

**Appraisal Subcommittee Advisory Committee for Development of Regulations (ASCAC)
Office of the Comptroller of the Currency
400 7th Street SW, Washington, DC 20024
April 16-17, 2014
Meeting Minutes**

Members

| | |
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| Roberta Ouellette (Chair) | North Carolina Appraisal Board |
| Frank Gregoire (Vice-Chair) | Gregoire & Gregoire, Inc. |
| Richard Borges, II | Borges & Borges Real Estate Advisors |
| Toni Bright | Iowa Appraiser Examining Board |
| Maria Brown | Idaho Real Estate Appraiser Board |
| Thomas Callahan | Massachusetts Affordable Housing Alliance |
| George Demopoulos | Lincoln Appraisal & Settlement Services, LLC |
| 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 |
| LeeAnn Moss | The Loranda Group, Inc. |
| Tony Pistilli | Axios Valuation Solutions |
| Van Stewart | SWBC Mortgage Corporation |
| Juana Watkins | Florida Division of Real Estate |

ASC Staff

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|---------------|--|
| Paula Godfrey | Temporary Staff |
| Brian Kelly | Administrative Assistant (April 17 th only) |
| Jim Park | Executive Director |
| Alice Ritter | General Counsel |
| Lori Schuster | Management and Program Analyst & Designated Federal Official |

Observers

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| Morey Barnes Yost | K&L Gates, LLP |
| Beth Buell | ServiceLink |
| Art Lindo | Federal Reserve Board & ASC Chairman (April 17 th only) |
| Bob Parson | Office of the Comptroller of the Currency (April 16 th only) |
| Brian Rodgers | Appraisal Institute (April 16 th only) |

Transcriber

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| James Salandro | Neal R. Gross & Company |
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WEDNESDAY, April 16, 2014

Welcome and Introduction

Chair R. Ouellette opened the first meeting of ASCAC. J. Park, Executive Director of the Appraisal Subcommittee (ASC), introduced himself to ASCAC members. He provided an overview of the purpose of federal advisory committees and their responsibilities under the Federal Advisory Committee Act.

Federal Advisory Committee Act (FACA) Requirements

Following the introduction of committee members, L. Schuster, Designated Federal Official (DFO) for ASCAC, explained her role to the members. The DFO serves as a liaison between ASCAC and the ASC. The DFO also makes certain that all provisions of FACA are met regarding the operations of ASCAC.

Approval of the Bylaws

R. Ouellette explained that ASCAC is limited to providing advice and recommendations to the ASC concerning development of regulations in four areas according to the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA). These areas are: temporary practice, National Registry, information sharing and enforcement. All committee actions and deliberations must be public. Excluded from open meeting requirements are meeting preparatory work and administrative work.

After discussion, G. Demopoulos moved to approve the bylaws as presented and all members voted to approve.

Public Comment

Nobody signed up for public comment and R. Ouellette asked if observers wished to speak. B. Buell from ServiceLink introduced herself and said that she and her organization will be more than happy to help ASCAC.

Committee Objectives

- **Temporary Practice Permits (TPP)**

R. Ouellette opened a free-flowing discussion on TPP application procedures. Most States process TPP applications in five business days; requiring additional steps may delay the process. Members discussed concerns with background checks, such as choosing a background check company and determining how many checks need to be done. In some States like Iowa, if an appraiser is actively credentialed in any State, that appraiser will be allowed to appraise in Iowa.

One member said there is an obligation to licensees and to the organizations that ASCAC members represent, to ensure there is reasonably free movement of licensees across States. A. Ritter added that many States comply with TPP requirements, and TPP compliance is not as big an issue as it once was. However, some concern was expressed by members about the per assignment basis of TPPs. Some State members said that if multiple properties are included in a TPP application, they

would ask for a copy of an engagement letter that listed each of the properties to be appraised. TPPs are usually good for six months with one extension. A. Ritter added that ASC Policy Statement 2 indicates that it would be burdensome if the TPP were effective for less than six months. States have the right to determine by statute or regulation how many times an appraiser may be issued a TPP. A. Ritter noted that Title XI authorized the ASC to determine what are burdensome requirements, and they are set forth in the ASC Policy Statements. One member asked how States can add additional requirements beyond being properly credentialed in the home State. A. Ritter responded that it would depend on whether or not the additional requirements are deemed burdensome by the ASC.

There was discussion on whether an appraiser disciplinary action in one State would affect whether or not an appraiser can get a TPP in another State. Members agreed that denying a permit based on another State's disciplinary action without some due process is burdensome. Some members said that the only time they would put an application before their board is if an applicant was currently on probation or a disciplinary action occurred recently. ASCAC can make recommendations, but unless a Policy Statement or regulation is issued by the ASC, the States will develop their own regulations. There needs to be a balance between serving the public and protecting the public. One member suggested combining ASC Policy Statement 2 and 5 on TPPs and reciprocity. Having one set of rules as a principle would be something to strive for given the complexities of compliance across State lines. A member commented sometimes regulators feel disadvantaged when dealing with a large Appraisal Management Company (AMC) that has a compliance manager who monitors all of the changes.

There was a concern about reliability regarding the National Registry (Registry) and how frequently States submit data to the Registry. R. Ouellette said that if all States were required to update information in real time, then her State, North Carolina, would rely on the Registry more often. One member asked if there was a consistent definition among States of what rises to a disciplinary action. A. Ritter said the Glossary of Definitions in the ASC Policy Statements defines disciplinary action as the ASC sees it for purposes of reporting. J. Park added that there is a requirement that all current disciplinary actions that are suspensions, revocations or voluntary surrenders in lieu of disciplinary action be made public. There is a private side on the Registry that is only available to State regulators. The private side exists so that States can use the information when they are making decisions about issuing licenses or TPPs to appraisers that are crossing State lines. When the Registry was designed, the various State laws regarding public/private reporting were respected by creating a non-public component of the Registry. One member raised a concern that this non-public database potentially creates issues relating to transparency.

A. Ritter said that the information on the Registry is the States' information. Members wondered if State consent orders could be uploaded to the Registry and linked to the appraiser's license. That way it would be readily apparent if a particular appraiser has any current disciplinary issues in any jurisdiction. There was discussion about a single clearinghouse for administrative decisions which would require a lot of interaction between the States and whoever would be compiling the database. A database of decisions could also assist States in writing their own decisions by serving as templates. Members also thought that education for Administrative Law Judges (ALJs) was a good idea. Judges are often not aware that such training opportunities currently exist. A. Ritter pointed out that once the ASC retains a record, the record becomes subject to the Freedom of Information Act. ASC staff confirmed they are working on developing a unique identifier for each appraiser on the Registry. One member suggested that if individual States make all disciplinary actions public,

they should also be public on the Registry.

J. Martin said that his State, California, utilizes the Simple Object Access Protocol (SOAP) system designed by the ASC, which allows his staff to update the Registry in real time. Currently, there is no uniformity on how often States report data to the Registry. L. Schuster noted that States are required to report data at least monthly to the Registry. However, disciplinary actions that interrupt an appraiser's ability to practice need to be reported in five days. One member pointed out that appraiser licenses can be suspended for actions unrelated to appraisal, i.e., non-payment of child support. A way to make a distinction between a practice related and non-practice related suspension would be helpful. Members indicated their desire to have current, accurate information on appraisers that is easily accessible on a national database. The benefit of including TPPs on the Registry should not outweigh the burden that States need to bear in order to report all of the TPPs.

Some members agreed that the committee should suggest principles that would lead towards standardization, consistency and guidance from the committee to States. Most States do not seem to have an issue with consistency, but often a lack of staffing and funding interferes with the goal of consistency. State laws on privacy and transparency can also conflict with imposing national standardization. Some members expressed concerns about the difficulty of keeping up with individual State requirements that go beyond DFA. All of the members acknowledged that creating a one size fits all system is improbable.

Following a lunch break, the members returned to discuss ASC Policy Statement 2 regarding TPPs based on an assignment. "Assignment," means one or more real estate appraisals and written appraisal reports covered by a single contractual agreement. A legal description for a property is usually just an address or tax parcel number. With regard to the five business day turnaround for issuance of TPPs, A. Ritter said that any issues that ASC policy managers raise with the States typically are resolved.

The Appraiser Qualifications Board (AQB) sets the minimum requirements for appraisers. The AQB proposed background checks as a requirement in 2015. That requirement has been delayed to 2017. One member liked the idea of not prohibiting the State from conducting a background check, but not mandating background checks at the national level.

Regarding home States, R. Ouellette mentioned that it is entirely conceivable that someone could continually get licensed in several States and never take one continuing education (CE) course. J. Martin said that in order to get a renewal license in California, an applicant needs to show proof of CE by submitting their completed course certificates. Ideally, course providers would electronically confirm the CE hours taken by applicants. A member suggested it would be beneficial if CE was reported to the ASC. There are States that rely on letters of good standing. A member asked whether it would be wise to remove the responsibility from the home State on issuing a letter of good standing within five business days and place it on the host State to use the Registry. Some members said the Registry is not current enough to be relied on in this fashion.

A. Ritter said that the ASC Policy Statements were put in place because the ASC did not have rulemaking authority. They were meant to guide the States regarding compliance with Title XI. The advisory committee's charge is to assist the ASC as it embarks on actual rulemaking and recommending sanctions. Members were in agreement that home States routinely take disciplinary action if one of their licensees is disciplined by another State.

R. Ouellette asked members if there was something specific to TPPs that is not related to the Registry. There was agreement that the TPP system works fairly well. As far as appraisers listed in the Registry, only a few States make the option voluntary. North Carolina is one of them. Appraisers not on the Registry are listed as inactive and are not eligible to appraise for federally related transactions (FRTs). Their license also includes wording that they cannot do appraisals for FRTs.

Members had a brief discussion on the funding and autonomy of the various State appraisal boards. This was helpful to the non-Association of Appraiser Regulatory Officials (AARO) members in gaining an appreciation of the diversity of the appraisal regulatory world.

- **National Registry**

There was agreement that ideally the Registry should be updated in real time, but that right now it would be burdensome to require States to update daily. R. Ouellette said that ASCAC is in agreement that everyone wants to rely on the Registry, but at this point, it is not reliable. Not every State can afford a separate computer system to be used only by appraisal regulator staff. States could possibly engage in a license to use an existing IT system rather than creating one from scratch. A data submission once a month means the information will not be current. Forty-eight hours to five days would be a reasonable reporting window under current conditions with real time updates the ultimate goal.

A lot of States use the ASC's extranet program to update credential information. Updates that relate to discipline or changing a person's status go through the extranet. Updates made via the extranet are displayed on the ASC's database and show up in real time. Data files that are uploaded by ASC staff may take longer. With the SOAP system currently being used in California, there is no additional processing by ASC staff to ensure that the data is correct.

R. Ouellette shifted the discussion to what items the committee would like to see on the Registry. Two items mentioned included proof of CE and Uniform Standards of Professional Appraisal Practice course certificates. One of the concerns is that appraisers may not be getting the education that they need. The Registry should include data such as: where an appraiser is licensed, what years were they licensed, and effective and ending dates of suspensions, revocations or surrenders.

A. Ritter said that the ASC has not addressed putting registered trainees on the Registry. Whether or not trainees should be captured on the Registry is undecided. Several members thought trainees should be listed and be required to provide the name of their supervisor, and members stated it should be easier for trainees to enter the profession and for States to monitor how many trainees a supervisor has across jurisdictions. Members thought the AQB should address the issue of multiple trainees in multiple jurisdictions that are under one supervisor. A State can always be more restrictive than the AQB Criteria in what it chooses to allow.

There was discussion concerning the issue of entering the profession, and the Fannie Mae requirement that if an appraiser signs the report on the left, then that appraiser has to be the one to inspect the property. Many residential appraisers hire trainees to do inspections because it saves time. A trainee can sign on the left, but many lenders do not allow trainees to sign on the left – this is a significant barrier to entry.

The members also discussed the following changes to the Registry: allow more access to the private side of the Registry; mark an appraiser when deceased; if an appraiser is not on the Registry and/or does not meet AQB minimum criteria then the appraiser is not eligible to do FRTs; the ASC should hire a public information officer/ombudsman; share trainee information so that it can be shared by multiple States; updated rules and policies by States; and putting an indication at the top of an appraiser's screen indicating whether they have any disciplinary actions against them.

THURSDAY, April 17, 2014

- **Registry Discussion Continued**

B. Kelly, ASC Administrative Assistant, answered a variety of questions from committee members, and discussed the process for uploading State data to the Registry. The SOAP protocol would be the fastest way to provide updates since it is available on the Registry immediately. AMCs and banks can download the Registry through the SOAP process. A majority of States update on a weekly basis, and four to five States update monthly. B. Kelly said that ASC does not own the data, and that States are responsible for informing the ASC about changes in appraiser disciplinary status. He pointed out that there is a records management cost to the ASC.

B. Kelly said the target date for starting the unique identifier project is September 1st. J. Park said he looks forward to ASCAC recommendations for potential redesign of the Registry. He added that the unique identifier will stay with the individual not with the license or home State.

- **Timeline for Reporting for the Subcommittee**

R. Ouellette said the goal is to get a report to the ASC following the January 2015 ASCAC meeting.

- **Enforcement and Sanctions**

R. Ouellette prepared an enforcement matrix after reviewing the ASC Policy Statements regarding temporary practice, the Registry/information sharing, and enforcement. She explained the matrix is not meant to be all-inclusive. The part of the matrix that ASCAC should focus on is potential sanctions against the States. The DFA expanded the spectrum of sanctions available to the ASC. She suggested one of the potential sanctions is education of board and staff members. Investigator training could be an important component in the education sanction. Another potential sanction would be a mentoring program where staff from a State that is facing non-compliance goes to another State that is in compliance and learns from the successful State's program. The matrix has a tiered sanction schema, so there are more options than just de-recognition. A. Ritter said that DFA did give the ASC interim sanctioning (or temporary de-recognition) authority to remove an appraiser or AMC from the Registry for up to 90 days. De-recognition means the inability of appraisers in a State to engage in FRTs. It does not preclude a State program from dealing with licensing appraisers that are not on the Registry, or appraisers that do not appraise for FRTs.

One member offered that it would be helpful to States to say that they will be fined a certain amount unless the State takes a specific action. It may be a better approach to one that is strictly punitive and may get States to comply, with a fine being a last step before de-recognition. As far as delays in enforcement actions are concerned, boards can be a source of delay if they cannot get a

quorum to meet. Other times the attorney general's office/administrative hearing process may be the source of delay. R. Ouellette said that ASCAC should look toward giving the ASC a variety of options for dealing with the wide variety of situations across States. J. Park said the ASC staff meets with the Governor's staff in problematic States. This type of non-punitive, consultative approach is extremely helpful to State boards and regulatory officials in helping them to be in compliance with Title XI. R. Ouellette said that in addition to meeting with State authorities, meeting with affected parties could be a form of sanctioning – realtor associations or banker associations.

One member suggested taking the regulatory process away from the State and giving it to the ASC if a State were non-compliant. Perhaps this could be coupled with a financial penalty. This would ensure that the system is operative while also being a significant punitive measure. A. Ritter said that such authority would require research and rulemaking.

A member stated conversations with State legislators need to be framed in way to ensure that they understand that if the State board is non-compliant, their constituents will be out of work and there will not be any home loans in the State. Getting the bankers, mortgage lenders and realtors on board saying that they need compliance tends to capture a legislature's attention. J. Park added that most of the problems are tied to lack of staffing or funding. One of the issues is that in a lot of the States, the money goes to the general fund and the board needs to go to the legislature and request additional budgetary resources.

A. Lindo, Chairman of the ASC, said that the goal is to move States towards compliance and to change behavior. The ASC carefully considers the economic impact of de-recognition before threatening a State with that action. Basically what the ASC wants to do is shorten the time between the designated infraction and its remediation.

R. Ouellette asked the committee to consider incentives in order to encourage States to remain compliant. One option would be to provide grants. J. Park said DFA gave the ASC authority to give grants to the States to support enforcement, and submission of data to the Registry, and overall compliance with Title XI. AMC fees could increase the ASC's ability to offer grants. Subsidies to States to attend education courses could be one form of grant. Travel is often restricted in some States and must be authorized by the Governor's office for staff to travel out of State – having the ASC endorse out of State education would be extraordinarily beneficial. One idea was that the ASC could establish a finite amount of money that they would give to a State, e.g., \$5 per appraiser. The State could use the money in any fashion it chose. There was support among members for this idea. The grant should be based on performance. One member mentioned that using matching funds could provide incentive for States to put up additional money as well. Members cautioned that the grant process cannot become so cumbersome that it becomes an administrative burden. The first purpose of the grant program should be to ensure that enforcement programs are working properly.

One member suggested creating a central repository of disciplinary complaints for the ALJs. Also, members suggested extending the one-year period for closing a case. Perhaps the one-year period should only mean that a case be completely investigated in one year. Respondents need to be given due process. As far as screening complaints is concerned, Idaho's State board has board members

that will determine if a complaint is frivolous before proceeding to an investigation. A member expressed that the right of defendants to defend themselves cannot be sacrificed upon the altar of efficiency.

There is a mandatory requirement that banks do some type of review and report issues for financially regulated transactions. If a complaint comes from a homeowner, there is likely already a professional review that has been done by an independent unit within the bank. Sometimes working with a bank to get documents on a particular complaint can lead to significant legal wrangling.

- Next Steps

J. Park said that the idea was to have ASCAC meetings in Washington, DC since ASC staff and its members are there, but ASCAC could decide on other locations. Members were in agreement that two-day meetings would be appropriate for future ASCAC meetings. One possibility for the next meeting would be to hold the meeting at the hotel where members are staying. L. Schuster will work with ASCAC members to set meeting dates for July and October.

Before the next meeting, R. Ouellette and L. Schuster will draft a summary of what issues will be discussed at the next meeting. The draft will be sent to members for their input.

Chairperson Ouellette adjourned the meeting.

Respectfully Submitted:

 6-4-14

Lori L. Schuster
DFO

Respectfully Submitted:

 6-4-14

Roberta Ouellette
Chair