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Appraisal Subcommittee

*Federal Financial Institutions Examination
Council*

Briefing Agenda

Date: January 12, 2022

Time: 10:00 a.m. ET

Location: Go to the Link below to register for the Briefing

<https://www.zoomgov.com/meeting/register/vJItdeChqD4tGGh5lS7gdOEZW83jIDqyTp8>

Briefing Topic(s)	
PAVE Task Force	J. Park
USPAP/AQB Criteria Review	J. Park
2017-19 TAF Grant Audit	M. Abbott
General Staff Update	J. Park

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Appraisal Subcommittee
Federal Financial Institutions Examination Council

TO: Appraisal Subcommittee

FROM: Jim Park, Executive Director

DATE: January 5, 2022

RE: Critical Projects Update



An ASC Briefing is scheduled for January 12, 2022, from 10:00 – 11:00 a.m. The agenda for the Briefing will include the topics addressed in this memo.

If any Board members have other topics for the Briefing agenda, please let me know.

Review of USPAP and the AOB Criteria

The consortium of legal firms led by the National Fair Housing Alliance (NFHA) delivered their final report to the ASC on December 22, 2021. You should have already received the final report. Attached is a three-page report summary created by NFHA as well.

The report includes findings and recommendations the ASC will likely need to consider for further action.

We (ASC/NFHA) are working with our PR teams to coordinate press releases on publication of the report. NFHA is scheduling media interviews to coincide with the release which is currently scheduled for January 11 at 11:00 a.m. ET.

HUD's Office of FHEO Investigation of the Appraisal Foundation (TAF)

The Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity is conducting an investigation of TAF regarding, among other things, the AQB's Criteria, and its potential impact as a barrier to entering the profession for protected classes of individuals under the Fair Housing Act. This is an ongoing investigation, so there are no further details.

TAF 2017-19 Grant Audit

The audit firm is nearing completion of the audit. A draft audit was circulated to ASC staff and TAF for comment. The audit has only one Notification of Finding (NOF) and it is related to program income. The NOF, which will be included in the final published audit, states the following:

“TAF raised valid points in their response to the Notification of Findings issued on October 26, 2021. However, most of their discussion appears to be disputing the form of the funds received. We believe there is significant evidence suggesting the form of the funds received was, in fact, a grant to which Federal Cost Principles would apply. Therefore, it appears there is a likelihood that program income exists which should be properly accounted for, and appropriate action should be taken to resolve the likely resulting questioned costs. The exact amount of questioned costs cannot be determined at this time as there is insufficient evidence available to determine an amount of program income earned. We believe that amount should be determined prior to making a determination of how to resolve the questioned costs, if any.”

Due to the lack of financial data provided for the questioned expenses, the auditors were not able to provide the total program income over these three years, but it could be several million dollars.

The ASC Grants Handbook addresses the audit resolution process in the following manner.

7.11 What is the process for resolving audit reports and findings?

The formal resolution process starts after issuance of the final audit report to the ASC:

- A. The ASC Grants Director reviews the final report and the recipient response and prepares the Management Decision.
- B. The Management Decision presents a summary of each unresolved finding, recipient response, and actions that must be taken to resolve the finding.
- C. The ASC Executive Director issues the Management Decision within 6 months of the final audit report to the recipient with a copy to the ASC Grants Director. The Management Decision will also notify the auditee of its right to appeal the Management Decision (s) to the ASC Board. The ASC will send the Management Decision via certified mail and post the report on the ASC website along with the grantee’s response to the draft audit findings.
- D. If the grantee disagrees with the Management Decision, the grantee has 30 days to appeal the decision. The appeal must be made in writing to the Chair of the ASC Board. Within 30 days of receiving the appeal, the Board may request additional information relating to the matters under appeal from the ASC Executive Director. The Board will render a final and binding decision on the appeal no later than 60 days following the receipt of the appeal or the receipt of any requested additional information. If the grantee does not file an appeal, the Management Decision will become final and binding 30 days after the Management Decision is issued.

We met with the auditors on January 4 regarding the public release of the audit. I will share the results of that meeting at next week’s Briefing. Prior to ASC issuing a Management Decision for the audit, we intend to consult with OMB, GAO and other federal grant making entities to get additional perspectives and input on the program income issue. Once ASC issues a Management Decision related to the program income issues and dependent on what that decision is, we will work with TAF to resolve the finding from the Audit.

Identifying Bias and Barriers, Promoting Equity: An Analysis of the Appraisal Standards and Appraiser Qualifications Criteria *December 2021*

Background

The appraiser has the power to determine the value of a mortgage borrower's most important financial asset, which can hold the key to determining whether that borrower's family can build wealth for their family and generations to come. Unfortunately, recent news stories have demonstrated that discriminatory bias continues to plague the appraisal industry. Given these circumstances, it is time to examine the appraisal industry's structure and governance, particularly as they impact borrowers of color.

This report on appraisal standards and criteria was conducted by the following consortium (the "NFHA Appraisal Report Consortium"):

- The National Fair Housing Alliance ("NFHA"), which is the country's only national civil rights organization dedicated solely to eliminating all forms of housing and lending discrimination and ensuring equal opportunities for all people;
- Dane Law, LLC, a private law firm with a special focus on the Fair Housing Act, the Equal Credit Opportunity Act, and other federal civil rights laws applicable to housing discrimination; and
- The Christensen Law Firm, a private law firm focused on legal and regulatory matters concerning valuation and related services.

The report was commissioned by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council and carried out by the Council on Licensure, Enforcement and Regulation. The goal of the report was to ensure that Uniform Standards of Professional Appraisal Practice ("USPAP Standards") and the Appraiser Qualifications Criteria ("Appraiser Criteria") do not encourage or systematize bias, and that the standards and criteria consistently support or promote fairness, equity, objectivity, and diversity in both appraisals and the training and credentialing of appraisers. The Appraisal Foundation is a private, nonprofit that issues the USPAP Standards through the Appraisal Standards Board and issues the Appraiser Criteria through the Appraiser Qualifications Board. These standards and criteria are adopted by the 50 states and territories. The Appraisal Foundation is monitored by the Appraisal Subcommittee.

The research for this report was conducted by reviewing numerous appraisal and civil rights materials and interviewing representatives from The Appraisal Foundation, the appraisal industry, the mortgage industry, fair housing advocates, and researchers. Based on these interviews, reviews, and research, the NFHA Appraisal Report Consortium provides the following recommendations, which are discussed in more detail in the report.

Recommendations

Questions About the Governance of the Appraisal Industry

Legal Authority. Under the current appraisal governance structure, a private entity (The Appraisal Foundation) sets the minimum appraisal standards and appraiser professional entrance criteria that must be adopted by the states. Given the importance of appraisals to the residential housing market and individual consumers' finances, it is recommended that the complex questions regarding the extent of The Appraisal Foundation's legal authority be considered for further review, including questions about:

- The extent of the legal authority under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"),
- Any potential obligations under the Administrative Procedures Act, and
- Any potential issues under the Constitution's nondelegation doctrine.

Appointments and Elections Process. The Appraisal Foundation should consider several steps to enhance inclusiveness, to provide a more intentional and meaningful way to incorporate the voices of civil rights and consumer advocates, and to improve the ability to issue USPAP Standards and Appraiser Criteria that benefit the whole of the housing market, including homeowners and neighborhoods of color. These steps should include:

- Repealing the requirement that a majority of the Board of Trustees must be appraisers,
- Repealing the requirement of financial donations to appoint board members, and
- Revising the appointments and elections process to provide industry groups and civil rights/consumer advocates equal opportunities to participate.

Rules of Procedure and Exposure Draft Process. The Appraisal Foundation should consider the following steps to enhance transparency and inclusiveness:

- Require the Appraisal Standards Board (which issues the USPAP Standards) and the Appraiser Qualifications Board (which issues the Appraiser Criteria) to state the legal authority under which it is promulgating standards or criteria;
- Require the Appraisal Standards Board to make the complete text of USPAP Standards, including Advisory Opinions, available to the public for free; and
- Require the Appraisal Standards Board and the Appraiser Qualifications Board to consider the impact of proposed standards and criteria on consumers and neighborhoods, including consumers and neighborhoods of color.

Gaps in Fair Housing Requirements and Training

Clear Prohibition on Discriminatory Conduct. To make it easier for appraisers and the public to understand an appraiser's fair housing obligations, the Appraisal Standards Board should revise the USPAP Standards to clearly state that discrimination in appraisals is prohibited.

Guidance on Discretion. Consistent with other aspects of the housing finance market, the appraisal process should be thoroughly reviewed for fair housing risk, particularly in the exercise of discretion, and the Appraisal Standards Board should amend the USPAP Standards accordingly in order to provide a baseline standard for fair and equitable outcomes.

Fair Housing Training. Quality fair housing training for appraisers is critically important and should be a requirement for every appraiser to obtain and maintain their credentials.

- The Appraiser Qualification Board should revise the Appraiser Criteria to clearly require comprehensive fair housing training on federal, state, and local fair housing laws at every stage of the appraiser credentialing process and at renewal.
- The Appraisal Foundation should work with civil rights experts to develop comprehensive fair housing training in the initial and continuing education Standards courses. The fair housing training module in the current 2022-2023 USPAP Standards continuing education course should be revised immediately to ensure the training is comprehensive and accurate.
- At a minimum, The Appraisal Foundation should work with civil rights experts to include the following in the fair housing modules for the initial and continuing education courses:
 - The history of discrimination and segregation and the role of the appraisal industry in establishing and perpetuating both;
 - Information about the costs of appraisal bias for families, communities, the housing industry, and the nation, including the impact on the racial homeownership and wealth gaps;
 - An in-depth explanation of the federal fair housing laws and implementing regulations as well as the role of state and local fair housing laws;
 - Recent case examples of appraisal discrimination;
 - The appropriate use of the free-form text sections of the appraisal report, including a reminder that the racial and ethnic composition of the neighborhood should never be a factor that influences the value of a home;
 - An explanation of how compliance with fair housing laws and standards benefits the appraisal and housing industry, consumers, communities, and the greater society; and
 - Best practices to ensure compliance with the letter and spirit of the fair housing laws.
- The Appraisal Foundation should consider inviting civil rights experts to provide the fair housing training for appraisers.
- The Appraisal Foundation should collaborate with U.S. Department of Housing and Urban Development, the U.S. Department of Justice, the Federal Housing Finance Agency, and other regulators and enforcement agencies to develop, improve, and implement fair housing training.

Barriers to Entry to the Appraisal Profession

Barriers to Entry. The Appraiser Qualifications Board should work with civil rights experts to analyze each of the following barriers to entry to the appraisal profession for possible disparate impact on potential appraisers of color:

- Multiple levels of credentials,
- College degree requirements,
- Appraiser education hours,
- Experience hours, and
- Standardized tests.

Pipeline and Future of the Profession. The Appraisal Foundation and other appraiser organizations should:

- Continue and expand their outreach to women and people of color;

- Monitor the demographics of individuals entering the profession or renewing their credentials and share this information publicly to ensure that the demographics of the profession are more transparent; and
- Ensure that new professionals are prepared for the future with respect to the use of technology, automation, and artificial intelligence.

Compliance and Enforcement

Need for Data. Government, the Government Sponsored Enterprises (“GSEs,” that is, Fannie Mae and Freddie Mac), lenders, appraisers, researchers, and civil rights/consumer advocates should strategize and work together to:

- Release appropriate elements of the appraisal data sets to reduce bias and develop more robust compliance and monitoring systems; and
- Develop a public repository and accessible database of complaints involving appraisals for mortgage lending to identify trends in complaints.

Compliance Management Systems. Government, the GSEs, lenders, appraisers, researchers, and civil rights/consumer advocates should use knowledge of data science and appropriate examples from the mortgage and homeowners’ insurance industries to develop more robust compliance management systems to monitor, remedy, and prevent fair housing risk and/or violations in appraisals.

Duty of Care. Because appraisers’ legal accountability for professional negligence under applicable case law typically extends only to those parties whom the appraiser has identified as “intended users” within the meaning of USPAP Standards and because appraisers generally do not identify borrowers as such intended users, appraisers often have no legal accountability to borrowers for instances of negligence. To increase the accountability of appraisers to borrowers who have been injured by appraisal negligence, including borrowers of color, the Appraisal Standards Board should consider amending the USPAP Standards to require appraisers to identify mortgage borrowers as “intended users” of appraisals prepared in relation to residential mortgage transactions.

Reconsideration of Value Process. A “reconsideration of value” is the *ad hoc* process by which borrowers challenge appraisal values. The process varies highly from lender to lender and does not have any legal structure. Government, the GSEs, lenders, and The Appraisal Foundation should develop standards and guidance for appraisers regarding the Reconsideration of Value process to provide for fairness, transparency, and accountability

**ASC Staff Operating Plan to Advance its Strategic Goals
Fiscal Year 2022**

The ASC oversees the real estate appraisal regulatory system as it relates to federally related transactions (FRTs) as defined in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI). This Operating Plan establishes the framework for the work of the ASC staff for fiscal year 2022 (FY22). Working within the approved budget, the Operating Plan includes the ASC’s core responsibilities, including special projects as prioritized by the ASC.

The COVID-19 pandemic had a significant impact on the ASC’s ability to carry out certain aspects of its 2021 Operating Plan as envisioned. Travel and other restrictions led the ASC to modify its focus from compliance to technical assistance. In 2021, ASC staff began using State Off-Site Assessments (SOA) to monitor the State Programs while travel is restricted. The 2022 Operating Plan assumes that travel will continue to be limited and SOAs will likely continue through the third fiscal quarter of 2022.

Strategic Goal	Strategic Objective	FY22 Operating Plan
SG 1: Promote Title XI-compliant State Appraiser Programs and Appraisal Management Company (AMC) Programs (State Programs)	SO 1.1: Ensure that States understand ASC expectations and compliance requirements of Title XI and the Policy Statements	<ul style="list-style-type: none"> • Communicate regularly with State Programs through: <ul style="list-style-type: none"> ○ Compliance Reviews and SOAs ○ AARO Meetings ○ Bulletins ○ Review/comment on proposed and enacted State legislation or rulemaking ○ formal and informal discussions/meetings ○ prompt and effective enforcement actions when warranted
	SO 1.2: Maintain understandable and enforceable Policy Statements	<ul style="list-style-type: none"> • Communicate regularly with State Programs to determine the level of understanding of the Policy Statements • Review Policy Statements and update as needed

SG 1 continued	SO 1.3: Issue Compliance Review Reports (Reports) or State Off-Site Assessments that are: (a) accurate representations of a State Program’s status; (b) developed and reported in accordance with established ASC policies and procedures (including the Plain Language Act); and (c) developed and reported in a fair and equitable manner	<ul style="list-style-type: none"> • Conduct 25-30 scheduled Compliance Reviews or SOAs • Conduct on-site or off-site Follow-up Reviews and Priority Contact visits as needed • Modify or enhance on-site and off-site review process and reports as needed • Complete development of and implement the Compliance Review data collection and reporting application
	SO 1.4: Issue timely Reports	<ul style="list-style-type: none"> • Issue final Compliance Review and SOA reports within 90 days of on-site or off-site review, absent special circumstances
SG 2: Carry out Title XI monitoring functions	SO 2.1: Monitor changes in regulatory appraisal standards of the ASC member agencies	<ul style="list-style-type: none"> • Staff to meet annually with member agencies to review any appraisal-related regulations or guidance proposed or adopted by the agency • Provide a written report to ASC members to be included in ASC Annual Report addressing any potential impact on State Programs, credentialed appraisers, AMCs and other stakeholders
	SO 2.2: Monitor and review the Appraisal Foundation (Foundation) practices, procedures, activities and organizational structure	<ul style="list-style-type: none"> • Follow existing ASC Policy on Monitoring and Review of the Foundation • Review ASC Policy on Monitoring and Review of the Foundation for revision as needed • Observe public meetings of the Foundation Boards • Provide comments/observations to Foundation staff and Boards as appropriate

SG 2 continue		<ul style="list-style-type: none"> • Keep ASC Board apprised of Foundation activities • Encourage diversity of Foundation boards • Encourage Foundation evaluation of impact of Standards and Criteria on diversity equity and inclusion issues the appraisal industry is facing • Encourage the Foundation to create more pathways to obtaining an appraisal license or certification
SG 3: Administer Title XI Grant Programs	SO 3.1: Promote use of ASC grant funds consistent with Title XI and ASC Policy	<ul style="list-style-type: none"> • Monitor and review use of ASC grant funds to ensure conformance to ASC policies • Issue grant awards following ASC Grants Handbook • Conduct independent audits on grantees' use of grant funds and report those findings to the ASC and the public
	SO 3.2: Expand the ASC Grants Program to more State programs and continue efforts with technical assistance cooperative agreement to develop training for State programs	<ul style="list-style-type: none"> • Assess the ASC financial resources available to support the ASC Grants Program • Administer grants in an efficient and effective manner in accordance with the ASC Grants Handbook • Work with the States and other stakeholders to determine most effective use of grant funds • Encourage and support efforts to increase the diversity in the appraisal profession • Goal of 20 States receiving grants by end of FY22

SG 4: Finalize Implementation of Advisory Committee recommendations	SO 4.1: Implement Dodd-Frank authority granted to the ASC for rulemaking	<ul style="list-style-type: none"> • ASC Board to consider NPRM on additional State enforcement authority to the ASC pursuant to Dodd-Frank Act authority • Prescribe regulations that maintain regulatory flexibility and responsible oversight in accordance with the Administrative Procedures Act
	SO 4.2: Implement Advisory Committee recommendations consistent with ASC mission	<ul style="list-style-type: none"> • Finalize review and complete analysis of Advisory Committee Report to the ASC to determine both feasibility and budget implications of recommendations • Determine priority of implementation • Institute process, improvements or other methods required for implementation
SG 5: Maintain the National Registries (Appraiser Registry and AMC Registry)	SO 5.1: Maintain public and private access to the Appraiser Registry and AMC Registry on the ASC website	<ul style="list-style-type: none"> • Complete website update and ASC logo changes • Continue working with our technology partners to ensure the National Registries are in a secure, reliable and contemporary environment, and meet minimum Federal government requirements • Continually look for opportunities to improve National Registry(s) performance and user experience • Process incoming data securely and expeditiously (<i>i.e.</i>, 24 hours)
	SO 5.2: Improve usefulness of the National Registries	<ul style="list-style-type: none"> • Routinely review the usefulness of the National Registries to the States and other users • Seek input from various users regarding potential enhancements to the National Registries, possibly through web-based solicitation of user feedback

SG 5 continued		<ul style="list-style-type: none"> • Determine if rulemaking is necessary to finalize UID implementation
SG 6: Prudently manage ASC resources	SO 6.1: Develop and execute properly detailed, analyzed and disciplined annual budgets	<ul style="list-style-type: none"> • Obtain annual independent audit of the ASC financial statements • Maintain a minimum one-year operating reserve, including grant funds, in the ASC's Treasury account • Keep the ASC informed regarding the agency's financial status
	SO 6.2: Execute proactive initiatives focused on the retention of employees, including mentoring, employee feedback, employee outreach, incentives and recognition programs	<ul style="list-style-type: none"> • Ensure supervisors provide staff with mid-year and end-of-year performance reviews • Encourage staff to provide feedback on the work of the agency • Recognize employees for outstanding service and/or commitment to the agency • Provide resources for staff to participate in professional development opportunities, as appropriate • Create appropriate documentation and systems for continuity of operations for use when key personnel depart • Ensure staff is made aware of mental health services available because of Covid-19

<p>SG 6: continued</p>	<p>SO 6.3: Maintain an effective ethics program</p>	<ul style="list-style-type: none"> • Maintain appropriate policies and procedures governing the ethics program • Maintain annual ethics training for current employees and new employees • Provide one-on-one consultation with ethics officials when needed • Provide financial disclosures as required by the U.S. Office of Government Ethics
	<p>SO 6.4: Ensure effective and efficient operations in carrying out Title XI functions</p>	<ul style="list-style-type: none"> • Perform internal reviews on an ongoing basis to evaluate operations and explore means to improve staff operations • Implement new ASC website and underlying data management system
	<p>SO 6.5: Continue operation of the Hotline in compliance with ASC Policies</p>	<ul style="list-style-type: none"> • Upgrade ASC Hotline to include referrals for alleged bias or discrimination by an appraiser or AMC • Include resources for users regarding alleged violations of the Fair Housing Act or other diversity and inclusion statutes and regulations • Improve Hotline user interface and experience with rollout of new ASC Website

<p>Strategic Goal 7: Facilitate Effective and Efficient Valuation Services and Regulation</p>	<p>SO 7.1: Provide a forum for networking of stakeholders</p>	<ul style="list-style-type: none"> • Provide opportunities to bring together diverse valuation stakeholders to improve valuation services for real estate related financial transactions, particularly for people of color • Engage with valuation stakeholders to facilitate development of the next generation of valuation services • Provide opportunities to bring attention to the need to expand diversity in the valuation profession • Liaise with domestic and international valuation service providers, regulators and users of valuation services to promote safe and sound valuation services and policies • Continue support and participation on PAVE Task Force as needed • Provide technical assistance to regulators and legislators on the U.S. appraisal regulatory system • Partner with FHFA and HUD to share appraisal data • Develop, administer and publish an initial census of how many active residential appraisers there (performing appraisals) are and where they are practicing • Develop and administer the balance of the census/survey project's goals
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