

□   □   □   □   □   □

# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

July 25, 2007

Mr. Nicholas Rhoad, Board Director  
Indiana Real Estate Appraiser Licensure  
and Certification Board  
Indiana Professional Licensing Agency  
402 W. Washington, Room W072  
Indianapolis, IN 46204

Dear Mr. Rhoad:

This letter responds to Board Chairman Griffin's May 15, 2007 letter responding to the Appraisal Subcommittee's ("ASC") March 14, 2007 field review letter. Each concern is discussed below.

- **Indiana accepted affidavits to support continuing education without a reliable means of validation, inconsistent with ASC Policy Statement 10 F.**

### ***2004 continuing education audit***

This concern was initially discussed in our July 18, 2005 field review letter and was not completely resolved at the time of our December 2006 field review.

In our March 14<sup>th</sup> field review letter, we noted that Indiana renewed appraiser credentials based on appraisers' sworn affirmations (*i.e.*, affidavits) that the appraisers had met the State's continuing education requirements. During our 2005 field review, ASC staff discovered that the Board failed to conduct a continuing education audit following the January 1, 2004 renewal. In our July 18, 2005 field review letter, the ASC directed the Board to audit the continuing education claims of at least 10 percent of appraisers who renewed their credentials on or after January 1, 2004. In response to our letter, Indiana audited the continuing education claims of 139 certified appraisers and 95 licensed appraisers. Of the 139 certified appraisers, two failed to provide proof of compliance with continuing education requirements. Those two cases were forwarded to the Attorney General ("AG's") office, and charges were filed against both appraisers. One appraiser surrendered his certification, and the other appraiser's certification was suspended indefinitely.

Of the 95 licensed appraisers, seven (7%) failed to provide proof of compliance with continuing education requirements. Only three of these seven cases were forwarded to the AG's office. Appropriate disciplinary action was taken against these three appraisers.

We questioned IPLA staff regarding the four licensed appraisers' cases that were not forwarded to the AG's office. IPLA staff responded that a staff member who no longer was employed by IPLA had communicated with these four licensees and possibly obtained documentation of their continuing education. That documentation, however, could not be located.

Our March 14<sup>th</sup> field review letter stated that, in connection with the 2004 continuing education audit, the Board and/or IPLA needed to:

1. Be aware that the ASC had changed the “AQB Compliant” field in the National Registry to “No” for each of the four licensed appraisers discussed above; and
2. Ensure that these appraisers were identified as “No” in the “AQB Compliant” data field in the State’s National Registry data submissions, until such time as the appraisers become AQB compliant.

In your May 15<sup>th</sup> letter, you failed to address this issue. IPLA staff, however, in subsequent email communications with ASC staff, indicated that two of the cases, on January 3, 2007, were forwarded to the AG’s office for filing of formal charges. We understand that the AG’s office still had not filed formal charges on these cases. We also understand that no action had been taken regarding the other two cases. These processing delays are unacceptable. The State needs to expedite the processing of these cases. Please keep us advised about the status of these cases as they move through your case resolution system.

Finally, we discovered on June 19, 2007, that the “AQB Compliant” field in the National Registry reflected “Yes” for each of the four licensed appraisers discussed above. We again have changed their “AQB Compliant” status to “No”. You must ensure that these appraisers are identified as “No” in the “AQB Compliant” data field in your National Registry data submissions until you can assure us that those appraisers have become AQB compliant.

### ***2006 continuing education audit***

In February 2006, Indiana audited 10 percent of the certified appraisers who renewed their credentials on or after January 1, 2006. That audit included 131 certified appraisers. Prior to our field review, Indiana reported to ASC staff that all audited appraisers provided proof of compliance with continuing education requirements. While on-site, ASC staff reviewed all 131 files and determined that 11 appraisers failed to document that they had met the AQB criteria’s continuing education requirements. IPLA staff immediately contacted these appraisers. Six appraisers provided documentation to substantiate the required continuing education. On December 15, 2006, IPLA mailed certified letters to the other five appraisers, giving them until January 15, 2007, to submit their proof of continuing education or their file would be forwarded to the AG’s office for the filing of formal charges.

Our March 14, 2007 field review letter stated that the Board and IPLA needed to report to ASC staff its determinations regarding the five certified appraisers referred to the AG office in connection with the 2006 audit. If any of the certified appraisers failed to document conformance to AQB criteria, the Board and IPLA needed to ensure that the State’s National Registry data submissions regarding these appraisers reflected “Inactive” in the Status field and “No” in the AQB Compliant field.

In your May 15<sup>th</sup> letter, you stated that the five certified appraiser files were forwarded to the AG’s office, and that the AG’s office had sent “board summaries” regarding two of those cases to the Board liaison for review. In addition, the AG’s office opened litigation files in connection

with the other three cases. You stated that, until the AG's office files administrative complaints in these three cases, the Board cannot take further action. Please send a report to [jenny@asc.gov](mailto:jenny@asc.gov) as soon as possible providing us with a status update regarding these five cases.

In the ASC's March 14<sup>th</sup> field review letter, we noted that Indiana did not conduct continuing education audits regarding licensed appraisers who renewed their credentials on or after January 1, 2006. Although States are not required to audit affidavits for licensed appraisers, unless such audits are conducted, the ASC cannot represent on the National Registry that those appraisers are AQB compliant. We gave the Board and IPLA the option of conducting an audit of at least 10 percent of these licensed appraisers' continuing education claims by April 30, 2007.

In your May 15<sup>th</sup> letter, you reported that IPLA audited the continuing education claims of 10 percent (64) of the licensed appraisers who renewed their credentials. Fifty-one appraisers were found to be in compliance with AQB criteria. Three appraisers failed to respond to the audit letter, four appraisers' audit letters were returned as undeliverable, and six were believed to be in noncompliance with the AQB's continuing education licensing criteria. The files regarding these 13 appraisers were forwarded to the AG's Office on May 24, 2007, and disciplinary actions will be initiated against those appraisers in the near future.

Thirteen of the 64 licensed appraisers failed to respond or were found to not to be in conformance with AQB criteria. This equates to a 20% failure rate. In accordance with ASC Policy Statement 10 F, a failure rate exceeding 10% is unacceptable. As a result of the 20% failure rate, the State has two options: 1) audit the continuing education claims of all licensed appraisers who renewed their credentials on or after January 1, 2006; or 2) cease accepting affidavits for continuing education. Please notify us of your intended action as soon as possible. If you choose to audit 100% of licensed appraisers, you need to complete that audit as quickly as possible.

- **Indiana approved continuing education courses that appeared inconsistent with AQB criteria and failed to document the continuing education course approval process.**

During the December 2006 field review, ASC staff identified 12 continuing education courses that appeared inconsistent with AQB criteria. The 12 courses were:

1. National Association of REALTORS<sup>®</sup> Code of Ethics;
2. Premier School of Real Estate Code of Ethics and Professional Standards;
3. Metropolitan Indianapolis Board of REALTORS<sup>®</sup> Code of Ethics;
4. Fort Wayne Area Association of REALTORS<sup>®</sup> Code of Ethics;
5. License and Escrow Law;
6. Agency Law;
7. Multi-Generational Marketing;
8. Innovative Marketing;
9. Click & Close: Working with the e-buyer;
10. Listing Contract & Related Documents;
11. Settlement Procedures; and
12. Effective Negotiations.

IPLA staff was unable to locate and/or provide any documentation for these 12 courses or the

decision-making process supporting approval of the courses. IPLA staff stated that these courses likely were approved several years ago, and that the documentation relating to these courses was not maintained. To address this concern, we directed the Board and/or IPLA to take certain corrective actions.

In your letter, you contended that ASC staff “did not provide criteria to the Board outlining the parameters on which they evaluate CE, making it exceedingly difficult to appropriately address their questions.” As was conveyed to you during our field review, the ASC enforces the criteria established by the AQB. Those criteria specify that: “The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his/her skill, knowledge and competency in real estate appraising.” AQB criteria provide additional guidance regarding the acceptability of continuing education courses. These criteria are not “obscure standards” as they have been in place for almost 20 years and have been discussed in many meetings and written communications during that time.

In your May 15<sup>th</sup> letter, you concluded that Indiana’s acceptance of the identified continuing education courses was consistent with State law and therefore appropriate. In support of Indiana’s acceptance of real estate broker and salesperson courses as acceptable for real estate appraisers, you stated that § 876 IAC 3-5-10 allows for courses from other professions to be accepted for appraiser continuing education as long as it complies with the guidelines established in § 876 IAC 3-5-1. Section 876 IAC 3-5-1(c)(5) states that, “Credit may be granted for education offerings which cover real estate appraisal and related topics which are consistent with the following continuing education requirements [, including] . . . Ethics and Standards of Professional Practice.”

Under Title XI, the AQB is authorized to promulgate, among other things, the minimum educational requirements for certified appraisers. As noted above, the AQB’s criteria state that the purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his/her skill, knowledge and competency in real estate appraising. All of the problematic courses appear to focus on subjects relating to real estate brokerage or agency and not *appraisal* practice, ethics, or USPAP. As such, they are not acceptable for qualifying or continuing education under AQB criteria. Acceptance of those courses to satisfy real property appraiser continuing education requirements under the AQB’s certification criteria violates Title XI.

The IPLA and Board must comply with Title XI and the AQB’s continuing education certification requirements. To do so, the State must take the corrective steps set forth in our March 14<sup>th</sup> field review letter. While the certified appraiser credentials you have renewed supported by an unacceptable educational course might be compliant with State law, appraisers holding those credentials are not legal for Title XI purposes. Additionally, continued approval of such courses by the Board and IPLA will put Indiana’s entire appraiser regulatory program in jeopardy under Title XI. Please keep us informed about your progress towards remedying this deficiency. We will review your compliance with this issue during our October 2007 field review.

- **Board regulations regarding appraiser reinstatement from Inactive status do not conform to AQB criteria.**

Our March 14<sup>th</sup> field review letter stated that Board regulations currently allow an appraiser to place his or her credential into Inactive status for an unlimited amount of time, provided the appraiser pays specified annual fees. The regulations require that, to reactivate a license or certification from Inactive to Active status, the appraiser must take 28 hours of continuing education, including the most recent edition of the 7-hour National USPAP Update Course.

In September 2005, the AQB adopted an Interpretation regarding waivers and deferrals of continuing education. That Interpretation provides that, prior to reactivating an Inactive credential, the credential holder must complete all continuing education that would have been required had he or she not been Inactive, including the most recent edition of the 7-hour National USPAP Update Course.

The Board needed to amend its regulations to comply with the AQB criteria Interpretation and keep us informed about that effort.

In your May 15<sup>th</sup> letter, you stated that the Board has begun the rule promulgation process to correct the above. We understand that LSA 07-338 Notice of Intent has been filed and will be posted on June 22, 2007. Please keep us advised about the status of this proposed rule change.

Our field review letter, your response, and any other previous correspondence between us regarding the field review are now publicly available on our Web site. Please contact us if you have further questions.

Sincerely,

Ben Henson  
Executive Director

cc: Lowell K. Griffin, Chairperson  
Wade Lowhorn, Deputy Director  
Gabrielle Owens, Attorney General's Office