

□ □ □ □ □ □

Appraisal Subcommittee

Federal Financial Institutions Examination Council

November 17, 2006

Richard Stephens, Chairman
Arkansas Appraiser Licensing and Certification Board
101 East Capitol, Suite 430
Little Rock, AR 72201

Dear Mr. Stephens:

Thank you for your September 1, 2006 letter responding to our July 19, 2006 field review letter. As noted in our November 3rd interim response to you, we delayed responding to your September 1st letter until we could meet with the Appraiser Qualifications Board (“AQB”) to discuss issues related to our field review findings. In our July 19th letter, we identified two areas that Arkansas needed to address to bring its real estate appraiser regulatory program (“Program”) into substantial compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”).

- **Arkansas’ regulations, policies, and practices regarding appraiser reinstatement from inactive status do not conform to Appraiser Qualifications Board (“AQB”) criteria.**

In our field review letter, we noted that Arkansas’ regulations, policies, and practices allowed an appraiser to reinstate his or her credential from a period of inactive status without completing all continuing education that would have been required while inactive, including the most recent edition of the 7-hour National USPAP Update Course. Because the regulations, policies, and practices did not conform to a September 2005 AQB-adopted Interpretation, the Arkansas Appraiser Licensing and Certification Board (“Board”) was directed to review its records and identify appraisers who reactivated their certified credentials since September 2005.

The Board fully completed only step one of the corrective actions steps contained in our July 19th letter. In your letter, you informed us that the Board identified two appraisers (one certified and one licensed) who reactivated their credentials since the effective date of the AQB Interpretation. We understand that you are in the process of contacting these appraisers to determine the number of continuing education hours completed by each.

The Board decided not to take any further steps regarding this situation because the Board believes that the appraisers complied with State regulations that were in effect at the time the appraisers went on inactive status and that “retroactively alter[ing] the conditions for reinstatement may be contrary to state law and beyond the authority of the [Board].” In addition, you stated that “[t]his is particularly true in light of the fact that the [State’s] reinstatement provision . . . has been in place since 1994 and there has been no finding of noncompliance in the three previous audits.”

One of the central purposes of Title XI is to ensure that appraisers who perform appraisals in connection with federally related transactions are competent and meet the minimum qualifications criteria for certification adopted by the AQB. The ASC is required by Title XI to

ensure that all States require applicants for initial certification, renewing certified appraisers, and reactivating certified appraisers meet AQB criteria for initial certification, renewal, or reactivation.

As noted in our field review letter, the AQB, in September 2005, adopted an Interpretation to its certification criteria clarifying that waivers and deferrals of continuing education were not permissible. That Interpretation further stated that, prior to reactivation, inactive credential holders must complete all continuing education that would have been required during the period they were in inactive status, including the most recent edition of the 7-hour National USPAP Update Course. (The AQB recently modified this Interpretation to allow States to defer completion of the continuing education requirements for up to 180 days for credential holders returning from active military duty.) Interpretations relating to certification classifications are binding and are inherent parts of the criteria.

The ASC cannot permit a State to issue certified credentials that authorize appraisers holding those credentials to perform appraisals in federally related transactions when those appraisers have not met the AQB's continuing education requirements. To allow such appraisers to continue performing appraisals in federally related transactions would misrepresent their authority to federally insured financial institutions and other users of appraisal services.

While the affected appraisers' certifications might have been issued in compliance with State law, State law cannot override the requirements of Title XI. Notwithstanding the existence of conflicting State law, Arkansas, under Federal law (*i.e.*, Title XI), was required after the AQB's September 2005 Interpretation adoption and publication to comply with that Interpretation as applied to certified appraisers. Arkansas knew or should have known about the existence of the September 2005 Interpretation and should have taken immediate steps to ensure compliance with its requirements.

Regarding your point that the ASC failed to note this deficiency in prior field reviews, the Interpretation was not yet in effect when we performed those field reviews. Even if the Interpretation had existed at the time of previous field reviews and had we failed to note the deficiency at that time, such a failure would have no impact on the State's responsibility to comply with Title XI.

Arkansas needs to take the following steps to address this concern:

1. Within 10 days of receipt of this letter, determine whether the appraisers identified above have taken all continuing education that would have been required if they had been in active status, including the most recent edition of a 7-hour National USPAP Update Course;
2. Require either appraiser who fails to meet the continuing education provisions to complete successfully the appropriate education within 60 days from the Board's receipt of this letter;
3. If the certified appraiser is determined to be deficient and fails to complete successfully the appropriate education within the 60-day period, take the necessary steps to downgrade his or her credential to the licensed level and notify the ASC of this fact. We will change the appraiser's "AQB Compliant" status on our Web site to "No";

4. If the licensed appraiser is determined to be deficient and fails to complete successfully the appropriate education within the 60-day period, notify the ASC of that fact. We will change the appraiser's "AQB Compliant" status on our Web site to "No"; and
5. Notwithstanding the continuing existence of the non-conforming regulation, refrain from reinstating appraiser certifications that fail to conform to AQB certification criteria.

Finally, you stated in your letter that the Board was in the process of amending its rules to conform to the AQB Interpretation. You expected that the rule amendments will be reviewed by the State's General Assembly soon, and that the rules will become effective January 1, 2007. We appreciate your prompt action to address this situation. Please notify us in writing once the amended rules are finalized and provide a copy for our records.

- **Arkansas' regulations, policies, and practices allow tax assessors to become certified appraisers without conforming to AQB experience criteria and in a manner that is inconsistent with ASC Policy Statement 10 F.**

In our July 19th field review letter, we noted that Board regulations provide that *ad valorem* tax appraisers may be awarded experience credit as evidenced by a timed log of specific appraisal tasks performed, and by demonstrating that he or she had effectively used similar appraisal process techniques to value properties as do other appraisers. We discussed how the Board implemented this regulation and how those implementing procedures failed to conform to AQB criteria and ASC Policy Statement 10.

Under the Board's procedures, the Board accepted from tax assessor applicants affidavits of experience claimed, along with timed logs of specific appraisal tasks performed, together with narrative descriptions detailing the types of tasks performed. Some logs, however, merely referenced work performed in a simple one-line summary. The affidavits did not reference USPAP-compliant work. During our field review, the Board and Board staff stated that the Board had not reviewed mass appraisal applicants' experience claims to determine whether that experience conformed to USPAP Standard 6.

With respect to ASC Policy Statement 10 F, we noted that, since January 1, 2005, that Policy Statement prohibited States from accepting experience-related affidavits from applicants for certification. States must require documentation to support the full experience hours required for certification. While that documentation can be in the form of a log, the entries on that log must contain sufficient information for a State to determine that the experience claimed by the applicant meets AQB criteria. We stated our belief that it would be impossible for the Board to make that determination based on logs that reference work performed in a simple one-line summary.

We concluded that, since the Program's inception, it was possible that the Board issued certified appraiser credentials to tax assessors based on Board regulations and practices that were inconsistent with AQB criteria and, since January 1, 2005, ASC Policy Statement 10 F. As a result, the ASC directed the Board to take certain corrective actions regarding appraisers whose credentials were issued based on assessor/mass appraisal experience.

Based on your September 1st letter, it appears that the Board completed only a portion of the specified corrective actions. You stated that the Board reviewed the files for all active and

inactive appraisers certified since December 1991 [the beginning of appraiser licensing in Arkansas]. You determined that 29 appraisers currently held certified credentials based on mass appraisal or mixed (fee) experience. You also reviewed the files of each of these appraisers to determine whether the file contained documentation supporting conformance to AQB criteria and, if the appraiser was certified on or after January 1, 2005, ASC Policy Statement 10 F.

You stated that, of the 29 certified appraisers, 16 were certified based entirely on experience earned prior to January 1992. You believe that, because there were no uniform standards of appraisal practice prior to implementation of appraiser licensing in Arkansas in late 1991, there was no basis on which to require that experience earned prior to 1992 be USPAP-compliant. As a result, the Board believes that any experience (*e.g.*, fee, *ad valorem*, or consulting) earned prior to 1992 was acceptable by affidavit under the Board's experience rules. You stated that the applicant only had to prove [the necessary] hours of experience. You further stated, "Even today, if someone applied for certification based on experience [earned] prior to January 1991 we think the Board would be 'remiss' in not granting credit for that experience. Even in cases where the experience was not *ad valorem* tax appraising and records were not available, the experience would be credited if the individual provided documentation acceptable to the Board."

To support your position, you attached early versions of the AQB certification criteria. You accurately noted that, at that time, the criteria stated that the necessary experience was, "[e]quivalent to two years appraisal experience. If requested, experience documentation in the form of reports or file memoranda should be made available to support the experience claimed." Furthermore, you relied on paragraph d. of the March 27, 1991 criteria and paragraph c. of the February 9, 1993 criteria, which were identical. Those paragraphs stated that "[t]he verification for experience credit claimed by an applicant shall be via affidavit on forms prescribed by the state certification/licensing agency."

AQB Criteria Considerations

As noted above, Interpretations to the AQB criteria always have been integral to the AQB's criteria and, regarding certification qualifications, have been binding on the States. The following Interpretations to the AQB's experience criteria for certification, as they existed on March 27, 1991, are relevant to our discussion:

- Experience credit should be awarded to *ad valorem* tax appraisers who demonstrate that they - (1) use techniques to value properties similar to those used by appraisers and (2) effectively use the appraisal process.
- Components of the mass appraisal process that should be given credit are highest and best use analysis, model specification (developing a model), and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, should not be eligible for experience credit.
- Mass appraisals must be performed in accordance with Standards Rule 6 of the USPAP.

Four imperatives, pertinent to this discussion, existed in the March 27, 1991 certification criteria and Interpretations:

- Two years of experience were needed;
- State agencies had to verify claimed experience via affidavit;
- Experience should be awarded to *ad valorem* tax appraisers only if they demonstrated that they used valuation techniques similar to those used by other appraisers and that they could effectively use the appraisal process; and
- Mass appraisals had to conform to Standards Rule 6 of USPAP.

Standards Rule 6, then and now, was directed toward the substantive aspects of developing and communicating credible analyses, opinions, and conclusions in the mass appraisal of properties. The 1991 AQB criteria required that mass appraisal experience had to conform to USPAP Standard 6. Because the AQB did not establish a time threshold regarding when this provision became effective, mass appraisal experience, regardless of when earned, had to comply with Standards Rule 6. In other words, beginning on March 27, 1991, certified appraiser credentials issued by a State must be supported by experience that meets AQB criteria. For mass appraisal experience, that experience had to comply with Standards Rule 6.

In June 1997, the AQB changed the Interpretation regarding mass appraisal. The new Interpretation stated that mass appraisal experience earned after January 1, 1991, had to conform to USPAP Standard 6. This Interpretation became effective in June 1997. Therefore, it applied to certified credentials issued in June 1997 or later.

On November 5-7 of this year, I met with the AQB during its public meeting and work sessions in La Jolla, California. I presented this issue to the AQB and discussed the ASC's reading and understanding of the AQB criteria. I explained the assertions made by Arkansas and other States regarding mass appraisal experience and the procedures used by some States to evaluate and award credit for mass appraisal experience. The AQB concurred with the ASC's understanding of the criteria. In summary, the AQB stated that the criteria always have required that mass appraisal experience must comply with USPAP Standard 6, and that the State had a responsibility to make that determination.

Arkansas, therefore, had a duty under the AQB's certification criteria and Title XI to ensure that mass appraisal experience conformed to USPAP Standard 6. While the certification criteria specifically allowed State agencies to accept experience claimed via affidavit, the criteria must be read as a whole, not piecemeal. The provision regarding the acceptance of experience affidavits must be read together in a reasonable manner with the provision that mass appraisal experience had to conform to USPAP Standard 6. Therefore, States could not rely solely on accepting affidavits in these circumstances. States had to make a reasonable effort to determine whether applicants performed their mass appraisal work in compliance with USPAP Standard 6. As noted previously and in our field review letter, the Board and Board staff, since the inception of the Program, failed to review mass appraisal experience claims to determine whether that experience conformed to USPAP Standard 6.

ASC Policy Statement Considerations

Arkansas' acceptance of experience affidavits also creates conflicts with ASC Policy Statement 10. On August 4, 1993, the ASC adopted the *ASC Policy Statements Regarding State Certification and Licensing of Real Estate Appraisers*. ASC Policy Statement 10 B addressed the issue of validating experience claimed by appraiser applicants. At that time, the paragraph stated that, "State agencies, at a minimum, should have a reliable means of validating both education and experience credit claimed for certification or licensing." The policy statement further provided that, "the lack of routine verification procedures is both an invitation to potential fraud and a threat to the integrity of a State's appraiser regulatory program." The ASC greatly strengthened that language, effective January 1, 2005, by adding new paragraph F, which prohibited States from accepting experience-related affidavits from applicants for certification.

Based on our field review findings, Arkansas failed to comply with our 1993 Policy Statement regarding the need to validate experience claimed by applicants and the 2005 Policy Statement amendment that prohibited States from accepting experience-related affidavits.

As with the reinstatement issue discussed earlier, here, too, you contended that "it is improper to retroactively conclude that additional experience is necessary. The appraisers in question were licensed pursuant to state laws and regulations. To retroactively alter the conditions for licensure may be contrary to state law and beyond the authority of the Arkansas Appraiser Licensing and Certification Board. This is particularly true in light of the fact that the timed log regulation regarding mass appraisers has been in place since 1998 and there has been no finding of noncompliance in the two previous audits."

For reasons similar to those stated earlier, your position is invalid. Arkansas failed to qualify persons appropriately under the AQB experience criteria for certification since the inception of the Program. Our failure to note this deficiency in the past does not offset the State's responsibility to comply with Title XI. Arkansas knew or should have known about the AQB criteria provisions regarding mass appraisal experience, and knew or should have know about the ASC's experience validation provisions as set forth in ASC Policy Statement 10.

Arkansas still needs to comply with corrective actions steps set forth in our July 19th field review letter. These steps must be completed within 60 days following your receipt of this letter.

Our field review letter, your response, and any other previous correspondence between us regarding the field review now are publicly available on our Web site.

Please contact us if you have any questions.

Sincerely,

Ben Henson
Executive Director

cc: James Martin, Executive Director