

Appraisal Subcommittee Advisory Committee for Development of Regulations (ASCAC)
Meeting Minutes
July 22 - 23, 2014
Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA 22314

Members

Roberta Ouellette (Chair)	North Carolina Appraisal Board
Frank Gregoire (Vice-Chair)	Gregoire & Gregoire, Inc.
Richard Borges, II	Borges & Borges Real Estate Advisors (via telephone)
Toni Bright	Iowa Appraisal Examining Board
Maria Brown	Idaho Real Estate Appraiser Board
Thomas Callahan	Massachusetts Affordable Housing Alliance
George Demopoulos	Lincoln Appraisal & Settlement Services, LLC
Blake Feik	North Valley Bank
Wayne Hood	ORNL Federal Credit Union
Alan Hummel	Forsythe Appraisals, LLC
Kathy Kelton	Wells Fargo Bank
Louise Lavertu	New Hampshire Joint Board of Licensure & Certification
James Martin	California Bureau of Real Estate Appraisers
Christine McEntire	Oklahoma Real Estate Appraiser Board
Tony Pistilli	Axios Valuation Solutions
Van Stewart	SWBC Mortgage Corporation
Juana Watkins	Florida Division of Real Estate

ASC Staff

Denise Graves	Deputy Executive Director
Brian Kelly	Administrative Assistant
Vicki Metcalf	Policy Manager
Jim Park	Executive Director
Alice Ritter	General Counsel
Lori Schuster	Management & Program Analyst, Designated Federal Officer
Jenny Tidwell	Policy Manager

Observers

Morey Barnes Yost	K&L Gates, LLP (July 23 rd only)
Dave Bunton	Appraisal Foundation (July 22 nd only)
Mark Chapin	Solidifi
Linda Cogburn	ServiceLink
Kelly Davids	Appraisal Foundation
Jeff Dickstein	Pro Teck Valuation Services
Larry Disney	Association of Appraiser Regulatory Officials (AARO)
Don Kelly	Real Estate Valuation Advocacy Association (REVAA)
Amy McClellan	Association of Appraiser Regulatory Officials
Frank O'Neill	DataQuick Lending Solutions
Robert Parson	Office of the Comptroller of the Currency (July 23 rd only)
Robert Witt	Federal Housing Finance Agency (FHFA) (July 22 nd only)

Transcriber

Charles Morrison	Neal R. Gross & Company
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TUESDAY, July 22, 2014

Welcome and Introduction

Chair Roberta Ouellette called the meeting to order at 9:07 a.m. She welcomed those assembled and opened the floor to introductions. It was noted that appraiser representative Leeann Moss was unable to attend the Meeting.

Federal Advisory Committee Act Requirements

Lori Schuster, Designated Federal Officer (DFO), explained she serves as a liaison between the Advisory Committee and the ASC, and ensures that provisions of the Federal Advisory Committee Act are met with respect to Advisory Committee operations and ethics.

Public Comment

Dave Bunton of the Appraisal Foundation commented that during a break-out session at the Industry Advisory Council Meeting, a recommendation was made that the Foundation develop a repository of States' Appraisal Management Company (AMC) laws. Given the provisions of the Dodd-Frank Act, he suggested it may make more sense for the ASC to maintain such a repository.

Frank O'Neill of DataQuick Lending Solutions commented that background checks have become a major topic of concern for the industry; solutions to reduce burdens on AMCs and appraisers, while protecting public safety, should be explored and pursued. He also said that the National Registry (Registry) should be comprehensive, consistent and timely updated; appraisers should not be able to opt out of the Registry, as this reduces its comprehensiveness; AMCs' bonding requirements should be recorded as State mandates, rather than on an individual AMC basis; and significant benefits would accrue to States if the ASC were to take on collection of Registry fees. A member asked how long a background check should be valid. Mr. O'Neill said, in his opinion, an annual review seems sensible; a one-time check is insufficient.

Don Kelly of REVAA commented that all appraisers who work with REVAA are subject to a common criminal background check; the complexity exists in finding a level of background check that would satisfy everybody; ASCAC has stepped up to take on many complicated and important issues, and should promulgate policy statements/recommendations which promote consistency across the industry; reciprocity and temporary practice are ongoing issues; and AMCs would like States to have a consistent compliance process for AMC audits.

Robert Witt of FHFA read a letter on behalf of Meg Burns, Senior Associate Director of the FHFA Office of Housing and Regulatory Policy confirming that FHFA would like the National Registry to be updated more frequently by States and would like appraisers' license history to be more complete.

Larry Disney of the Kentucky Appraisal Board (representing AARO) commented that the background check issue requires serious discussion; subjecting applicants to certain types of background checks may not be beneficial.

Temporary Practice Recommendations

Chair Ouellette compiled a list of temporary practice recommendations for consideration and discussion by ASCAC.

Recommendation 1: Until all information on the National Registry is updated in a more timely fashion, ASCAC recommends making no changes regarding the “letter of good standing” for a temporary practice permit.

A member suggested timeliness goals should be implemented to ensure the process does not continue indefinitely. A member commented that in certain jurisdictions, letters of good standing are required only for federally-related transactions (FRT). Some members suggested incorporating the frequency of State updates to the Registry into the recommendation. The letter of good standing is at best problematic for appraisers and AMCs, and more timely updates to the Registry could lessen the need for letters of good standing. States which currently update the Registry in real time still occasionally must produce letters of good standing for other States' use. Additionally, some States' regulatory systems in this area are built on receipt of letters of good standing. Discrepancies between data found in the Registry and letters of good standing need to be reconciled. Consideration must be given to the extent and kind of historical information the Registry should contain, e.g., license status at the time a temporary practice application was submitted.

Recommendation 2: Given the importance of criminal background screening, ASCAC recommends that no action be taken regarding the requirement by some States for a criminal background check on an applicant for temporary practice.

Various questions and comments were discussed. One member said some States currently have no background-check requirements in place; perhaps the recommendation could be worded to take effect at some particular future date. Another member questioned if fingerprinting would be required for each change in an applicant's credentialing? Reciprocity was briefly discussed. Concern was expressed that multiple redundant background checks may serve to slow down the credentialing process, rather than make it more secure. Appraisers should not be subjected to lengthy waits to obtain temporary practice permits in a given State. Lenders may not be interested in taking the risk to hire an appraiser from another State who has not received a temporary practice permit. One member expressed support for commenting whether such background checks are burdensome. Would currently licensed or certified appraisers who have not been subject to a background check be mandated to undergo one with acceptance of this recommendation? The private sector is currently in the process of requiring background checks for all residential appraisers. Multiple background checks will reduce efficiency; a singular platform with which everyone can be satisfied should be the goal. The concept of home State is ambiguous: does it refer to State of residence or State of original licensure. For purposes of credentialing, appraisers may have more than one home State. Different States have different requirements for background check review: renewal, upgrade, varying periods. One member suggested working from principles to which all members can agree and allowing policymakers to establish specific requirements based on those principles, e.g., background checks are good, they should be performed at a national level, they should be monitored in real time. ASCAC should take care to ensure that regulations will suit the entire industry and not just solve issues where

problems have already arisen. Chair Ouellette said the ASC has limited authority with respect to background checks. The issue was tabled to be taken up again during ASCAC's discussion of background checks later in the Meeting.

Recommendation 3: Currently it appears on the Registry as if the disciplinary action on a temporary practice permit was taken in the applicant's home State, not the actual State that took disciplinary action. The Registry should reflect the State that took disciplinary action against the appraiser.

ASC staff said this change is being developed. The redeveloped Registry should have greater capabilities for more detailed data. One member asked who investigates an appraiser for a bad appraisal or other failure. Another member responded that the State granting the temporary practice permit takes on the responsibility for discipline of that appraiser, should it be required. The appraiser's home State may then decide to take some action of its own. Discussion ensued whether all temporary practice permits should be issued within five days, regardless of review requirements.

National Registries (Appraisers and AMC) Recommendations

Recommendation 1: Absent uniformity across the States, the Registry should not include trainees, either on a voluntary or mandatory basis.

Chair Ouellette said inasmuch as trainees are inherently tied to their supervisor's license, it doesn't make sense to require separate Registry entries for trainees. Additionally, requiring trainees to pay Registry fees may be burdensome to the trainee population. One member said separate trainee entries may be necessary in order to verify a trainee appraiser's license. Trainee registration may allow for greater learning opportunities, especially in the preparation of reports. Without trainee registration, it is difficult to know how many trainees a supervisor is overseeing. The appraiser population is declining; regulations should not limit the ability of trainees to effectively complete their training and serve as appraisers. ASC staff questioned whether the ASC has authority to assess Registry fees for trainees. One member said that tracking trainees is a good thing but questioned how that could be done since trainees are not covered under Title XI. States also cannot be required to disclose disciplinary information taken against trainees to the ASC. One member suggested trainees be included on a voluntary basis, to which there was general agreement. Voluntary inclusion may be a double-edged sword to both those included and not included. All States that have trainee programs assess a State licensing fee on trainees, but not a Registry fee.

Recommendation 2: Each appraiser credentialed on the Registry should have one unique identifier that will be used by each State in which the appraiser is credentialed.

ASC staff is exploring several different options and ASCAC encourages these efforts. One member said some States use systems which will not accommodate new ID numbers. Though work-arounds exist, States need to be educated in order to prevent undue panic. Perhaps allowing States time to implement new database systems would be useful.

Recommendation 3: Appraisal Management Companies

Chair Ouellette proposed several fields which could be included on a National Registry of AMCs. Perhaps the Registry should be separated into public- and regulator-facing websites containing different levels of information. The States are not in sync with respect to what information may be publicly disclosed, especially with regard to disciplinary actions. One member suggested the only information which should be disclosed is that to which all States agree. Applying the same rules to appraisers and AMCs may not make sense, or be legal, since one is a person and the other is a business. If Registry data is not completely transparent, it may be of limited value. The States may also have different standards for who can be listed as an AMC's contact/control.

Information Sharing Recommendations

Chair Ouellette composed a list of information sharing recommendations for consideration and discussion by ASCAC.

Recommendation 1: The ASC website must be significantly enhanced to include much more information on each State appraiser regulatory agency. This data must include information regarding AMCs.

Chair Ouellette compiled a list of information she would like to see included in a State-level registry database. One member suggested more detailed State information such as: various fees, temporary practice rules, complaint information, application information and qualifying and continuing education requirements to name a few examples. Other members suggested adding the following: a link to the State's disciplinary actions if available; providing a link to States' complaint forms; and displaying contact information for more than one or two State staff.

(Recommendations 2 and 3 were discussed on the second day of the meeting.)

Recommendation 2: There should be more information available about each appraiser on the National Registry. (See Recommendation 2 in National Registries).

The States vary widely in what they choose to report about appraisers practicing in their jurisdiction. The Registry should include the rules the appraiser's State follows with respect to public reporting of disciplinary actions. Several members agreed that public evidence of any disciplinary action may result in loss of business for appraisers. Appraisers are subject to federal regulation, which may imply that certain types of public reporting are warranted. Perhaps public reporting should be limited to breach-of-trust infractions. Chair Ouellette summarized the view of ASCAC that the Registry should include a link to State regulators who may be able to release disciplinary information about appraisers in their State, and that the States should include disciplinary actions in PDF format to be included on the private-facing side of the Registry. The Chair will draft a recommendation to be discussed at the October ASCAC Meeting.

Recommendation 3: The ASC should hire an additional staff person whose role will be to serve as a public information officer to collect and maintain information regarding each State appraiser regulatory agency.

One member suggested formulating the recommendation around functions the ASC should perform and leave it to that group how to go about doing it. Another member said the recommendation may duplicate other work being performed. Because of its congressional mandate, the ASC's role is substantially different from that of the Appraisal Foundation.

Enforcement Sanctions Matrix

Different States use different terminology to mean enforcement sanctions: reprimand, public disciplinary action, letter of warning, caution, letter of guidance, censure, conditional dismissal, etc. Chair Ouellette provided a table of infractions, degrees of severity and potential actions for consideration by ASCAC. Use of these tools could drive down recruitment to serve on State regulatory boards. Boards should understand that ASC findings against them are not intended as punitive, but as identifying a need for further education. Different States have different rules pertaining to appraiser investigators following the provisions of USPAP. The investigators intention is to find facts, not form an opinion. State Boards are not the final say; decisions may usually be appealed to district courts or other venues. ASCAC members agreed that State board training is a good thing and should be enhanced. A member suggested that the ASC develop recommendations for minimum education for State board members. Another suggested ASCAC recommend that the ASC make available training materials for State staff and board members. Such a recommendation may be outside ASCAC's purview. ASC staff said grants along this line may be considered. Arguments were made for and against whether the ASC should impose fines for serious infractions. ASC staff stated its opinion that the ASC does not have the authority to impose fines. ASCAC discussed the various penalties that could result from infractions.

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ASCAC decided to form and populate working groups to work separately through the sanctions matrix, and to address aggravating and mitigating circumstances, and come back to ASCAC with a recommendation for consideration. One member said sanctions must be written in such a manner that negative findings against States do not affect individual appraisers and other innocent victims. The accelerated review program may be helpful in this regard. Do agencies like the ASC have the authority to go to Congress and request more oversight authority? ASCAC is free to make any recommendation to the ASC that it wants, subject to the approval of the ASC. The ASC could be more effective by implementing ongoing education programs to help ensure that State governments understand their obligations under Title XI. One member noted that having regular meetings with States' executive branch staff may only serve to increase visibility of the State program, which would not necessarily be a good thing. The "nuclear option" of stopping a State's licensing authority does not realistically exist. States should identify their number one complaint area and then have the ASC provide education based on those findings.

Questions/Follow-Up Discussion from Previous Day's Discussion

Discussion Items

Should ASC Policy Statements 2, 3, 7 and 8 be codified?

If ASC Policy Statements were made into regulation, it would subject the ASC to more stringent rulemaking requirements. One member said ASC Policy Statements should not be codified because of the fluid environment which currently is happening in the real estate appraisal field. ASC would be better served by a broad-based, high-level rulemaking effort, rather than smaller ones. One member said it is premature to recommend codifying the Policy Statements at this time.

Should one-year timeframe for States to review and close complaints be lengthened?

The one-year timeframe is currently laid out in the ASC Policy Statement 7. Views on this question were divided. Perhaps ASCAC's recommendation should include language ensuring that due process is protected. Perhaps the timely resolution of cases should be determined based on the legal requirements underlying them. Focusing on timely resolution does not always yield the best result. Regulation in this area may conflict with existing State laws. Most cases could probably be resolved within a year, but many may take longer due to the complexity of the case. It may be possible to resolve cases within a year now, but circumstances (economic and otherwise) may change, forcing longer wait times for resolution. One member characterized ASC dictating a one-year resolution period as micro-management of the States. The quality of the decision is equally important to a case's timely resolution.

Who has authority over temporary practice for non-federally related transactions?

ASC's jurisdiction is over FRTs. Some States do not allow issuance of a temporary practice permit for non-FRTs. Could the ASC penalize a State for non-compliance on a non-FRT completed under a temporary practice permit? ASC staff is of the opinion their jurisdiction is limited to FRTs. States also differ on whether they issue temporary practice permits for only FRTs or for other types of transactions. States have authority over temporary practice for non-FRTs.

ASC grants to States and how the funds should be used and disseminated to States.

Several funding models have been under discussion at the ASC: reward model programs, help under-performing States improve, in-kind training or education for State staff and board members. One member said grants awarded should be accompanied by stipulations as to how that money may be used. States may decide not to take money if there are "strings attached." Reimbursement or fellowship models may be more useful to States and closer to the intent of the ASC grants program. One member said online training courses for staff and board members would benefit all jurisdictions, given staffing turnovers. One member said money to increase consistency of background checks would be well spent. Most market participants would be glad to see the ASC be set up as a conduit and/or standard-setter for background checks, reducing backlogs and redundancies. ASC staff emphasized that currently there is no federal requirement that appraisers be subject to criminal background checks. A national standard on background checks could lessen the need for duplicative State requirements in this area. A background check

that would satisfy all stakeholders is likely unattainable; a set of minimum standards for checks may be more agreeable. ASC staff believes this hypothetical standard would require congressional mandate. Lenders often have more stringent standards than States. States are driven by public safety concerns, while lenders are more likely driven by liability concerns. Is there a way to reconcile this difference? One member suggested that the Federal Financial Institutions Examination Council may give guidance that all stakeholders could support. Perhaps NMLS should be invited to address ASCAC at a later meeting. The regulatory environment will evolve as AQB requirements take effect in 2015 and 2017. Some federal background checks are less comprehensive than State ones. Should ASCAC recommend that the ASC continue to look at national standards for background checks? The consensus of ASCAC seems to be no, since their and other stakeholders' options are too limited to take on the issue.

Tentative dates and locations for January 2015 ASCAC Meeting

Attendance of staff makes a Washington, DC meeting desirable, despite the interest of holding meetings elsewhere, as well as possible complications caused by winter weather. The DFO will work with ASCAC members to determine their availability for a January 2015 Meeting.

The following items were on the agenda for discussion but were not discussed due to shortness of time. They will be put on the discussion item for the October 15-16 ASCAC Meeting:

Could States use part of their application/licensing fees to go directly into funding education for Board staff or other appraisal-related items such as attending AARO conferences?

Could grant funds be tied to Compliance Review findings?

Can clients require appraisers to have background checks?

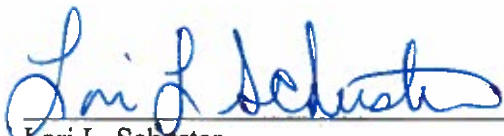
Final Comments/Public Comment

Chair Ouellette will assign members to the various working groups. Members who have a preference to be on a particular working group should make their interest known either to the Chair or DFO.

The next Advisory Committee meeting will be held October 15 - 16, 2014 at the Crystal City DoubleTree Hotel in Arlington, Virginia.

Chairperson Ouellette adjourned the meeting at 4:08 p.m.

Respectfully Submitted:



Lori L. Schuster
DFO

Respectfully Submitted:



Roberta Ouellette
Chair