



Center for Government Services
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January 9, 2007

The Commission
American Institute of Certified Planners (AICP)
1776 Massachusetts Avenue, NW
Washington, DC 20036

RE: Comments on proposed “certification maintenance” program

Dear Commissioners:

I am commenting on the “certification maintenance” program proposed by AICP. As I understand this program, AICP members will be required to take at least 48 credits of eligible professional development activities in a two-year period. Of that amount, half of the eligible credits must come from the American Planning Association (APA) or APA-sponsored programs. The other half may come from other registered educational providers; APA or AICP intends to establish a program to register providers for a fee to be determined. A self-study component is included, and it may count for up to 12 hours.

I direct the Center for Government Services (CGS), a unit of the Edward J. Bloustein School of Planning and Public Policy, which maintains an accredited graduate program in planning. The Center, which is 56 years old, provides training and continuing education to government officials in New Jersey, and conference support to the New Jersey Chapter of the American Planning Association, as a service function of the Bloustein School. Our Center runs some 850 courses a year, including training for planning and zoning board members (now mandated by state law) and zoning enforcement officials. Our planning instructors are AICP members or attorneys. Most of our courses are aimed at positions in New Jersey government that require some type of certification or license to hold.

Within CGS is the Professional Development Institute (PDI), which manages a variety of national training programs aimed at professional planners and community development specialists. The best known of these is the Bloustein Online Continuing Education Program (BOCEP), which offers online training to a national audience on a broad variety of planning topics, including urban design, placemaking, planning law and legal issues, community development, economic development, smart growth, sustainable development, and leadership and management. In addition, PDI includes The Leading Institute, which offers leadership development programs for planning and community development professionals.

As it is presently structured, the proposal is not about the altruistic goal of ensuring affordable, accessible training to professional planners, presumably so they can do their jobs better, but is instead about attempting to raise substantial amounts of revenue for APA and AICP and kill off all competition.

Our Center's programs directly compete with those offered by the APA and AICP. As proposed, the certification maintenance program is predatory, and would cause serious economic harm to CGS, and other local government institutes in the U.S. and graduate planning programs and other providers that offer similar training. AICP must modify this proposal to correct the substantial problems with it, or face legal challenge to it.

(1) The AICP proposal contains a “tying arrangement,” which is a prohibited activity under federal antitrust laws (the Sherman and Clayton Acts). A tying arrangement is the conditioning of the sale of a desired good or service (here, certification of professional planners) to the purchase of a second good or service (here, the provision of training programs available only through APA or AICP). By threatening to withhold the desired service (continuation of professional certification), the vendor (in this case APA or AICP) hopes to coerce the sale of less desired services (training), which of course can be provided by other vendors. See “What constitutes separate and distinct products or services for purposes of determining whether tying arrangement violates § 1 of Sherman Act (15 U.S.C.A. § 1) or § 3 of Clayton Act (15 U.S.C.A. § 14),” 46 ALR Fed 516.

By any standard, a tying arrangement is an unethical business practice.

AICP has a monopoly in the U.S. on certification of professional planners, and now intends to use that monopoly to punish independent for-profit or not-for-profit providers of continuing education for professional planners. The fact that AICP proposes to allow planners to obtain a *portion* of the training either through self-study or other “registered” providers does not eliminate the tying arrangement. There are numerous providers of training for professional planners who can offer equal or even superior service to the APA's expensive training. For example, planning academics, including my colleagues at the Bloustein School, routinely attend the Association of Collegiate Schools of Planning conference, a low-cost, high quality event. This proposal would remove all incentive for AICP members to purchase the mandated training from sources other than APA because of how the program is structured.

The problem of private professional accrediting organizations operating in a predatory, anticompetitive manner has been widely recognized. Ostensibly, certification is aimed at providing helpful information to purchasers of planning services by establishing threshold standards for professional competence and knowledge. However, when the requirement of certification is linked to a training program that only the accrediting body will offer and recognize, then that limits options of professional planners in the market place to purchase training at a reasonable cost. Clark C. Havighurst and Peter M. Brody, “Accrediting and the Sherman Act,” *57 Law and Contemporary Problems* 199 (1994).

Lest AICP Commissioners think that somehow the Commission would be exempt from an antitrust challenge by either an individual professional planner or an affected competitor, I can assure you it would not. See, for example, *Bogus v. American Speech and Hearing Ass'n*, 582 F.2d 277 (1978) (holding where the association expressly conditioned the award of the certificate of clinical competence on the purchase of a tied product, membership in the association, and where plaintiff legitimately and reasonably believed the certificate was desirable and unique when she applied for it and paid membership fees, the plaintiff had standing to challenge the legality of the rule). Indeed, in an antitrust challenge, successful plaintiffs, which can include individual planners, may obtain treble damages from the guilty firm or organization.

If the Commission retains the requirement that half (or **any** portion) of any required training may **only** be provided by APA or through APA-sponsored programs, I will be forced to take

appropriate action, including requests to the Rutgers general counsel, the New Jersey attorney general, and the New Jersey public advocate to consider initiating legal action against AICP because of the damage it would do to the Center for Government Services. In addition, I will contact the antitrust division of the U.S. Justice Department to determine whether they will investigate and take similar action against AICP.

(2) The number of hours of continuing education—48 over two years--is simply too high and does not equate with any standard I have been able to find or take into account the preferences expressed by AICP members as part of the Commission’s 2005 Continuing Education Survey.

The Canadian Institute of Planners has a self-reporting system with 18 suggested “learning units” per year. The Royal Town Planning Institute does not have a specified minimum, but allows members great flexibility in designing their own professional development programs.

New Jersey mandates continuing education for certain municipal government positions (excluding licensed professional planners). Here are some typical requirements: certified tax assessors—30 credit hours over 3 years; certified public works managers—20 credit hours over three years; registered public purchasing specialists—15 credit hours over three years; uniform construction code subcode official—20 credit hours over three years.

In addition, according to the American Institute of Architects website, the following are typical mandatory continuing education requirements for architects in the states that require them.

- Florida—20 hours every two years
- Illinois—24 hours every two years
- New Jersey--24 hours every two years
- New York—36 hours every three years
- Oregon—12 hours annually
- Oklahoma—24 hours every two years
- South Carolina—12 hours every year

Surprisingly, a number of states where you might expect mandatory continuing education for architects—California, Pennsylvania, and Washington—do not have them at all. Thus, the norm for architects appears to be around 10 to 12 hours per year in the states that mandate continuing education.

AICP members, according to the 2005 survey posted on the Commission’s website, express preferences that are similar to these figures. A majority of all members (58%) choose the least demanding option presented: less than 16 hours per year. Another 24% of all respondents selected 16 or more hours per year, followed by 10% selecting 40 or more hours every 2 years. More demanding options were selected by fewer than 5% each. Mandatory continuing education opponents were virtually unanimous in wishing such a requirement (if adopted) to be as undemanding as possible — 88% said less than 16 hours per year.

On the basis of the above, I favor a standard of 20 to 24 hours of continuing education over a two year period.

(3) AICP must ensure that the topics treated as continuing education must be flexible enough so that they will be useful to members in different positions and at different phases in their professional careers.

It is not clear to me what topics will constitute “continuing education,” but I would urge that it be defined very broadly. For example, would a course offered by the Bloustein School’s public policy program in multivariate statistics be acceptable? How about a course on real estate finance or personnel performance appraisal or city planning history? As AICP members move into different areas, continuing education needs change, and they may not be satisfied by yet another course in planning law. The Royal Town Planning Institute’s continuing education program offers a good example of a broad view of “education.”

(4) AICP must clean up its own internal administration of the continuing education program, and detail the mechanism and standards by which it will recognize and register providers like the Center for Government Services and the costs such a system will entail. It must hold itself to the same training standard that it holds independent providers. This must be done before any so-called certification maintenance program moves forward.

My colleague at Rutgers, Leo Vazquez, AICP/PP, a faculty member who oversees the Professional Development Institute, recounted his experience with the AICP staff in a January 2, 2007, column on the Planetizen website:

“It took seven months for the APA to make my training program, Bloustein Online Continuing Education Program (BOCEP), eligible for continuing education credits. And it took that long for BOCEP to get space in the APA's continuing education website. Only after I had complained several times did the staff act on my request. Why did it take so long? Was it simply that the staff of a multi-million dollar organization couldn't get around to it? Or was it that the staff and leadership were not inclined to act on a program that might take away business from the APA's CD-ROM and video training series? I don't know.”

This conduct is simply unacceptable and it reflects thorny problems that only the Commission can correct. The Commission must act to ensure that approved providers of training have timely access to APA’s website and other publications unimpeded by internal footdragging for whatever private bureaucratic reasons. For a good example of how another organization handles this, I suggest that the Commission members themselves examine the website of the American Institute of Architects, and arrange a presentation by the AIA staff.

The Commission must clarify how the proposed provider registration is to operate and ensure that providers are only charged the actual costs of the administration, and not padded costs intended to stifle competition. Based on our experience at CGS, a provider registration would incorporate:

- Title of the course
- Instructor vitae
- Specific learning objectives as related to planning content areas
- Course syllabus
- List of required texts, if any
- Cost, location, and frequency

This type of review should not be time-consuming or costly, and should be able to be handled electronically and quickly. APA and AICP must be prepared to assemble a manual for potential registered providers and a mechanism to ensure that providers retain records of training for verification. The standards for training and records retention must be applied equally to both APA/AICP programs and those of outside providers. Finally, there must be a mechanism set in

place to resolve disputes over the approval or nonapproval of courses, and provide recourse to AICP members who believe that what was promised in training was not provided.

(5) The Commission must be transparent in conducting its business, rather than secretive. I have communicated with several of you my concern that the Commission has failed to post its agendas and minutes and other information on its website so that its members, after logging on, could access them. AICP President Sue Schwartz, FAICP, agreed with me that this is a problem, but I have seen nothing subsequently to lift the black shroud that surrounds AICP business (and APA business as well).

AICP Commissioners must also post their telephone numbers, email, and addresses on the website so that members can communicate with them directly, and this information must be kept up to date. The Commission must also correspond directly with members about important AICP business, such as this, and not rely on indirect, intermediate means like *Interact*, intended for the general APA membership. If APA can repeatedly send me emails directly about junkets to China it is trying to peddle, the AICP can certainly contact me directly about its internal business.

The Next Steps

From what I can tell, AICP developed this proposal in secret after there were sufficient votes on the Commission to ram the idea through. That is not the way complex programs that affect the professional development and welfare of 15,000 professional planners should be initiated. AICP must table this proposal at this time and begin an open collaborative process with chapters, divisions, planning educators, and various providers of continuing education. Information about the experimental program conducted by several chapters a few years ago must be made available to all AICP members, along with any other internal reports and studies. The Commission must set aside considerable time to listen to its members in an open hearing in Philadelphia, and must not hide away in executive sessions or retreats, concealed from public view and criticism.

I support continuing education, but there is no rush to put a flawed proposal into effect, and there is plenty of time to do it right.

Sincerely,

A handwritten signature in cursive script that reads "Stuart Meck". The signature is written in black ink on a white background.

Stuart Meck, FAICP/PP
Director and Faculty Fellow
Former APA President, 1989-91
Former AICP Commissioner, 1985-1988

cc: Carlos Rodriques, AICP/PP, New Jersey APA Chapter President
Brent Barnes, AICP/PP, President, Chapter Presidents Council

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