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Appraisal Subcommittee

Federal Financial Institutions Examination Council

August 13, 2007

To the State appraiser regulatory agency addressed:

After considering comments received regarding proposed revisions to *ASC Policy Statement 10: Enforcement*, the ASC, at its August 9, 2007 meeting, adopted a revised Policy Statement. The final statement adds Paragraph G which addresses several of the ASC's concerns about methods used by States to validate an applicant's appraisal experience.

In response to our March 28, 2007 proposal, we received written comments from eight States and one individual. All commenters generally supported the proposal, although some raised questions and/or concerns. For your information, we have attached a summary of the comments and our responses, together with a complete copy of ASC Policy Statement 10, as amended. The revisions and comment letters can be found at the ASC's Web site at <http://www.asc.gov>.

Please contact us if you have any questions.

Sincerely,

Ben Henson
Executive Director

Enclosures

Summary of Comments

ASC Policy Statement 10 G.

Eight States (Tennessee, Kentucky, Texas, Missouri, Arizona, Illinois, Oklahoma, and Wisconsin) and one individual provided comments regarding the proposed revision to ASC Policy Statement 10. The following list provides commenters' observations and our responses:

General

- **Comment** – We would ask the ASC to consider an implementation date of January 1, 2008, to coincide with the AQB's criteria changes. This would provide our licensing agency with a marginal grace period to review and refine our current policies and procedures as they relate to Statement 10.

Response – Policy Statement 10 G does not establish new requirements. The purpose of paragraph G is to clarify already existing Title XI and ASC Policy Statement provisions. Therefore, establishing an effective date for the new paragraph is not necessary or appropriate.

Validation of Qualifying Experience and Proper Use of Experience Logs

- **Comment** – Would the ASC consider a State appraiser regulatory agency to be in compliance with this expectation if the agency requires sufficient information to be included in the experience log for locating the subject properties listed?

Response – While sufficient information to locate subject properties is a desirable element in an experience log, that information alone would be inadequate to validate appraisers' experience claims. State agencies must validate that appraisers performed the work. The most common validation method is for the State to select two or more appraisal assignments listed on the experience log and require the applicant to submit the related appraisal reports and/or other supporting documentation for review by the State.

- **Comment** – We recommend that, in the last sentence, the words “to have the ability” be inserted after “State agency.” It is unlikely that information contained on an experience log will be sufficient to validate the existence of an appraisal, or to determine whether it is USPAP-compliant. It is more likely that the information on the experience log will provide the State with the ability to determine what additional information (appraisal reports, work files, etc.) will be required to evaluate an applicant's experience.

Response – We agree with the commenter, but believe that the existing wording conveys this intent.

Determinations of USPAP Compliance

- **Comment** – For a person who works for a government agency or some other group outside fee appraisals of real property for lending purposes, would the ASC expect that the work must also comply with USPAP?

Response – Yes. If the experience is being used to support issuance of an appraiser credential authorizing the appraiser to perform appraisals in federally related transactions, that experience must be USPAP-compliant.

- **Comment** – If a State regulatory agency requires sample appraisal reports to be submitted for review prior to a license or certification being issued and determines that those samples comply with applicable USPAP provisions, has the agency met the initial part of validating the experience?

Response – Yes, provided the State, not the applicant, selected the sample work products to be submitted and reviewed.

- **Comment** – Although the ASC will review each State’s method on a case-by-case basis, does the ASC have any guidance regarding what steps a State should take to ensure an acceptable exercise of due diligence when setting up an experience review process?

Response – In general, due diligence should include, at a minimum, the following steps:

- Requiring an experience log containing adequate detail to enable the State to: (1) analyze compliance with the AQB criteria’s 24-month, 30-month, or other time frame regarding experience; (2) determine the total amount of experience claimed; (3) determine the types of experience claimed; (4) determine the reasonableness of the amount of experience claimed for each assignment; and (4) identify the property that was the subject of the assignment;
 - Selecting two or more appraisal assignments from the log and requiring the applicant to submit the supporting work product (*e.g.*, appraisal reports) to the State;
 - Reviewing the submitted work products for USPAP compliance; and
 - Maintaining documentation to support the above steps.
- **Comment** – Our State law establishes 5% [of applicants] as an appropriate sampling technique. Our current concern is that your policy indicates that the ASC is considering 100% audit.

Response – ASC Policy Statement 10 F, effective January 1, 2005, prohibits a State from accepting experience affidavits for certified appraiser credentials. Therefore, the State must validate experience, including USPAP compliance, for each and every applicant using the methods described above. Determining USPAP compliance for a sample of applicants is unacceptable.

Determinations of Experience, Experience Hours, and Time Periods

- **Comment** – It is assumed that the key for this expectation will be the beginning and ending dates. Will there be an expectation of a specific number of hours within a specific time period? Or, is the expectation simply the cumulative number of hours during the entire 24 or 30-month period?

Response – Under AQB criteria, experience may be earned at any time during the 24 or 30-month time period. The criteria do not require the experience to be earned throughout the time period. For example, an applicant could list experience earned during a six-month period, show no experience during the next three-month period, and list experience during the remaining 15-month period to meet the 24-month requirement. Experience need not be distributed in any specific manner.

- **Comment** – Will the ASC have any specific expectation for how States require and verify a sampling of various property complexities or property types? Is it expected that States should verify that an applicant has completed a sampling of various property types during the experience time claimed?

Response – Title XI, AQB criteria, and ASC Policy Statements generally recognize two basic types of appraisal transactions: residential and non-residential. Except for certain transactions, Licensed and Certified Residential appraisers are limited to appraisals associated with residential transactions, while Certified General appraisers are authorized to appraise all residential and non-residential transactions. Accordingly, we would expect applicants for Licensed and Certified Residential credentials to demonstrate USPAP competency for residential transactions, and applicants for Certified General credentials to demonstrate USPAP competency for both residential and non-residential transactions.

- **Comment** – Is it expected that States should examine the experience from the beginning of the applicant’s experience history, from the ending, or samples from the full time period of the experience history?

Response – It is reasonable to assume that an applicant will gain knowledge, skills, and abilities during the course of his/her education and experience history. Accordingly, it is more important to focus on more recent experience than experience that was obtained early in an applicant’s career when the applicant probably had less education and/or experience.

Applicability to Licensed Appraisers

- **Comment** – Would the ASC have any problem with a State having the same number of years and the same experience hour requirements for Licensed appraisers as for Certified Residential appraisers?

Response – No. A State may exceed AQB criteria if it chooses, provided the provisions exceeding the criteria do not unreasonably hamper entrance into the appraisal profession.

- **Comment** – Would the ASC have any problem with a State requiring the same type of demonstration report expectations of Licensed applicants as that of Certified Residential applicants?

Response – No. Please refer to the previous response.

Supporting Documentation

- **Comment** – What type of documentation does the ASC consider reasonable when describing “adequate” documentation?

Response – Documentation requirements will vary by State, depending on the State’s approach to experience review and validation. The ASC would expect to be able to verify the State’s validation approach through a review of the State’s policies and procedures and the supporting documentation from the actual validation of an applicant’s appraisal experience.

Statement 10: Enforcement

A. The Scope of State Agency Enforcement Programs

In the ASC's view, Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals in connection with all real estate appraisals involving real estate related financial transactions, and not just federally related transactions. The Federal agencies and all employers of appraisers must rely on the States to effectively regulate, supervise and discipline their certified and licensed appraisers -- in other words, to assure their professional competence. Accordingly, a State agency with knowledge of inappropriate behavior by a certified or licensed appraiser committed in connection with an appraisal of a non-federally related transaction should take appropriate action to investigate that behavior and to discipline the appraiser.

As noted, other Federal statutes and regulations require the use of State certified or licensed appraisers in certain real estate transactions. A few State statutes, however, do not require the use of certified and licensed appraisers in those circumstances. The ASC recommends that State statutes or regulations authorize the State agency or another appropriate State authority to take action, as necessary, against an uncertified or unlicensed person who performs an appraisal for which a State certified or licensed appraiser is required under Federal statute or regulation. The ASC believes that, to preserve the integrity of the system for regulating the appraisal process, States should have sufficient legal tools, *e.g.*, a State law prohibiting a person from misrepresenting his or her professional status and authority, to take such actions.

B. Audit of Experience and Education Submissions

While the ASC has no preference for any specific methodology, State agencies, at a minimum, should have a reliable means of validating both education and experience credit claimed for certification or licensing. The ASC believes 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.

C. Exemptions

Title XI and other Federal statutes and regulations specifically require the use of only State certified or licensed appraisers in connection with the appraisal of certain real estate-related financial transactions. A State may not exempt any individual or group of individuals from meeting the State's certification or licensing requirements if the individual or group member performs an appraisal where Federal statutes and regulations require the use of a certified or licensed appraiser. For example, an individual who has been exempted by the State from its appraiser certification or licensing requirements because he or she is an officer, director, employee or agent of a federally regulated bank, thrift or credit union would not be permitted to perform an appraisal in connection with a federally related transaction. States with exemption provisions should take steps to ensure that the provisions are not being used or interpreted to avoid the use of certified or licensed appraisers in transactions governed by Federal law.

D. Supervising Uncertified and Unlicensed Appraiser Assistants

Title XI provides that an individual who is not a State certified or licensed appraiser may assist in the preparation of an appraisal if the assistant is under the direct supervision of a licensed or certified appraiser and the final appraisal is approved and signed by that appraiser. The ASC believes that this provision should not be used to legitimize situations where one or more uncertified or unlicensed

persons are not actively and directly supervised by a certified or licensed appraiser during the preparation of the significant aspects of the appraisal process, and the certified or licensed appraiser does not substantively review the appraisal in accordance with USPAP's requirements. The ASC believes that any cursory review should not qualify as direct supervision and that such activities would violate the intent and purposes of Title XI. The ASC, therefore, urges State agencies to ensure that their appraiser regulatory programs can identify situations where direct supervision is not present and to take appropriate steps to remedy them.

E. Effective, Consistent, Documented, and Timely Enforcement Process [Section added 10/11/00, effective January 1, 2001.]

Each State agency must ensure that its entire system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well-documented manner. For the purposes of this paragraph, "well-documented" means that relevant documentation pertaining to a matter exists, and it will enable ASC investigators to understand the facts and determinations in the matter and the reasons for those determinations. Absent special documented facts or considerations, substantially similar cases must result in similar dispositions. State agencies must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint. Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal, appraisal methodology, and USPAP.

Dismissal of an alleged USPAP violation due to an "absence of harm to the public" is inconsistent with Title XI's purpose. That purpose "is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed . . . in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision." Financial loss or the lack thereof is not an element in determining whether there is a USPAP violation; the extent of such loss, however, should be a factor in determining the appropriate level of discipline. It is critical that State agencies investigate allegations of USPAP violations, and, if allegations are proven, take appropriate disciplinary or remedial action.

State agencies need to 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.

F. Use of Affidavits or Other Affirmations Regarding Appraiser Experience and Education [Section added 8/11/04, effective January 1, 2005.]

The following discussion provides guidance on the acceptance of affidavits and other affirmations by States in recognizing experience and education for initial certification, credential upgrade to certification, and certification renewal.

- 1. Background** – Most States require applicants/appraisers to submit documentation supporting experience and education claimed to qualify for or renew a credential. These States review the documentation before determining whether to issue or renew the credential. In the ASC's review of State appraiser regulatory programs, the ASC has found that some States rely on affidavits (*i.e.*, sworn statements or affirmations) from applicants/appraisers stating that they have obtained the experience and/or education required under State and/or Federal law to obtain their certificates or licenses initially (*i.e.*, qualifying education or experience) or to renew their

credentials (*i.e.*, continuing education). In States accepting affidavits, the applicant/appraiser usually does not submit documentation to support the claimed experience or education. The States accept the applicant/appraiser's affirmation that he or she has obtained the necessary experience or education. It is critical that States relying on such affidavits have effective procedures to verify that the appraiser has successfully met Federal and State law requirements.

Certified appraisers who obtain their credentials via affidavit, but have not completed the claimed education courses or experience, have not met Title XI's minimum requirements and are not legally eligible to perform appraisals in connection with federally related transactions and appraisals in connection with real estate related financial transactions involving Fannie Mae, Freddie Mac, and FHA.

2. **Experience** – States cannot accept experience-related affidavits from applicants for certification (*i.e.*, Certified Residential or Certified General classifications). If a State accepts experience-related affidavits from applicants for licensure (*i.e.*, any non-certified classification, such as Licensed or Trainee), upon the appraiser's application to upgrade to a certified classification, the State must require experience documentation to support the appraiser's qualification for the certified classification, not just the incremental amount of experience required to move from the non-certified to the Certified classification. For example, assume that a State accepts an experience affidavit from an appraiser to support the appraiser's initial hours to qualify for the Licensed classification. Subsequently, this appraiser applies to upgrade to the Certified Residential classification. The State must require documentation to support the full experience hours required for the Certified Residential classification, not just the difference in hours between the two classifications.
3. **Qualifying Education for Initial Certification** – States cannot accept education-related affidavits from applicants for initial certification without verifying that the applicant's claimed education courses are acceptable under AQB Criteria, and that the applicant has successfully completed the courses. States must ensure that applicants for certification meet AQB Criteria. Also, we recommend that States ensure that applicants for non-certified classifications meet the State's initial education requirements by reviewing each education course.
4. **Qualifying Education to Upgrade to Certified Classifications** – If a State accepts education-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require documentation to support the appraiser's educational qualification for the certified classification, not just the incremental amount of education required to move from the non-certified to the Certified classification. (*See* paragraph two above for an example of a similar upgrading situation.)
5. **Continuing Education** – States may accept education-related affidavits from certified appraisers for credential renewal. Each State accepting affidavits for certified appraiser credential renewals must establish a reliable means of validating the affidavits, *i.e.*, validation procedures.
 - a) **Validation Procedures** – For the purposes of this Policy Statement, validation procedures need to achieve at least two goals. First, the procedures must include a prompt post-approval audit of an adequate number of affidavits to have an acceptable chance of identifying appraisers who fail to comply with Federal and State law. The sample must include a reasonable representation of the appraiser population being sampled. Second, the procedures

must be structured to permit acceptable projections of the sample results to the entire population of subject appraisers. It is necessary to achieve both goals to have reliable validation procedures.

- b) **Credential Renewal Intervals** – States renew appraiser credentials at varying intervals. Some States schedule credentials to expire on a single date, *e.g.*, December 31 each year, every other year, or every third year. Other States schedule expirations for month end or quarter end. Still other States establish expirations based on the dates the credentials are issued and can have expirations almost every day of the year. Each approach presents its own challenges to the State.

For States that have a single expiration date for a portion or all of their appraisers, the appraiser population is easy to determine. This, in turn, makes the sample size easy to determine. States that have multiple expiration dates might have more difficulty in determining the appraiser population and the appropriate sample size and techniques. Nonetheless, it is incumbent on these States to ensure that they implement validation procedures for certified appraisers that conform to this policy statement.

- c) **Auditing and Enforcement Requirements** – The State must audit the continuing education-related affidavit for each certified appraiser selected in the sampling procedure. The following minimum standards apply to these audits:

- Each affidavit audit must be completed within 60 days from the date the renewed credential is issued;
- The State must determine that the education courses claimed conform to AQB Criteria, and that the appraiser successfully completed each course;
- When a State determines that a certified appraiser does not meet the AQB’s minimum continuing education criteria, the State must take appropriate action in the most expeditious manner to suspend the appraiser’s eligibility to perform appraisals in Federally related transactions. Also, the State must notify the ASC expeditiously, by email or fax, of that fact so that the appraiser’s record on the National Registry can be updated appropriately; and
- If a State determines that more than ten percent of the audited appraisers failed to meet the AQB Criteria, the State must take remedial action to address the apparent weakness of its affidavit process. Possible actions could include: auditing the affidavit submissions of every certified appraiser in the renewing population; abandoning the affidavit process; and/or prominently publishing the names of appraisers failing the audit to improve deterrence. The ASC will determine on a case-by-case basis whether remedial actions were effective and acceptable.

- d) **List of Education Courses** – To promote accountability and deter fraud, we encourage States that accept continuing education-related affidavits for certified appraisers to require that the appraiser also submit a listing of courses to support the affidavit.

- e) **Documentation** – To ensure that the ASC can determine State compliance with these standards, a State needs to maintain adequate documentation to support its affidavit renewal

and audit procedures and actions.

G. Validation of Experience Documentation for AQB Criteria Conformance and USPAP Compliance [Section added August 9, 2007. No specific effective date as this amendment does not establish new requirements.]

The following discussion provides guidance regarding how State agencies can ensure that applicants for certification and licensure have the necessary experience to perform appraisals in connection with federally related transactions and real estate related financial transactions that require the services of State licensed or certified real estate appraisers under Federal law.

- 1. Validation of Qualifying Experience and Proper Use of Experience Logs** – Most States require applicants for licensure or certification to submit an experience log that lists, with some specificity, each of the appraisals claimed for experience credit. Reviewing experience logs is only the first step in evaluating an applicant’s experience claims. States, in some reliable manner, must validate that the experience listed on the log actually exists. Therefore, it is necessary that each entry on an experience log contains sufficient information to enable a State agency to validate the existence of the appraisal and to perform its duty to determine whether the applicant is capable of performing USPAP-compliant work.
- 2. Determinations of USPAP Compliance** – Generally, for appraisal experience to be acceptable under AQB criteria, that experience must be USPAP-compliant. Appraisals, other than mass appraisals and tax assessment/*ad valorem* appraisals, must comply with USPAP Standards 1 and 2. Mass appraisals and tax assessment/*ad valorem* appraisals must comply with USPAP Standard 6. Therefore, States, under Title XI and the AQB’s certification criteria, must determine, by some reasonable method, whether applicants are capable of performing appraisals that are USPAP-compliant.

The only acceptable method of making this determination is by reviewing appraisal work product for each applicant. For most States, the most reasonable approach to making this determination would be to review specific work products and/or to require the applicant to perform appraisals of specified properties and prepare corresponding appraisal reports (*e.g.*, demonstration reports). It is important to note that the State agency must select the work products to be reviewed. Allowing applicants to make the selection would significantly reduce the reliability of any validation approach. States must exercise due diligence in determining whether submitted experience is USPAP-compliant. States are free to tailor their methods of making this determination to fit their unique needs. The ASC will review each State’s method on a case-by-case basis and determine whether that method is acceptable for Title XI compliance.

- 3. Determinations of Experience, Experience Hours, and Time Periods** – When awarding experience credit toward certification, States need to make reasonable determinations that the applicant is capable of performing the work authorized by the requested credential. For example, when awarding a certified general credential, States need to review both residential and commercial work product.

When measuring the beginning and ending of the experience period under AQB criteria (currently 24 and 30 months for certified residential and certified general, respectively), States need to review each appraiser’s experience log (or other documentation) and note the dates of the first and last acceptable appraisal activities performed by the applicant. Then, the State needs to

calculate the time period spanned between those appraisal activities. The spanned time period must comply with the time period set forth in AQB experience criteria.

- 4. Applicability to Licensed Appraisers** – To reduce confusion and administrative inefficiencies, the ASC strongly encourages States to treat experience claims of applicants for licensure in the same manner as those submitted by applicants for certification.
- 5. Supporting Documentation** – To ensure that the ASC can determine whether the State is appropriately validating experience documentation for AQB criteria conformance and USPAP compliance, a State needs to maintain adequate documentation to support its validation method or methods.