

# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

July 23, 2007

Mr. Lawrence M. Reifurth, Director  
Hawaii Department of Commerce and Consumer Affairs  
P.O. Box 3469  
Honolulu, HI 96801

Dear Mr. Reifurth:

Thank you for the cooperation of your staff in the June 3-6, 2007 Appraisal Subcommittee (“ASC”) field review of Hawaii’s real estate appraiser regulatory program (“Program”). The condition of Hawaii’s Program has deteriorated significantly since our previous review in 2005.

Based on our review, Hawaii needs to address four concerns to bring its Program into substantial compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, (“Title XI”). We will monitor Hawaii’s progress towards curing these concerns to determine whether we will perform a follow-up review later this year.

- **Hawaii’s regulations do not conform to current Appraiser Qualifications Board (“AQB”) criteria, and the State has not taken sufficient steps to implement the 2008 AQB criteria.**

While Hawaii, in practice, implements current AQB criteria, including the January 2003 AQB criteria changes, the Department of Commerce and Consumer Affairs (“Department”) did not amend its regulations to incorporate the January 2003 AQB criteria changes formally into State law. We notified the Department of this concern in our July 10, 2002 and July 18, 2005 field review letters. The Department stated in its September 15, 2005 response letter that it was in the final stages of drafting implementing regulations to adopt the 2003 criteria changes. Those regulations never were proposed or adopted.

During the current field review, we also found that the State had not yet begun the rule making process to formally adopt regulations to ensure that the 2008 AQB criteria changes would be in place by the January 1, 2008 effective date. Department staff informed ASC staff that the Department planned to implement the 2008 criteria changes informally and not adopt implementing regulations.

Under Title XI, Hawaii must ensure that applicants for certification meet the AQB’s minimum qualification requirements. Hawaii must have in place a formal legal structure requiring applicants for certification to conform to the AQB’s minimum criteria requirements. If Hawaii were to fail to adopt formal regulations or statutory changes to implement the 2008 criteria changes, the State’s existing regulations would continue to be enforceable under State law. Those existing regulations, however, would contain certification criteria requirements that would fail to meet those required under Title XI on and after January 1, 2008. Because those existing regulations would remain enforceable, it would be possible that applicants for certification could compel Hawaii to use those existing, outdated regulations to qualify for certification. Appraisers

receiving certifications under those regulations, however, would not be legally eligible to perform appraisals in connection with federally related transactions or any other transactions that require the services of certified appraisers under Federal statutes or regulations.

To cure this concern, the Department needs to:

1. Within 21 days from the date of this letter, provide the ASC with a specific action plan to implement the 2003 and 2008 criteria changes. The State may choose to implement these changes in two ways. Hawaii could adopt formal rule changes implementing the 2003 AQB criteria changes on an expedited basis and then begin the rulemaking process to adopt the necessary changes for the 2008 AQB so that the 2008 criteria would be in place by January 1, 2008. In the alternative, the State could begin the rulemaking process as soon as possible to adopt the 2008 AQB criteria so that the changes would be in place by their January 1, 2008 effective date. Adopting separate rule changes to incorporate the 2003 AQB criteria changes would be unnecessary as the 2008 criteria changes supersede the 2003 changes;
  2. Provide for our comment and review a draft copy of the proposed rule changes discussed in item one;
  3. Submit monthly reports regarding the status of the rulemaking efforts to Appraisal Policy Manager Vicki Ledbetter via email at [Vicki@asc.gov](mailto:Vicki@asc.gov); and
  4. Notify the ASC in writing when those regulations are adopted.
- **The Department reactivated inactive appraiser credentials in a manner inconsistent with AQB criteria.**

In September 2005, the AQB issued an Interpretation stating that, prior to reactivation of an inactive credential, the credential holder must complete all continuing education hours that would have been required if the credential had been Active, including the most recent edition of the 7-hour National Uniform Standards of Professional Practice (“USPAP”) Update Course, or its equivalent. Part of the Department’s regulations regarding reinstatement failed to conform to this interpretation.

HAR § 16-114-64 contains a provision that enables an appraiser returning to Active from Inactive status to show “proof of completion of all continuing education hours the applicant would have had to submit for the biennium immediately preceding the date of reactivation.”<sup>1</sup> This section conflicts with AQB criteria because, for example, a certified appraiser who had been Inactive for three years could become Active by only earning 28 hours of continuing education, even though at least 42 hours would be needed under AQB criteria, including the most recent edition of the 7-hour National USPAP Update Course, or its equivalent.

ASC staff discovered one certified residential appraiser whose credential was reactivated under HAR § 16-114-64. The Department placed this credential on inactive status on January 1, 1996, and reactivated it on May 9, 2006. The Department only required the appraiser to prove 28 hours of continuing education. (The appraiser actually provided 37 hours of continuing education,

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<sup>1</sup> HAR § 16-114-104 includes a similar provision. This section permits a person returning to Active status after a suspension to reinstate with just 28 hours of continuing education. Based on our review of the complaint log and corresponding complaint files, Hawaii has not suspended any credentials and, therefore, has not had the occasion to rely on this provision.

including a 7-hour National USPAP Course.) Under the AQB Interpretation, however, the appraiser needed to have 132 hours of continuing education at the time of reactivation (20 hours for the December 31, 1997 renewal cycle, and 28 hours each for the December 1999, 2001, 2003, and 2005 renewal cycles).

To address this deficiency, the Department needs to:

1. Refrain from reactivating certified appraisers who fail to conform to the AQB reactivation Interpretation;
  2. Within 30 days from the date of this letter, notify the identified certified residential appraiser that she must complete the necessary continuing education courses within 60 days of the date of the Department's notification letter;
  3. Within 90 days from the date of this letter, initiate appropriate action against the appraiser, if she fails to document compliance with the AQB Interpretation and begin the process to downgrade the credential to a non-certified level;
  4. As an alternative to completing the necessary continuing education courses, permit the appraiser to submit a new application and qualify as a new applicant. This process would include documenting the necessary qualifying education and experience to conform to current AQB criteria, and passing the appropriate examination;
  5. Within 120 days from the date of this letter, provide the ASC with a written report confirming that steps one through three (or four) have been completed; and
  6. Amend its regulations as soon as possible to comply with the AQB reactivation interpretation and keep us informed about the status of those rule amendments.
- **Hawaii did not investigate and resolve complaints in a timely manner.**

Hawaii's complaint investigation and resolution process did not comply with Title XI and ASC Policy Statement 10 E because complaints were not investigated and resolved in a timely manner. Failure to investigate and resolve complaints in a timely manner is a key element to effective appraiser supervision. ASC Policy Statement 10 E provides that States need to process complaints on a timely basis, and that, absent special documented circumstances, final State administrative decisions regarding complaints should occur within one year of the complaint filing date.

The chart below summarizes complaint statistics.

<b>Field Review Cycle</b>	<b>Complaints received</b>	<b>Complaints outstanding</b>	<b>Complaints outstanding more than 1 year</b>
July 2002-June 2005	9	5	3 (60 %)
July 2005- June 2007	10	10	7 (70%)

Of the seven aged complaints, two were received in 2005, and five in 2006. ASC staff reviewed all seven case files and could not determine any specific reasons for the delays. Each case file, however, showed recent activity. ASC staff discussed these findings with Compliance and Enforcement Officer Jo Ann Uchida and reminded her about ASC Policy Statement 10 E's requirement that States resolve complaints in a timely manner. Ms. Uchida agreed with our conclusion that cases were not being resolved timely and stated that she would work to identify

procedural changes to expedite the process.

To address this situation, the Department needs to:

1. Ensure that it investigates and resolves complaints in a timely manner, as required by ASC Policy Statement 10 E; and
  2. Provide the ASC with a detailed plan describing how the Department will reduce the complaint-processing backlog and handle newly received complaints on a timely basis.
- **Hawaii did not provide regular National Registry data submissions in accordance with ASC Policy Statement 8 E.**

Title XI requires States to report appraiser-related data to the ASC for inclusion in the National Registry. ASC Policy Statement 8 E requires that States provide this information to the ASC no less frequently than monthly. Hawaii frequently failed to comply with this requirement. During the 24-month review period, June 2005 to June 2007, the ASC received only seven data submissions: two in 2005; four in 2006; and one in 2007.

To remedy this situation, the Department needs to:

1. Develop and implement procedures to ensure the timely submission of National Registry data to the ASC; and
2. Provide the ASC with a copy of those procedures.

Unless indicated otherwise above, please respond to our findings and recommendations within 60 days from the date of this letter. Until the expiration of that time or the receipt of your response, we consider this follow-up review to be an open matter. After receiving your response or the expiration of the 60-day response period, whichever is earlier, this letter, your response and any other correspondence between you and the ASC regarding this follow-up review become releasable to the public under the Freedom of Information Act and will be made available on our Web site.

Please contact us if you have any questions.

Sincerely,

Virginia M. Gibbs  
Chairman

cc: Alan Taniguchi, Executive Officer