

Appraisal Subcommittee

Federal Financial Institutions Examination Council

July 23, 2007

Mr. Derek Miller, Director
 Division of Real Estate
 Department of Commerce
 P.O. Box 146711
 Salt Lake City, Utah 84114-6711

Dear Mr. Miller:

Thank you for your cooperation and your staff’s assistance in the February 27-28, 2007 Appraisal Subcommittee (“ASC”) review of Utah’s real estate appraiser regulatory program (“Program”). Based on our review, Utah needs to address three concerns to bring the Program into substantial compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (“Title XI”). These concerns relate to: (1) the failure to investigate and resolve complaints in a timely manner; (2) the issuance of certified credentials on the basis of experience affidavits; and (3) the issuance of certified credentials to Division investigators without documenting their compliance with Appraiser Qualifications Board (“AQB”) experience criteria.

- **The State did not investigate and resolve complaints in a timely manner as required by ASC Policy Statement 10 E.**

Under Title XI and ASC Policy Statement 10 E, State appraiser regulatory agencies must process complaints of appraiser misconduct or wrongdoing on a timely basis. Absent special documented circumstances, final State agency administrative decisions regarding complaints should occur within one year of the complaint filing date.

As shown in the chart below, Utah’s complaint investigation and resolution timeliness has worsened since our previous review in January 2004.

Field Review Cycle	Complaints received	Complaints outstanding	Complaints outstanding more than 1 year
Nov 2000 – Dec 2003	335 (~105/year)	65	33 (51%)
Jan 2004 – Feb 2007	434 (~137/year)	107	72 (67%)

Of the 72 aged cases, 12 cases were from 2003, 24 from 2004, 34 from 2005, and two from 2006. The Board attributed the backlog to a shortage of investigators. Division Director Derek Miller and Enforcement Director Dee Johnson informed ASC staff that the Division had taken steps to add investigative resources. An investigator from the Real Estate section recently was assigned to handle appraiser-related complaints. Director Johnson also made processing and workflow adjustments that should improve timeliness. Additionally, the Division received authority to resolve appraiser cases informally.

To resolve this concern, the Board and Division need to:

1. Devote the necessary time and resources to bring the complaint processing and resolution program into compliance with ASC Policy Statement 10 E; and
 2. Provide ASC staff, on a quarterly basis, complaint logs and reports describing the status of the State's efforts to reduce the complaint backlog and to process newly received complaints on a timely basis.
- **Utah issued certified credentials to *ad valorem* tax assessors on the basis of experience affidavits in violation of ASC Policy Statement 10 F.**

On August 4, 1993, the ASC adopted ASC Policy Statement 10 B. That paragraph addressed the issue of validating experience claimed by appraiser applicants by stating, "State agencies, at a minimum, should have a reliable means of validating both education and experience credit claimed for certification or licensing." Effective January 1, 2005, the ASC added new paragraph F to ASC Policy Statement 10. That paragraph, among other things, prohibited States from accepting any experience-related affidavits from applicants for certification.

Utah's statutes and regulations require *ad valorem* tax assessors to be State licensed or certified under AQB criteria. However, since the inception of the Program until June 1, 2007, *ad valorem* tax assessor applicants did not need to submit experience logs. While other applicants for appraiser credentials had to submit such logs, *ad valorem* tax assessor applicants would submit affidavits from supervisors noting applicants' employment dates and *ad valorem* and/or mass appraisal activities. The affidavits generally set out the tasks performed by applicants during each year of service and did not identify each particular property, project, or tax subdivision, or the like, the date and nature of each task performed, or the number of hours spent performing each task.

On the basis of the safeguards provided by the State's statutes and regulations, the Division and Board concluded that it was reasonable to assume that all mass appraisal work submitted by *ad valorem* tax assessors for experience credit was USPAP-compliant, and that the State had a reliable means of validating experience credit claimed for certification or licensing under ASC Policy Statement 10 B. The ASC agrees with the State's determination and finds that the State's reliance on experience affidavits from *ad valorem* tax assessor applicants is appropriate.

During the fall 2006 Association of Appraiser Regulatory Officials conference, the Division's Licensing and Education Director became aware that Utah's process for processing applications from *ad valorem* tax assessor applicants might be in conflict with ASC Policy Statement 10 F's prohibition against States accepting unsupported experience affidavits for certification. At the conference, he discussed the matter with ASC staff.

As a result, on November 1, 2006, Utah stopped processing applications containing mass appraisal experience claims and ceased issuing appraiser credentials to *ad valorem*/tax assessor applicants relying on experience affidavits. The Division created a committee to develop a specific experience point system related to tax assessment/mass appraisal and an experience log

on which those applicants could document their experience. The committee completed its work and made recommendations to the Division and Board.

Based on the committee's recommendations, the Division and Board proposed amendments to its rules, which were adopted on May 29, 2007 and became effective June 1, 2007. The amendments removed offending rule provisions and added several new provisions. The new provisions created a comprehensive tax assessment/mass appraisal point system, required the submission of a detailed experience log, and required that *ad valorem*/tax assessor applicants submit to the Division and Board for review several appraisals demonstrating compliance with USPAP Standards 1 and 2.

The State required all *ad valorem*/tax assessor applicants with applications in process on or after November 1, 2006, to reapply for their credentials under the proposed amendments, and now effective, new regulations. The ASC believes that those regulations fully comply with ASC Policy Statement 10 F and AQB criteria. While on-site, ASC staff determined that certified (and licensed) credentials issued to *ad valorem* tax assessor applicants from November 1, 2006, to the time of our February 2007 field review were fully compliant with ASC Policy Statement 10 F and applicable AQB criteria.

The only open issue is the use of experience affidavits for those *ad valorem* tax assessor applicants processed between January 1, 2005, and November 1, 2006. During this period, Utah accepted experience affidavits from *ad valorem*/tax assessor applicants and awarded experience credit on the basis of those affidavits, which was clearly inconsistent with ASC Policy Statement 10 F's prohibition against accepting experience affidavits.

To remedy this situation, the Division and Board need to:

1. Within 30 days from the date of this letter, identify all appraisers who were issued appraiser credentials supported by *ad valorem*/mass appraisal experience between January 1, 2005, and November 1, 2006;
2. Within 45 days from the date of this letter, determine whether the appraisers identified in step one have documentation on file to support conformance with AQB criteria and ASC Policy Statement 10 F;
3. Within 60 days from the date of this letter, send a letter to all appraisers determined to be deficient in step two, requesting documentation of the experience obtained either before or since being issued an appraiser credential with justification on the number of appraisal hours claimed;
4. Within 75 days from the date of this letter, determine whether any of the appraisers identified in step two failed to document AQB-qualifying experience for the credential held –
 - a. For each certified appraiser who fails to document the needed experience, recall the existing certification and conspicuously over stamp it with wording similar to "Not eligible to appraise federally related transactions." In this case,

you would need to instruct the ASC to change the appraiser's record on the National Registry from "Active" to "Inactive"; and

- b. For each licensed appraiser who fails to document the needed experience, provide a listing to ASC staff identifying the appraiser by name and credential number and instruct the ASC to change the appraiser's record on the National Registry to "non-AQB compliant"; and
5. Within 90 days from the date of this letter, send the ASC a spreadsheet listing each appraiser identified in step one, including each appraiser's status relative to this action plan.
- **Utah allowed fulltime investigators with the Division to be granted certifications without documented conformance to AQB experience criteria.**

Board regulation § R162.104.17.4 provided that fulltime Division investigators could be awarded experience credit for every 18 months of service. As a result, the Division and Board did not require the investigators to submit experience logs or provide any other supporting documentation in their application for appraiser certification. Therefore, the ASC believes that the Division and Board failed to ensure that the experience claims were verifiable and USPAP compliant under AQB criteria. While the Division's current investigator responsible for appraiser-related complaints was appropriately certified, the State issued at least two other certifications on this basis.

The Division and Board deleted this rule when it adopted the new regulations discussed above. Effective June 1, 2007, to obtain an appraiser credential, Division investigators must satisfy the AQB criteria's minimum experience requirements.

To resolve this concern, the Division and Board need to:

1. Within 30 days from the date of this letter, identify all appraisers who were issued appraiser credentials based on credit for service as a fulltime investigator;
2. Within 45 days from the date of this letter, determine whether the appraisers identified in step one have documentation on file to support conformance to AQB criteria and ASC Policy Statement 10 F;
3. Within 60 days from the date of this letter, send a letter to all appraisers determined to be deficient in step two requesting documentation of the appraiser's experience since being issued an appraiser credential;
4. Within 75 days from the date of this letter, determine whether any of the appraisers identified in step two have failed to document AQB-qualifying experience for the credential held.
 - a. For each certified appraiser who fails to document the needed experience, recall the existing certification and conspicuously over stamp it with wording similar to "Not eligible to appraise federally related transactions." Ensure that

the appraiser's record on the National Registry is changed from "Active" to "Inactive;" and

- b. For any licensed appraiser who fails to document the needed experience, provide a listing to ASC staff identifying each appraiser by name and credential number. Ensure that these licensed appraisers are listed on the National Registry as "non-AQB compliant"; and
5. Within 90 days from the date of this letter, send to the ASC a spreadsheet listing each appraiser identified in step one, including each appraiser's status relative to this action plan.

Unless specified otherwise above, please respond to our findings and recommendations within 60 days from the date of this letter. Until the expiration of that time period or the receipt of your response, we consider this field 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 field 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: Craig Morley, Chair
Appraiser Licensing and Certification Board