April 2005 No. 2

# FBI WARNS OF MORTGAGE FRAUD "EPIDEMIC"

Source: National Society of Appraisal Specialists Agenda, Vol. 12, No.1

Rampant fraud in the mortgage industry has increased so sharply that the FBI has warned of an "epidemic" of financial crimes which, if not curtailed, could become "the next S & L crisis."

Assistant FBI Director Chris Swecker said the booming mortgage market, fueled by low interest rates and soaring home values, has attracted unscrupulous professionals and criminal groups whose fraudulent activities could cause multibillion-dollar losses to financial "It has the potential to be an institutions. epidemic," said Swecker, who heads the Criminal Division at FBI headquarters in "We think we can prevent a Washington. problem that could have as much impact as the S & L crisis," he said.

In the 1980s, many Savings and Loans failed because of poor management, risky loans and investments, and in some cases, fraud. Taxpayers were left with a \$132 billion tab to cover federal guarantees to S & L customers.

The FBI has dispatched undercover teams across the country in an urgent investigation into dealings by suspect mortgage brokers, appraisers, short-term investors, and loan officers, Swecker, flanked by FBI executives and Justice Department prosecutors, revealed.

In one operation, six individuals were arrested in Charlotte, charged with bank fraud for their roles in a multimillion-dollar mortgage fraud, officials said. The two-year investigation found fraudulent loans that exposed financial

institutions and mortgage companies to \$130 million in potential losses, they said.

Federal agents in Jacksonville arrested two people and executed seven search warrants in connection with an alleged scheme designed to defraud banks of \$22 million, officials said.

The number of open FBI mortgage fraud investigations has increased more than five-fold in the past three years, from 102 probes in 2001 to 533 as of June 30 this year, the FBI said. The potential losses are staggering, and many financial institutions are cooperating with investigators. Officials noted mortgage industry sources have reported more than 12,000 cases of suspicious activity in the past nine months, three times the number reported in all of 2001.

While the FBI described mortgage-related fraud as a nationwide problem, it said the levels of illegal activity are worse in some locations than in others.

States identified as the top 10 "hot spots" for mortgage fraud are Georgia, South Carolina, Florida, Michigan, Illinois, Missouri, California, Nevada, Utah and Colorado. "It's bad in Georgia, the Atlanta area," said John Gillies, chief of the FBI's Financial Institutions Fraud Unit. (Continued on Page 2)

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#### FBI Warns of Mortgage Fraud "Epidemic" Continued

"It was bad in the Charlotte area, but we've had a lot of undercover activity there that's helped push the problem into South Carolina."

Josh Hochberg, head of the Justice Department's Fraud Section, said some organized ethnic groups are becoming involved in mortgage fraud schemes, but he declined to identify the groups.

Officials said mortgage fraud is one prominent aspect of a wider problem of fraud aimed at financial institutions. The FBI said action has been taken against 205 individuals in the past months in what it described as the "largest nationwide enforcement operation in FBI history directed at organized groups and individuals engaged in financial institution fraud."



## **GOVERNOR APPOINTS NEW BOARD MEMBERS**

Governor Sebelius' office announced the appointment of three new members to the Kansas Real Estate Appraisal Board on February 3, 2005.

#### PHILIP L. BOWMAN

Mr. Bowman is a lawyer, practicing in Wichita with the firm of Adams & Jones. His principal area of practice is Real Estate Law. He holds degrees from the University of Kansas in Business Administration (1958) and Law (1961). Mr. Bowman is a member of the Wichita Bar Association (President 85-86) and Kansas Bar Association. He was a member of the Kansas Supreme Court nominating Commission (76-86) and the Kansas Continuing Legal Education Commission (96-02). He is also a member of the American College of Real Estate Lawyers (past president) and the American College of Mortgage Attorneys. Mr. Bowman replaces G. N. (Jerry) Capps as a public member of the Board. His term will expire on June 30, 2007.

# TIM KELLER

Mr. Keller is the president of Keller & Associates, Inc., in Lawrence. Mr. Keller is a Certified General appraiser and past president of the Kansas City Chapter of the Appraisal Institute. He has a BS in Business from Ft.

Hays State University and an MBA from the University of Notre Dame. Mr. Keller has passed the Certified Public Accounting Examination. He has been appraising for 15 years. Mr. Keller replaces Ronald Aul as an appraiser member of the Board. His term will expire on June 30, 2007.

#### MICHAEL F. MCKENNA

Mr. McKenna is a native of Northwest Kansas and, together with his wife Joan, operates McKenna Appraisal Services, Inc. appraisal practice is a full service appraisal business, specializing in the appraisal of irrigation and cattle operations in western Kansas, eastern Colorado and southwest Nebraska, in addition to residential, commercial, agricultural and mineral royalty appraisals. Mr. McKenna is a Certified General appraiser in Kansas, Colorado and Nebraska, with a BS in Business Administration from Ft. Hays State University. Professional memberships include the Accredited Rural Appraiser (ARA) with the American Society of Farm Managers and Rural IFAA-Agricultural and the designation with the National Association of Independent Fee Appraisers. Mr. McKenna is fulfilling the remainder of the term of Donna Hutcheson, who resigned from the Board in April, 2004. His term will expire on June 30, 2005.



# OCC ADDS APPRAISER INDEPENDENCE GUIDELINES TO REGULATION

Source: Appraisal Institute News Online, Vol. 6, No. 3/4

As a further step to protect against national bank involvement in predatory, abusive, unfair or deceptive residential mortgage lending practices, the Office of the Comptroller of the Currency issued an appendix to its Interagency Appraisal and Evaluation Guidelines concerning the residential mortgage lending practices of national banks and their operating subsidiaries.

The amended guidelines, which become effective April 8, 2005, describe particular practices inconsistent with sound residential mortgage lending practices. They also describe other terms and practices that may be conducive to deceptive lending practices, depending on the circumstances, and which, accordingly, warrant

a heightened degree of care by lenders. For example, influencing the independent judgment of an appraiser with respect to a valuation of real estate that is to be security for a residential mortgage loan would violate applicable standards.

Among the other specific practices that the guidelines describe as abusive are equity stripping, fee packing, loan flipping, refinancing of a special subsidized mortgage on terms adverse to the consumer, and encouraging borrowers to violate contracts, thereby defaulting on credit connected with the refinancing of that loan. In addition, the guidelines address the steps that banks should take to mitigate risks associated with their purchase of residential mortgage loans and use of mortgage brokers to originate loans.

In its new guidelines, the agency stated that it expects national banks, as well as their operating subsidiaries, to "focus on the substance of activities and practices, not on the creation of policies."

The announcement of the new guidelines on residential mortgage lending practices can be found on the OCC's website at <a href="https://www.occ.treas.gov/ftp/bulletin/2005-3a.pdf">www.occ.treas.gov/ftp/bulletin/2005-3a.pdf</a>.



#### 2005 RENEWAL

Renewal applications were mailed out to all Kansas appraisers on March 28, 2005. The due date for an "on-time" renewal is May 31, 2005. Renewals received <u>after</u> May 31, 2005 will be subject to a \$50 late fee.

#### **FEES**

As reported in the 2005 Winter Newsletter, fees have been reduced by \$40. Certified General, Certified Residential and State Licensed appraisers will pay \$225 for their 2005 renewal. Provisional (Trainee) appraisers will pay \$200.

# **CONTINUING EDUCATION**

The 2005 renewal marks the end of our first twoyear education cycle. KEEP IN MIND that your continuing education must be completed **prior** to submitting your renewal. Appraisers licensed prior to July 1, 2003, will be required to log 28 hours on their renewal application. This represents the 14 hours taken for the 2004 renewal and the 14 hours taken for the 2005 renewal. Of the 28 hours, 7 <u>must</u> be in the USPAP Update course.

Appraisers licensed on or after July 1, 2003, but prior to July 1, 2004, will be required to log 14 hours on their renewal application. The 14 hours must have been completed on or after their original license date. Of the 14 hours, 7 must be in the USPAP Update course.

Appraisers licensed on or after July 1, 2004, are not required to have continuing education at this, their first renewal in Kansas.

#### Do's and Dont's of Renewal

- <u>DO</u> proof your application and check prior to submitting. Verify that you have answered all questions, logged all continuing education required, that the fee is correct and the check has been signed.
- **DON'T** attach your certificates of completion to the renewal application.
- **DON'T** log courses taken prior to the applicable education cycle (for most this would be July 1, 2003 through May 31, 2005).
- <u>DON'T</u> use a separate sheet to report your continuing education <u>unless</u> there are too many courses, completed within this education cycle, to log in the space provided.
- While it is highly recommended that you submit renewals individually, if you are combining fees into one check, be aware that if any one renewal is incorrect and cannot be processed for any reason, all of the renewals will be returned.

#### **BOARD WEBSITE AND THE NATIONAL REGISTRY**

Renewals are not reported to the National Registry or downloaded to the Board's website until <u>after</u> their June 30, 2005 expiration date.





GOT AN IDEA FOR AN ARTICLE?
If you have a subject you would like to see addressed in an article, let us know. Write or e-

mail the Board office with your

ideas and we'll do our best to include them in one of our future newsletters.

### **IMPORTANT CHANGES TO APPRAISER QUALIFICATIONS**

On February 20, 2004, the Appraiser Qualifications Board (AQB) of the Appraisal Foundation adopted changes to the *Real Property Appraiser Qualification Criteria* that will become effective on January 1, 2008. These changes represent the **minimum** national requirements that each state must implement for individuals applying for a real estate appraiser license or certification as of January 1, 2008. The changes include increased pre-license education, which is summarized as follows:

CATEGORY	CURRENT REQUIREMENTS	01/01/2008 REQUIREMENTS	01/01/2008 COLLEGE-LEVEL COURSE REQUIREMENTS
STATE LICENSE	90 Hours	150 Hours	None
CERT RESIDENTIAL	120 Hours	200 Hours	An applicant for the Certified Residential classification must hold an Associate degree, or higher, from an accredited college, junior college, community college, or university. In lieu of the Associate degree, an applicant shall successfully pass twenty-one (21) semester credit hours covering the following subject matter courses: English Composition, Principles of Economics (Micro or Macro), Finance, Algebra, Geometry or higher mathematics, Statistics, Introduction to Computers-Word Processing/Spreadsheets, and Business or Real Estate Law, from an accredited college, junior college, community college or university:
CERT GENERAL	180 Hours	300 Hours	An applicant for the Certified General classification must hold a Bachelors degree or higher, from an accredited college, junior college, community college, or university. In lieu of the Bachelors degree, an applicant shall successfully pass thirty (30) semester credit hours covering the following subject matter courses: English Composition, Micro Economics, Macro Economics, Finance, Algebra, Geometry or higher mathematics, Statistics, Introduction to Computers-Word Processing/Spreadsheets, Business or Real Estate Law, and two (2) elective courses in accounting, geography, ag-economics, business management, or real estate, from an accredited college, junior college, community college or university.

# SEGMENTED OPTION FOR 2008 APPRAISER EDUCATION CHANGES

There are two options for the state regulatory agencies in the implementation of this change. The first option, the "drop dead" or "firm date" option, requires that before any license or certificate can be issued on or after January 1, 2008, the applicant must meet the new education requirement. The second option, the "segmented" option, breaks down certification into three components: education, experience, and examination.

Under the segmented option, an applicant must meet the criteria in effect at the time the segment is completed, not the criteria in effect when the application is filed or when the license or certificate is issued. For example, at this time, if a certified residential appraiser currently desires to upgrade to a certified general, he/she must complete an additional 60 hours of pre-license education and pass the examination. Under the segmented approach, if the appraiser takes the additional 60 hours before January 1, 2008, he/she does not have to comply with the new 2008 education requirement.

The examination to become a licensed or certified appraiser will be changed effective January 1, 2008. If an applicant completes his/her education prior to January 1, 2008 and files an application with the Board, the old examination can be taken up to and including December 31, 2007. If the applicant does not pass the examination before January 1, 2008, the applicant will have to take and pass the new examination.

The Kansas Real Estate Appraisal Board has chosen to implement the segmented option. As these changes are drafted into current regulation, they will be posted on the Board's website.



# **USPAP Q & A**

#### ANALYZING AND REPORTING OF EXPOSURE TIME

Why was language in STATEMENT No. 6 related to the reporting of exposure time deleted from USPAP?

The following passage,
"The discussion of reasonable exposure
time should appear in an appropriate section
of the appraisal report, one that presents the
discussion and analysis of market conditions,
and also be referenced at the statement of
the value definition and at the value
conclusion"

was deleted from STATEMENT No. 6 Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions because:

- USPAP requires that each real property and personal property appraisal report contain sufficient information to enable the intended users of the appraisal to understand the report properly. Meeting this requirement does not require the reporting of exposure time in all assignments;
- The amount of detail in which exposure time is reported should be determined based on the intended user, the intended use and the type and definition of value. It should not be a "one-size-fits-all" reporting requirement for every appraisal assignment; and
- The reporting requirement for all comments related to the definition of value, including exposure time, is incorporated in the Comment to Standards Rules 2-2(a)(v), 2-2(b)(v), 8-2(a)(v), and 8-2(b)(v), which states:

Stating the definition of value requires the definition itself, an appropriate reference to the source of the definition, and any comments needed to clearly indicate to the reader how the definition is being applied. (bold added for emphasis)

If disclosure of the exposure time is necessary for intended users to understand the report, this reporting requirement necessitates inclusion of an appropriate discussion.

Note: The deletion in STATEMENT No. 6 related to the reporting of exposure time **does not** change the development requirement to analyze exposure time if the value opinion to be developed is market value, i.e., Standards Rules 1-2(c)(iv) and 7-2(c)(iv).

#### **APPRAISING LAND**

I am appraising a property improved with an apartment complex, but have found that the land is zoned for commercial use. My research indicates that such commercial land would have a value different from that of apartment land, but still far less than the current total value of the apartment complex.

According to USPAP, how should I value the land?

USPAP does not dictate the use of any apply any method, as long as it is recognized, applicable, and correctly employed. SR 1-1(a) only requires the appraiser to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

Edits to the 2005 edition of USPAP resulted in the elimination of language in the Standards Rules that appeared to require a particular theory.

# TYPE AND DEFINITION OF VALUE, AND CITATION OF SOURCE

USPAP requires appraisal reports to identify the type and definition of value and cite the source of the definition. What is the "type of value?" Why is this no longer referred to as the "purpose" of the assignment? What sources can be used to comply with the requirement to cite the source of the definition of value?

STANDARDS 2, 6, 8 and 10 require that appraisal reports state the type and definition of value and cite the source of the definition. The exact wording varies by reporting option. Previously, the term "purpose" in USPAP was used to refer to several different concepts, including the type and definition of value. For the 2005 edition of USPAP, this and other special meanings of this term were eliminated to increase clarity. Where it is now

used "purpose" will only convey the standard dictionary meaning of the word.

The "type of value" is the general class or category of value. Examples include market value or fair value.

The "definition of value" provides a specific description of the characteristics and conditions of the type of value. Examples include definitions provided on a form report, in FIRREA, in U.S. accounting regulations, and U.S. tax regulations.

USPAP does not provide any specific definition of value or endorse any particular source. Sources could include, for example, a regulatory agency, a legal jurisdiction, an engagement letter, or a textbook.

# REPORTING USE OF EXTRAORDINARY ASSUMPTIONS AND HYPOTHETICAL CONDITIONS

What are the USPAP reporting requirements relating to the use of extraordinary assumptions and hypothetical conditions in an appraisal assignment?

The report must clearly disclose the use of extraordinary assumptions and hypothetical conditions and notify intended users that the extraordinary assumptions and hypothetical conditions might have affected the assignment results.

For example, Standards Rule 2-1 (c) states that each written or oral real property appraisal report must:

clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions **used** in the assignment. (**bold** added for emphasis)

This requirement creates an obligation to disclose all extraordinary assumptions and hypothetical conditions used in the assignment.

For example, Standards Rule 2-2 (a)(viii) states that Self-Contained Appraisal Report must, at a minimum:

# (viii) clearly and conspicuously:

 state all extraordinary assumptions and hypothetical conditions; and • state that their use might have affected the assignment results; (bold added for emphasis)

This requirement directs the appraiser to provide a clear and conspicuous statement of the extraordinary assumptions and hypothetical conditions. The form and location of the statement is left to the discretion of the appraiser, but it must be clear and conspicuous to intended users.

The requirement further directs the appraiser to provide notice to intended users that the use of the extraordinary assumptions and hypothetical conditions might have affected the assignment results. The appraiser is not required to report on the impact of the extraordinary assumptions and hypothetical conditions on assignment results.

Note: The requirements for other report types are similar.

#### **MULTI-DISCIPLINE CERTIFICATION**

I am a real property appraiser who sometimes participates in assignments that include the appraisal of real property, personal property (machinery and equipment), and intangible assets. The value conclusions for each asset type are separately prepared by an appraiser with competency in the asset type. A single report is jointly issued that communicates the assignment results for all of the assets. What is the appropriate wording for the certification in these situations?



Standards Rule 2-3 states, in part:

Each written real property appraisal report must contain a signed certification that is **similar** in content to the following form:

- the reported analyses, opinions, and conclusions ... are my personal, impartial, and unbiased professional analyses, opinions, and conclusions...
- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice...

Comment: ...In an assignment that includes only assignment results developed by the

real property appraiser(s), any appraiser(s) who signs a certification accepts full responsibility for all elements of the certification, for the assignment results, and for the contents of the appraisal report. **In an** assignment that includes personal property, business or intangible asset assignment results not developed by the real property appraiser(s), any real property appraiser(s) who signs a certification accepts full responsibility for the real property elements of the certification, for the real property assignment results, and for the real property contents of the appraisal report. (**bold** added for emphasis)

When reporting assignment results, that are separately prepared by appraisers from different disciplines, the certification must clearly define responsibility for all assignment results and report content. The certification language may be altered to indicate which "reported conclusions" each appraiser is certifying to. The certification language is not required to be exactly as presented in USPAP.

One solution would be for each appraiser to sign a separate certification that identifies the assignment results and report content for which they take responsibility. Another solution to this circumstance would be to include a single certification altered to indicate the assignment results and report content certified to by each appraiser.

Whatever solution is adopted, the certification language must identify the assignment results and report content for which the real property appraiser takes responsibility. One example of such language would be:

- the reported real property analyses, opinions, and conclusions ... are my personal, impartial, and unbiased professional analyses, opinions, and conclusions...
- my real property analyses, opinions, and conclusions were developed, and the real property content of this report has been prepared, in conformity with the *Uniform* Standards of Professional Appraisal Practice...

Each personal property appraiser must take responsibility for the personal property

assignment results and report content. Each business and/or intangible asset appraiser must take responsibility for the business and/or intangible asset assignment results and report content.

### REQUIRED LEVEL OF DETAIL IN A SELF-CONTAINED APPRAISAL REPORT

A colleague recently told me that she never prepares Self-Contained Appraisal Reports. She believes that it is impossible to write a report that contains all the information and analysis that supports her assignment results. I have heard others express similar thoughts. Is it true that a Self-Contained Appraisal Report must include an exhaustive account of my appraisal process?

No. USPAP requirements for Self-Contained Appraisal Reports provide flexibility within a framework.

The key term in understanding the level of information in a Self-Contained Appraisal Report is describe. As stated in Advisory Opinion 11, Content of the Appraisal Report Options of Standards Rules 2-2 and 8-2:

The Self-Contained Appraisal Report should contain all information **significant** to the solution of the appraisal problem. (**bold** added for emphasis)

The reader of the Self-Contained Appraisal Report should expect to find all **significant** data reported in comprehensive detail. (**bold** added for emphasis)

Describe is used to connote a comprehensive level of detail in the presentation of information.

The requirement is to provide all **significant** information and data, not all information and data. Significance is measured against the needs of the intended use and intended users in the assignment. The Self-Contained Appraisal Report option will contain a comprehensive level of information detail, but it cannot contain the sum total of the appraiser's data, analysis and experience that went into making the judgments required.

A basic requirement for **all** reports is stated in Standards Rule 2-1(b), with similar language in STANDARDS 5, 6, 8 and 10:

Each written or oral real property appraisal report must contain sufficient information to enable the **intended users** of the appraisal to understand the **report** properly; (**bold** added for emphasis)

Additionally, a basic requirement for all reports is stated in Standards Rules 2-2(a), with similar language in Standards Rules 2-2(b) and (c) as well as in STANDARDS 5, 8, and 10:

The content of a Self-Contained Appraisal Report must be consistent with the **intended use** of the appraisal . . . (**bold** added for emphasis)

There are two important points to recognize in these requirements:

- (1) An appraiser's reporting obligations are relative to intended users (which include the client) and intended use. Reports are directed to the needs of the intended users and the requirements associated with the intended use. Since the reporting needs associated with specific intended users and intended uses vary, report content will vary. USPAP allows for flexibility within report types.
- (2) The USPAP requirement is to provide sufficient information to enable the intended users to understand the report, not the appraisal. It is unreasonable to require that intended users understand the appraisal because this would entail complete documentation of the data and analysis as well as the appraiser's life experience and education that went into making the judgments required in the assignment.

Standards Rules 2-2 (a)(ix) and 8-2(a)(ix) state:

Describe the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;

<u>Comment</u>: The appraiser must be certain the information provided is sufficient for the client and intended users to adequately understand the rationale for the opinion and conclusions.

This requirement is directed toward addressing the needs of the client and other intended users in understanding the "rationale". The rationale is the basis for the assignment results, but does not include everything done or considered in the appraisal.

#### **USING THE DEFINITION OF VALUE PROVIDED**

A client has asked me to use a definition of value included in an engagement letter for the assignment. Is this permitted?

Yes. As part of identifying the problem to be solved, the appraiser must identify the type and definition of value, but USPAP does not require the use of any specific type or definition of value. For example, in a real property appraisal assignment, Standards Rule 1-2(c) requires the appraiser to:

identify the type and definition of the value ...

In addition, Standards Rules 2-2 (a)(v) and 2-2 (b)(v) require that the report:

...state the type and definition of value and cite the source of the definition:

Comment: Stating the definition of value also requires any comments needed to clearly indicate to the reader how the definition is being applied.

The source of the definition of value could be a simple as "provided in the engagement letter".

The requirements for identifying and reporting the definition of value are similar for personal property and business and intangible asset appraisals.

This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. The ASB USPAP Q&A is issued to inform appraisers, regulators, and users of appraisal services of the ASB responses to questions raised by regulators and individuals; to illustrate the applicability of the Uniform Standards of Professional Appraisal Practice (USPAP) in specific situations; and to offer advice from the ASB for the resolution of appraisal issues and problems.





JANE E. PEACE, ARVADA, CO (R-350) CASE No. 04-07

**Violations:** K.S.A. 58-4121, 58-4118(a)(6) Action: A Final Order was issued on November 18, 2004, with the following terms and conditions: That Peace pay a fine of \$850 within 90 days from the date of the Order's Certificate of Service.

SCOTT S. SIEGMAN, LEAWOOD (G-1648) COMPLAINT #394

Violations: K.S.A. 58-4121, 58-4118(a)(6); 58-4118(a)(7); and 58-4118(a)(8)

Action: A Consent Agreement and Order was entered into on January 26, 2005, with the following terms and conditions: That Siegman take and pass the examination of the 15-hour USPAP course on or prior to June 30, 2005; that Siegman pay a fine of \$250 within 30 days from the date of the Agreement; and that Siegman cease and desist from all supervision for a period of six months, effective the date of the Agreement.

LORI ANN LOVELACE, LEAWOOD (L-1215) COMPLAINT #396

Violations: K.S.A. 58-4121, 58-4118(a)(6); 58-

4118(a)(7); and 58-4118(a)(8)

Action: A Consent Order was entered into on February 18, 2005, with the following terms and conditions: That Lovelace take and pass the 15hour USPAP course on or prior to June 30, 2005; and that Lovelace take and pass the examination of a minimum 24-hour report writing course on or prior to June 30, 2005.



# LICENSED/CERTIFIED APPRAISERS AS OF **APRIL 4, 2005**

GENERAL CERTIFIED	429
RESIDENTIAL CERTIFIED	346
STATE LICENSED	365
PROVISIONAL (TRAINEE)	<u>148</u>
, ,	
TOTAL	1.288

#### KANSAS REAL ESTATE APPRAISAL BOARD

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