

# FYI Cover Page

May 8, 2019

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**Letter from AARO’s President  
 Dee Sharp**



Dear AARO Colleagues:

What a great time to be involved with AARO! I am honored and privileged to serve as your 2019 President. AARO’s leadership team has continued its strategic planning and development of its long term vision to increase the value and relevance of AARO to its member jurisdictions. As a result, we are delighted to report that AARO has accomplished a couple key goals over the course of this past year. At AARO’s 2018 Spring Conference in Seattle, WA, AARO kicked off abbreviated versions of its *Regulator Training Course* and the *Investigator Training – Case Studies Course* that were developed and facilitated by AARO members. Both courses were well received and set the groundwork for AARO’s Education Committee to develop full and rich 7 hour courses to be offered contemporaneously with AARO’s Spring Conferences.

At AARO’s 2018 Fall Conference in Washington, DC the AARO membership voted on Bylaw changes to include the ability to admit all 55 jurisdictions as members of AARO with voting rights under a tiered dues structure. We are so excited that for the first time ever, the Northern Marianas Islands is sending attendees to the spring conference in Denver AND they have joined as voting members under the new tiered membership dues.

On May 2, 2019 in Denver, Colorado AARO is presenting the full 7-Hour *Regulator Training* and the *Investigator Training – Case Studies Courses*. We are excited to offer both of these exceptional trainings to advance knowledge, skills and abilities in licensing and regulating Appraisers and AMC’s. I would like to extend my personal gratitude to AARO’s Education Committee and all of the enthusiastic and dedicated developers that have worked together to create courses that highlight best practices to operate compliant and efficient Appraiser and AMC licensing and regulatory programs.

This year’s Program Committee is led by AARO’s President-Elect Kristen Worman. Under her guidance and leadership, the committee spent much of early 2019 reviewing proposals from possible presenters, researching relevant hot topics for today’s regulators, and have developed a full and informative 2019 Spring Conference. It will be held at The Grand Hyatt in Denver, Colorado, May 3-5, 2019. The Program Committee has created an Agenda that is offering a balanced mix of general sessions and breakout sessions, where we will hear presenters discussing such topics as: Regulatory Trends, Changing

**AARO ’s Mission:**

Is to be an advocate for the member jurisdictions as to the enforcement and administration of appraiser and appraisal management company regulatory laws. The Association is committed to the success and advancement of state appraiser and appraisal management company regulatory programs and seeks to accomplish these objectives through: Leadership, Cooperation, Communication and Education

Thresholds, Bifurcated and Hybrid Appraisals, AMC Compliance Review Best Practices, and CE Standardization among the States. There will also be a multitude of opportunities to interact with our colleagues and peers throughout the conference. Many congratulations to all that have been involved in the strategic planning and development of a long term vision for AARO. Please feel free to reach out to me, any member of the Board of Directors or our Managing Director Brent Jayes if we can be of any assistance. We want to hear any and all suggestions as to how AARO can better serve you, the member jurisdictions and Affiliate members. I look forward to working with all you in the coming year.

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## Spring 2018 Conference Highlights

**AARO held its 2018 Spring meeting at the Westin Seattle. The audience size was about 160, from all walks of the appraisal regulatory community.**

**Here's some of what you missed.**

**The ASC Advisory Council** meeting was chaired by Vanessa Beauchamp, with a total audience of about 8 people.

The first topic discussed was AMC Complaints. Vanessa asked Denise Graves of the Appraisal Subcommittee when complaints should be reported on the AMC National Registry. Denise indicated that any complaints filed after the AMC's opt-in date should be reported. Complaints before that date are not reported to the ASC.

Next, a brief discussion was held regarding Senate Bill 2155. Jim Park indicated that the bill is currently in the House, with no hearings currently scheduled.

Appraisal waivers were also discussed. Jim and Denise reported that at the current time no waivers are pending. Jim indicated that when waiver requests are filed, the ASC will look to the State Regulatory Boards for information.

The final item discussed was the new AQB changes that went in to effect on May 1, 2018. A brief discussion was held regarding the changes. This included a discussion regarding how the changes might affect reciprocity.

Tom Lewis chaired the **USPAP Advisory Council** meeting. Discussion kicked off with topics related to the upcoming 2018/ 2019 edition of USPAP.

Questions were asked about the changes to the existing definition of "assignment" with this new USPAP, and the reasons for the change per the past Exposure Drafts. The conversation also covered the new definition of "assignment conditions" as a definition itself now. Is there a difference between assignment conditions and client requirements and where do those requirements come from.

The audience then discussed AO 1 changes regarding sales history; learning the purpose of these changes was to clarify guidance regarding prior/pending sales, current listings. More dialog followed on AO 31 changes, specifically those relating to assignments with more than one appraiser. The purpose of the change was to



Go Mariners! Some of the AARO Seattle Conference attendees enjoying a baseball game.



clarify/expand on significant appraisal assistance.

Clarification was shared about how review reports from the past Standard 3 now appears in Standards 3 and 4 for development and reporting, similar to Standards 1 and 2 for development and reporting for appraisal reports. And it was clarified that the definition of review may consider also state laws that may contribute to the definition per the states; some states do receive reviews in the complaint/disciplinary process from complainants, some states more than others. The USPAP Advisory Council offered no formal recommendations.

Discussion then moved on to the January 30, 2018 Discussion Draft for 2020-2021 USPAP: Questions were presented about the reporting options pursuant to USPAP; one option, two options; is there a benefit/detriment to having more than one option? Two options? What do appraisers think? What do clients think? While good dialog followed, the Advisory Council again offered no formal recommendations.

The panel on **Appraisal Threshold Levels, Exemptions and Waivers** was moderated by Kristen Worman. We had the privilege of hosting 3 esteemed experts; Scott Reuter, Freddie Mac; James Murrett, Appraisal Institute and Sharon Whitaker, American Bankers Association.

Scott Reuter, Freddie Mac Update touched on a wide range of issues, including a Seller Servicer Guide, LCA – Loan Collateral Advisors, the appraiser capacity nationwide, the pressure on appraisers to maintain their independence, the use of Trainee and Licensed Appraisers and appraisal modernization through innovation.

Scott closed with the mantra of APPRAISAL IS A COMPONENT OF RISK DECISION !!!

Jim Murrett, 2018 President of the Appraisal Institute then covered appraisal thresholds, appraisal exemptions, appraisal waivers and regulatory modernization

Jim shared that appraisals are the gold standard for credit decision making!

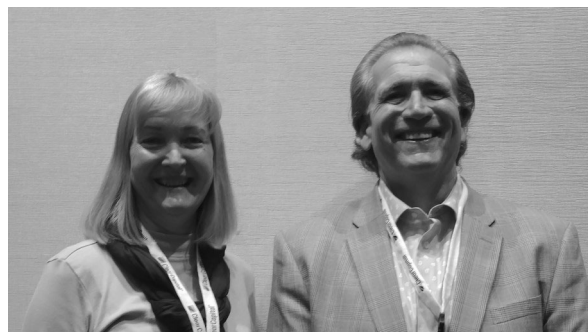
Sharon Whitaker, VP, ABA Mortgages and Public Policy Department, Commercial and multi-family took the lectern next. She shared some of her early background at the ABA. When she was hired, the ABA said only 10% of her time would be spent on appraisals. But she now fields 2 to 3 questions per day regarding appraisals. Bankers are given oversight by banking regulators, much like appraisal regulators.

Sharon did indicate that the ABA did not take position on temporary waivers. The new TRID of Dodd-Frank require disclosing the appraisal fee within 3 days, and the fee cannot be changed.

### **Wyoming Board Raises Questions**

AARO received a courtesy copy of a letter that the Wyoming Certified Real Estate Appraiser Board recently sent to The Appraisal Foundation. In the letter, Wyoming raises issues about the frequent and, at times, non-substantive changes to USPAP asking if such changes are really necessary and are they the most effective way to address real world changes occurring in the appraisal field. At press time, AARO has not heard of any response from TAF.

### **Meet the AARO Members!**



Left: Jane McClaran, Right: Pete Fontana

### **Tell us about yourself:**

**Jane (JM)**- I'm a 4th generation Idahoan, a CPA and currently serve on 2 corporate boards. I have 23 years of public service, some as a senior financial management analyst, some as a financial officer and some as an administrator.

**Pete (PF)**- I live in the Great State of Montana. I am the Owner of Cornerstone Appraisal Service, a

small residential appraisal firm located in Central Montana. My appraisal career began in 1991 as the Elected County Assessor in Cascade County, then to the Montana Department of Revenue as a Statewide Appraisal Supervisor and eventually opening my own practice in 2001. I have served on the MT Board of Real Estate Appraisers for 4 terms and am currently the Vice Chair. I am married to the beautiful Katie, and we have 1 grown son.

## How many AARO Conferences have you attended?

**JM:** Seattle in Spring 2018 is my first!

**PF:** I have been to 4 conferences, and was a presenter at one of those.

## Is attending the conferences helpful for you to do your job?

**JM:** Yes.

**PF:** The importance of attending the AARO conference cannot not be overstated. As a regulator it is critical to share ideas and issues faced by our colleagues in other jurisdictions. Also, this is the best arena to gather top level regulatory and qualification information from the ASC and the Appraisal Foundation. The ability for state administrators and regulators to be able to talk one on one with AQB board members/staff, the ASC legal team and policy managers is of vital importance for the states.

## What do you enjoy most about your work?

**JM:** As the only public member of the ID REA Board, and with extensive experience in state government operations, I enjoy adding those elements to the existing technical expertise of the existing board.

**PF:** Without a doubt it's the interaction with my colleagues and homeowners. I absolutely enjoy chatting with homeowners. It really opens your eyes to the diverse social fabric of your community. These are not just homeowners, they are artists, athletes, quilters, fisherman, hunters, skiers, collectors, inventors, etc. There is no other job in the world that allows a person to enter the homes and lives of 1000 of clients and have them share a little piece of their life with you.

## What is the last book you read?

**JM:** Loving What Is, by Byron Katie.

**PF:** Undaunted Courage! by Stephen Ambrose, a biography of Meriwether Lewis of the Lewis and

Clark Expedition. If you are an American history buff this is a must read!

## What is your favorite US city to visit, and why?

**JM:** I love to snorkel off Kauai in Hawaii.

**PF:** Chicago without reservation! The music, night-life, food and drink, located on the shores of lake Michigan and a river channel through the heart of the city make for a very special and entertaining atmosphere.

## What is your first impression of AARO?

**JM:** Very inclusive.

**PF:** Professional, well-structured organization!

## What challenges do you face at work?

**JM:** Acronyms!

**PF:** Travel and limited sales data! The most challenging task of being an appraiser in Central Montana is the travel. I spend a minimum of 15-20 hours per week behind the windshield of my car. The time spent can be relaxing and reflective, but in the end unproductive. I try and use this time to return phone calls but the cell service is a bit sketchy in the wide-open areas of Montana. Secondly, there are very limited sales in rural Montana and that presents some real challenges in meeting investor and secondary market guidelines.



Pictured: (left to right) Dwight Vinson, Jackie Olson

## Tell us about yourself:

**Dwight (DV):** I have my own appraisal service in

Franklin, NC, a small town in western NC. My wife and I have been married for 31 years and have one adult daughter. I have been on the NC Appraisal Board since 2013.

**Jackie (JO):** I am married and glad to be mom to 2 beautiful daughters, ages 8 and 11. I earned my JD at the University of Hamlin in St. Paul. I joined Marty at the MN Department of Commerce about a year ago.

### What are some of your hobbies?

**DV:** I like to ride my motorcycle and also love music. I play several instruments.

**JO:** My favorite hobby now is my daughters and their activities. But I also like to run (half marathons), bike, read and barre exercise classes.

### What do you enjoy most about your work in the industry?

**DV:** I enjoy the diverse case load— some residential, some commercial, some lending work and some testifying at trial.

**JO:** I enjoy the people I work with and the work we do to protect the public.

### Is attending the AARO conferences helpful in your job?

**DV:** Yes. I especially like hearing the vast array of perspectives on the different issues— from all the different players in the regulatory arena.

**JO:** It's interesting to see the broad industry views and hearing different viewpoints on the topics being discussed.

### What is the last book you read?

**DV:** Frankie— A Life Cut Short by Ronnie Evans. It's about a still unsolved murder in my hometown from 1963,

**JO:** The Winner Stands Alone by Paulo Coehlo. It is essentially a love story set among the struggle for fame at the Cannes Film Festival, but with murders and high fashion!

### What were your first impressions of AARO?

**DV:** My first AARO conference was in 2014 and I remember the conflict between AARO, the Appraisal Foundation and the Appraisal Institute. A volatile time for sure.

**JO:** The people are very professional but it seems male dominated with little diversity.

## Future Conferences

Spring 2019 - Grand Hyatt Denver, May 3-5  
Fall 2019 - Westin DC , Oct. 18-21  
Spring 2020— City and dates, TBD  
Fall 2020 - Westin DC, Oct. 16- 19

## Book Your Rooms Early!

Swearing in of the 2019 Officers and Board of Directors



**AARO Officers and Directors for 2019**

President: Dee Sharp, WA  
President-Elect: Kristen Worman, TX  
Vice-President: Diana Piechocki, AR  
Secretary: Marty Fleischhacker, MN  
Treasurer: Dennis Badger, KY  
Immediate Past President: Craig Steinley, SD

**Directors at Large:**

Don Rodgers, NC  
Gae Lynne Cooper, OR  
Craig Coffee, GA  
Tamora Papas, DC  
Vanessa Beauchamp, MO  
Allison McDonald, FL  
BJ Jibben, WY  
Douglas Oldmixon, TX  
Corey Kost, ND  
Brandy March, IA

**Alternate Directors:**

Amelia Lovorn, MS  
Steve McCaleb, OK  
Danielle Morales, MS  
Jackie Olson, MN

**Fall 2018 DC Conference Highlights**



AARO held its annual fall conference at the Westin DC City Center.

Here are summaries of a few of the sessions:

The Session on PAREA was hosted by Sherry Bren and John Brennan.

AARO conducted a survey regarding experience issues and it was very well responded to.

65% said the qualifications are a barrier to becoming an appraiser.

55% said no, there are not enough supervisors to mentor trainees.

80% said that they support the alternative experience criteria and PAREA.

It's not education, it's experience. There are a lot of professions we are trying to catch up with. The trainee model has been out there for 100 years and it's not working as well as it needs to. People can't find supervisors. It's an alternative to the experience, not a replacement to experience. We are trying to catch up to bartenders, ice cream scoopers, surgeons, nursing, dentists, accountants, astronauts, firefighter, appliance repair, forklift operators, truck drivers and car salespeople.

What is PAREA? It's an alternative method to gaining real estate appraisal experience. The goal is to emulate actual appraisal experience by an incorporation of virtual online experience.

The experience begins with basics: What am I doing? How do I start? How do I measure? How do I report?

What PAREA is NOT. It is not qualifying education, nor classroom training, nor capstone

Why PAREA? To help overcome the difficulty in connecting trainees with qualified supervisors. There is the factor of the time and expense for supervisors. Some supervi-

More New Members— AARO welcomes SBS Valuation, the National Association of Appraisers and OrderPro USA as Affiliate members!



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APPRAISER  
REGULATORY  
OFFICIALS

sor feel they are “Training my competition”, and the training limited to supervisor’s practice. PAREA offers the benefits of the training and will be overseen by qualified trainers and it will follow structured learning modules.

One of the huge advantages to PAREA is that trainees will learn how to appraise a VARIETY of properties since trainees don’t understand the appraisal process.

## PAREA Module Content

- Residential Modules under development
- Concepts include appraisal development, practice and reporting
- Training will be consistent with theory and methodology as specified in required core curriculum and USPAP
- With virtual online immersion training, digital video segments can start out simple and graduate to complex with various overlays (e.g. a property can develop forms of obsolescence and varying market conditions)
- Successful completion will require trainee to complete several USPAP-complaint reports reviewed the by trainer.

## Benefits of PAREA

- Greater consistency of training (big complaint is that appraisers are only as good as their supervisor)
  - Various types of experience scenarios that may not normally be available (experience has been limited to the types of properties their supervisor completes)
  - Trainees successfully completing PAREA will be marketable immediately as practicing appraisers (possibly up to 75% of the required experience).
- We are thinking of taking the learning points in the modules, and show them to people to see what it actually looks like and get feedback.

Timelines: The AQB has a subset of the board working only on PAREA. We’re hoping by spring/early summer 2019, they will have a concept paper out showing what it would look like.

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Q: Peter: Would this include any of the business side? Dealing with clients? Dealing with issues? A: That’s one of the reasons AQB is thinking only 75%. The program is going to be as complete as possible. They are thinking from going from basics – how to you be professional? How do you deal with the borrower? In the end, some of the real life experience will have to supplement the experience.

Q: Iowa: With the experience and types of courses... will they be based on the demographics of the state? Rural. Acreage. A: The idea and the beauty of PAREA is that people will be provided the opportunity to view and appraise several different types of appraisals.

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Example – a video of a house – you have a virtual supervisor talking to you about what to do and what to note, just

like a good in person supervisor would tell you to do. The trainee can spend as much time in the house as needed and not be rushed.

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Q: Brandy— How will you deal with demographics; A: when it does roll out, they’ll be able to address the demographic issues.

Q: Steven Wagner Appraisal Institute: 8-10 appraisals? What kind of numbers are you thinking about and talking about? A: It has not been decided. The concept is that there will be enough broad based experience training and explore more common things you may come across. We need to go through the process and identify what exactly needs to happen and how do we confirm they learned everything we wanted them to learn. It’ll take some time, they need to inspect, go through process. But no firm numbers

Q: Does the Foundation view this as something that can supplement current appraiser’s competency? A: If I had an ethical appraiser who made mistakes, I may require them to go through PAREA to attain competency.

Q: Would this qualify as a necessary step to acquire competency? A: It could potentially be used, yes. It’s not the intent of the program.

Q: ND: Will PAREA be broken up in such a way that a board could target remedial action? A: There would be a licensed appraiser and certified appraisers. It’s all or nothing. If you go through the process and you are awarded a block of experience. 25%, 43%, 75% and you get a certificate with assurance that the percentage was attained.

Q: Arkansas: He wasn’t fond of the idea. The more you think about it, it’s a really good plan and a good alternative. The only thing I’d say is that I would be concerned with is whether the appraiser actually gains competency. The issue I see a lot of is that an appraiser doesn’t understand their own competency. Your license may say what you can do, but your competency says something different. A: I think the idea that as they are introduced in what to do, it may not apply to the first property. They need to know their own competency. The AQB is NOT saying going through this program makes you competent. As this evolves, there will be one or more exposure drafts that you can provide feedback on.

Q: How come it’s taken so long to do this? You can build in competence. A: We’re all as eager to see this hit the ground as everyone is. My personal belief is that if this is right, it could be a game changer. The main objective is





to make sure I get it right.

Q: Scott: How much? Where is the money coming from to build this? A: We don't know the price tag. We know it'll be expensive. We haven't gone into who is going to fund it. We don't know the answer yet. It won't be cheap. Maybe Appraisal Foundation grant. Maybe partnering with private firms.

Q: Utah: 1) I was skeptical of concept when it was discussed initially. But I think it's a great idea. If it was an AQB Course, you could recoup the cost. It sounds like you are creating this as a package course? Is that your intent? A: What's the difference between practicum course and this? A practicum had NO module. When you do this, you will have 75% of the experience which is way more than the current practicum course.

Q: How long are you envisioning? Are these semester courses? How long will it take to get 75% of the training?

A: It's not a course, it's a training program. We're not sure yet. We don't know how many appraisals will be done.

Q: Mark: Is the proposal that it would require 75% of each state's experience requires? Will it be an option states can choose? A: The states have to do the minimum, but they can always go with more. States can have more stringent.

Q: Massachusetts: My dad was an appraiser. I learned how to appraise one type of property. If I am hearing you right, it's an automated system, but you have to have a human to have it qualify. A: It can be a combination of Artificial Intelligence or an actual human.

Q: Kentucky: I like to see the segments. It would be so helpful to the Boards to take a section of the program, instead of the whole thing. Then the appraisers could hone in on what they need to approve. A: It wasn't the original design – to use it for enforcement purposes. But I think if we focus on that up front, it would delay. But the idea would be to develop it eventually to use it for enforcement positions

Q: West Virginia: Is the intent to get rid of the supervisor requirement completely? A: There should be at least a portion of an actual supervisor. The person who has 0 experience is very different than someone who has gone through the system. So the experience they gain, will make them more marketable and easier to find a supervisor.

Q: Dennis: I love the idea. I hope it's feasible. I think the time has come for it. I hope you look at a consultant. Almost like a time study. I hope we look forward. A: We started this in 2016, we had a group of subject matter experts to help develop the concept. They will likely reconvene another group of subject matter experts.

Q: It sounds like everyone has positive feedback. A question about the remaining 25%, a lot of trainees may be better trained than their supervisors. Lenders will likely allow trainees to appraise a property because of the knowledge they can from the program. A: Trainees can do inspections on their own.

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Gae Lynne Cooper moderated a panel discussion with

both Jenny Tidwell and Kristi Klamet of the ASC on AMC Regulatory Audits & The National Registry

The Dodd Frank Act added AMC requirements. OCC, Federal Reserve, FDIC, etc., issued the AMC Rule. States are not required to have an AMC, but if they choose to participate, the ASC will review AMC programs in next rotation of audits.

We're conducting AMC reviews with Appraiser review programs. Policy Statements 8-11 were published in August. AMC Programs will normally be on a 2-year rotation unless there are issues.

Prior to review, 60-90 days in advance, ASC will request information to be submitted prior to review. The ASC also will send a compliance questionnaire. Policy Managers will contact the state with what they want to look at during the audit. There will be an opening meeting, the review and an exit conference regarding preliminary observations. While they also regularly attend Board Meetings, they don't discuss preliminary findings with the Boards.

The state will receive a preliminary report and are given 60 days to respond to the preliminary program. Then it's presented to the ASC along with and the state's response. Then the ASC will vote on final report.

Statutes, Regulations, Policy Statements (PS): There are 5 requirements. 1) PS must establish and maintain an AMC program with the legal authority to review, approve or deny applications, 2) Appraisers on panels must have authority to conduct appraisers. 3) PS must have requirements of the appraisers on the panel. Must comply with USPAP. 4) PS must enforce and document state registration, If AMC in whole or in part, directly or indirectly, has an owner who has been suspended, revoked, etc. PS must enforce ownership requirements. If any person owns more than 10%, does not have good character or fails to complete a background check, they cannot be an owner. 5) PS must have sufficient funding to support program.

Policy Statement 9: AMC National Registry. States must transmit disciplinary action to the national registry. AMC registry fee must be collected by state. 1) pay invoices within 45 days; 2) state must report disciplinary actions within 5 days after the final decision; 3) states must provide ASC written reason why they can't comply; 4) when state learns an AMC is no longer registered in the state, the AMC must be changed to inactive on the registry; 5) must adopt a written policy about the right of access to the AMC registry; 6) states must keep registry active; 7) June 4, 2020, statutes must be amended to allow for the collection of fees. ASC will start reviewing AMC Registry. If a state cannot collect the fee, it will be noted in the report and the ASC will help them implement the appropriate statutes. 8) Fees must be sent to ASC on annual basis. Registry fee is \$25/panel appraiser who has completed a covered transaction in the last 12 months. State has to determine when the 12 month start and

stops. A new AMC's fee could possibly be \$0. There are currently 2 states populated the AMC National Registry. By the end of October, there will be three states. States need to designate a person who is authorized to manage user names and passwords and the designated person must allow access.

Enforcement: Complaints and investigations must be completed in a reasonable amount of time. The states must maintain relevant documentation to show reason for actions. States must resolve complaints within 1 year. States must ensure discipline is consistent, fair, and well documented. They must be maintained in an electronic sortable format. States must document enforcement files and progress of investigation and the rationale for the outcome of the case. Very similar to appraiser programs.

Areas of non-compliance: After August 2018, we began reviewing AMC programs. An AMC who is a subsidiary of a national bank. These AMCs are not required to register. Federally regulated AMCs are exempt from registration. Statutes must comply with exemption. Another issues, appraisers must be notified of the reason they are removed from a panel. Lastly, an AMC shall not be included on the AMC Registry if they have been suspended, revoked, denied, etc. The state needs to have policies to deal with publicly traded entities and mutual funds. None of the owners can have a suspension, revocation or denial.

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Q: Mississippi: Are you going to be lenient on the first review? A: No.

Q: Texas: I asked the ASC to review our statutes and rules. Are you still offering that to states? A: Absolutely.

Q: Pennsylvania: Can you touch more on the tracking number? A: The federally regulated AMCs are exempt for Registry, but state still has to collect the fee. State will have to enter the federally regulated AMCs. The state needs to have numbers for registries. It can't be left blank.

Q: So is it the same number every year? A: No.

Q: The common deficiencies, are they available in writing? A: I will seek permission to post them.

Q: What obligations do the states have to make sure they are actually federal regulated AMCs? A: The state has no obligations. The AMC needs to identify themselves appropriately. All complaints need to be directed to the organization who has the authority to investigate the complaints. They will be noted if they are federally regulated.

Q: Should our forms say, are you federally regulated? A: The forms will have to determine whether they are single state, multi state or federally regulated AMCs. NOTE FOR BRATSCH: Make sure forms allow this distinction.

Q: When state collects fee, are you providing any guidance on how the state can verify the number of appraisers on the panel? A: It's up to the state to verify the number and the appropriate fee for the AMC. NOTE FOR BRATSCH: AMCs should have to sign an affidavit attesting to the truth of number of appraisers.

Q: When do you have to submit the fee to the ASC? A: States have to send in the fee annually.

Q: West Virginia: You pick the twelve month period that

you are basing the fee on.

Q: Would that period begin when they were issued a permit? A: You could. Seems like it would be difficult to do.



AARO enjoys the performing arts! A group of AARO attendees and their guests went to the Kennedy Center to see a performance of 'Shear Madness'

**Watch for AARO's new website, to be launched Spring 2019.**  
[www.aaro.net](http://www.aaro.net)

## 2019 Spring Conference in Denver, a Preview



**AARO heads to the Mile High City!** The Grand Hyatt Denver will act as the hub of activity for

AARO's annual spring conference. Denver is blessed with about 300 days a year of sunshine– the benefit of being on the right, both figuratively and literally, side of the Rockies. The Gold Rush, which started in early 1859 took Denver from a dusty crossroads to a booming western town of miners, outlaws and 'regular folk' over a short span of 30 years. While the steps of Denver's capital building is exactly one mile above sea level, Denver is near the mountains, not in them.

We kick off Thursday, May 2nd with 2 training sessions– one for Regulators (Attorneys, Board Members and Administrators) and one for Investigators. As this goes to print, there are still a few seats left in each session.

The full conference begins at 1 pm on Friday. See below for the tentative agenda. If you have any questions about either the Thursday training sessions or the conference itself, please reach out to Managing Director Brent Jayes at [brent.jayes@meetingsoncue.com](mailto:brent.jayes@meetingsoncue.com).

### **Tentative Agenda- as of 4/4/19**

#### **Friday, May 3**

12:00p – 4:00p Registration

1:00p – 3:00 p

**Opening Remarks-**  
Dee Sharp, AARO President

#### **ASC & TAF Updates**

ASC – Jim Park  
TAF- Dave Bunton  
AQB  
ASB

3:00p – 3:15p – Break



3:15p – 4:30p **General Session- State Regulatory Trends and the Most Common Deficiencies**  
Moderator: Steve McCaleb, OK  
Panelists- Marty Fleischhacker, MN  
Jackie Olson, MN

6:00p – 8:00p **Welcome Reception**

8:00 – 10:00p **Learning After Dark**

#### **Saturday, May 4**

8:00a – 4:00p Registration

7:45a- 8:30a Continental Breakfast

8:30a- 10:00a- **General Session- On the Regulatory Horizon- Hybrid Appraisals, Bifurcated Appraisals, AVMs, Other New Products and Services**

Moderator: BJ Jibben, WY  
Panelists- Tony Pistilli, Computershare;  
Paul Chandler, Property Sciences;  
Crispin Bennett, Alterra Group;

10:00a – 10:15a – Break

10:15a- 11:45a- **General Session- Appraisal Industry Outlook- Shortages, Changing Thresholds- Separating Fact from Fiction**

Moderator: Nicole Novotny-Smith WY  
Mark Cassidy, Service 1<sup>st</sup> Valuation  
Lyle Radke, Fannie Mae  
Randall Thomas, TN  
Sharon Whitaker- ABA

11:45a– 1:00p **Lunch On Your Own**

1:00p– 3:45p- **Break Out Sessions- By Job Function**

**Attorneys– Kristen Worman & Steve McCaleb**  
**Board Members– Joe Ibach & Amelia Lovorn**

# ASSOCIATION OF APPRAISER REGULATORY OFFICIALS

**Executive Directors/ Administrators-**  
**Jodie Campbell**  
**Investigators– Tom Lewis & Dennis**  
**Badger**  
**Affiliates– Jeff Dickstein & Deanna Ilk**

1:15p – 2:45p

**General Session- Standardization**  
**Among the States & Modernizing**  
**Title XI**

Moderator: Vanessa Beauchamp, MO  
Panelists- Craig Steinley, SD  
Other Panelists- TBD

2:15p – 2:30p – Break

6:30p- 9:00p– **Haunted Pub Tour– optional**

7:00p – 10:00p **Learning After Dark**

3:00p – 4:45p

**Board of Directors meeting**

## **Sunday, May 5**

8:00a – 4:00p Registration

7:45a- 8:30a Continental Breakfast

8:30a – 9:25a **Committee Meetings**

Policy & Planning  
Program  
Budget & Finance  
Communications  
Nominating  
Education

9:35a– 10:30a **Advisory Council Meetings**

Appraiser Qualifications  
USPAP  
ASC  
Affiliate Members

10:30a – 10:45a – Break

10:45a – 12:00p

**General Session- AMCs- Best State**  
**Practices for Regulating Them; ASC**  
**Compliance Reviews**  
Moderator: Allison McDonald, FL  
Troy Beaulieu, TX  
Scott Calhoun, ID  
Other Panelists- TBD

12:00p – 1:15p **Lunch- Provided**

AARO would like to thank the following  
sponsors for the upcoming spring  
conference:

**REVAA**  
**Appraisal Institute**  
**PCV Murcor**  
**ServiceLink Valuation Solutions**  
**Clear Capital**  
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### **AARO Home Office:**

**This address is new as of 11/15/18**  
**6325 Falls of Neuse Road**  
**Suite 35-447, Raleigh,, NC 27615**  
**Phone: (919) 235-4544**  
**Brent Jayes, Managing Director**  
**Email:**  
**brent.jayes@meetingsoncue.com**



ASSOCIATION OF  
APPRAISER  
REGULATORY  
OFFICIALS

**Lori L. Schuster**

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**From:** The Appraisal Foundation <info@appraisalfoundation.org>  
**Sent:** Thursday, March 28, 2019 3:28 PM  
**To:** Lori L. Schuster  
**Subject:** BREAKING NEWS: AQB Issues Discussion Draft About PAREA

# PRESS RELEASE



**THE APPRAISAL FOUNDATION**  
*Authorized by Congress as the Source of Appraisal  
Standards and Appraiser Qualifications*

*Media Contact: Davia Greer*

*Director of Communications*

*The Appraisal Foundation*

[dgreer@appraisalfoundation.org](mailto:dgreer@appraisalfoundation.org)

*direct phone 202.624.3048*

## **Appraiser Qualifications Board Issues Discussion Draft About the Practical Applications of Real Estate Appraisal Concept**

*Seeks Comments to Key Questions*

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(Washington, DC) March 28, 2019—The Appraiser Qualifications Board, an independent board of The Appraisal Foundation, issued a Discussion Draft about the Practical Applications of Real Estate Appraisal (PAREA) concept. Unlike an exposure draft that provides detailed prescriptions, a discussion draft requests comments to key questions the AQB is considering.

PAREA offers practical experience in a simulated environment using various technologies for trainees seeking to earn the minimum criteria for appraiser qualifications and training.

“The point of a discussion draft is to solicit feedback regarding key questions that the AQB is considering,” said 2019 AQB Chair Mark A. Lewis. “Stakeholder feedback at this time is critical for the AQB deliberations in advance of any future exposure draft regarding this concept.”

Questions the AQB is seeking answers to include:

- What is the maximum amount of experience a trainee should be able to obtain by completing PAREA training?
- What “prerequisites” should be required prior to enrolling in PAREA training?
- What level of “supervision” is appropriate for PAREA trainees?
- What should the minimum qualifications be for those “supervising” PAREA trainees?
- Should PAREA trainees have to complete USPAP-compliant appraisal reports?
- How will this type of experience be verified?

To access the Discussion Draft, click [here](#). All comments should be sent to [AQBcomments@appraisalfoundation.org](mailto:AQBcomments@appraisalfoundation.org).

The AQB will be meeting in Denver, Colorado on May 3, 2019, from 9:00 am to 12:00 pm MT. A virtual reality demonstration will be provided to demonstrate one technology that could be utilized in PAREA. To register to attend in person or by live stream, click [here](#). For a list of all events go to [appraisalfoundation.org](http://appraisalfoundation.org). Please contact Magdalene Vasquez, Qualifications Board Program Manager at [magdalene@appraisalfoundation.org](mailto:magdalene@appraisalfoundation.org) to answer questions.



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### About The Appraisal Foundation

The Appraisal Foundation is the nation’s foremost authority on the valuation profession. The organization sets the Congressionally-authorized standards and qualifications for real estate appraisers, and provides voluntary guidance on recognized valuation methods and techniques for all valuation professionals. This work advances the profession by ensuring appraisals are independent, consistent, and objective. More information on The Appraisal Foundation is available at [www.appraisalfoundation.org](http://www.appraisalfoundation.org).

### Manage Your Subscription

This message was sent to [lori@asc.gov](mailto:lori@asc.gov) from [info@appraisalfoundation.org](mailto:info@appraisalfoundation.org)

The Appraisal Foundation  
David Greer  
1155 15th Street NW STE 1111  
Washington, DC 20005

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TO: All Interested Parties

FROM: Mark A. Lewis, Chair  
Appraiser Qualifications Board

RE: Discussion Draft  
***Practical Applications of Real Estate Appraisal (PAREA)***

DATE: March 28, 2019

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### **Background**

The Appraiser Qualifications Board (AQB) has been examining the need for an alternative to the traditional supervisor/trainee model for gaining appraisal experience. Persons wishing to enter the appraisal profession have consistently reported difficulties finding qualified certified appraisers willing to supervise them. The underlying reasons certified appraisers are unwilling are numerous and well documented; however, no matter the reason, the lack of an adequate supply of supervisory appraisers presents a significant challenge to entry into the appraisal profession.

The difficulty of finding a supervisor is most pronounced in the residential sector of the profession. The AQB establishes minimum requirements for education, experience, and examination applicable to all jurisdictions within the United States and these requirements, by design, are intended to ensure minimally qualified individuals are permitted to obtain credentials. However, unlike the requirements for education and examination, which can be overcome through study and applying oneself, the experience requirement cannot be completed without the cooperation of an existing certified appraiser who is willing to supervise. Thus, there is the need to examine an alternative to the existing experience model. It must be clearly understood: the existing supervisor/trainee model is still considered an excellent model and will remain an option; however, as discussed above, an alternative is needed.

It is important to note that while the AQB is interested in being as informed as possible regarding both the supply of, and demand for, appraisers and appraisal services, the AQB is primarily concerned with establishing an orderly process whereby a *minimally qualified* person wishing to enter the profession can reasonably advance and obtain a credential. Because this process is currently hindered due to the lack of an adequate supply of willing

Discussion Draft: *Practical Applications of Real Estate Appraisal (PAREA)*

supervisory appraisers, it becomes a matter of public trust to find an alternative that will produce a *qualified* appraiser. Also, as explained by the AQB previously, all qualifications are established to ensure that someone obtaining a credential is *minimally qualified* to practice. These minimum qualifications do not equate to, and differ from competency. Competency is a result of experience and training over time, and is a function of the *Uniform Standards of Professional Appraisal Practice* (USPAP). Even longstanding appraisers with an incredible depth and breadth of experience are not necessarily competent to perform every assignment.

The pages that follow in this document provide additional detail regarding the *Practical Applications of Real Estate Appraisal* (PAREA) concept, as well as key questions for which the AQB is seeking feedback.

**All interested parties are encouraged to comment in writing to the AQB before June 1, 2019. The AQB will also accept verbal comments at its public meeting in Denver, Colorado on Friday, May 3, 2019.** Respondents should be assured that each member of the AQB will thoroughly read and consider all comments.

Written comments on this discussion draft can be submitted by mail and email.

Mail: Appraiser Qualifications Board  
The Appraisal Foundation  
1155 15<sup>th</sup> Street, NW, Suite 1111  
Washington, DC 20005

Email: [AQBcomments@appraisalfoundation.org](mailto:AQBcomments@appraisalfoundation.org)

**IMPORTANT NOTE: All written comments will be posted for public viewing, exactly as submitted, on the website of The Appraisal Foundation. Names may be redacted upon request.**

**The Appraisal Foundation reserves the right not to post written comments that contain offensive or inappropriate statements.**

If you have any questions regarding this document, please contact Magdalene Vasquez, Qualifications Program Manager at The Appraisal Foundation, via e-mail at [magdalene@appraisalfoundation.org](mailto:magdalene@appraisalfoundation.org) or by calling (202) 624-3074.

At its May 3 public meeting in Denver, the AQB intends to provide a brief demonstration showing how virtual reality may be used in PAREA training. You may register to either attend the meeting in person, or watch it via live stream by visiting: [https://www.appraisalfoundation.org/TAFCore/Events/Event\\_Display.aspx?EventKey=AQB201905](https://www.appraisalfoundation.org/TAFCore/Events/Event_Display.aspx?EventKey=AQB201905)



**Discussion Draft:**  
***Practical Applications of Real Estate Appraisal (PAREA)***

**Issued: March 28, 2019**  
**Comment Deadline: June 1, 2019**

When commenting on various aspects of this document, it is very helpful to fully explain the reasons for concern or support, provide examples or illustrations, and suggest any alternatives or additional issues that the AQB should consider pertaining to this concept.

For ease in identifying the various issues being addressed, this Discussion Draft is presented in sections.

**TABLE OF CONTENTS**

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5	Minimum Supervisor Qualifications	9
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## Section 1: PAREA Basics

### What is PAREA?

The AQB believes PAREA may alleviate the challenges in obtaining appraisal experience as described at the outset of this document. PAREA training would be developed for both the Licensed Residential and Certified Residential real property appraiser classifications.<sup>1</sup> Following are some fundamental principles to understand prior to addressing the key questions found in the remaining sections of this document.

PAREA is an alternative experience model that, in the AQB's opinion, has the potential to provide *at least* an equivalent method to the existing supervisor/trainee model. In addition to the inadequate numbers of willing supervisors discussed above, the existing supervisor/trainee model also has an inherent weakness: the experience training is limited to the supervisor's knowledge and practice. Poor quality experience training may be just as bad, or possibly worse, than no experience training at all.

Even the most competent supervisor committed to providing outstanding training is limited in the type of training that can be offered, based on the constraints of his or her appraisal practice. A supervisor with a practice focusing on appraising urban properties in a large metropolitan market may never have the opportunity to train someone on how to appraise a rural ranch property on acreage. Conversely, a supervisor whose practice is comprised primarily of appraising rural properties might not be able to offer training on how to appraise a tract home, condominium or cooperative unit. In addition, regardless of the type of practice, all supervisors might have limited opportunities to train on properties that possess a variety of physical, functional, or external characteristics.

The PAREA concept discussed herein has the potential to provide a more consistent and broad-based experience model that takes advantage of technology, recognizing that learning styles and environments have changed over the years.

### How Will PAREA Work?

It is important to understand that PAREA is not qualifying education. Rather, PAREA is designed to offer practical *experience* in a simulated or controlled environment, incorporating the concepts learned in a trainee's qualifying education. Multiple types of training techniques could be utilized, including, but not limited to:

- **Computer Based Learning:** Participants utilize a software application to answer questions, collect data, perform analyses, etc. Examples might include case study exercises, or applications teaching participants how to collect information from the MLS.
- **Video Tutorial:** Participants may watch video on how to perform a task, and are then expected to perform the task themselves. Examples might include showing how an

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<sup>1</sup> The PAREA concept may eventually expand to include an alternative experience path for trainees wishing to appraise *non-residential* properties; however, the current PAREA concept under development is limited to 1-4 unit residential properties only.

appraiser communicates with a client to determine things such as the intended use, intended user, scope of work, etc.; or, how appraisers view and photograph comps.

- **Virtual Simulation:** Participants may experience simulations, with an ability to view multiple scenes in a virtual environment. An example might include a virtual walkthrough of a house.
- **Virtual Reality Training:** Participants may utilize virtual reality systems, where the participant is immersed into various scenarios. An example might include training on how to properly measure a house.

### **How will PAREA be Delivered?**

The AQB will adopt the final content requirements, training methods, and supervisor requirements for PAREA. Due to the expected significant financial investment required to create this type of training program, The Appraisal Foundation intends to develop a “model” PAREA program, which would be made available via licensing agreements to entities wishing to offer PAREA training.

For entities that desire to develop their own “equivalent” PAREA training program, minimum specifications will be made available and such programs will be reviewed for equivalency by the AQB.

The AQB is not asking any *specific* questions related to the content included in this section of the document (Section 1); however, you are welcome to include any feedback you may feel is appropriate.

In the following sections of this document, the Board seeks your responses to specific questions and greatly appreciates your feedback. You may also offer comments on any additional issues not presented in this document that you believe the Board should consider.

## Section 2: Maximum Allowable Experience

### **What is the maximum amount of experience a trainee should be able to obtain by completing PAREA training?**

This question has garnered great attention and consideration. Some feel that a trainee completing PAREA training should still be required to obtain some portion of “traditional” training to satisfy the experience requirements. Some believe PAREA training should be limited to 50% or 75% of the experience required for a credential, requiring the remainder be obtained under the current supervisor/trainee model.

Others believe that requiring trainees to obtain *any* amount of experience under the current model simply does not resolve the problem; that even with some experience under their belts, trainees would still encounter difficulty in finding a qualified supervisor that would provide quality training for the remaining required hours. However, there are those who believe that this trainee might be more marketable and not experience such difficulties finding a supervisor.

Some believe that because of the technological advances PAREA may offer, trainees would be *better* suited if they could obtain 100% of the required experience through PAREA training. Those in this camp are quicker to embrace the role technology can potentially play, and cite shortcomings in the more traditional experience model, such as those discussed previously in this document.

At various times, the AQB has publicly discussed the possibility of allowing 50%, 75%, and 100% of the required experience to be obtained through PAREA.

Also, the AQB does not envision any “partial credit” opportunities for PAREA participants. That is, participants completing PAREA will receive credit for the full amount of experience as determined by the AQB (see above). However, because it may be difficult to establish certain milestones within PAREA training, an individual completing roughly half of the program, for example, would not receive 50% credit.

The Board is seeking your comments on these issues.

### Section 3: Required Prerequisites

#### What “prerequisites” should be required prior to enrolling in PAREA training?

As discussed previously, PAREA is experience, not education. However, the AQB is examining the question of how much formal appraisal education should be completed by a trainee prior to enrolling in PAREA training.

There are various viewpoints on this topic. Some believe a trainee should complete *all* of the required qualifying education prior to enrolling in PAREA training. Others believe that trainees should be allowed to complete the required qualifying education in parallel with PAREA training.

As discussed previously, the AQB is developing PAREA applications for both the Licensed Residential and Certified Residential classifications. For someone seeking a Licensed Residential credential, the AQB is currently considering requiring completion of all of the qualifying education required for the Trainee credential *prior to beginning PAREA training*, which consists of the following:

<i>Basic Appraisal Principles</i>	30 hours
<i>Basic Appraisal Procedures</i>	30 hours
<i>National USPAP Course</i>	<u>15 hours</u>
Total	75 hours

For individuals seeking a Certified Residential credential, the AQB is currently considering requiring completion of all of the qualifying education required for the Licensed Residential credential *prior to beginning PAREA training*, which consists of the following:

<i>Basic Appraisal Principles</i>	30 hours
<i>Basic Appraisal Procedures</i>	30 hours
<i>National USPAP Course</i>	15 hours
<i>Residential Market Analysis and Highest and Best Use</i>	15 hours
<i>Residential Appraiser Site Valuation and Cost Approach</i>	15 hours
<i>Residential Sales Comparison and Income Approaches</i>	30 hours
<i>Residential Report Writing and Case Studies</i>	<u>15 hours</u>
Total	150 hours

The AQB is soliciting your feedback on this issue.

## Section 4: Level of Supervision

### **What level of “supervision” is appropriate for PAREA trainees?**

Because the current experience model requires a trainee to work under the direct control and supervision of a qualified supervisory appraiser, the question of supervision naturally extends to the PAREA concept. But what exactly “supervision” means in this context, and who may act as a “supervisor” raises questions the AQB is currently examining.

Consider that technology exists today that could allow a trainee to demonstrate mastery of a topic through exposure to multiple iterations and variations. Therefore, if a trainee could successfully go through a robust series of exercises to prove that he or she has successfully learned how to do something, is a “live” supervisor necessary? As an example, one component of PAREA may require a trainee to learn how to correctly measure a house. So at first, the trainee is exposed to a very basic, rectangular house and after demonstrating multiple times that he or she has learned how to measure that house (and others like it) properly, a different house is presented that has a more complex design. Again, after successfully measuring the more complex house (and others like it) a number of times, another house even more complex is presented. And so on. If the technology performed as stated, how necessary is a supervisor for this task?

The AQB believes that many steps in the training (such as the example above) could incorporate automation to ensure a trainee performed the tasks properly. However, are there some portions of the training that would require interaction and oversight by a qualified supervisor? If so, which portions and why?

The AQB wants to hear your thoughts on this.

## Section 5: Minimum Supervisor Qualifications

### What should the minimum qualifications be for those “supervising” PAREA trainees?

If “supervision” is appropriate as outlined above, what qualifications would be necessary for such supervision? Should the qualifications of a PAREA supervisor align with what is required for supervisors under the current experience model? Should it be less? Should it be more? Why?

Some believe that if PAREA requires a qualified supervisor for the training, some of the same obstacles experienced in the current training model may surface. What if there is a lack of available individuals willing to act as supervisors for PAREA training? Would there be a similar reluctance by potential PAREA supervisors with a perception of “training my future competition?”

Again, the AQB seeks your feedback on these questions.

## Section 6: USPAP-Compliant Appraisal Reports

### Should PAREA trainees have to complete USPAP-compliant appraisal reports?

Today, applicants for a real property appraiser credential document the *quantity* of their experience on a log listing appraisal assignments that contains the minimum number of hours (and months) necessary for the respective credential.

The *quality* of an applicant's experience is determined by the state appraiser regulatory agency's review of appraisal reports performed by the applicant while working under the direct control and supervision of one or more supervisory appraisers. The respective jurisdiction examines the appraisal reports for USPAP compliance and, assuming all other conditions are met, approves the experience claimed by the applicant.

Some question whether a state's examination of a handful of appraisals truly represents a meaningful evaluation of an applicant's experience. Clearly, it's neither reasonable nor financially feasible for a state to examine each and every appraisal on a log, but are the examinations being performed today adequate?

Still others contend that such examinations are really more a measure of the *supervisory appraiser* than the trainee, since the supervisor ultimately determines whether the appraisals are acceptable. There are documented cases where trainees working under "subpar" supervisory appraisers have had their entire claimed experience rejected by a state appraiser regulatory agency because the appraisals examined did not comply with USPAP (this is one of the reasons the AQB established minimum qualifications for supervisory appraisers). In such cases, the supervisory appraiser can clearly be viewed as the primary basis for denying the trainee's experience. Logic suggests the inverse is then true; that is, the supervisory appraiser is also primarily responsible for a trainee's *acceptable* experience. Therefore, just how much "credit" or "blame" for the eligibility of the experience really rests with the trainee?

These questions tend to support those who believe challenging and robust state licensing and certification examinations should be the true gatekeeper to determine whether an individual is minimally qualified to obtain a credential. Those in this camp likely believe it is not imperative for someone completing PAREA training to complete USPAP-compliant appraisal reports if the credentialing examinations adequately measure the depth and breadth of an applicant's knowledge, skills, and abilities.

Conversely, there are those who firmly believe "the proof is in the pudding": that the only true way to measure an applicant's experience is documenting the applicant's ability to perform a USPAP-compliant appraisal report. Those in this camp maintain that under the current requirements, qualifications are a "three-legged stool" consisting of education, examination, and experience, and a true evaluation of experience is incomplete without full, USPAP-complaint appraisal reports.



The AQB seeks your feedback on this issue. Is completion of USPAP-compliant appraisal reports a required element for PAREA training? Why or why not?

## Section 7: Verification of Experience

As currently envisioned, an individual successfully completing PAREA training would be provided a “certificate of completion” (similar to what one might receive when completing an educational offering). The individual would then be able to submit the PAREA completion certificate to a state appraiser regulatory agency, along with documentation of satisfying all of the other qualifications, in an application for a credential. This certificate would be valid for whatever percentage of experience that is ultimately adopted (see Section 2 of this document).

The AQB does not believe it would be necessary for the successful PAREA participant to document such experience on a log, or to provide copies of appraisals completed as part of PAREA training. However, it is possible that some state appraiser regulatory agencies may seek additional “validation” of a PAREA participant’s experience.

For those who believe additional validation may be necessary, a key issue to consider is what that validation may look like. For example, if a successful PAREA participant was asked to provide USPAP-compliant appraisal reports, would there be an expectation that those reports utilize common formats currently in use, such as a Fannie Mae 1004/URAR form? Complications may subsequently arise anytime forms like these are updated or redesigned (as is currently underway). Further, with advent of technology, it’s possible that many appraisals may not be communicated via the use of a “form” at all in the future. If an appraiser simply communicates a “data stream,” there may not readily be a “form” available to document USPAP compliance.

It is also important to keep in mind that no form is deemed “USPAP-compliant.” The Appraisal Standards Board position is that the obligation to comply with USPAP does not rest with a *form*; it is an obligation of the *appraiser*. Therefore, would there be an expectation the trainee would submit more generic, or narrative reports? Would it make sense to require narrative reports if trainees would ultimately be using form reports (or data streams) in their practice?

Should PAREA participants be required to provide state appraiser regulatory agencies any additional verification of training beyond a completion certification? Why or why not?



THE APPRAISAL FOUNDATION

*Authorized by Congress as the Source of Appraisal  
Standards and Appraiser Qualifications*

APPRAISER QUALIFICATIONS BOARD

TO: All Interested Parties

FROM: Mark A. Lewis, Chair  
Appraiser Qualifications Board

RE: First Exposure Draft of a **Proposed Interpretation of the Real Property Appraiser  
Qualification Criteria**

DATE: April 3, 2019

---

### **Background**

Effective January 1, 2015, the Appraiser Qualifications Board (AQB) *Real Property Appraiser Qualification Criteria* mandated qualification requirements for Supervisory Appraisers. Among other requirements, these qualifications include a prohibition against supervising for a minimum of three years following the imposition of any discipline that affects an appraiser's legal eligibility to practice.

In recent months, the AQB has been made aware of circumstances in some states where discipline is imposed for "administrative" reasons, as opposed to a breach of an individual's requirements to practice ethically and competently. In these jurisdictions, there have been cases where sanctions such as revocation or suspension have been levied against an appraiser for administrative matters, as opposed to violations of ethics and competency.

Please see the rationale for the proposed Interpretation on page 3 of this document.

**All interested parties are encouraged to comment in writing to the AQB before Friday, May 3, 2019. The AQB will also accept verbal comments at its public meeting in Denver, Colorado on Friday, May 3, 2019.** Respondents should be assured that each member of the AQB will thoroughly read and consider all comments.

Written comments on this proposed Interpretation can be submitted by mail and email.

Mail: Appraiser Qualifications Board  
The Appraisal Foundation  
1155 15<sup>th</sup> Street, NW, Suite 1111  
Washington, DC 20005

Email: [AQBcomments@appraisalfoundation.org](mailto:AQBcomments@appraisalfoundation.org)

**IMPORTANT NOTE: All written comments will be posted for public viewing, exactly as submitted, on the website of The Appraisal Foundation. Names may be redacted upon request.**

**The Appraisal Foundation reserves the right not to post written comments that contain offensive or inappropriate statements.**

If you have any questions regarding this document, please contact Magdalene Vasquez, Qualifications Program Manager at The Appraisal Foundation, via e-mail at [magdalene@appraisalfoundation.org](mailto:magdalene@appraisalfoundation.org) or by calling (202) 624-3074.

**Exposure Draft of a Proposed Interpretation of the  
Real Property Appraiser Qualification Criteria (Criteria)**

**Issued: April 3, 2019  
Comment Deadline: May 3, 2019**

This exposure draft begins with a rationale for the proposed changes. The rationale is identified as such and does not have line numbering. Where proposed changes to the *Criteria* are noted, the exposure draft contains line numbers. This difference is intended to distinguish for the reader those parts that explain the changes from the proposed changes themselves.

When commenting on the exposure draft, it is very helpful to reference the line numbers, fully explain the reasons for concern or support, provide examples or illustrations, and suggest any alternatives or additional issues the AQB should consider.

Where text is proposed for deletion from what currently appears in the *Criteria*, that text is shown as ~~strikeout~~. For example: ~~This is strikeout text proposed for deletion~~. Text proposed for addition to what currently appears in the *Criteria* is underlined. For example: This is text proposed for insertion.

## Proposed Interpretation Regarding Supervisory Appraisers

### RATIONALE

Since the changes to the *Criteria* that became effective on January 1, 2015, the AQB has received comments related to some state appraiser regulatory agencies' interpretations of certain disciplinary sanctions in the Supervisory Appraiser Requirements section of the *Criteria*.

The language in the *Criteria* states, in part:

*Supervisory Appraisers shall not have been subject to any disciplinary action—within any jurisdiction—within the last three (3) years that affected the Supervisory Appraiser's legal eligibility to engage in appraisal practice.*

Because the *Criteria* does not distinguish the **reason(s)** for a disciplinary sanction that affects a Supervisory Appraiser's legal eligibility to practice, all such sanctions would preclude an individual from acting as a Supervisory Appraiser for a period of three years after the sanction.

When drafting the *Criteria*, the AQB was under the assumption that sanctions affecting an individual's legal eligibility to engage in appraisal practice would only involve breaches of ethics and/or competence. However, the AQB subsequently learned that some states may suspend or revoke an individual's appraiser credential due to *administrative* matters that do not involve appraisal ethics or competency. Documented examples include sanctions imposed for failure to pay fees to renew a credential in a timely manner, or failure to notify a state appraiser regulatory agency of a change of address or other contact information. While the AQB understands and supports a state's rights to levy such sanctions for administrative matters, the AQB did not intend to impose a *three-year hiatus in supervising* for sanctions levied for these reasons.

As a result, the AQB proposes the Interpretation on the following pages to help clarify that the restriction precluding an individual from acting as a Supervisory Appraiser for three years after a sanction, does not apply to sanctions levied due to administrative matters.

Also, because the current *Criteria* includes a section on General Interpretations (appearing on page 6 of the *Criteria*) that uses language stating there is only one exception to implementing the *Criteria*, the language in that section would need to be updated as proposed on the following pages.

## GENERAL INTERPRETATIONS

- 1 The following is a general Interpretation ~~the only exception~~ for implementing the 2015 *Real Property Appraiser*
- 2 *Qualification Criteria*:
- 3 An applicant in the Reserve components of the U.S. Armed Forces, who was pursuing an appraiser license
- 4 or certification prior to December 1, 2011, and who was called to active duty between December 1, 2011
- 5 and December 31, 2014, may satisfy the qualifications required under the 2008 Criteria for an additional
- 6 time period after January 1, 2015. The extension of time shall be equal to the applicant's time of active duty,
- 7 plus 12 months.

## SUPERVISORY APPRAISER REQUIREMENTS INTERPRETATION

### 8 APPLICABLE TO SUPERVISION OF TRAINEE APPRAISERS ONLY

9 Supervisory Appraisers provide a critical role in the mentoring, training, and development of future valuation  
10 professionals. It is inherently important to strike a proper balance between enhancing public trust by ensuring  
11 Supervisory Appraisers are competent and qualified to supervise Trainee Appraisers without making the  
12 criteria too stringent and restrictive as to discourage or prevent qualified Supervisory Appraisers from  
13 actually participating in the training and supervision of Trainee Appraisers.

#### 14 I. General

- 15 A. Supervisory Appraisers shall be responsible for the training, guidance, and direct supervision of the  
16 Trainee Appraiser by:
  - 17 1. Accepting responsibility for the appraisal by signing and certifying the appraisal complies with  
18 USPAP;
  - 19 2. Reviewing and signing the Trainee Appraiser appraisal report(s); and
  - 20 3. Personally inspecting each appraised property with the Trainee Appraiser until the Supervisory  
21 Appraiser determines the Trainee Appraiser is competent to inspect the property, in accordance  
22 with the COMPETENCY RULE of USPAP for the property type.
- 23 B. Supervisory Appraisers shall be state-certified and in "good standing for a period of at least three (3)  
24 years prior to being eligible to become a Supervisory Appraiser. Supervisory Appraisers do not need  
25 to be state certified and in good standing *in the jurisdiction* in which the Trainee Appraiser practices  
26 *for any specific minimum period of time*. Supervisory Appraisers shall not have been subject to  
27 any disciplinary action—within any jurisdiction—within the last three (3) years that affected the  
28 Supervisory Appraiser's legal eligibility to engage in appraisal practice. A Supervisory Appraiser  
29 subject to a disciplinary action would be considered to be in "good standing" three (3) years *after* the  
30 successful completion/termination of the sanction imposed against the appraiser.
- 31 C. Supervisory Appraisers must comply with the COMPETENCY RULE of USPAP for the property type  
32 and geographic location where the Trainee Appraiser is being supervised.
- 33 D. Whereas a Trainee Appraiser is permitted to have more than one Supervisory Appraiser, Supervisory  
34 Appraisers may not supervise more than three (3) Trainee Appraisers at one time, unless a state  
35 program in the credentialing jurisdiction provides for progress monitoring, supervisory certified  
36 appraiser qualifications, and supervision and oversight requirements for Supervisory Appraisers.
- 37 E. An appraisal experience log shall be maintained jointly by the Supervisory Appraiser and the Trainee  
38 Appraiser. It is the responsibility of both the Supervisory Appraiser and Trainee Appraiser to ensure  
39 the experience log is accurate, current, and complies with the requirements of the Trainee  
40 Appraiser's credentialing jurisdiction. At a minimum, the appraisal log requirements shall include:
  - 41 1. Type of property;

- 42 2. Date of report;
- 43 3. Address of appraised property;
- 44 4. Description of work performed by the Trainee Appraiser and the scope of the review and
- 45 supervision of the Supervisory Appraiser;
- 46 5. Number of actual work hours by the Trainee Appraiser on the assignment; and
- 47 6. The signature and state certification number of the Supervisory Appraiser. Separate appraisal
- 48 logs shall be maintained for each Supervisory Appraiser, if applicable.
- 49 F. Supervisory Appraisers shall be required to complete a course that, at a minimum, complies with the
- 50 specifications for course content established by the AQB, which is specifically oriented to the
- 51 requirements and responsibilities of Supervisory Appraisers and Trainee Appraisers. The course is
- 52 to be completed by the Supervisory Appraiser prior to supervising a Trainee Appraiser. Please refer
- 53 to the Supervisory Appraiser/Trainee Appraiser Course Objectives and Outline in this booklet for
- 54 more information.

55 Supervisory Appraiser Requirements Interpretation

56 With respect to disciplinary sanctions that affect an individual's legal eligibility to practice as referenced

57 in Section 1.B. above, sanctions imposed as a result of administrative actions not related to an

58 individual's obligations of ethical and competent appraisal practice do not apply. Examples may involve

59 isolated administrative responsibilities including late payment of fees, failure to timely renew a credential,

60 or failure to notify a regulatory office of a change in contact information. The intent of the language stated

61 in Section 1.B. above, was to prevent Supervisory Appraisers from training due to egregious appraisal

62 practice issues that involved ethics and competency. Administrative infractions do not preclude an

63 individual from acting as a Supervisory Appraiser for three years after the sanction.

■ ■ ■ ■ ■ ■ ■

## Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

April 12, 2019

**Via Email: [AQBComments@appraisalfoundation.org](mailto:AQBComments@appraisalfoundation.org)**

Mr. Mark A. Lewis, Chair  
Appraiser Qualifications Board  
The Appraisal Foundation  
1155 15th Street, NW  
Suite 1111  
Washington, DC 20005

Dear Chair Lewis:

The Appraisal Subcommittee (ASC) staff appreciates the opportunity to comment on the First Exposure Draft of a Proposed Interpretation of the *Real Property Appraiser Qualification Criteria* (Criteria). These comments reflect the opinions of ASC staff and are not necessarily those of the ASC or its member agencies.

In the past, the Appraiser Qualifications Board (AQB) has introduced substantive changes as revised Criteria. ASC staff urges the AQB to consider implementation of this change as revised Criteria rather than as an Interpretation. As proposed, the Interpretation contradicts the plain language of the Criteria:

“Supervisory Appraisers shall not have been subject to any disciplinary action—within any jurisdiction—within the last three (3) years that affected the Supervisory Appraiser’s legal eligibility to engage in appraisal practice” [emphasis “any” as published by the AQB].

Because the plain language of the Criteria is specific, clear, and published with emphasis, the use of an Interpretation to equivocate from that language seems misguided.

There is a “model approach” the AQB could consider for implementing this revision, which is familiar to State regulators. Specifically, the AMC Rule provides States with authority to make a discretionary call in the case of an AMC owner whose credential was revoked, suspended, or otherwise interrupted; the State can set aside restrictions on an AMC<sup>1</sup> if the State determines a lack of “substantive cause” for the action that impacted the owner’s credential, assuming the credential has been reinstated. Since States are already adept at making this discretionary call in the case of registering AMCs given applicable ownership restrictions, the

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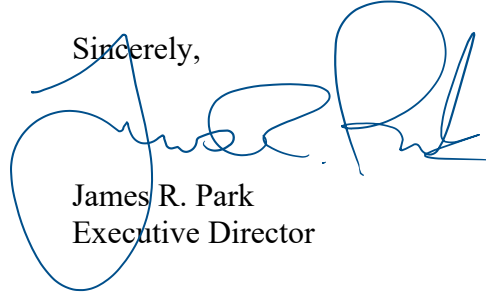
<sup>1</sup> The AMC Rule restricts an AMC from being registered by a State or included on the AMC Registry if owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the appropriate State appraiser certifying and licensing agency.



extension of this concept to Supervisory Appraisers and when the 3-year restriction may be set aside seems a natural one for State regulators and may be easier for appraisers to understand.

ASC staff appreciates the AQB's acknowledgement of the difficulties faced by State Programs and its willingness to address those issues when necessary.

Sincerely,

A handwritten signature in blue ink, appearing to read "James R. Park", is written over the typed name and title. The signature is fluid and cursive, with a large initial "J" and a distinct "P" at the end.

James R. Park  
Executive Director



**APPRAISAL STANDARDS BOARD**  
**2019 SUMMARY OF ACTIONS**  
**RELATED TO USPAP CHANGES**  
**April 17, 2019**

On April 5, 2019, the Appraisal Standards Board (ASB) adopted modifications to the *Uniform Standards of Professional Appraisal Practice* (USPAP). This action began in earnest with the issuance of a Discussion Draft in January 2018, followed by four exposure drafts with specific proposed revisions to USPAP. Written comments were received in response to each document, and oral comments were provided at each of four public meetings. Each member of the ASB read and carefully considered every comment. Based on the feedback received, the Board adopted revisions for the 2020-21 edition of USPAP.

The following changes were adopted by the Board in a public meeting on April 5, 2019, and will be incorporated in the 2020-21 edition of USPAP and associated guidance material with an effective date of January 1, 2020:

**Revisions to the Standards regarding reporting options and Comments in Standards Rules**

The Board adopted revisions to permit additional intended users besides the client for Restricted Appraisal Reports, as long as the other intended users are named in the report (i.e., not merely identified “by type”). The second adopted change for Restricted Appraisal Reports is a simplification of warning language that will no longer include a reference to the appraiser’s workfile.

The Board also adopted revisions to Standards Rules 2-3 and 4-3 to address situations where an assignment requires the use of a certification that does not include all of the certification elements in the respective Standards Rule. In such cases an appraiser is required to include a supplemental certification, which includes the remaining required certification elements. Notably, the Board is also clarifying that such supplemental certifications do not require signature by the appraiser(s). The Board also adopted revisions to enumerate and clarify the minimum level of reporting necessary under the reporting requirements for an Appraisal Report in STANDARDS 2, 8, and 10.

The Board voted to delete some Comments that had redundant requirements clearly stated elsewhere, and to incorporate other Comments directly into the Standards Rules. In some cases, Comments were retained to provide interpretation and/or establish the context and conditions for the application of Standards Rules.

The Board also adopted labels for each Standards Rule in order to make it easier for users to locate specific rule content in the document.

## **Revision of SCOPE OF WORK RULE**

The Board adopted revisions to add language to the Disclosure Obligations section of the SCOPE OF WORK RULE to address the flexibility afforded the appraiser in the disclosure of scope of work.

## **Revisions to COMPETENCY RULE**

The Board revised the “Perfection is impossible to attain...” Comment in Standards Rules 1-1, 3-1, 5-1, 7-1, and 9-1, and moved it into to the COMPETENCY RULE. Moving the Comment into the COMPETENCY RULE reduces duplication and, at the same time, broadens the applicability since the COMPETENCY RULE applies to both development and reporting in all disciplines.

## **Revisions to DEFINITIONS**

The Board adopted some modifications and additions to the DEFINITIONS in order to help readers better understand USPAP. The Board adopted changes to the definitions of APPRAISAL, APPRAISAL PRACTICE, APPRAISAL REVIEW, APPRAISER, ASSIGNMENT CONDITIONS, ASSIGNMENT RESULTS, CLIENT, COST, EXPOSURE TIME, MARKET VALUE, PERSONAL PROPERTY, REAL PROPERTY, VALUATION SERVICE, VALUE and WORKFILE.

The Board also adopted new definitions for the terms ASSIGNMENT ELEMENTS, EFFECTIVE DATE, MISLEADING, PERSONAL INSPECTION, PHYSICAL CHARACTERISTICS, and RELEVANT CHARACTERISTICS, to help clarify how each term is used in USPAP.

## **Other Edits to Improve Clarity and Enforceability of USPAP**

The Board adopted changes related to the phrases “accept an assignment” and “intangible items.” The edits are intended to improve clarity and consistency.

## **Revisions to ADVISORY OPINION 1, *Sales History***

The Board adopted revisions to Advisory Opinion 1, *Sales History*, to provide additional detail and illustrations related to an appraiser’s obligation to analyze the listing, contract, and sales history of the subject property.

## **Revisions to ADVISORY OPINION 2, *Inspection of Subject Property***

The Board adopted revisions to Advisory Opinion 2, *Inspection of Subject Property*, to provide guidance and illustrations reflecting changes in the marketplace related to an appraiser’s inspection of a property.

## **Revisions to ADVISORY OPINION 3, *Update of a Prior Appraisal***

The Board adopted revisions to Advisory Opinion 3, *Update of a Prior Appraisal*, to clarify an appraiser’s obligations regarding confidentiality when performing an update of an appraisal using the “incorporate by reference” option.

## **Revisions to ADVISORY OPINION 28, *Scope of Work Decision, Performance, and Disclosure***

The Board adopted revisions to Advisory Opinion 28, *Scope of Work Decisions, Performance, and Disclosure*, including a new Illustration 2 regarding a scope of work problem related to tangible personal property, and adding an additional illustration regarding a scope of work problem related to real property.

### **Revisions to ADVISORY OPINION 31, *Assignments Involving More than One Appraiser***

The Board adopted revisions to Advisory Opinion 31, *Assignments Involving More than One Appraiser*, to help clarify guidance related to significant appraisal assistance and Standards Rules 2-3, 4-3, 6-3, 8-3, and 10-3.

### **Revisions to ADVISORY OPINION 32, *Ad Valorem Property Tax Appraisal and Mass Appraisal Assignments***

The Board adopted revisions to Advisory Opinion 32, *Ad Valorem Property Tax Appraisal and Mass Appraisal Assignments*, that adds a new Illustration 5 on the topic of an appraiser's obligations regarding the quantity and quality of factual data collected in a mass appraisal assignment.

### **Revisions to ADVISORY OPINION 36, *Identification and Disclosure of Client, Intended Use, and Intended Users***

The Board adopted revisions to Advisory Opinion 36, *Identification and Disclosure of Client, Intended Use, and Intended Users*, to clarify an appraiser's requirement to make a proper disclosure of the client and any other intended users in an Appraisal Report or Restricted Appraisal Report, particularly in cases where the client has requested anonymity in the report.

### **Creation of ADVISORY OPINION 38, *Content of an Appraisal Report and Restricted Appraisal Report***

The Board adopted newly-created Advisory Opinion 38, *Content of an Appraisal Report and Restricted Appraisal Report*. The new Advisory Opinion compares the reporting requirements under the revised Appraisal Report and Restricted Appraisal Report options, and replaces the prior guidance offered in Advisory Opinions 11 and 12.

### **Retirement of ADVISORY OPINION 4, *Standards Rule 1-5(b)*; ADVISORY OPINION 11, *Content of the Appraisal Report Options of Standards Rules 2-2, 8-2, and 10-2*; and ADVISORY OPINION 12, *Use of the Appraisal Report Options of Standards Rules 2-2, 8-2, and 10-2***

The Board adopted the retirement of Advisory Opinions 4, 11, and 12. Advisory Opinion 4 was narrowly-focused, and was more appropriately housed where it also currently exists in the USPAP *Frequently Asked Questions*. As stated above, Advisory Opinions 11 and 12 have been replaced with the newly-created Advisory Opinion 38, *Content of an Appraisal Report and Restricted Appraisal Report*.

Additional administrative edits will be made to other Advisory Opinions and FAQs for consistency with the adopted changes.

### **Detailed Adopted Revisions**

You can also access the [Discussion Draft & Comments](#), [First Exposure Draft & Comments](#), [First Exposure Draft of Advisory Opinions & Comments](#), [Second Exposure Draft & Comments](#), [Third Exposure Draft & Comments](#), and the [Fourth Exposure Draft & Comments](#) by clicking on them. If you are having issues accessing these documents, please contact Aida Dedajic, [aida@appraisalfoundation.org](mailto:aida@appraisalfoundation.org). More information on the actions of the ASB can be found on The Appraisal Foundation's website [www.appraisalfoundation.org](http://www.appraisalfoundation.org).

# **APPRAISAL SUBCOMMITTEE**

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## **AGREED-UPON PROCEDURES ON THE APPRAISAL FOUNDATION**

**SEPTEMBER 30, 2018**



## **INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES**

To the Appraisal Subcommittee of the  
Federal Financial Institutions Examination Council  
1401 H Street, N.W., Suite 760  
Washington, D.C. 20005

We have performed the procedures enumerated below, which were agreed to by the Appraisal Subcommittee (the "Subcommittee"), solely to assist you with respect to The Appraisal Foundation's (the "Foundation") compliance with the grant agreements during the grant year ended September 30, 2018. The Appraisal Foundation's management is responsible for The Appraisal Foundation's compliance with those requirements. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures, observations, and findings are as follows:

### **1. Ascertain that grant funds are expended for activities allowed in the grant agreements**

#### **Procedures:**

- Obtain an understanding of the types of activities that are allowed or prohibited under the grant agreements.
- The allowability of expenses will be assessed based upon either summary-level data or individual transactions. On summary-level data, ascertain that the activities of the Foundation are allowed under the grant agreements. Note the classification and accumulation of individual transactions of the Foundation and its component Boards, and trace the individual transaction into the activity total. On the individual transaction level, select transactions and agree the associated expense to an allowed expense category in the grant agreements.
- Testing will be performed to ensure that indirect rates applied are consistent with actual costs related to indirect labor (i.e. for any overhead rates charged, is there a comparison to the actual funds needed to cover the costs of those expenditures?) within the grants' provisions.

**Observations:**

We obtained an understanding of the types of activities that are allowed or prohibited under the grant agreements based on discussions with personnel of the Subcommittee and the Foundation, and the review of the grant agreements between the Subcommittee and the Foundation for the grant year ended September 30, 2018. We haphazardly selected a total of 95 transactions from the monthly requests for reimbursement and agreed the associated expense to an allowed category such as salaries and wages, consulting, travel and meeting, postage, printing and legal. We traced the individual transactions to the general ledger of the Foundation without exception.

**Conclusion:**

Based on the results of our procedures, we did not identify any grant funds that were expended for activities not allowed in the grant agreements.

**2. Ascertain that costs charged to the grants are allowed under the grant agreements**

**Procedures:**

- Salaries and Wages: Determine whether salaries and wages charged to the grants are properly allocable to the program services and are treated in a consistent manner. If there are any limitations on salaries and wages under the grant agreements, program regulations, or under any other agreement, determine whether salaries and wages adhere to such limitations. Trace salaries and wages to the appropriate supporting documentation, such as approval for hiring, salary determination, and pay increases. Make a selection of time and effort reports of the individuals involved in the program activities to ascertain that salaries and wages charged to the grants are based on the actual effort allocable to the various functional and programmatic activities.
- Consulting, Travel, and Meetings: Obtain an understanding of the Foundation's policies and procedures for allocating these costs to the Foundation's activities and determine whether there is uniformity in charging these costs to Federal and Non-Federal activities. Appropriate documentation, such as invoices, cancelled checks, purpose of costs incurred, and authorization for payment will be inspected to support each selected item. Ascertain that payments are made timely (within 30 days of receipt of an invoice). Ascertain that unallowable consulting charges are not included in the billing rates. Select samples of the time and effort reports of the consultants, as well as individuals incurring travel and meeting costs, to ascertain that these costs are based on the actual efforts devoted to the various functional and programmatic activities and are allocated in accordance with the Foundation's policies and the terms of the grants.

**Observations:**

We haphazardly selected 25 payroll, 25 consulting, 20 other disbursements, and 25 travel and meetings transactions from the monthly request for reimbursement and agreed them to supporting documentation. The supporting documentation for salaries and wages included approval for hiring, salary determinations, pay increases (when applicable), and time and effort reports. We agreed the time charged on the time and effort reports for the selected individuals in our sample to the request for reimbursement.

We traced the consulting, travel and meeting costs, postage, printing, telephone, and equipment rental costs to appropriate documentation, such as consulting reimbursement requests, invoices, cancelled checks, purpose of costs incurred, and authorization for payment. We ascertained that consulting charges and other cost categories were allowable. We ensured that checks were properly endorsed by only authorized signers and that payments were made in a timely manner (within 30 days of receipt of an invoice). We traced the charges to the consultants' monthly reimbursement requests and traced their billing rates to the grant agreements. We traced consultant reimbursement requests of the consultants and time and effort reports of individuals incurring travel to ascertain that these costs are based on the actual efforts devoted to the various functional and programmatic activities and are allocated under the terms of the grant agreements.

**Conclusion:**

Based on the results of our procedures, we did not identify any disbursements that were not paid within 30 days of the receipt of an invoice.

**3. Ascertain that indirect costs charged to the grants are allowed under the grant agreements**

**Procedures:**

- Indirect Fringe Costs: Determine whether indirect fringe benefit costs charged to the grants are properly calculated and allocable to the program services and are treated in a consistent manner. Additionally, determine that the "Provisional Fringe Rate" is accurate and ensure that it is being properly calculated. Ascertain what is included on budget line "Reimbursement" amount for indirect fringe costs. Trace salaries and wages to the appropriate supporting documentation, and ensure that salaries and wages are current when computing fringe reimbursement calculation.
- Indirect Overhead Costs: Determine whether indirect overhead costs charged to the grants are properly calculated and allocable to the program services and are treated in a consistent manner. Additionally, determine that the "Provisional Overhead Rate" is accurate and ensure that it is being properly calculated. Ascertain what is included on budget line "Reimbursement" amount for indirect overhead costs. Trace salaries and wages to the appropriate supporting documentation, and ensure that salaries and wages are current when computing overhead reimbursement calculation.



**Observations:**

We obtained an understanding of the indirect fringe calculation allowable under the grant agreements and determined that the calculation was properly computed and ensured it was properly allocated to the specific program. For all of the employees with time devoted to the grants, we obtained their salary information and fringe costs for the grant year. From this, we determined the actual fringe costs per employee and from that computed the total fringe benefit percentage per employee. We determined that the actual fringe costs incurred by the Foundation were significantly higher than the amount that was being reimbursed by the grant agreements, which is acceptable since the grants are meant to defray the costs, not necessarily cover them in their entirety.

We obtained an understanding of the indirect overhead calculation allowable under the grant agreements and determined that the calculation was properly computed and ensured it was properly being allocated to the specific program. For the employees of the Foundation, we obtained all timesheets for the year. From this, we segregated direct labor hours charged to the grants and labor hours that were not charged to the grants. We completed an analysis comparing all employees' total time spent on the grants compared to total hours of time not spent on the grants. In this analysis, we allocated a percentage of overhead expense based on the percentage of time that employees charged to the grants.

**Conclusion:**

Based on the results of our procedures, we did not identify any indirect costs charged to the grants that were not properly calculated or disallowed under the grant agreements. We determined that correct rates were used and indirect fringe costs and indirect overhead costs were treated in a consistent manner.

**4. Note whether specified service or expenditure levels are maintained**

**Procedures:**

- Obtain an understanding of the required level of effort for each activity authorized under the grant agreements and determine whether the level of effort requirement was met for each activity.
- Determine whether only allowable categories of expenditures or other effort indicators, such as individuals' hours and number of people served, are included in the calculation of level of effort and that non-monetary effort indicators are supported by official documentation.
- Determine whether such treatment is consistent each year. Determine that expenditures specifically not allowed to be included in such computations under the grant agreements are not included. Also determine that the amounts used for the computation of level of effort are reflected in the books of accounts.

**Observations:**

We obtained an understanding of the required level of effort for each activity authorized under the grant agreements and determined that the level of effort requirement was met for each activity. We determined that transactions for salaries and wages, consulting, travel, and meetings were properly classified in allowable categories of expenditures; non-monetary effort indicators, such as individuals' hours, number of people served, etc. are included in the calculation of level of effort and are supported by documentation. We determined the treatment of expenditures was consistent with prior years and that non-allowable expenditures were not included in the computation of level of effort. We also determined the amounts used for the computation of level of effort are reflected in the books of the accounts.

**Conclusion:**

Based on the results of our procedures, we did not identify any specified service or expenditure levels that were not achieved. This includes allowable categories of expenditures or other effort indicators are properly included in calculations, ascertaining that amounts being included in the calculation of level of effort were allowable and that the level of effort requirements were met for each activity.

**5. Ascertain whether minimum or maximum limits for specified purposes are met**

**Procedures:**

- Identify the required dollar amount or percentage for each specified purpose under the grant agreements.
- Identify the minimum amount for a specified type of service, and note whether such amount was properly charged to the program. Utilize a sampling technique to select a sample of items and trace the items to supporting documentation. Testing will be done on a sampling basis to verify that proper classification of the transaction supporting the specified minimum amount is done.
- Identify and test the maximum amount for a specified service, and verify that the books of accounts do not show more than this maximum amount charged to the program. Perform sampling from the financial records to identify transactions for the specified activity, which are improperly classified in another account and would have caused the specific activity amount or percentage to exceed the maximum allowed if classified properly.

**Observations:**

We identified the required dollar amount or percentage for each specified purpose under the grant agreements. We identified the minimum and maximum amounts for a specified type of service, and noted whether such amounts were properly charged to the program. Using the sample selected from Procedure 2, we identified and tested the minimum and maximum amounts for specified services.

According to the grant agreements, the grantee shall incur costs in conformity with the budget included in the grant agreements. The grantee shall not commingle any funds requested under these grants with any other existing or future operating accounts held by the grantee and shall not transfer funds among budget line items without prior written approval from the Subcommittee.

The following table lists the actual versus budgeted grant expenses for the grant year ended September 30, 2018:

<b><u>2018 Budget vs. Actual</u></b>	<b><u>2018 Budget</u></b>	<b><u>2018 Actual</u></b>	<b><u>(Over) Under</u></b>	<b><u>% Change</u></b>
Salaries	\$ 102,253	\$ 105,741	\$ (3,488)	-3%
Postage and Delivery	1,683	1,198	485	29%
Printing	12,750	8,076	4,674	37%
Consulting	85,625	53,044	32,581	38%
Travel	310,985	244,582	66,403	21%
Legal	3,933	525	3,408	87%
Subcontractor	24,190	9,920	14,270	59%
Indirect Costs	<u>118,581</u>	<u>122,626</u>	<u>(4,045)</u>	-3%
	<u>\$ 660,000</u>	<u>\$ 545,712</u>	<u>\$ 114,288</u>	

**Conclusion:**

Based on the results of our procedures, we noted two line items for which actual expenditures exceeded the budgeted maximum. The Appraisal Subcommittee Foundation total grant expenses were under budget for the grant year ended September 30, 2018.

- Determine whether funds were obligated within the period of availability and obligations were liquidated within the required time period**

**Procedures:**

- From the grant agreements, obtain an understanding of any specific requirements related to the period of availability of the grants.

- Select a sample of transactions completed after the end of the grant year and determine whether the underlying expense was incurred within the period of availability.
- If there are any adjustments to the grants amounts, select a sample of adjustments and determine whether these adjustments were for transactions that occurred during the period of availability.

**Observations:**

We obtained an understanding of specific requirements related to the period of availability of the grants. We reviewed the 2018 Budget Summary and noted the Foundation was significantly under budget. We reviewed journal entries and noted no adjustments were made to the grant amounts in the current year or significant accruals at year end. We identified certain reprogramming requests subsequent to year end, which were approved for expenses accrued during the grant year.

**Conclusion:**

Based on the results of our procedures, we determined funds were obligated within the period of availability and obligations were liquidated within the required time period.

**7. Determine whether revenues are correctly recorded and disbursed in accordance with the grants/program requirements**

**Procedures:**

- Compare the revenue data and grant agreements to identify significant and/or unusual instances, such as:
  - Grant funds received in excess of obligations.
  - Substantial payments with no costs reported against them.
  - Obligations with no recorded activity.
  - Determine whether the related activity of the revenue was recorded in a timely manner, i.e., within 30 business days.
  - Select samples and vouch the obligations, payments, and expenses recorded against the grants to the documents substantiating these activities.

**Observations:**

We haphazardly selected a sample of grant obligations, which included salaries and wages, consulting, travel and meetings and other expenses and traced them to the general ledger and supporting documentation. We noted that the grant funds received were not in excess of the obligations and that all the obligations had recorded activity against them. We agreed the grant revenues to the general ledger and also traced the expenditures against those revenues to the general ledger. We noted that the revenues are accrued monthly and adjusted based on actual reimbursements within 30 business days.

**Conclusion:**

Based on the results of our procedures, we did not note any revenues that were not correctly recorded and disbursed in accordance with the grants/program requirements.

**8. Determine whether activities related to the grants occurred when the Foundation incurred the expenditure**

**Procedures:**

- Select the samples of the documents supporting the activity, test the preparation process, and note whether the documentation supports the grant-authorized activity.
- From the grant agreements, obtain an understanding of the nature and timing of the activities and relate such activities to the expenditures allowed and incurred.
- Identify any differences and/or exceptions, as a result of the above sampling. If material, extend the work to look for the reasonableness of such differences or exceptions.

**Observations:**

We haphazardly selected a sample of grant expenditures of salaries and wages, consulting, travel and meeting costs (as noted above), and traced them to the general ledger and supporting documentation. We noted that the grant expenditures incurred were allowable and that all meeting costs occurred on dates that agreed to the grant agreements.

**Conclusion:**

Based on the results of our procedures, we did not note any instances where activities related to the grants did not occur when the Foundation incurred the expenditure.

**9. Ascertain the costs charged to the meetings are in compliance with the grant agreements**

**Procedures:**

- Obtain the schedule of meetings in the grant agreements. Select a sample of the meetings from general ledger detail reports and trace the activity of individuals involved in the meetings to their time and effort reports, to ascertain that costs charged are based on the actual effort devoted to the various functional and programmatic activities, and are allocated in accordance with the Foundation's policies and the terms of the grants.
- Obtain and review the minutes of the meetings to ascertain the subject matter discussed was in accordance with the grants and determine that the names of all individuals who charged time to the meeting are included in the list of attendees.

**Observations:**

We obtained the schedule of meetings for all projects that are allowed under the grant agreements, selected a sample of the meetings from general ledger detail reports, and traced the individuals involved in the meetings to their time and effort reports to ascertain that these costs are based on the actual effort devoted to the various functional and programmatic activities, and are allocated in accordance with the Foundation's policies and the terms of the grants. We obtained and reviewed the minutes of the meetings to ascertain the subject matter discussed was in accordance with the grant agreements. We noted that the names of all individuals who charged time to the meeting were included in the list of attendees.

**Conclusion:**

Based on the results of our procedures, we did not note any costs charged to meetings that were not in compliance with the grant agreements.

**10. Ascertain that the costs charged to the grants for conference calls are in compliance with the grant agreements**

**Procedures:**

- Select a sample of the conference calls from the general ledger detail and trace the activity of individuals involved in the conference calls to their time and effort reports to ascertain that these costs are based on the actual efforts devoted to the various functional and programmatic activities and are allocated in accordance with the Foundation's policies and the terms of the grants.
- Obtain and review the minutes of the conference calls to ascertain that the time charged to the conference calls was spent on projects that are allowable under the grant agreements.

**Observations Conclusion:**

We obtained the general ledger detail for telephone expense and noted that no conference calls were charged to grants during 2018.

**Summary:**

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not, conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Foundation's compliance with the grant agreements during the grant year ended September 30, 2018. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council and is not intended to be and should not be used by anyone other than these specified parties.

O'Connor and Duen, P.C.

**Certified Public Accountants  
Braintree, Massachusetts**

March 8, 2019

# Appraiser Update

March 2019

## Periodic updates for residential appraisers serving Fannie Mae lender customers

As we hinted in the last edition of this newsletter, Fannie Mae has begun testing new processes and technologies in the collateral risk management space. You may have heard some buzz about a “1004P” form or a desktop appraisal process. In this edition, we share an overview of what we’re working on and what those terms mean to us.

We also update you on the appraiser training resources available for MH Advantage® and give a real-life example of a question received through our appraiser mailbox.

Our team will be at several upcoming appraisal industry events, including the Valuation Expo in Chicago in March, ACTS in Salt Lake City in April, AARO in Denver in May, and NAR in Washington, DC in May, and the Appraisal Institute Annual Conference in Denver in July. We hope to see many of you in the coming months at one or more of these events!

Collateral Policy & Strategy Team  
Fannie Mae

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Interested in receiving this newsletter and other periodic appraisal-related updates?

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## What appraisers need to know about property data collection

Lately, you may have heard buzz about modernizing the appraisal process or related terms such as property data collection (PDC), desktop appraisals, form 1004P, and disclosures of significant professional assistance. We're going to give you the inside scoop on what Fannie Mae is testing in the appraisal space and what these terms mean to us.

### Appraisal Modernization

Each year, the Federal Housing Finance Agency (FHFA) creates a "scorecard" that lays out key objectives they expect us to accomplish during the year. Since 2018, our scorecard objectives have included appraisal modernization, with two areas of focus. First, we are to collaborate with Freddie Mac on updating the Uniform Appraisal Dataset (UAD) and the appraisal forms. Second, we're directed to work independently on modernization of the appraisal process. To achieve the scorecard objective, we have been testing a variety of technologies and methodologies that could enhance our ability to manage collateral risk and make the process more efficient for lenders, borrowers, appraisers, and investors.

### Property Data Collection (PDC)

The first thing we're testing consists of new ways to obtain descriptive data for properties that secure the loans we acquire. The test includes mobile apps that guide a property data collector to generate a robust

and accurate set of data elements, photos, and floor plan. This descriptive data and supporting exhibits are delivered to Fannie Mae. We use it to analyze the collateral risk associated with the loan application and then issue a message to the lender prescribing the level of collateral validation needed for the loan to be eligible for delivery to us. Additional aspects of this test include experimentation around what data elements are most important for measuring collateral risk and who does the best job of collecting accurate data.

### Desktop Appraisal

In many cases, our analysis determines that an appraisal is the necessary level of collateral validation needed from the lender. We are testing the performance of a desktop appraisal informed by the photos, measurements, and other facts about the subject property that were previously collected. The scope of work, limiting conditions, and certifications in the existing URAR appraisal form (1004) are not suited to these desktop appraisals, so for our test we created a modified version of the 1004 that we call a "1004P."

### Scope of Work and USPAP

Since the appraiser is using data collected by someone else to perform the desktop appraisal, one question that we've heard is whether this requires disclosure of significant appraisal assistance as described in USPAP (see Standards Rule 2-2). While this is ultimately a decision the appraiser must make, we share a bit of our perspective below.

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The important thing to keep in mind is that the property data collection happens prior to, and completely independent of, the appraisal assignment. In fact, the property data collection is finished and delivered to Fannie Mae before we determine if an appraisal is required. Also important to recognize is that the information provided to the appraiser from the PDC is purely factual data. The PDC does not involve formation of any opinions. It is in the same class with other third-party data sources that appraisers routinely rely on (e.g., survey, flood map, MLS record, blueprint, zoning map, public record).

We've also considered this new process in light of USPAP Advisory Opinion 31. It says, "[a]n appraiser often uses assistance that does not constitute significant appraisal assistance. Although it is the appraiser's responsibility to determine the role of any individual providing assistance, tasks such as, but not limited to, writing down measurements the appraiser provides when measuring a structure, taking photographs of the subject property, and providing clerical duties are not considered significant appraisal assistance."

As we see it, surveyors, FEMA flood engineers, listing agents, architects, zoning officers, tax assessors, etc., are not disclosed as providing significant appraisal assistance in the scope of work because (1) they work completely independently of the appraiser,

and (2) they do not participate in developing the appraiser's opinion of value. Property data provided to the appraiser works exactly the same way: it is strictly observation, measurement, and fact. The collector of the data does not participate in the development of the professional opinion of value, so the appraiser would not need to identify the person who collected the property data as having provided professional assistance. However, the appraiser would need to disclose the use of the property data and does need to disclose any extraordinary assumptions necessary to support that usage.

Again, the assigned appraiser must make the ultimate decision here. But as we see it, the PDC process should work well within the existing USPAP requirements. This video from the Appraisal Foundation, [Inspections & Hybrid Appraisal Assignments Q&As](#), is a great resource on this topic.

## Learn how to appraise MH Advantage homes

Have you heard about MH Advantage®? It's an innovative new homeownership option that pairs affordable financing with specially designated manufactured housing having characteristics typical of site-built homes. Our [December 2018 newsletter](#) reviewed some of the appraisal requirements for MH Advantage. To find out more, view this new [MH Advantage eLearning course](#) and get a quick view of the appraisal requirements with [this overview](#).

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## Responding to your questions

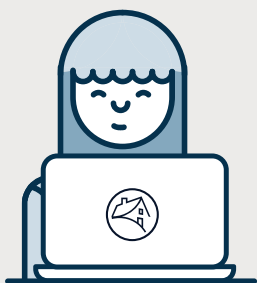
Did you know there is a “Contact Us” option on the [Fannie Mae Appraisers page](#)? We want to hear from you.

Here is a question we received from an appraiser with our response below:

“I've been asked to appraise a new manufactured home, which has just been completed on a 13-acre parcel. The lender wants an appraisal on just the manufactured home, purchased by the borrower. The lender has asked that the 13-acre lot (owned by the borrower free and clear for years) not be included in the appraisal. The lender insists this is a purchase and not a refinance. Please advise.”

Fannie Mae Response: Since the subject is a new manufactured home, our manufactured home guidelines in *Selling Guide* [B4-1.4-01](#) apply. This requires the appraiser to develop an opinion of value on the characteristics of the subject property (home), site, and any other site improvements. To develop the cost approach, the appraiser needs to know the site value. Further, *Selling Guide* [B5-2-02](#), Manufactured Housing Loan Eligibility (06/15/2018), states that the mortgage loan must be secured by both the manufactured home and the land on which it is situated, and both the manufactured home and the land must be legally classified as real property under applicable state law. So, the appraisal must include both the home and the land as a package.

Purchase money transactions are those in which the mortgage proceeds are used to finance the purchase of the manufactured home or the manufactured home and the land. The land may be previously owned by the borrower, either free of any mortgage or subject to a mortgage that will be paid off with the proceeds of the new purchase money mortgage. The borrower does not receive any cash back with a purchase money transaction. A refinance is used to pay off existing liens on the home and land.



### Contact Fannie Mae about Appraisal Topics

Use the "[Contact Us](#)" form to share what's on your mind and submit feedback and questions on appraisal topics.

### Connect with us! We'll be at

**Valuation Expo**  
Chicago • March

**ACTS**  
Salt Lake City • April

**Appraisal Institute  
Annual Conference**  
Denver • July

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

GERALD McNAMARA,  
Cushman & Wakefield of Pennsylvania, Inc.  
1650 Market Street, 33<sup>rd</sup> Floor  
Philadelphia, PA 19103, and

COLLEEN KUDRICK,  
Cushman & Wakefield of Pennsylvania, Inc.  
1650 Market Street, 33<sup>rd</sup> Floor  
Philadelphia, PA 19103, and

Plaintiffs,

v.

GURBIR S. GREWAL, in his official capacity as  
New Jersey Attorney General,  
RJ Hughes Justice Complex  
25 Market Street, Box 080  
Trenton, NJ 08625-0080,

NEW JERSEY STATE BOARD OF REAL  
ESTATE APPRAISERS,  
124 Halsey Street, Newark, NJ 07102

MICHELLE L. MILLER, in her official  
capacity as Director of the New Jersey  
Department of Law and Public Safety,  
124 Halsey Street, Newark, NJ 07102

PAUL R. RODRIGUES, in his official  
capacity as Acting Director of the  
New Jersey Division of Consumer Affairs,  
124 Halsey Street, Newark, NJ 07102 and

BARRY J. KRAUSER, JOHN McCANN, and  
JOSEPH PALUMBO, in their official capacities  
as Members of the New Jersey State Board of  
Real Estate Appraisers  
124 Halsey Street, Newark, NJ 07102  
Defendants.

CIVIL ACTION

NO. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Gerald McNamara ("McNamara") and Colleen Kudrick ("Kudrick") (McNamara and Kudrick are collectively referred to as "Plaintiffs"), by and through their undersigned attorneys, file this Complaint for Declaratory and Injunctive Relief and allege in support thereof as follows:

1. This is a complaint for declaratory and injunctive relief challenging the constitutionality of certain provisions of New Jersey laws and regulations governing the licensing and discipline of real estate appraisers, both as adopted and as applied to Plaintiffs in this action.

2. Plaintiffs allege that N.J.A.C. 13:40A-6.1 and related regulations are facially unconstitutional and unconstitutional as applied to Plaintiffs under the Fifth and Fourteenth Amendments to the United States Constitution.

### **Parties**

3. Plaintiff Gerald McNamara is over the age of 18, resides and is a citizen of the Commonwealth of Pennsylvania, and is a commercial real estate appraiser licensed in, *inter alia*, New Jersey to serve as a commercial real estate appraiser.

4. Plaintiff Collen Kudrick is over the age of 18, resides and is a citizen of the Commonwealth of Pennsylvania, and is a licensed commercial real estate appraiser.

5. Gurbir S. Grewal is the New Jersey Attorney General. He and his office are legally obligated to ensure the provisions of the laws and regulations of New Jersey are enforced. This includes investigating, disciplining, enforcing, and/or affecting the license status of any licensed commercial real estate appraiser.

6. The New Jersey Board of Real Estate Appraisers (the "Board") was created by the New Jersey Legislature to regulate the appraisal profession and evaluate the credentials of applicants for licensure and certification. The Board is responsible for the regulation of real

estate appraisers is New Jersey.

7. Michelle L. Miller, in her official capacity, is a Director of the New Jersey Department of Law and Public Safety, which has responsibility to oversee the actions of the New Jersey Division of Consumer Affairs, within which the Board is housed.

8. Paul R. Rodrigues, in his official capacity as Acting Director of the New Jersey Division of Consumer Affairs, has responsibility to oversee the actions of the Board.

9. Barry J. Krauser, John McCann, and Joseph Palumbo, in their official capacities as Members of the Board, are responsible to enforce and discipline licensed commercial real estate appraisers in New Jersey.

#### **Jurisdiction and Venue**

10. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331, 42 U.S.C. §§ 1983 & 1988, and the federal common law jurisdictional doctrine established in *Ex parte Young*, 209 U.S. 123 (1908), to redress the deprivation under color of state law of rights secured by the federal constitution.

11. This Court also has jurisdiction under 28 U.S.C. §§ 1331 & 2201 over Plaintiffs' facial challenges to New Jersey laws and regulations.

12. The relevant acts and omissions occurred, and are likely to continue, in the State of New Jersey; therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

13. A preliminary injunction, enjoining Defendants from taking any action to enforce the challenged New Jersey laws and regulations, will protect Plaintiffs' rights while these proceedings are pending. A permanent injunction, enjoining Defendants from enforcing the challenged provisions of the Act, will protect Plaintiffs' rights after the final resolution of these proceedings.

**The Board's Notice of Claim**

14. The State of New Jersey, through the office of the Attorney General, has sought to discipline the Plaintiffs for violations of the Uniform Standards of Professional Appraisal Practice ("USPAP") as more set forth in the attached Complaints marked Exhibits A ("McNamara Complaint") and B (the "Kudrick Complaint").

15. Gerald McNamara ("McNamara") filed a Response to the McNamara Complaint ("McNamara and Kudrick Response"). *See* Exhibit C.

16. Colleen Kudrick ("Kudrick") filed a response to the Kudrick Complaint. *See* Exhibit D.

17. The parties wish to address the Constitutional issues raised by the Plaintiffs in the McNamara and Kudrick Response. Administrative Law Judge, the Honorable Jeff S. Masin, issued an Order staying the disciplinary proceedings pending the outcome of this constitutional challenge to facilitate judicial review of the issues so raised.

18. Exhibits A and B assert that McNamara and Kudrick were guilty of failing to abide by the dictates of USPAP and should be disciplined accordingly.

19. USPAP was originally created by non-governmental / private party appraisal industry representatives, which was improperly and impermissibly delegated the responsibility to promulgate regulations that governmental employees intended to enforce against citizens.

20. TITLE XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") was passed in the aftermath of the Savings and Loan crisis of the late 1980s and the Law and Public Safety Division of the Division of Consumer Affairs promulgated real estate appraisal requirements for Federally Related Transactions ("FRTs").

21. The stated purpose of FIRREA was to protect federal financial and public policy interests in real estate related transactions.

22. The Federal Financial Institutions Examinations Council ("FFIEC") consists of the representatives of the heads of the agencies comprising the FFIEC (the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration Board.)

23. The FFIEC was established to "prescribe uniform principles, standards, and report forms for the federal examination of financial institutions."

24. FIRREA added the Appraisal Subcommittee ("The Appraisal Subcommittee") to the FFIEC.

25. FIRREA Title XI created real estate appraisal requirements for FRTs.

26. FRTs were defined in FIRREA as any real estate related financial transaction that: (1) the FDIC or any regulated institution engages in or contracts for; and (2) requires the services of an appraiser.

27. Real estate related financial transactions are defined as sales, refinancing, and mortgages.

28. FIRREA designated the Appraisal Standards Board ("ASB") of The Appraisal Foundation ("TAF") to create "generally accepted standards of practice" for real estate appraisals.

29. FIRREA designated the Appraisal Qualifications Board ("AQB") of TAF to create requirements for real estate appraiser qualification.

30. FIRREA permitted states to establish a "state licensed appraiser" category that did not specifically meet TAF / AQB requirements.



31. Each federal financial institution regulatory agency is statutorily required to establish appraisal standards that meet the minimum requirements adopted by a private organization, the Appraisal Foundation, or TAF.

32. According to its bylaws, TAF "is a private, not-for-profit corporation charged by [Title XI of FIRREA] with the responsibility of establishing, improving and promoting minimum uniform appraisal standards and appraiser qualifications criteria."

33. The Dodd-Frank Act (the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010) substantially overhauled major portions of the U.S. financial and banking systems in response to the financial crisis of 2008.

34. The Mortgage Reform and Anti-Predatory Lending Act ("MRAPLA") was originally passed as a standalone bill by the U.S. House of Representatives in 2009, but was never passed by the U.S. Senate. A revised version of the standalone bill later became Title XIV of the Dodd-Frank Act.

35. MRAPLA required a "state licensed appraiser" to meet the TAF / AQB requirements.

36. MRAPLA gave the Appraisal Subcommittee the specific authority to enforce the AQB requirements for a "Trainee Appraiser" and/or a "Supervisory Appraiser."

37. The ASB and AQB were described as part of TAF.

38. There is no federal oversight of USPAP before it becomes law as to non-FRTs in NJ.

39. There is no State oversight of USPAP before it becomes law as to non-FRTs in NJ.

40. The Appraisal Subcommittee of the Federal Financial Institutions Examining Council ("FFIEC") was designated as the federal governmental entity to oversee compliance with FIRREA.

41. In MRAPLA, the Appraisal Subcommittee was given the ability to prescribe regulations.

42. MRAPLA limited the areas in which the Appraisal Subcommittee could prescribe regulations.

43. FIRREA gave the Appraisal Subcommittee the specific function of:

- a) monitoring states on certification / licensing of appraisers, including "USPAP;" and,
- b) monitoring the Appraisal Foundation.

44. The Appraisal Subcommittee does not have oversight authority on the substantive creation, revision, or promulgation of USPAP.

45. FFIEC was not given oversight authority regarding the substantive creation, revision, or promulgation of USPAP, either directly or indirectly as a result of FFIEC oversight of the Appraisal Subcommittee.

46. States only needed to conform to USPAP as to FRTs.

47. The Appraisal Subcommittee Policy Statements do not include authority to oversee creation, or amendment, of USPAP.

48. Congress delegated USPAP creation, amendment, and administration by TAF and the ASB.

49. The Appraisal Subcommittee does not have legal authority to supervise TAF, as to the creation of USPAP, under the original version of FIRREA.

50. The Appraisal Subcommittee does not have legal authority to supervise TAF, as to the creation of USPAP, under the amended version of FIRREA.

51. "The Appraisal Foundation is directed by a Board of Trustees ("BOT") that is responsible for the governance of the organization. The BOT appoints members and provides financial support and oversight to two independent Boards: the Appraiser Qualifications Board ['AQB'] and the Appraisal Standards Board ['ASB']." [https://www.appraisalfoundation.org/imis/TAF/About\\_Us/TAF\\_Boards/TAF/TAF\\_Boards.aspx?hkey=7b71f017-fd58-4c72-bf3c-90fdb06cd56](https://www.appraisalfoundation.org/imis/TAF/About_Us/TAF_Boards/TAF/TAF_Boards.aspx?hkey=7b71f017-fd58-4c72-bf3c-90fdb06cd56).

52. The membership of the two independent boards overseen by the BOT are created as follows:

- a.) The AQB is composed of five to nine members who are appointed by the BOT and may serve up to eight years. Activities of the Board are directed by the Chair, who is appointed by the BOT for a one-year term; and,
- b.) The ASB is composed of five to nine members who are appointed by the BOT and may serve up to eight years. Activities of the Board are directed by the Chair, who is appointed by the BOT for a one-year term. *Id.*

53. No officer, director, or committee member of TAF, past or present, has been elected to that position — *i.e.*, elected by the general public, as opposed to being elected from within TAF — or appointed by anyone who holds any government office.

54. The USPAP was copyrighted and the copyright was donated to TAF on April 27, 1987.

55. The USPAP is updated every two years by TAF. [https://www.appraisal.foundation.org/mis/TAF/Standards/Appraisal\\_Standards/Uniform\\_Standards\\_of\\_Professional\\_Appraisal\\_Practice/TAF/USPAP.aspx](https://www.appraisal.foundation.org/mis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx).

56. TAF is a private, non-profit organization comprised of appraisal industry representatives.

57. TAF adopted USPAP as the "generally acceptable standards of practice" for real estate appraisal.

58. The ASB was designated in FIRREA to promulgate "generally accepted appraisal practices."

59. The ASB was designated in FIRREA to promulgate "generally accepted appraisal standards" for FRTs.

60. Each Federal Institutions Regulatory Agency was prescribed appraisal standards with the "generally accepted appraisal standards" of TAF's ASB as a minimum standard.

61. TAF was, and is, a Section 501(c)(3) corporation under the Internal Revenue Code.

62. TAF does not have governmental constraints over its staff and officers.

63. TAF's BOT is chosen by appraisal industry organizations.

64. The CEO of TAF is appointed by its BOT.

65. Officers and employees of TAF are appointed by the CEO.

66. ASB members are appointed by the BOT of TAF.

67. The ASB promulgates USPAP with no official signoff by the Appraisal Subcommittee.

68. USPAP is created, amended, and administered by competitors of the Plaintiffs.

69. The New Jersey Appraisal Board is comprised of competitors of Plaintiffs and their employer, Cushman & Wakefield of Pennsylvania, Inc. ("C&W").

70. Neither the Appraisal Subcommittee, nor any other federal entity, has oversight of the creation, amendment, promulgation, publishing, sale, or interpretation of USPAP by the ASB and/or TAF.

71. The Appraisal Subcommittee does not make amendments to USPAP.

72. The final determination of USPAP amendment is made by the ASB in a private meeting without a record.

73. The Appraisal Subcommittee does not act as though it has legal authority to either approve or disapprove any amendments to USPAP.

74. Between 1989 and 2010, there were no amendments to FIRREA regarding Congressional delegation of authority to TAF, ASB, and/or AQB.

75. Between 1989 and 2010, there were no amendments to FIRREA regarding Congressional delegation of authority to the Appraisal Subcommittee oversight of TAF.

76. Between 1989 and 2010, there were no amendments to FIRREA regarding USPAP.

77. USPAP 2005 became effective on January 1, 2005, and was in effect at the time of Plaintiffs' Appraisal.

78. USPAP 2005 contains the statement: "[appraisers must] be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal."

79. The 1991 NJ Appraiser Act did not provide the Board with authority to regulate any appraisals, beyond those prepared for FRTs, pursuant to FIRREA.

80. The 1991 NJ Appraiser Act did not include a requirement for non-FRT appraisals to conform with federal requirements.

81. The Board's proposed initial regulations regarding the NJ Appraiser Act were Chapter 40A, State Board of Real Estate Appraisers, adopted as R.1991 d.598, effective December 16, 1991.

82. The State's proposed initial regulations regarding the NJ Appraiser Act were amended several times since.

83. In the 1996 amendments to the NJ Appraiser Act, the Law and Public Safety Division of the Division of Consumer Affairs expanded the authority of the Board to include all appraisals / valuations performed in the State, whether those appraisals were FRTs, as defined in FIRREA, or appraisals for purposes other than an FRT ("non-FRTs").

84. Neither the New Jersey legislature nor any administrative agency ever delegated the authority to TAF to set standards governing appraisals in New Jersey.

85. No New Jersey regulatory or administrative body, nor any individual(s) delegated or appointed thereby, nor anyone with any connection to any level of New Jersey government ever had any involvement in, comment on, or participation in the original creation of the standards in the USPAP.

86. No New Jersey regulatory or administrative body, no individual(s) delegated or appointed thereby, nor anyone with any connection to any level of New Jersey government ever had any involvement in, comment on, or participation in the biennial updates to the standards in the USPAP.

87. No New Jersey regulatory or administrative body has ever adopted the standards in the USPAP as being the standards to which appraisals in New Jersey must adhere or that a failure

by an appraiser to do appraisals in compliance with the standards in the USPAP can result in civil, criminal, and/or administrative penalties.

88. Simply put, there is no State oversight of the development of USPAP or its amendments before it becomes effective in New Jersey.

89. At no time since the adoption of USPAP in 1996, did any of the amendments to USPAP promulgated by the TAF undergo any part of the Administrative Procedure Act in New Jersey.

90. The Board is comprised of competitors of Plaintiffs and their employer, C&W.

91. At the time of the filing of the complaint by the Attorney General of New Jersey in this matter, there were no governmental employees who were active participants of the Board. The only Board members who deliberated on the filing of the charges against the Plaintiffs were competitors of the Plaintiffs and their employer, C&W.

92. There has been no legislative action on any amendments to USPAP in New Jersey since 1997. USPAP has been amended and/or modified several times from 1997 until the relevant version of USPAP published in 2005.

93. In expressing their collective opinions concerning the work of the Plaintiffs on the Property, the members of the Board were performing an "appraisal" governed by the requirements of USPAP, yet in expressing their individual and collective opinions, they failed to follow the requirements of USPAP.

94. The 2005 version of USPAP does not contain a definition or explanation of "recognized methods and techniques that are necessary to produce a credible appraisal."

**Count I**  
**(All Defendants — Due Process,**  
**42 U.S.C. §§ 1983 & 1988)**

95. Plaintiffs incorporate by reference all preceding allegations as if fully stated herein.

96. The Fifth Amendment to the United States Constitution precludes the government from "depriving any person of life, liberty, or property, without the due process of law." U.S. CONST. amend. X, § 1.

97. The Fourteenth Amendment to the United States Constitution precludes any State government from "depriving any person of life, liberty, or property, without the due process of law." U.S. CONST. amend. XIV, § 1.

98. The property interest of licensed professionals is a well-established liberty and property right protected by the Due Process Clause of the United States Constitution.

99. Plaintiffs have a liberty and property interest in their rights as a licensed professional and should be entitled to the certain rights, responsibilities, benefits, and protections prior to which the State can revoke any professional license. Requirements of procedural due process apply to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972).

100. Defendants violate the liberty interests of the Plaintiffs in two respects;

- a) The State violated the non-delegation rule relating to the delegation to private individuals of governmental legislative functions by permitting private individuals, without any government oversight, to establish standards of conduct and measures by which such standards are to be



judged; and,

- b) In seeking to discipline the Plaintiffs, the State is using a Board of private individuals who are competitors of the Plaintiffs and who are using standards created by private individuals to judge Plaintiffs while failing to abide by those same regulations in doing so.

101. Defendants' infringement upon the Plaintiffs' liberty and property right to enjoy the rights and privileges of their licenses violates the Due Process Clause.

102. Defendants' interference upon Plaintiffs' liberty and property right to enjoy the rights and privileges of their licenses violates the Plaintiffs' fundamental rights and fundamental freedom in liberty and property under the Fourteenth Amendment.

103. The New Jersey laws and regulations relating to the licensing and lawful practice as a property appraiser facially and as applied to Plaintiffs deprives Plaintiffs of their Due Process rights under the Fourteenth Amendment and is not narrowly tailored to serve a compelling governmental interest.

104. Defendants, acting under color of state law, are depriving Plaintiffs of their rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983

105. Plaintiffs are entitled to their costs, including their reasonable attorneys' fees, pursuant 42 U.S.C. § 1988.

106. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and Fed. R. Civ. P. 57, Plaintiffs seek a declaratory judgment that N.J.A.C. 13:40A-6.1 and related regulations violate the Due Process Clause of the Fifth and Fourteenth Amendment to the United States Constitution.

107. Plaintiffs have no other adequate remedy at law.

**Count II**  
**(All Defendants — Request for a  
Preliminary and Permanent Injunction)**

108. Plaintiffs incorporate by reference all preceding allegations as if fully stated herein.

109. Defendants violate the liberty interests of the Plaintiffs in two respects;

- a) The State violated the non-delegation rule relating to the delegation to private individuals of governmental legislative functions by permitting private individuals, without any government oversight, to establish standards of conduct and measures by which such standards are to be judged; and,
- b) In seeking to discipline the Plaintiffs, the State is using a Board of private individuals who are competitors of the Plaintiffs and who are using standards created by private individuals to judge Plaintiffs while failing to abide by those same regulations in doing so.

110. Defendants' infringement upon the Plaintiffs' liberty and property right to enjoy the rights and privileges of their licenses violates the Due Process Clause.

111. Plaintiffs seek the entry of a preliminary injunction enjoining Defendants and Defendants' officers, agents, servants, employees, attorneys, and other persons in active concert or participation with Defendants or Defendants' officers, agents, servants, employees or attorneys from enforcing N.J.A.C. 13:40A-6.1 and related regulations.

**Prayer for Relief**

WHEREFORE, Plaintiffs pray that this Court:

- (A) Enter a judgment declaring that N.J.A.C. 13:40A-6.1 and related regulations violate the Due Process Clause of the Fifth Amendment to the United States Constitution;
- (B) Enter a judgment declaring that N.J.A.C. 13:40A-6.1 and related regulations violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
- (C) Enter a preliminary and permanent injunction enjoining Defendants from enforcing N.J.A.C. 13:40A-6.1 and related regulations under the Due Process Clause of the Fourteenth Amendment, as challenged herein;
- (D) Award costs and expenses to Plaintiffs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988; and
- (E) Award such additional relief as this Court deems just and proper.

By: /s/ Kevin F. Berry  
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**STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
NEW JERSEY STATE BOARD OF REAL ESTATE APPRAISERS**

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IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE :  
CERTIFICATION OF :  
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:  
**GERALD McNAMARA** :  
**CERTIFICATION NO.** :  
**42RG00081100** :  
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:  
TO PRACTICE REAL ESTATE :  
APPRAISING IN THE STATE OF NEW :  
JERSEY :

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Administrative Action

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IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE :  
CERTIFICATION OF :  
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:  
**COLLEEN KUDRICK** :  
**CERTIFICATION NO.** :  
**42RG0021800** :  
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TO PRACTICE REAL ESTATE :  
APPRAISING IN THE STATE OF NEW :  
JERSEY :

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**RESPONDENTS' REPLY TO  
STATE'S RESPONSE TO  
MOTIONS OF GERALD McNAMARA  
AND COLLEEN KUDRICK TO DISMISS  
THE COMPLAINT**

Gerald McNamara (“McNamara”) and Colleen Kudrick (“Kudrick”), jointly referred to herein as the Respondent, by and through their attorneys, file this Reply to the State’s Opposition to Response to Respondents’ Motion to Dismiss the Complaint and aver as follows:

**PRELIMINARY STATEMENT**

Movants challenged the efficacy of the State’s action on constitutional grounds, as set forth in Respondents’ Motion to Dismiss. Moreover, in a Motion to Dismiss on legal grounds, Respondents did not, and certainly would not, specifically address the State’s factual allegations in its Motion to Dismiss because, although the State’s allegations are based on either misstatements, mischaracterizations or misrepresentations of facts in controversy, such allegations are assumed true when challenged legally in a Motion to Dismiss. Nevertheless, when ruling on a motion to dismiss on constitutional grounds, the court’s inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. *Rieder v. Department of Transp.*, 221 N.J. Super. 547, 552 (App. Div. 1987). The court treats all factual allegations as true, and considers only whether the complaint states a cognizable cause of action. *Id.* Where the factual allegations are insufficient to support a claim upon which relief can be granted, the court must dismiss the complaint. *Id.* After addressing the constitutional argument, Respondents will then respond to the factual misstatements and falsehoods averred in the State’s Reply brief.

The States violation of Respondents’ constitutional due process rights is but one example of how the Board is operating outside of the law. The United States Supreme Court,

and the United States Court of Appeals for the District of Columbia Circuit have issued decisions regarding the “delegation doctrine,” and how Congress’ outsourcing of the creation of law is in violation of United States Constitution. As noted in Respondent’s Motion, the regulatory structure that was criticized in Amtrak is virtually identical to the real estate appraisal regulatory regime. Movants challenged the efficacy of the State’s action on constitutional grounds, as set forth in Respondents’ Motion to Dismiss.

Furthermore, the United States Supreme Court admonished a state regulatory board for self-dealing. *N.C. State Bd. of Dental Exam’rs v. FTC*, 135 S. Ct. 1101, 191 L.Ed.2d 35 (2015). In Respondents’ Motion, Respondents specifically pointed out there was at least one Board member who is a direct competitor of Respondents and their employer. While alluded to in Respondents Motion, we did not specifically identify the recent United States Supreme Court decision in *Masterpiece Cakeshop v. Colorado Human Rights Commission*, 138 S. Ct. 1719, 201 L.Ed.2d 35 (2018). We include it here because of the Board’s continued failure to accept its “.... solemn responsibility of fair and neutral enforcement of ...” the law. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1729. The State’s Response was primarily a reiteration of its misstatements, mischaracterizations or misrepresentations of facts in controversy, not an exercise of an impartial judicial body that has avoided prejudging the cases before them.

The State’s Response to Respondents’ Motion to Dismiss either ignores the substantive issues raised by that Motion or mischaracterizes those issues.

Respondents’ Motion to Dismiss sufficiently pled the elements for a lack of the Board’s jurisdiction over the subject matter. R. 4:6-2(a). Respondents’ Motion to Dismiss sufficiently pled the elements regarding the State’s failure to state a claim upon which relief can be granted.

R. 4:6-2(e). Arguably, the delay in a Case Management Conference tolled the clock for Respondents' Motion to include consideration under the State's lack of jurisdiction over the person. R. 4:6-2(b).

This matter is anything but a straightforward case of professional misconduct. The underlying standards of the State's action are unconstitutionally promulgated based on United States Supreme Court and District of Columbia Circuit Court holdings that the creation of law cannot be delegated to a nongovernmental entity, such as The Appraisal Foundation's Appraisal Standards Board, or in the absence of Article II officers.

### **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

Before proceeding, Respondents would like to define terms used in this Reply for the convenience of this Court.

#### **Key Definitions**

Appraisal/Appraisal Assignment: 1) The engagement by the Carlyle Group of Cushman & Wakefield, which resulted in the Appraisal Report. 2) Appraisal is defined in 2005 USPAP as "the act or process of developing an opinion of value; an opinion of value" (noun). 3) Assignment is generically defined in USPAP 2005 as: a valuation service provided as a consequence of an agreement between an appraiser and a client.<sup>1</sup>

Appraisal Report: 1) The communication of the Appraisal in the Appraisal Assignment in this case. 2) Defined by USPAP as: any communication, written or oral, of an appraisal, appraisal review, or appraisal consulting service that is transmitted to the client upon completion of an assignment.<sup>2</sup>

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<sup>1</sup> USPAP 2005, Definitions, at 2.

<sup>2</sup> USPAP 2005, Definitions, at 4.

Hypothetical Condition: that which is contrary to what exists but is supposed for the purpose of analysis. Comment: Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.<sup>3</sup>

INTENDED USE: the use or uses of an appraiser's reported appraisal, appraisal review, or appraisal 102 consulting assignment opinions and conclusions, as identified by the appraiser based on communication with the client at the time of the assignment.<sup>4</sup>

INTENDED USER: the client and any other party as identified, by name or type, as users of the appraisal, appraisal review, or appraisal consulting report by the appraiser on the basis of communication with the client at the time of the assignment.<sup>5</sup>

Scope of Work: the amount and type of information researched and the analysis applied in an assignment. cope of work includes, but is not limited to, the following: the degree to which the property is inspected or identified; the extent of research into physical or economic factors that could affect the property; the extent of data research; and the type and extent of analysis applied to arrive at opinions or conclusions.<sup>6</sup>

Greater Property: The property included in the prior sale of the Subject Property , PLUS the privately owned Beach on which the Subject Property fronts (Tract 5 in the conveying deed). Deed from Diamond Beach Resort, LLC to Achristvest, LLC, March 30, 2005, recorded April 6, 2005, in the Records of the Cape May County Clerk.

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<sup>3</sup> USPAP 2005, Definitions, at 3.

<sup>4</sup> USPAP 2005, Definitions, at 3.

<sup>5</sup> USPAP 2005, Definitions, at 3.

<sup>6</sup> USPAP 2005, Definitions at 4.



Subject Property: The Client's May 4, 2005 Engagement Letter identified the Subject Property as follows. "The property to be appraised is two parcels located across from each other on Atlantic Avenue in Wildwood New Jersey. One parcel is improved with an existing 195 unit waterfront hotel built in the 1970s that will be demolished for construction of a 125 unit condominium building data parcel will be improved with a 63 unit condo/hotel. The other parcel will be improved with a 63 unit condo hotel". May 4, 2005 Engagement Letter, Cushman & Wakefield and the Carlyle Group. In the Appraisal Report, Respondents go on to

In its Statement of Facts and Procedural History, the State left out significant details cited in Respondents Answer, to the point of misrepresentation of those details. As a result, Respondents incorporate their Answer into this Reply, as if fully set forth herein, and respectfully request the Court to consider the facts in Respondents' Answer in regard to this Reply. In addition, Respondents would like to point out some specific instances of the State's failure to address factual details in its Response. The State has misrepresented the Appraisal Assignment, the Subject Property, and the Intended Use of the Appraisal Report. *See, infra*, Definitions and Respondents' Answer.

In regard to the State's discussion of the first paragraph under Statement of Facts and Procedural History in opposition to Respondents' motion, the July 30, 2003 Addendum to the April 16, 2003 Agreement of Sale added \$2,700,000 to the sale price of the Subject Property and perhaps an additional \$50,000 based on the information in that Addendum. Respondents' Answer at 4. The prior sale included no contingencies as to approvals of any kind, as well as other material elements including but not limited to the non-refundable deposit of \$2,750,000, which would be considered liquidated damages in the event of buyer

default. Answer at 3, Paragraph 7. Further, On March 31, 2003, the New Jersey Department of Law and Public Safety (the Attorney General's Office), Division of Consumer Affairs, announced a total \$160,000 dollars settlement between the State and the owner of the property, which was then known as the Grand Hotel at Wildwood Crest.<sup>7</sup> Answer at 55-56. Also, contemporaneous postings on the internet indicate that the property was closed for the 2004 season.<sup>8</sup> Answer at 57. And, the Lower Township government document ""Resolutions of Findings and Conclusions of Board of Adjustment of the Township of Lower", dated April 7, 2005, at paragraph 12, states "the property in question is currently being used as a closed hotel". Answer at 56-57, Paragraph 32. Respondents agree they were hired by the Carlyle Group to complete an appraisal of the subject property.

Both Respondents inspected the Cushman & Wakefield Original Appraisal Report (the "Appraisal Report") Subject Property, a fact which the State has misrepresented in its Response, as discussed herein and in Respondents' Answer. There are three key issues, here. First, the State improperly asserts the Subject Property should have been something other than that for which Respondents' client, the Carlyle Group, (the "Client") engaged Respondent to appraise. Second, both Respondents, Colleen Kudrick and Gerald McNamara, inspected the Subject Property, *i.e.*, the two tracts defined in the Appraisal Report, under consideration of the engagement letter to appraise that Subject Property as vacant land. Third, the State's Response indicates a lack of understanding of the appraisal issue of a "Hypothetical Condition", as quoted from 2005 USPAP and set forth under "Key Definitions", *infra*.

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<sup>7</sup> <http://njpublicsafety.com/ca/press/diamond.htm>

<sup>8</sup> <http://businessfinder.nj.com/reviews-grand-hotel-wildwood-nj.html>

The Appraisal Report describes the subject property as two non-contiguous parcels of land containing 174,196 square feet, in the aggregate. However, the State's pleadings misrepresent how Respondents' determined the site area.

The State's following alleged statement of fact evinces a lack of understanding of the relationship between the prior sale of the greater parcel and the appraisal standard "Hypothetical Condition"<sup>9</sup>.

"Moreover, despite acknowledging an "April 6, 2005" sale of the subject property for \$18,000,000 and the buyer's intent to drastically redevelop the site, the appraisal report was prepared under the hypothetical condition that the entire property was vacant and available for development, with no consideration given to the standing 195-unit beachfront hotel or any proposed improvements."

State Response at 2.

As to the third paragraph of this section of the State's Response, Respondents generally agree they valued the subject property as vacant land utilizing the Sales Comparison Approach. Respondents object to the State's use of "air quotes" on the word vacant and the States assertion Respondents *calculated* [emphasis added] the market value of the Appraised Subject Property. The State's use of the air quotes may seem like a trivial complaint, but when coupled with the State's assertion the market value was calculated (appraisers estimate an opinion of market value – they do not calculate it), along with numerous other misstatements, mischaracterizations and misrepresentations of appraisal industry standards, procedures and doctrine, it becomes clear the Board continues to "shoot from the hip", as they have done from the beginning of this action and misapprehend the point of the Appraisal Report.

In the fourth paragraph of the State's Response is an assertion the client in the Appraisal Report filed the consumer complaint against the Respondents in 2010 is particularly troubling in

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<sup>9</sup> The Appraisal of Real Estate, 12<sup>th</sup> Ed., p. 56 (Appraisal Institute, 2001).

that the State has admitted they do not know who filed the consumer complaint. Moreover, an investigation has revealed the Carlisle Group has confirmed it had no issues with the report in question, nor did any of its employees complain to any government agency, or indeed the Respondent's, concerning the Appraisal Report.

Respondents further object to the State's assertion of the Appraised Subject Property value as any kind of multiple to the prior sale of the Greater Parcel, as well as the subsequently asserted relevance of the real property tax assessment for the abandoned and shuttered former motel at that site. As further discussed below, the State's statement to this Court that such sale took place "just two months prior to the appraisal" is a serious misrepresentation of fact, as the meeting of the minds took place over two years beforehand, the date of the appraisal was literally at the very peak of the boom market prior to the financial crash and the client had expended a considerable amount of time and money to bring the property from its State-shuttered status to a site approved for development of one of, if not the most expensive residential condominium development on a barrier island.

With regard to data utilized by Respondents in the Appraisal, Respondents utilized standard industry acceptable practices and data, which was based on underlying Government records, both of which were deemed reliable at the time Respondents utilized such Data and records, in their analysis of Comparable Sale 1, as further discussed below.

The State misrepresents Respondent's typographical error regarding the actual versus planned demolition of the existing improvement at Comparable Sales 5.

In the State's allegation of the property that was the subject of the Appraisal, the State misrepresents Respondents' identification of the Subject Property. The State then

goes on to assert they know that should have been appraised, better than the Client, who identified the parameters of the Appraised Subject Property, or the Respondents who correctly followed their Client's direction regarding the parameters of the Subject Property.

Respondents do not agree with the State's characterization of Respondents' violation of State statute prohibiting real estate appraisal activity without the appropriate credential. The Board initially attempted to charge Respondent Kudrick with a violation of a law that was *not* in existence at the time of the May 2005 Appraisal Assignment. NJSA 45:1-18.2 (it became effective January 17, 2010). When that fact was pointed out, the Board manufactured additional language in the regulation, thirteen years after the Respondents performed the appraisal.

"no person other than a State licensed real estate appraiser, a State certified real estate appraiser or *a person who assists in the preparation of an appraisal under the direct supervision of a State licensed or certified appraiser* shall perform or offer to perform an appraisal assignment in regard to real estate located in this State including, but not limited to, any transaction involving a third party, person, government or quasi-governmental body, court, quasi-judicial body or financial institution". [emphasis added] N.J.S.A. 45:14F-21(c).

The plain language of the regulation permits Respondent Kudrick to perform the appraisal under the direction of a state credentialed appraiser. The manufactured language was intended to prohibit her from such performance, *after the fact*.

The State misrepresents Respondent Kudrick's Statement under Oath, and therefore, Respondents object to the State's representation to this Court of its

misrepresentations as fact including, but not limited to, the reconstructed nature of Respondents' Workfile. The State also conveniently ignores that Respondent Kudrick's statement Under Oath took place over seven years after actual performance of the Appraisal Assignment. It took the state over two years after receipt of the anonymous consumer complaint, and the notification to the Respondents of such complaint (thus seven years post report), to have the Respondents provide Statements under Oath. Over the period of the next two years, the State and Respondents discussed potential resolution of the State's proposed action. It then took the State over three years to file a formal Complaint (some twelve years after the report was published). The proposed trial in January-February 2019 will take place almost 14 years after Respondents performed the Appraisal. The State's delay is, in itself, a violation of Respondents' due process rights. *See, State v. Cahill*, 213 N.J. 253, 61 A.3d 1278 (2013) (16 month delay in license revocation proceeding violated due process). Respondents' Statement under Oath was intended to be presented to an impartial judicial body, but the Board violated its own responsibilities to act as such. In *Masterpiece Cakeshop* the U.S. Supreme Court repeatedly admonished the Colorado Civil Rights Commission for its "... statements [which] cast doubt on the fairness and impartiality of the Commission's adjudication ...". 138 S. Ct. at 1730.

The State misrepresents Respondent McNamara's testimony in his Statement under Oath regarding his participation in preparation of the Appraisal Report. Respondent McNamara actually testified he participated in the Appraisal Assignment and supervised Respondent Kudrick, in accordance with generally accepted real estate appraisal industry practice.

## DISCUSSION OF DISPUTED FACTS

There are numerous facts in dispute in this case. While Respondents' Motion was based on the constitutional issues, the State's Response in opposition to Respondents' Motion failed to ".... set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding ...." in regard to the issues raised in Respondents' Motion. R. 1:1-12.5(b). Instead, the State presented arguments that misrepresented facts in controversy.

As noted *infra*, the following are but examples of the State's mischaracterization of facts, are merely the most glaring examples of the State's mischaracterizations and are particularly cited because these facts pertain to the underlying assumptions in a real estate appraisal, as the Scope of Work and supporting documentation. These factual mischaracterizations by the Board are additional support for Respondents' Motion to Dismiss on constitutional grounds. Not only has the Board not fulfilled its impartial judicial role. *See. Masterpiece Cake*. The Board has twisted facts to meet its preconceived decision of the outcome of the action, therefore violating Respondents' due process rights.

Subject Property: The "Subject Property" was established in that Appraisal as ".... two parcels located across from each other on Atlantic Avenue....". May 4, 2005 Engagement Letter at 1. Throughout its pleadings, the State incorrectly contends the Appraisal's appraised property should have been different from the Client requested appraised.. *See, Complaint at 2, Para 7.*

Intended Use and Intended Users: The State has asserted the Intended Use of the Appraisal Report was ".... for the purpose of evaluating potential financing". Complaint at 4, Paragraph 12. Yet, the State does not identify any other Intended Users, who would have relied upon the Appraisal Report. Both USPAP and TARE clearly indicate a real estate appraisal

assignment is to be conducted based on the Intended User(s) and Intended Use. *See* Key Definitions, *infra*, Complaint at 4, Paragraph 12.

Assignment Conditions: The State has asserted it has the right to determine Respondents' Scope of Work element of a Hypothetical Condition. Instead, that Assignment Condition is established by the appraiser. , 12th Ed. The Appraisal of Real Estate, p. 56 (Appraisal Institute, 2001) stating, "Hypothetical conditions are contrary to what exists, but the conditions are asserted by the appraiser for the purpose of analysis". The Appraisal of Real Estate is a learned treatise frequently cited by New Jersey Courts. In particular, the State incorrectly asserts Respondents were wrong to appraise the Subject Property as vacant and available for development, but the State provides no support for that assertion. Complaint at 5, para 13. Respondents determined the need for use of the Hypothetical Condition based on Respondent Kudrick's communications with the Client and the developer. Answer at 22, Paragraph 23(a).

Respondents' Work File: The State repeatedly references Respondents' Work File. Complaint at 4, Footnote 2. The State is abundantly aware the document retention policy of Cushman and Wakefield, Inc. was USPAP compliant in that materials were retained for a period of five (5) years following completion of the proposed assignment. The Appraisal Report was delivered on May 23, 2005. The Respondents first received notice of an "anonymous complaint" from the New Jersey Appraisal Board on July 12, 2010. The original Work File was destroyed in June 2005 in accordance with Cushman & Wakefield's standard document retention program. Respondents provided the State with what they retained or could reconstruct in their original Work File, with the caveat that the documents proffered were not the Original Work File. In both of their Statements Under Oath, Respondents repeatedly indicated they did



not remember whether certain documents were, or were not, included in this appraisal assignment's Work File.

Statement Under Oath: The Board's communications with Respondents at the Statement Under Oath did not comport with the Board's role as judicial body. *See generally, Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719. While Respondents attempted to honestly state they did not remember events from seven years beforehand, the Board appears to have seen that as "stonewalling," which in turn led the Board to communicate hostility to Respondents and the Board's hostility compounded Respondents difficulty in remembering and caused them to become cautious in responding to the Board. That then caused the Board to become frustrated, which then increased its communication of hostility, which in turn caused Respondents to become even more cautious, which then created the Board to believe its "preconceived "gut" instinct was correct. Without any in-depth professional research of the Appraisal Report, the Board decided to have Board Counsel offer Respondents a Consent Order that included a one-year styed suspension, a \$10,000 fine for each, with the resulting effect Respondents would have to face reciprocal discipline in the numerous other states in which they hold real estate appraiser credentials.

State Misrepresentation of Facts: The State has also misrepresented other facts to the Court, as they pertain to this Action. One such example is the State's assertion of an alleged "miscalculation" of \$155 in Respondents' multiplication of the Actual Subject Property site area of 174,196 by their opinion of the Sales Comparison Approach value indication of \$375.00 per square foot. The difference between Respondents' calculation was likely due to the prior computation of their square foot value estimate, not only is the \$155 not worth mentioning (except to underscore its hostility), the Board then incorrectly rounds a \$65 million figure to the

five-hundred-dollar level, while Respondents correctly rounded to the hundred thousand dollar level. *See*, Complaint at 6, Paragraph 15, Footnote 8. Not only is the Board's rounding improper, but the Board then goes on to assert Respondents conducted a series of minor errors that result in a violation of the USPAP Ethics Rule. *See*, Complaint at 13, Paragraph 27, citing this alleged minor error and similar as evidence Respondents violated USPAP Standards Rule 1-1(c)<sup>10</sup>. Once again, this is an example of the Board violation of Respondents due process rights and supports Respondents' Motion to Dismiss.

The State's mischaracterizations to this Court are not limited to real estate appraisal elements. The Board has misrepresented critical facts to this Court.

Complainant: The State continues to assert the complainant was Respondents' client, the Carlyle Group. Complaint at 6, Paragraph 16. The State is well aware the complainant is unknown. Counsel had several communications with the State on this issue. Kevin Berry, Esquire, communicated to Board Counsel that he had personally spoken with Carlyle Group managers and staff regarding this action and was assured the consumer complaint did not come from the Carlyle Group. The State reviewed its files, found no evidence of the consumer complaint coming from the Carlyle Group and admitted they do not know who filed the consumer complaint. This is a serious misrepresentation that further demonstrates prejudice and

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<sup>10</sup> 2005 USPAP Standards Rule 1-1(c)

530 not render appraisal services in a careless or negligent manner, such as by making a series of  
531 errors that, although individually might not significantly affect the results of an appraisal, in  
532 the aggregate affects the credibility of those results.

533 Comment: Perfection is impossible to attain, and competence does not require perfection.

534 However, an appraiser must not render appraisal services in a careless or negligent  
535 manner. This Standards Rule requires an appraiser to use due diligence and due care.

supports Respondents' Motion to Dismiss based on the State's misrepresentation of this fact to the Court.

In addition to misrepresentation of facts to this Court, the State has also presented significant mischaracterizations.

The State has not informed this Court that the "back parcel" land in the Appraisal Report was the subject of an agreement with adjoining owners in 2004. Neither did the State inform the Court that parcel received approvals for a 6 story (5 levels of units over parking, pool, etc.) with 62 condominium/apartment dwelling units and 124 parking spaces on July 19, 2007. *See*, Answer at 49, Paragraph 32.

In regard to Comparable 1, the Board mischaracterizes incorrect governmental record reporting as fraud in another example of the Boards violation of Respondents' due process rights. *See*, Complaint at 7, Paragraph 18. The Board reached this conclusion, without appropriate review of underlying documentation. With regard to the analysis of the site area of Comparable Sale 1, Respondents relied on commercially acceptable secondary reporting, which itself relied on published governmental records. As indicated in Respondents Answer, it would not have been possible for Respondents to have ascertained the correct information regarding the sale at the time of their review of the secondary/governmental records data, as the underlying governmental records had been incompletely reported at the time of the Respondents' review. Answer at 29, Paragraph 24(a). Ms. Kudrick's actions reasonably conforms with the USPAP and industry standards for development of the Appraisal. The Boards failure, and that of their expert, to conduct a proper analysis of the underlying documentation, before asserting Respondent committed fraud. This is a serious accusation that should not be charged without sufficient support.

The State provides no support for its accusation of fraud. Neither the Board, nor its expert have provided Respondents with either the Board or their expert's qualifications to determine fraud. In New Jersey, the elements of common-law fraud are: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." *Gennari v. Weichert Co. Realtors*, 691 A.2d 350, 148 N.J. 582, 610 (N.J. 1997); accord *Kuzian v. Electrolux Home Prods., Inc.*, 937 F. Supp. 2d 599, 614-615 (D.N.J. 2013). Neither the Board nor their expert have provided any evidence on how they determined Respondents' Appraisal Report was misleading or how Respondents committed fraud. Legal concepts of misleading and fraud require intent. The State has shown no intent.

Respondents in good faith provided information in the Appraisal Report, which subsequently was determined to be incorrect. A mistake is not fraud, under New Jersey law.

If the Board is accusing Respondents of communicating an Appraisal Report that is misleading according to USPAP, the law requires proof of intent. The State has shown none, and has absolutely no evidence of intent. Furthermore, Respondents' actions do not constitute reckless disregard, as they followed acceptable industry practices in relying on published data as being commercially reasonably reliable.

The State's extreme position on Respondents' use of such commercially reasonably reliable data in an Analysis of Comparable Sale 1 is another example of how the Board has misrepresented the facts of this case to this Court and of the Board's violation of Respondents' due process rights.

The Board further misrepresents the facts to the Court by not disclosing the Board's net opinion that Respondents' overstated [their] indication of value" long before the Board hired an expert. *See*, Complaint at 13, Paragraph 28. Again, this is a violation of Respondents' due process rights.

With regard to Comparable 5, Colleen Kudrick, in her Statement under Oath for a subcommittee of the Board on June 26, 2012, stated the Appraisal Report's characterization of Comparable 5, as already having been demolished, was a typographical error. Complaint at 8, Paragraph 19. She further stated she knew the property had not been demolished because she drove by the property and interviewed the party to the transaction at the site. She also stated the interviewee indicated the property was to be torn down and redeveloped as condominiums. Therefore, it is reasonable to believe Appraisal development regarding Comparable 5 was prepared in compliance with USPAP Standard 1 and industry standards, regarding the development of the appraisal assignment.

Respondent Colleen Kudrick is being prosecuted for allegedly performing an appraisal in violation of New Jersey law and regulation, because she did not have a state appraiser credential when the Appraisal Report was performed, even though she performed that appraisal under the supervision of a New Jersey credentialed appraiser. *See*, Complaint at 21 – 22, Paragraphs 49 through 54. The Board initially attempted to charge her with violation of a statute that was not even in effect at the time she performed work in this appraisal assignment. NJSA 45:1-18.2 (effective January 17, 2010), as referenced above.

In the Complaint filed with this Court, the Board States there is a "limited exception for those 'assisting' in the preparation of an appraisal under "the direct supervision of a certified or licensed appraiser," without citation to any source or law or otherwise.

Since the rules governing such conduct contain no reference to such a “limited exception,” the Board has violated Respondents due process rights by effectively revising the rules, *ex post facto*, without due process of law.

The Board’s rules clearly state an appraiser without state appraiser credentials is permitted to assist a NJ credentialed appraiser in the performance of an appraisal. N.J.S.A. 45:14F-21(c), as referenced and discussed, *infra*. The Federal Appraisal Subcommittee’s (ASC) then-effective Policy Statement also permits such performance. Appraisal Subcommittee, *Appraisal Subcommittee Policy Statements Regarding State Certification and licensing of Real Estate Appraisers*, September 22, 1997, as amended October 24, 2000, Statement 10.D. Supervising Uncertified and Unlicensed Appraiser Assistants, p. 19-20. Even though the ASC’s Policy Statement pertains to appraisals of Federally Regulated Transactions (“FRT”), New Jersey’s law and regulations pertains to all appraisal assignments but the State’s Response indicates New Jersey follows Federal law and regulation on real estate appraisal. Also, the ASC conducts audits of the New Jersey Board under Federal law and there is no indication the ASC treats non-FRT appraisals different from those of FRTs in such audits. The State has not provided a reason why Ms. Kudrick is being prosecuted for her conduct in 2005, although, five years after the appraisal assignment, they did drop the charge she violated the statute that was not in effect until 2010. Respondent McNamara was similarly charged for conduct in 2005, for violation of a statute adopted in 2010, but that charge was dropped. Again, the Board has failed to act as an objective judiciary body, and thus committed an egregious violation of Respondents’ due process rights.

Under the 14<sup>th</sup> amendment to the United States Constitution, Respondents’ had the right to an impartial inquiry by the Board at their Statement Under Oath on June 26, 2012. Yet, a

review of the transcripts from that proceeding indicate anything but an impartial inquiry. The Board's questioning of Respondents had a highly adversarial nature. Then, the Board went on to assert the Respondents gave contradictory responses under barrage of accusations by the Board. Again, the Board has violated Respondents' rights to due process.

The Board has not correctly informed this Court regarding the need for Respondents to reconstruct their Work File for this appraisal assignment. The Board has also mischaracterized respondents' attempts to truthfully answer their recollection of events seven years before the Statements under Oath, without the benefit of the Original Work File. Complaint at 8, Paragraph 19.

Particularly egregious is the Board's misrepresentation of the circumstances regarding the prior sale of the Greater Parcel. The Board has accused Respondents of failure to analyze that sale. *See*, Complaint at 8, Paragraph 19. Complaint at 17, Paragraphs 32 through 39. As indicated in Respondents' Answer, documentation of facts cited by Respondents in the Appraisal Report, and to the Board, supports Respondents' level of analysis. Further, the Board has exceeded its legal authority by attempting to "re-appraise" the Subject Property, based on net opinions of the Board including, but not limited to, speculations regarding the prior sale of the subject greater parcel, without doing any of the work necessary to support such net opinions. Complaint at 8, Paragraph 19 (Kudrick). Complaint at 8, Paragraph 19 (McNamara).

The Board mischaracterizes Respondent McNamara's Statement under Oath, as "Testify[ing] that he did not assist in the preparation of the appraisal report". Complaint at 8, Paragraph 20. As indicated in Respondents' Answer, Kudrick assisted McNamara in preparation of the appraisal report. Answer at 16, Paragraph 20. Further, Kudrick's assistance was permitted under existing rules as indicated herein.

The Board committed a serious error in its initial review and communication of allegations to Respondents, regarding identification of the Subject Property. Complaint at 9, Paragraph 23. In the Board's Complaint, the Board has taken it upon itself to overrule Respondents' Client regarding identification of the property to be appraised in the appraisal assignment. *See*, Complaint at 9, Paragraph 23. The Client indicated the Subject Property was to include only parcels between Atlantic Avenue and the Beach, and Atlantic Avenue and Seaview Avenue. The Client's direction did not include appraising the beach, as the Board falsely, and without explanation, indicates should have been part of the Subject Property. The Complaint states

“... Significantly, the appraisal report makes no mention of this privately owned beach land, suggesting that the Appraisers were unaware of its inclusion in the subject property when they prepared the appraisal report, notwithstanding its reference in the deed to the subject property. This omission is significant as private beach ownership is an amenity that would typically be expected to enhance the value of property, yet this portion of the property is not referenced anywhere in the appraisal report, including the property description, or the analysis and valuation.”  
Complaint at 9, Paragraph 23(c).

Furthermore, the Appraisal Report references the proximity of the actual Subject Property to the beach:

- “We would note that the larger parcel extends through to the Wildwood Crest Beach.”: Appraisal Report at Summary, Introduction at 1, Site Description at 16.
- “In addition, this portion of the property has substantial beach frontage.” Appraisal Report at 16.

In this significant misrepresentation, the Board has not only exceeded its legal authority, but has violated Respondents due process rights.

The Board has also mischaracterized Respondents' reasonable rounding in describing the actual Subject Property site area. Respondents indicated the beachfront parcel contained 2.8



acres of land, while the State asserts the actual area is 2.796 acres. Similarly, Respondents indicated the parcel between Atlantic and Seaview Avenues contained 1.2 acres of land while the State asserts the actual area is 1.157 acres. Respondents clearly identified the subject property in the Appraisal Report, as called for under USPAP and industry standards. And, Respondents reasonably rounded the site area. This is not an error on the part of Respondents. Instead, it is an attempt by the Board to support its argument of numerous minor errors to justify its ongoing prejudgment of Respondents' guilt, as part of the Board's numerous violations of Respondents' due process rights.

The Board goes beyond the argument of "minor errors" in its allegation that a word-processing error in the body of the report and a contradictory statement in the certification constitutes fraud. Complaint at 20 – 21, Paragraphs 45 through 48. Again, this supports Respondents sincere believe the Board has not addressed this matter as an impartial judicial decision-making body, but rather with an agenda.

In Count II of the Complaint the Board once again decides that it knows better than the client in the appraisal assignment by alleging the Appraisal Report has "... insufficient information provided to enable the intended user to adequately understand the rationale for the adjustments, and the resulting opinions and conclusions". Complaint at 13, Paragraph 27. Complaint at 19-20, Paragraphs 41-43. While such hyperbole may be acceptable in other Court pleadings, the Board's attempt to state that it knows more than any client, but particularly a client, who of the Board has misrepresented to the Court as a complainant. Furthermore, this particular client is probably one of the most, if not the most, sophisticated real estate developers on the planet. If the Carlyle Group did not understand the Appraisal Report, they would have told Cushman & Wakefield in

2005. Carlyle did not tell Cushman they did not understand. Carlyle did not file a complaint with the Board. The Board has presented a serious misrepresentation to this Court. By doing so, the Board has violated Respondents due process rights.

Similarly, if the Carlyle Group believed that the analyses and adjustments in the Appraisal Report did not support the valuation in that appraisal, it is reasonable to believe that client would have let Cushman know. By making such a charge, the Board has ignored cornerstone of real estate appraisal, specifically the Scope of Work for an appraisal assignment is dependent on the Intended Use and the Intended User, and the only Intended User of the Appraisal Report was the Client. *See*, Key Definitions, *infra* and The Appraisal of Real Estate 12<sup>th</sup> Ed. at 57. The Carlyle group spent thousands of dollars analyzing the feasibility of this development project before hiring Cushman to appraise the land as vacant. Unlike an FRT, where government regulators might be overseeing the appraisal of a property for financing by a government regulated financial institution, the Carlyle group answered to its market driven investors. As indicated in \_\_, the Intended Use of the Appraisal Report was for internal decision-making by the Carlyle Group. Anyone who is ever reviewed a commercial real estate appraisal, including the state expert's Appraisal Review and his Original Appraisal Report, knows that most of the time appraisers do not include, in the appraisal report, detailed calculations on how they came up with adjustments to comparable sales. For example, the State's expert's Appraisal Report does not include detailed calculations or even detailed explanations of adjustments. In large part that is because real estate appraisal, like any profession, is part art and part science. While published subsequent to the Appraisal, the 14<sup>th</sup> Edition of The Appraisal of Real Estate, candidly described as

“judgment” as a necessary part of the real estate appraisal, and mentions “judgment” numerous times in that learned treatise. One particularly relevant example is regarding the Sales Comparison Approach:

“Even when adjustments are supported by comparable data, the adjustment process and the indicated values should reflect judgment. Small inaccuracies can be compounded when several adjustments are added or multiplied, and thus seemingly precise arithmetic conclusions derived from adjusted data might contradict the appraiser’s judgment. The sales comparison approach is not formulaic. It does not lend itself to detailed mathematical precision. Rather, it is based on judgment and experience as much as quantitative analysis.”

*The Appraisal of Real Estate, 14th Ed.*, 931 (Appraisal Institute, 2015)

In the appraisal of a property in the Wildwoods where there has never been a high density, high-rise condominium development, with units projected to sell for almost \$1 million each, no one, particularly the State’s expert can conduct a scientific mathematical calculation with detailed explanations of their analyses. Respondents’ client, as the Intended User, appropriately made the decision that Respondents’ Appraisal Report by Respondents was appropriate for the Appraisal Assignment and for their Intended Use.

The Board makes allegations against Respondents regarding “... several adjustments to comparable sales data, without supporting discussion or explanation, that were either inconsistent or contradictory”. Complaint at 14, Paragraph 29. The Board provides no rationale why its opinion of what it believes is an appropriate explanation of adjustment is

better than that accepted by the Carlyle Group, the client who ordered the appraisal. To date, the Board has provided no communication to Respondents, on what the Board considers to be an appropriate explanation of adjustments. And in many instances, the State's expert provided a remarkably similar level of explanation of how he derived adjustments.

As previously noted, the Board has misrepresented the identity of the complainant to this Court. There is no support for the Board assertion complainant was the Carlyle Group. Further, the Board has never provided support for its charge Respondents' should have provided more explanation for adjustments than they did. All of these issues were verbally thrown at Respondents during their Statements under Oath, as "net opinions" of the Board. The transcript of those sessions, as well as further documents provided by the Board provide uncontradicted evidence the Board had already made up its mind Respondents were guilty before they walked into the room. And has also previously noted, this prejudicial behavior by a judicial board is an egregious violation of Respondents' due process rights, as pointed out by the US Supreme Court in *Masterpiece Cake*.

A particularly absurd charge by the Board is that the comparable sales in Wildwood Crest should have been adjusted downward to the subject location in the Diamond Beach section of Lower Township, citing the Respondents reference in the Appraisal Report:

"The Appraisers, in a section titled "Local Area Characteristics", described the Wildwood area as having greater attractions than the subject property's location in Diamond Beach, including a "World Famous Boardwalk, with five amusement piers, over 150 rides, two water parks, movie theaters, fireworks, hundreds of specialty shops, and a variety of restaurants ... [and] the Wildwood Convention Center [which] offers a wide variety of special events and activities year round."

Complaint at 15, Paragraph 29(c).

The charge that Wildwood Crest is superior to the Diamond Beach section is unsupported not only by assertions made by the Board, or by its expert. This is another example of how the

Board has violated Respondents' due process rights.<sup>11</sup> It is particularly egregious because the Board has charged Respondents with failure to explain their analyses, while the Board has made this unsupported allegation with vague reference to "the Wildwoods" having more tourist attractions, which totally ignores Respondents' consideration of their locational adjustment explanation that an almost \$1M condo buyer would want to be away from the noise and crowds and willing to travel the additional 5 minutes to 30 seconds it would take to travel from Wildwood Crest to Diamond Beach. The State also misrepresents the comparison between the Subject Property neighborhood and the neighborhoods of the comparable sales by the State's expert's reference to Lower Township as the basis of comparison, instead of the Diamond Beach section of that municipality.<sup>12</sup> Diamond Beach is located on the Wildwoods Island, adjacent to Wildwood Crest, is geographically separated and both physically and economically distinct from the mainland portion of Lower Township. *See*, Complaint at 15-16, Paragraph 29(d).

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<sup>11</sup> As the *Masterpiece Cakeshop* Court observed: "For these reasons, the Court cannot avoid the conclusion that these statements cast doubt on the fairness and impartiality of the Commission's adjudication of Phillips' case. Members of the Court have disagreed on the question whether statements made by lawmakers may properly be taken into account in determining whether a law intentionally discriminates on the basis of religion. *See Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. 520, 540– 542 (1993); *id.*, at 558 (Scalia, J., concurring in part and concurring in judgment). In this case, however, the remarks were made in a very different context—by an adjudicatory body deciding a particular case. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1730, 201 L.Ed.2d 35, 47 (2018).

<sup>12</sup> The Diamond Beach section of Lower Township where the subject property is located is more similar to Wildwood Crest than it is to the rest of Lower Township, and the selection of comparable sales in Wildwood Crest is justified. However, the market generally recognizes Wildwood Crest as more desirable than Lower Township, so if any adjustments for location were to be made at all, they would be expected to be downward adjustments instead of the upward adjustments that were applied. "Review of Appraisal Report of Property Located At The Grand Resort and Spa Site 9601 Atlantic Avenue, Lower Township, Cape May County, New Jersey" at 18 (Mark Sussman, MAI, November 2, 2016).

Based on the Board’s repeated violation of Respondents due process rights, as indicated above, Respondents’ request for a Motion to Dismiss should be granted. If the Court does not grant Respondents’ request for a Motion to Dismiss, it is not practicable for the Court to reply upon the State’s Response in Opposition to “.... ascertain what material facts exist without substantial controversy....” because the State has misrepresented a significant number of facts in controversy. R. 1:1-12.5(b)(d). This Reply identifies such facts as “ .... genuine issue[s] which can only be determined in an evidentiary proceeding....”. As a result of the State’s misrepresentation, if this this Honorable Court does not grant Respondents’ Motion, the Court cannot issue an “.... order specifying those facts and directing such further proceedings in the contested case as are appropriate”. R. 1:1-12.5(d).

### CONSTITUTIONAL ISSUES

The State has, for the most part, ignored the facts asserted in support of the Motion to Dismiss, *i.e.*, those facts relevant to the unconstitutional delegation of authority to establish regulatory standards by delegating that function to a private entity comprised of individuals with conflicts of interest.

The “non-delegation doctrine” has traditionally been applied to limit Congress’s authority to delegate “legislative power” to the *other* governmental entities. *See Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 472 (2001).

The Supreme Court has limited the types of authority and functions that Congress can delegate to a purely private entity. *See Department of Transportation v. Association of American Railroads*, 135 S.Ct. 1225, 1238 (2015) (the “AMTRAK case”)(Alito, J., concurring). *See also Wellness Int’l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1957 (2015) (Roberts, C.J.,

dissenting) (“It is a fundamental principle that no branch of government can delegate its constitutional functions to an actor who lacks authority to exercise those functions.”).

*Carter v. Carter Coal Co.* 298 U.S. 238 (1936) [hereinafter *Carter Coal*]. In *Carter Coal*, the Supreme Court invalidated the Bituminous Coal Conservation Act of 1935, a law that granted a majority of coal producers and miners in a given region the authority to impose maximum hour and minimum wage standards on all other miners and producers in that region. *Id.* at 311-12.

As the Circuit Court in *American Railroads II* indicated (its decision on remand from the United States Supreme Court), it becomes clear that what primarily drives the Court to strike down this provision is the self-interested character of the delegates’ . . . .” *Ass’n. of Am. R.R. v. Dep’t. of Transp.*, 821 F.3d 19, 31 (D.C. Cir. 2016) [hereinafter *AMTRAK II*].

In the *AMTRAK I*, Justice Thomas opined that “[W]e have too long abrogated our duty to enforce the separation of powers required by our Constitution. We have overseen and sanctioned the growth of an administrative system that concentrates the power to make laws and the power to enforce them in the hands of a vast and unaccountable administrative apparatus that finds no comfortable home in our constitutional structure. The end result may be trains that run on time (although I doubt it), but the cost is to our Constitution and the individual liberty it protects.” *Id.* at 1254-55.

The *AMTRAK I* case addressed the power of Congress to delegate to private parties the authority to promulgate regulations that have the force of law. The majority opinion in *AMTRAK I* held that Amtrak is a governmental agency (overruling the District of Columbia Circuit Court opinion ruling that it was a private entity). The Supreme Court remanded the matter for further proceedings in the Appellate Court.

The regulatory framework in *AMTRAK I* mirrors the establishment of USPAP and raises significant questions on the enforceability of USPAP as a standard of conduct because of the manner it was created, *i.e.*, by private parties not subject to oversight or accountability under the Constitution. The performance measures in *AMTRAK I* are not of merely academic interest. Amtrak and its contractual partners are required to incorporate the measures into their operating agreements "[t]o the extent practical." 49 U.S.C. 24308(c). The Association of American Railroads sued, charging that this sort of private delegation is invalid; and the District of Columbia Circuit Court agreed.

The Supreme Court reversed the District of Columbia Circuit Court, holding that Amtrak is actually a governmental entity, not a private actor. *Dep't of Transp. v. Ass'n of Am. R.R.*, 135 S.Ct. 1225, 1232-33 (2015). The Supreme Court decided *AMTRAK I*, 9-0, with an opinion by Justice Kennedy, a concurrence by Justice Alito, and a concurrence in the judgment by Justice Thomas. Accordingly, the case holdings cited by Respondents are not *dicta*.  
Complaint at 1.

The United States Supreme Court invalidated the PRIIA's<sup>13</sup> provision of joint regulatory authority to Amtrak, holding that the fundamental principle of "fairness" that emanates from the Due Process Clause does not permit Congress to delegate to Amtrak the "coercive power to impose a disadvantageous regulatory regime on its *market competitors*." *Id.* at 31. (Emphasis added).

TITLE XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) was passed in the aftermath of the Savings and Loan crisis of the late 1980s

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<sup>13</sup> Passenger Rail Investment and Improvement Act, Pub.L. 110-432, 122 Stat. 4917 (codified as amended 49 U.S.C. § 24101 (2015)).



and promulgated real estate appraisal requirements for Federally Related Transactions (FRTs).<sup>14</sup> Under FIRREA, each Federal financial institution regulatory agency is required to establish appraisal standards that meet the minimum requirements adopted by the Appraisal Foundation. 12 U.S.C. § 3339.

The Appraisal Foundation (TAF) is a private, non-profit organization established in 1987 by the nation's largest private valuation organizations. In 1987, TAF's appraisal industry members promulgated the Uniform Standards of Professional Appraisal Practice (USPAP), as and agglomeration of appraisal standards of the various founding organizations. TAF established the Appraisal Standards Board (ASB). FIRREA designated the ASB of the Appraisal Foundation as the entity responsible to promulgate appraisal standards, which are the current version of the Uniform Standards of Professional Appraisal Practice. (USPAP) promulgated by TAF appraisal industry members in 1987. 12 U.S.C. § 3339(1)(3). As a result of designation in FIRREA, USPAP is now recognized throughout the United States as the generally accepted standards of professional appraisal practice.

FIRREA established the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examinations Council ("FFIEC"). The ASC *has no effective oversight* in regard to the establishment of real estate appraisal standards under TAF, but the ASC enforces application of USPAP by state real estate appraisal regulatory agencies. There is no requirement that the Appraisal Foundation report either directly or indirectly to Congress. The ASC was criticized by the GAO in its June 2012 report on ASC's lack of oversight of Federal funds spent by the

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<sup>14</sup> For citations to sources concerning the origins of the regulatory framework for appraisers, *see generally, Regulation of Real Estate Appraisers, Edward V. Murphy*, Congressional Research Service, 7-5700 www.crs.gov RS22953 (June 26, 2012)

Appraisal Foundation on Title XI-related activities, but nothing else. That Audit indicates the GAO has no substantive control over the Appraisal Foundation. REGULATORS SHOULD TAKE ACTIONS TO STRENGTHEN APPRAISAL OVERSIGHT. GA0 -12-840T (June 2012).

The Appraisal Foundation openly states it is a private entity and it operates like one, in particular as to the promulgation of USPAP. The Appraisal Foundation's Board of Trustee members ("BOT") are appointed by the Appraisal Foundation member appraisal industry trade organizations. The CEO of the Appraisal Foundation is appointed by its BOT. Officers and employees of the Appraisal Foundation are appointed by the CEO. ASB members are appointed by the BOT of The Appraisal Foundation. The chair of the ASB is appointed by the BOT. The ASB promulgates USPAP, with no official signoff by the ASC. Because the Appraisal Foundation /ASB is effectively " ....an autonomous private enterprise...", with minimal oversight, as noted above, USPAP can be said to fail the non-delegation test. *Amtrak*, 135 S. Ct. at 1232-33.

Not only is the Appraisal Foundation a private entity by definition, it is not properly constituted to exercise the power that it possesses. It can establish and amend USPAP standards from time to time without oversight, standards that form part of the regulations governing the practice of real estate appraising. Federal Financial Institution Regulatory Agencies were given the power to accept or reject the authority of state real estate appraiser regulatory entities based on the determination of whether such state entities "..... recognize the standards..." and "...make decisions concerning appraisal standards... ", which are in conformance with USPAP. 12 U.S.C. § 3347(b).

There is, however, no evidence of Article II Officers approving USPAP at any time in its publication history. None of the members of the ASB are Article II Officers under the United States Constitution. None of the members of the Appraisal Foundation's BOT, and none of the

officers of the Appraisal Foundation are Article II Officers under the United States Constitution.

Finally, and perhaps most importantly, USPAP is created, amended, and administered by competitors of the Respondents herein, *to wit* TAF and the ASB. The New Jersey Appraisal Board is comprised of competitors of Respondents and their employer, Cushman & Wakefield, Inc. Thus, you have private competitors, at the Federal and state levels, creating regulations governing the conduct of their competitors and then populating the governmental board that determines the performance of the competitors in accordance with the USPAP standards. A more obnoxious violation of due process in this context is hard to imagine.

Respondents argue that New Jersey has unlawfully sub-delegated its administrative authority to the New Jersey Appraisal Board, a public-private entity made up of competitors of Respondents. The power “delegated by statute to an administrative agency cannot be sub-delegated in the absence of any indication that the Legislature so intends.” *Mercer Council # 4, N.J. Civil Serv. Ass'n v. Alloway*, 119 N.J.Super. 94, 99 (App.Div.), *aff'd* 61 N.J. 516 (1972).

Even if the delegation to the NJAB is appropriate, the NJAB has adopted the privately formulated and frequently amended USPAP standards in violation of due process as argued above.

The New Jersey Superior Court has held that the power to decide licensure, “may not be validly delegated to a private person or body, not subject to public accountability, particularly where the exercise of such power is uncontrolled by adequate legislative standards inhibiting arbitrary or self-motivated action by such private parties.” *N.J. Dep't of Transp. v. Brzoska*, 139 N.J.Super. 510, 513 (App.Div.1976).

*Contra Brzoska, supra*, the standards employed in the instant case were adopted by the privately formulated and frequently amended USPAP standards in violation of due process as

argued above. Thus, Respondents submit the facts herein, and in Respondents Answer, regarding the unconstitutional promulgation of USPAP, in support of their argument the State has delegated its authority to regulate real estate appraisal to an invalid regulatory standard.

Constitutional due process protects against the improper suspension or revocation of a license. *Graham v. N.J. Real Estate Comm'n*, 217 N.J.Super. 130, 135 (App.Div.1987). While “[a]n occupational license is in the nature of a property right,” *Graham v. N.J. Real Estate Comm'n*, 217 N.J.Super. 130, 135 (App.Div.1987), “constitutional due process protects against only the improper suspension or revocation of a license . . . .” *Limongelli v. N.J. State Bd. of Dentistry*, 137 N.J. 317, 326 (1993); *see also Graham, supra*, 217 N.J.Super. at 135-36.

The State repeatedly asserts USPAP as law.<sup>15</sup> *c.f.*, Complaint at 2, Paragraph 3. This supports Respondents’ presentation of the facts, regarding the unconstitutional promulgation of USPAP in Respondents’ Motion to Dismiss.

Instead of USPAP as law, as is its present status even though unconstitutionally promulgated, USPAP should be seen as a general guideline, which is then “fleshed out” by acceptable industry practice and learned treatises, in particular *The Appraisal of Real Estate*, published by the Appraisal Institute and frequently cited by New Jersey, and other, Courts in cases involving real estate appraisal.

USPAP is not only unconstitutionally promulgated, it is unconstitutionally vague, as evidenced by the fact that the 2005 USPAP consisted of 56 pages directly related to real estate

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<sup>15</sup> Notwithstanding Respondents’ belief USPAP is unconstitutionally promulgated as law, the State contends, and has relied upon it as law, and therefore, Respondents’ addressed USPAP requirements in their Appraisal Report, in their Motion to Dismiss and in this Reply.

appraisal (including 11 pages for Mass Appraisal for property tax assessment purposes)<sup>16</sup>, within a total 250 pages in the bound volume sold by TAF. The current 2018-19 USPAP consists of 43 pages directly related to real estate appraisal (including 7 pages for Mass Appraisal for property tax assessment purposes), with 360 pages in the bound volume, a total bound volume 44 % pages increase over the 13+ years of this case. Almost all that increase is due to attempted explanations of what USPAP means. That is in addition to enhanced training for USPAP Instructors. Thus, while USPAP is a legal standard, by virtue of Federal and state government incorporation into real estate appraisal statutes, the need for a “battle of the experts” to divine the true meaning of USPAP is itself an offense to the rule of law when it comes to regulator determination of whether an appraiser can keep their license and their livelihood. Like lawyers, different real estate appraisers have different opinions on how to approach an issue in their own profession.

The State has offered neither facts nor argument to oppose that: 1) there was a delegation to a private entity, 2) the entity is comprised of competitors, 3) there are no Article II officers overseeing the creation or adoption of USPAP or its amendments, and 4) the delegation of regulatory authority was to a private entity. Further, USPAP is unconstitutionally promulgated and unconstitutionally vague. As acknowledged in *Carter Coal Co.*, “A more obnoxious violation of due process in this context is hard to imagine.” *American Railroads*, 135 S.Ct. 1225, 1238 (2015). Accordingly, unconstitutionally vague standards published, for sale,

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<sup>16</sup> While TAF, the ASB and USPAP were originally intended by Congress to deal with real estate appraisal, TAF subsequently expanded its work beyond real estate appraisal into other areas of appraisal, i.e. business and personal property valuations. TAF even created a separate “Appraisal Practices Board” beyond its Congressional authorizations regarding boards overseeing real estate appraisal of federally related transactions. After a significant amount of criticism and the Appraisal Institute’s work with various state legislatures to develop professional appraisal standards for non-FRT’s, TAF disbanded their “Appraisal Practices Board”.

by an unconstitutionally promulgated document as a result of unconstitutional delegation calls for this Honorable Court to grant Respondents' Motion to Dismiss on constitutional grounds.

**RESPONSE TO STATE'S ARGUMENTS**

**POINT I**

**THE STATE ADMITS IT HAS BASED THE STANDARD ON WHICH RESPONDENTS ARE CHARGED ON THE UNCONSTITUTIONAL USPAP**

In its Response in opposition to Respondent's Motion to Dismiss, the State admits it has based its case against Respondents upon USPAP. Above, Respondents have shown how USPAP is unconstitutionally promulgated as held in the United States Supreme Court's decision in AMTRAK II and the D.C. Circuit Court's decision on remand in Amtrak II. Consequently, this Honorable Court must strike the portions of the State's case based on those unconstitutionally promulgated appraisal standards as law. In place of USPAP as a legal standard, the Court may consider USPAP to be the broad guidance outline it is and rely upon the learned treatise accepted by New Jersey Courts, "The Appraisal of Real Estate," published by the Appraisal Institute, as well as other generally accepted appraisal industry practices.

The State admits its real estate appraiser standards were originally based on USPAP when the State conformed to the original FIRREA requirements. Response at 9-10. The State statute read:

"Establish a code of professional ethics for persons licensed or certified under this act which meets the standards established by the [USPAP] promulgated by the [ASB] of [TAF]" N.J.S.A. 45:14F-8.

And, the State goes on to indicate:

An appraiser's failure to comply with the USPAP and those additional standards could be construed by the Board as an act of professional misconduct, as defined by N.J.S.A. 45:1-21(e). *Ibid*

Further, the State admits it adopted USPAP as the sole appraiser standards law when New Jersey revised its real estate appraiser statute to require state certification for any type of real property valuation.

“... In 1996, following public notice and comment, the Board recodified N.J.A.C. 13:40A-5. as the current N.J.A.C. 13:40A-6.1, deleting the State-specific standards to provide that appraisals shall conform solely to the USPAP standards in effect at the time of the appraisal, and with the Board retaining discretion to construe an appraiser's failure to so comply with USPAP standards as professional misconduct. See, 28 N.J.R. 4724(a); 29 N.J.R. 369(a). The rule-making history of this amendment indicates the Board's recognition that the "USPAP standards are sufficiently exhaustive and that no requirements beyond USPAP are necessary or appropriate.”

Response at 10.

The reality is that USPAP is law because it has been promulgated by TAF, which got its franchise as a result of the unconstitutional Congressional delegation of creation of law.

The State asserts it adopted USPAP in order to create “consistency” and “reciprocity”.

Response at 10. Then, the State utilizes its self-serving assertions to support its use of USPAP as the standard for real estate appraisals in New Jersey. Response at 10-11. Nowhere in the State’s Response does the State address the facts presented by Respondents on the unconstitutional promulgation of USPAP. See, AMTRAK (USSC), AMTRAK II (DC Circuit). Instead, the State requests this Court to accept its pleadings at face value. Response at 11.

The Appraisal Institute has been working for several years in an attempt to have state real estate appraisal regulatory agencies to adopt its principles-based “Standards of Valuation

Practice” (“SVP”).<sup>17</sup> At the Appraisal Institute’s 2018 National Conference, it was indicated that some FRT-mandate states<sup>18</sup> had adopted SVP in part and other states are considering it.

## POINT II

The State misrepresents the holding of Amtrak I and Amtrak II. The District of Columbia Circuit Court decision summarizes the preceding decisions as follows, below. Given the relevance of these federal decisions, the opinion is quoted at length.

This Court originally sided with the Department. It held that the PRIIA, first, did not violate the Due Process Clause's prohibition against "interested private parties['] . . . wielding regulatory [\*3] authority" because Amtrak was not truly private and, second, did not constitute an unlawful delegation of legislative power to a non-governmental entity because the FRA jointly participated. *See Ass'n of Am. R.Rs. v. Dep't of Transp.* (AAR I), 865 F. Supp. 2d 22, 29, 32-33 (D.D.C. 2012). The District of Columbia Circuit Court reversed, declining to address the former due-process issue but holding on the latter that § 207 was in fact an improper delegation to a private actor. *See Ass'n of Am. R.Rs. v. Dep't of Transp.* (AAR II), 721 F.3d 666, 670, 406 U.S. App. D.C. 34 (D.C. Cir. 2013).

The Supreme Court then heard the case, ultimately vacating AAR II as relying on a "flawed premise." *Dep't of Transp. v. Ass'n of Am. R.Rs.* (AAR III), 135 S. Ct. 1225, 1233, 191 L. Ed. 2d 153 (2015). It held that "Amtrak is a governmental entity, not a private one, for purposes of determining the constitutional issues presented in this case." *Id.* But it did not venture further. Still-uncharted issues included whether the Act violated due process by giving a for-profit corporation regulatory authority over its own industry and whether § 207(d) violated the Appointments Clause. *Id.* at 1234. The Supreme Court instructed that, "[o]n remand, the Court of Appeals" should address these questions after "identifying the issues that are properly preserved and before it." *Id.*

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<sup>17</sup> <https://www.appraisalinstitute.org/advocacy/standards-of-valuation-practice/>;  
[https://www.appraisalinstitute.org/assets/1/7/SVP\\_effective\\_1-1-20151.pdf](https://www.appraisalinstitute.org/assets/1/7/SVP_effective_1-1-20151.pdf)

<sup>18</sup> <https://www.asc.gov/State-Appraiser-Regulatory-Programs/StateOperationsAndRequirements.aspx>



The District of Columbia Circuit Court did just that. Its ensuing opinion first concluded that "the freight operators' due process claim and arbitration claim are both properly presented for our review." *Ass'n of Am. R.Rs. v. Dep't of Transp.* (AAR IV), 821 F.3d 19, 27, 422 U.S. App. D.C. 202 (D.C. Cir. 2016). On that first [\*4] count, the Circuit Court then held that "PRIIA violates due process" because it "gives a self-interested entity regulatory authority over its competitors." *Id.* As to the second issue, the opinion concluded that § 207(d) violated the Appointments Clause because the arbitrator would act as a "principal officer" who required appointment by the President and confirmation by the Senate, as opposed to mere selection by the Surface Transportation Board.

*Id.* at 36.

*Ass'n of Am. R.R v. DOT*, 2017 U.S. Dist. LEXIS 221476, \*2-4, 2017 WL 6209642

The District Court Circuit Court goes on to Indicate:

The last appellate decision did not specify a remedy, so both sides now ask for the Court to execute the District of Columbia Circuit Court's mandate by entering judgment for Plaintiff. *See* Mot. at 5; Opp. at 3. They agree that the Court must declare § 207(d) void and unconstitutional and vacate the May 2010 metrics and standards. They dispute, however, whether the whole of § 207 must go as well.

*Ass'n of Am. R.R. v. DOT*, 2017 U.S. Dist. LEXIS 221476, \*4, 2017 WL 6209642.

In summary, the District of Columbia District Court vacated the Standards, which were the subject of the preceding cases. *Ass'n of Am. R.R v. DOT*, 2017 U.S. Dist. LEXIS 221476, \*8, 2017 WL 6209642. That Court also declared the entire questionable section of the legislation in controversy as void and unconstitutional. *Ass'n of Am. R.R v. DOT*, 2017 U.S. Dist. LEXIS 221476, \*8, 2017 WL 6209642. The District of Columbia Circuit Court wound up its analysis thus:

But the Due Process Clause of the Fifth Amendment puts Congress to a choice: its chartered entities may either compete, as market participants, or regulate, as official bodies. After all, "[t]he difference between producing . . . and regulating . . . production is, of course, fundamental." To do both is an affront to "the very nature of things," especially due process.

*Ass'n of Am. R.R v. DOT*, 2017 U.S. Dist. LEXIS 221476, \*8, 2017 WL 6209642.

The State admits the District of Columbia Circuit Court "... held that Section 207 of PRIIA violated due process in its grant of regulatory power to Amtrak, insofar as it was a profit-motivated actor given the authority to wield regulatory power over market competitors, namely freight train operators, for scarce resources primarily train track, in the very industry that it was regulating. *Ass'n of Am. R.R. v. United States DOT*, 821 F.3d 19, 27, 31 (D.C. Cir. 2016). Response at 13. However, State then goes on to admit "...the appropriate constitutional inquiry is premised not on a mere distinction over whether an entity, which is delegated regulatory authority, is private or public, but rather on whether the entities "compete, as market participants, *or* regulate, as official bodies[,]" as doing both may be considered an "affront ... to due process." *Ibid.* [emphasis in original]." Response at 14.

The State incorrectly asserts "... TAF's activities must be monitored and reviewed by the ASC, which was established by Title XI of FIRREA as a committee within the federal interagency body known as the FFIEC. 12 U.S.C.S. § 3350". Response at 14. That citation merely includes definition of the ASC. 12 U.S.C.S. § 3350 (LexisNexis). **It does not say anything about TAF's activities being monitored and reviewed by the ASC.**

The ASC does not oversee the activities of TAF, as previously indicated herein and in Respondents' Motion. Motion at 13. The State misrepresents ASC's role in regard to TAF in stating "Among its supervisory roles, the ASC is required to monitor and review "the practices, procedures, activities and organizational structure of TAF, as well as the appraisal and licensing requirements of the states, and must submit annual reports to Congress detailing the manner in which it executes its various functions. 12 U.S.C.S. §§ 3332(a)(1), (5) and (b). Further, the State incorrectly asserts "... ASC and TAF are not profit-driven enterprises, and have no discernable economically self-interested motives to compete with Respondents or undertake initiatives that would directly impugn their ability to freely practice in their chosen real estate appraisal market".

The ASC is a governmental agency that has no effective oversight of TAF as previously cited in the GAO's 2012 audit of that agency. REGULATORS SHOULD TAKE ACTIONS TO STRENGTHEN APPRAISAL OVERSIGHT. GAO -12-840T (June 2012), stating "... In particular, ASC has not fully developed appropriate policies and procedures for monitoring state appraiser regulatory agencies, the federal banking regulators, and the Appraisal Foundation". GAO -12-840T at 11. In that audit, the GAO specifically indicated the ASC needed to keep closer watch on how TAF spent public funds. GAO -12-840T at 16, stating "ASC's policies and procedures manual does not address how ASC monitors The Appraisal Foundation....".

While TAF is ostensibly a nonprofit, its main source of income is the selling of USPAP, in hardcopy, electronic format for the document itself, as well as selling courses, which are required by the AQB, and thus by state regulators, in order for Respondents to renew their real estate appraiser credentials. Such “Program Services” constituted 79% of its revenue in 2015.<sup>19</sup> Thus, the entity that created the law is funded by the *selling of the law*. At least one member of the ASB has testified before a judicial body on USPAP compliance, while a member. Former members reportedly provide such expert testimony, without the typical post-employment hiatus required of government officials. TAF leadership reportedly enjoy salaries far in excess of the typical Article II Officer. TAF’s IRS 990, as analyzed by ProPublica indicates the CEO’s compensation was \$354,696 in 2015.<sup>20</sup> In 2013, the NJ Appraiser Board took in \$1.6 Million, half of which went into the State’s General Fund. All that can reasonably be seen as “economically self-interested motives”.

USPAP has been frequently criticized by appraisers as being unclear and several states have either adopted, or are considering, alternate standards for non-FRTs. USPAP does not address any issue of appraisers being able to work in other jurisdictions, as the ASC Policy Statements in effect in 2005 addressed the issue of temporary practice and reciprocity. Appraisal Subcommittee, Policy Statements Regarding State Certification and Licensing of Real Estate Appraisers, September 22, 1997. Therefore, the State’s argument

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<sup>19</sup> <https://projects.propublica.org/nonprofits/organizations/232493621>

<sup>20</sup> <https://projects.propublica.org/nonprofits/organizations/232493621>

USPAP facilitates competition is a misrepresentation of USPAP and the State's argument is invalid on its face. The only competition USPAP encourages is "battles of the experts". While a battle of the experts may be appropriate in litigation where the value of real property is at issue, it should not be necessary for either real estate appraisers or a Court to have regulatory standards first determined in "shoot from the hip" net opinions by the Board, and then to have market competitors of the Respondents prosecute Respondents based on unconstitutionally vague, privately promulgated standards, that change year to year, such changes initiated by private parties who, again, are market competitors of the Respondents..

By this point, the Court can see that the Real estate appraiser regulatory regime has been corrupted by the unconstitutional delegation by Congress to TAF. That unconstitutional delegation has resulted in the "theater of the absurd" drama now unfolding before this Court. Not only is USPAP unconstitutionally promulgated, it is unconstitutionally applied because it is unconstitutionally vague, as the Court can see from the pleadings to date. *State v. Pomianek*, 2015 WL 1182529, 2015 N.J. LEXIS 275 (New Jersey unanimously struck down subsection of state's bias-intimidation statute as unconstitutionally vague). As the practical definition of "unconstitutionally vague," USPAP meets that standard.

The State violates Respondents' due process rights by its enforcement of unconstitutionally promulgated law that is so unconstitutionally vague it requires a "battle of the experts" to ascertain, while TAF and the State economically benefit. As a result, regulated appraisers, such as Respondents, are at the mercy of the Board's unsupported opinions about what USPAP really means because two qualified experts could, and often do, arrive at different

conclusions of what is required by USPAP, not to mention reasonable differences that reasonable appraisers could have the approach to, and final estimate in the value of real property.

### POINT III

The State's Response does not properly address the issue of an industry regulating itself under the color of law. Instead the State attempts to avoid the issue by citing statutes and abstract procedures without addressing the real-life situation faced by Respondents.

USPAP is unconstitutionally promulgated because it is law enforced by the Federal Government and States under the oversight of the Federal ASC. To say otherwise is to ignore Justice Alito's admonition in his concurrence in the U.S. Supreme Court decision in the AMTRAK:

This case, on its face, may seem to involve technical issues, but in discussing trains, tracks, metrics, and standards, a vital constitutional principle must not be forgotten: **Liberty** requires accountability.

When citizens cannot readily identify the source of legislation or regulation that affects their lives, Government officials can wield power without owning up to the consequences. One way the Government can regulate without accountability is by passing off a Government operation as an independent private concern. Given this incentive to regulate without saying so, everyone should pay close attention when Congress "sponsor[s] corporations that it specifically designate[s] *not* to be agencies or establishments of the United States Government." *Lebron v. National Railroad Passenger Corporation*, 513 U. S. 374, 390, 115 S. Ct. 961, 130 L. Ed. 2d 902 (1995).

*DOT v. Ass'n of Am. R.R.*, 135 S. Ct. 1225, 1234, 191 L.Ed.2d 153, 163 (2015)

The Board currently has only four sitting members. None of those are public members. One of the sitting members was, at the start of the case, a senior manager of one appraisal firm, and appears to currently be a senior consultant to another appraisal firm, both of which are

arguably direct competitors of Respondents' employer Cushman & Wakefield. Yet, even with that member's best efforts to be impartial, it is not possible to overcome at the least, an appearance of conflict or impropriety for him to be sitting in judgment of another industry participant working for a competing firm. Under the unconstitutionally promulgated real estate appraiser regulatory regime, regulating most real estate appraisers do not have the resources to fight the inscrutable meanings of unconstitutionally vague USPAP.

There is another issue, referenced above. As noted, in 2013, the Board took in \$1.6 million, half of which went to the State General Fund. Board members get no stipend. They do not even get parking reimbursement, while they take off from their "day job" to perform Board duties., They Board members often put in the evenings and weekends reviewing appraisal reports in disciplinary matters. Because the State siphons off half the revenue brought in by the unconstitutional regulatory regime. As a result, the Board made an improper "gut" level judgment in this case instead of having an impartial objective review of the Appraisal Report *before* coming to their conclusions.

In addition to the failure of the State to provide the Board with adequate resources to properly analyze the Appraisal Report before arriving at a conclusion, the Board members were originally incorrectly advised Respondents' client, Carlyle Group, filed the consumer complaint against Respondents. As a result, prior to having an objective independent analysis of the Appraisal Report, the Board started out with presumption of guilt and then had to find support for their presumption.

As previously noted, the Board continuously asserted the unsupported opinion that Wildwood Crest was superior to the Diamond Beach neighborhood. The Board State's expert compared the Subject Property neighborhood to the whole of Lower Township while the Subject

is in a geographically separate section of that Township with demographics and properties similar or superior to Wildwood Crest.

“The Diamond Beach section of Lower Township where the subject property is located is more similar to Wildwood Crest than it is to the rest of Lower Township, and the selection of comparable sales in Wildwood Crest is justified. However, the market generally recognizes Wildwood Crest as more desirable than Lower Township so if any adjustments for location were to be made at all, they would be expected to be downward adjustments instead of the upward adjustments that were applied,....” Sussman Appraisal Review at 18.

One can reasonably propose the State’s expert was mirroring the Board’s predisposition in that discussion of location adjustments between the Subject Property and comparable sales in Wildwood Crest, because in the ”Sales Comparison Approach/Location” section of the State’s expert’s appraisal report, the State’s expert States the following:

In fact, the subject property lies on the Lower Township/Wildwood Crest boundary line. Diamond Beach is more similar in character to Wildwood Crest than it is to the rest of Lower Township. No comparable sales suitable for analysis were found in Diamond Beach, however several sales were found in neighboring Wildwood Crest. Although the market generally recognizes Wildwood Crest as more desirable than Lower Township, the Diamond Beach section is viewed as comparable to Wildwood Crest and no location adjustment for Diamond Beach as compared to Wildwood Crest is warranted. Sussman Appraisal Report at 44.

When asked why the Board does not hire an outside expert to conduct a detailed professional analysis of a highly complex appraisal such as in the instant case, the response is they do not have the money. Therefore, the State has put the Board in the position of enforcing an unconstitutionally promulgated regulatory regime without constitutional safeguards for conflict and due process, without sufficient resources to perform in the objective manner identified by the United States Supreme Court in *Masterpiece Cakeshop*, while the State siphons off half of the revenue from the unconstitutionally promulgated regime. If that is not economic self-interest, then nothing is.



It is not only offensive to Respondents to have spent now over eight years defending themselves in an anonymous complaint case that should have never have been accepted in the first place. It is obscene that the State has gone to such lengths to aggressively prosecute this case in an anonymous complaint with a multitude of alleged violations, most of which cannot be proven to be more than net opinions. The State has cost Respondents not only money but serious concern over their livelihood. Not only did Respondents *not* receive swift justice. But it appears as a result of an anonymous complaint, the Board developed a preconceived opinion Respondents were guilty before conducting a proper in depth and *objective* analysis and then had to find support for their opinion.

The State abused the system by basing its complaint on that preconceived opinion, then directed their expert to support the preconceived opinion. The results of the State's expert's reports include the litany of points proffered by the State in the run-up to filing the Complaint. Instead of the State telling their appraiser what they believed wrong before state even began to level specific charges against respondents, the State had an obligation to have the an expert conduct an unbiased review before the State even began to level specific charges against Respondents. As a result of such pre-judgment, it is offensive not only to Respondents, but also to the taxpayers of New Jersey and to the users of real estate appraisal services to be subject to such an unconstitutional and dysfunctional real estate appraisal regulatory regime.

**CONCLUSION**

For the foregoing reasons, Respondents respectfully request that this Court enter an Order granting their Motion to Dismiss.

**O'HAGAN MEYER LP**

/s/ Kevin F. Berry

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IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE : **Administrative Action**  
CERTIFICATION OF :  
:  
**GERALD McNAMARA** :  
**CERTIFICATION NO.** :  
**42RG00081100** :  
:  
TO PRACTICE REAL ESTATE :  
APPRAISING IN THE STATE OF NEW :  
JERSEY :

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IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE :  
CERTIFICATION OF :  
:  
**COLLEEN KUDRICK** : **PROOF OF SERVICE**  
**CERTIFICATION NO.** :  
**42RG0021800** :  
:  
TO PRACTICE REAL ESTATE :  
APPRAISING IN THE STATE OF NEW :  
JERSEY :

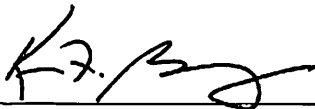
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I, Kevin F. Berry, Esquire, hereby certify that on this 13<sup>th</sup> day of August, 2018, a true and correct copy of the Gerald McNamara and Colleen Kudrick's Reply to Complainant's Memorandum of Law in Opposition to Respondents' Motion to Dismiss the Complaint served upon the parties this date *via Court ECF* to the following:

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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

## ASC Roundtable Summary

**November 5, 2018**

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The Appraisal Subcommittee (ASC) hosted its second annual Roundtable, *The Evolving Real Estate Valuation Landscape II*. The Roundtable took place on Monday, November 5, 2018, at the Office of the Comptroller of the Currency (OCC) in Washington, DC. Sixty-six participants and 43 organizations representing Federal and State agencies, as well as the private and non-profit sectors took part in the day-long event.

The discussion focused on the integration of financial technology within today's appraisal landscape. The purpose of the Roundtable was to provide a forum for dialogue between stakeholders with varying perspectives and priorities with the goal of developing a common approach to the integration of technology into the valuation process.

The Roundtable started with presentations by panel members representing the U.S. Department of the Treasury, American Bankers Association, Housing Policy Council and Montana Board of Real Estate Appraisers. Following the presentations, participants divided into 8 separate discussion tables to address the topic of technology integration in residential and commercial real property valuation. Particular focus was given to residential and commercial lending where technology is already having an impact. The afternoon session brought all attendees together to address the issues in a plenary setting.

In general, it was acknowledged that technology (*e.g.*, artificial intelligence and data) will continue to evolve the valuation landscape at an ever-increasing pace. Many participants suggested further discussions among Federal and State regulators, valuation providers, standards setters, the securitization market and other real estate valuation industry stakeholders on issues

around: (1) parity among the various constituencies; and (2) understanding the applicability, benefits and risks of technology tools, as well as the appropriate restrictions on their use.

The afternoon session, which brought all attendees together, provided a forum for representatives from each of the discussion tables to present a summary of topics addressed in the morning session by the break-out groups. Topics of discussion where there was general interest in further conversation included:

- Importance of integrating human element and technology
- Consideration of uniform standards for data and technology used in all types of valuations (*e.g.*, appraisals, evaluation, automated valuation models [AVMs])
- Advantage of access to more data by the appraisal profession
- Need for definitions/product descriptions for new products such as hybrid and bifurcated appraisals
- Support for review of existing statutes/regulations
- Value of regulators, lenders, the valuation profession, and vendors embracing innovation while understanding and containing underlying risk
- Concern over the speed at which non-regulated institutions may bring technology to the market versus regulated institutions, and the potential impact to the marketplace

Other topics of discussion included:

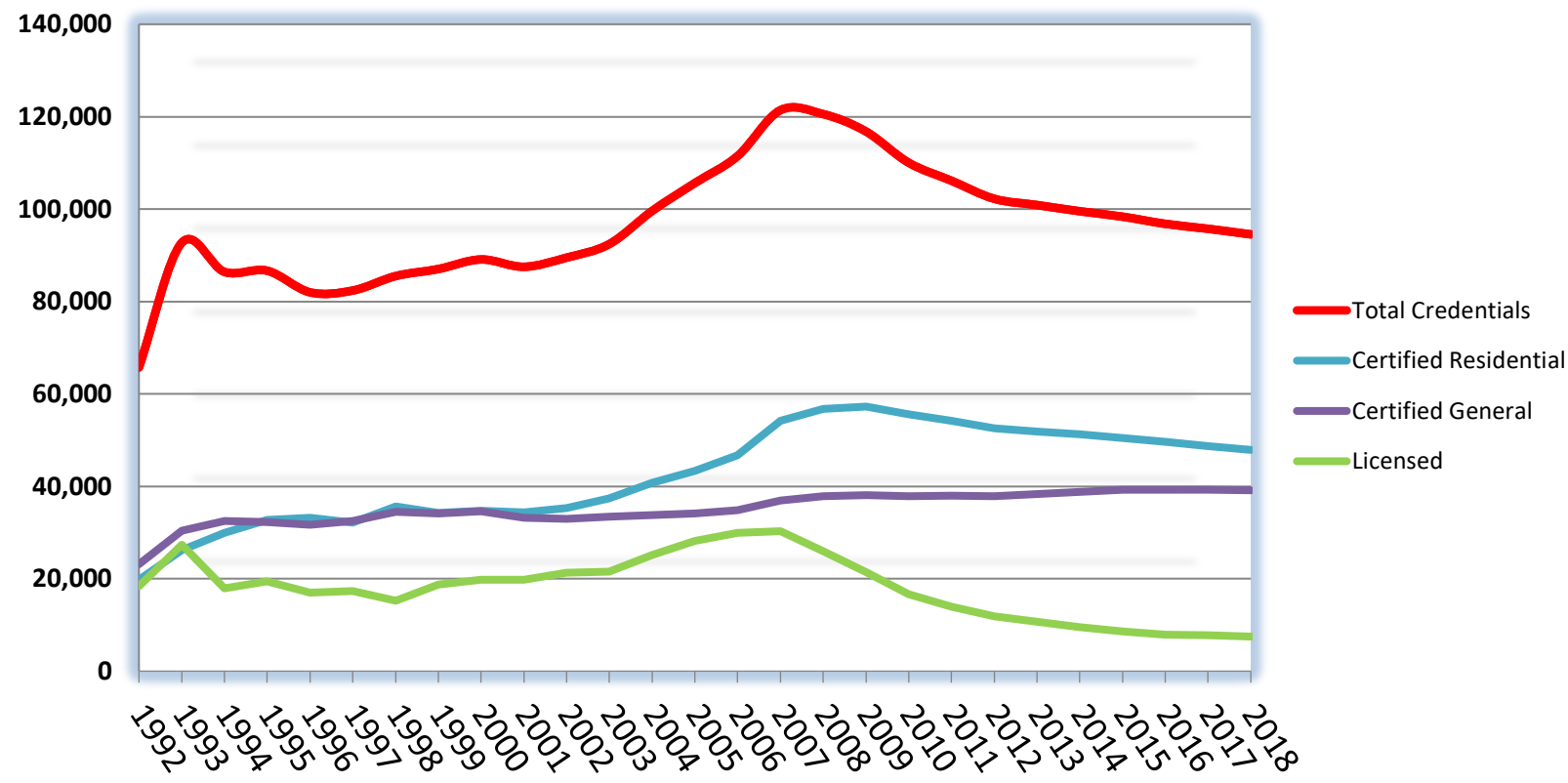
- Regulation of innovative technology products
- Use of automation in commercial property valuation
- Performing collateral valuation at the beginning of the loan manufacturing process rather than later in the process

- Degree to which AVMs and other automated tools should be used in lieu of traditional appraisals
- Whether it would be appropriate or necessary for and, if so, how and to what degree should appraisal professionals, lenders, regulators and others to have or be allowed access to the growing pools of data

ASC Roundtables provide a valuable forum to share information and facilitate discussion with industry thought leaders involved in real property valuation. In conformance with the ASC's 2019-23 Strategic Plan, the ASC intends to continue hosting events such as this to facilitate effective and efficient valuation services and regulation.

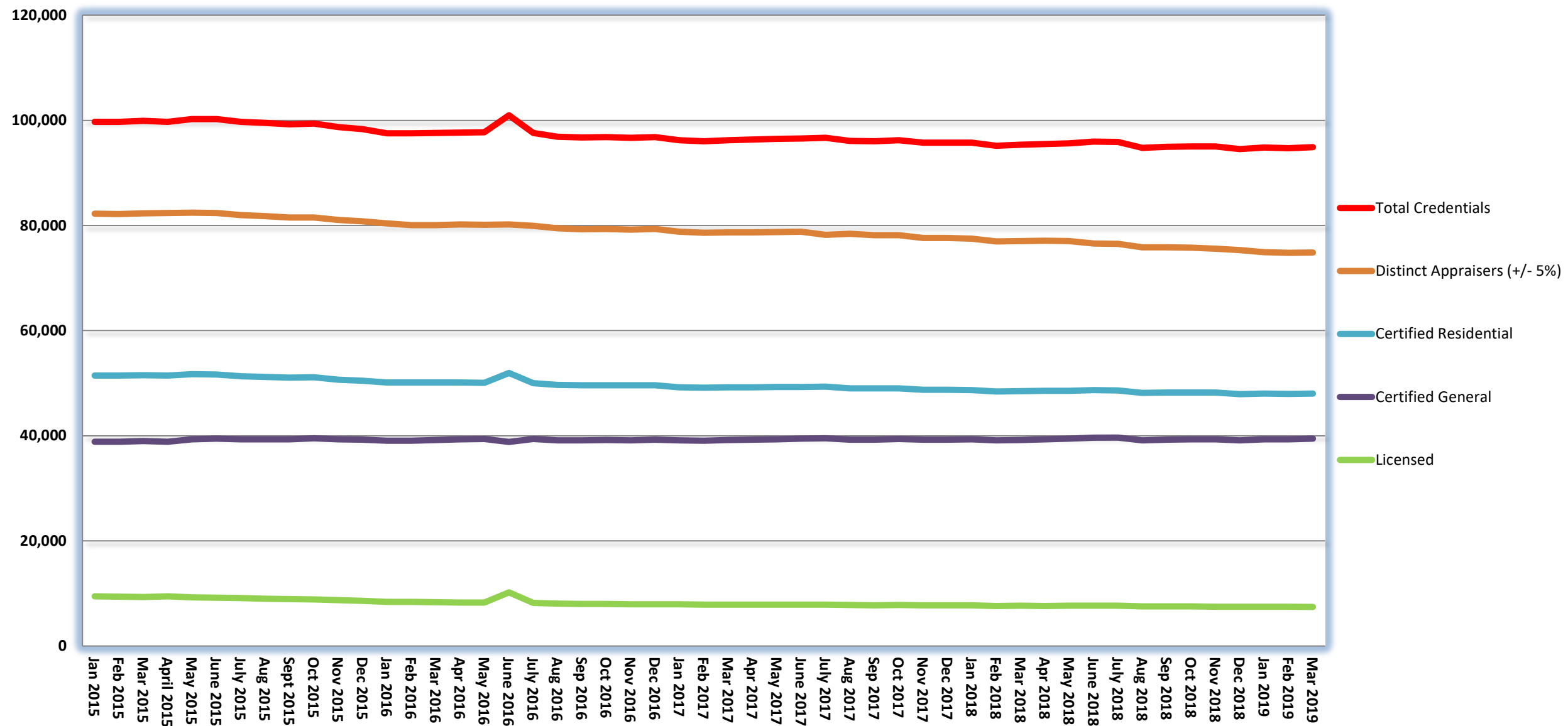
Comments are welcome and can be sent to [jim@asc.gov](mailto:jim@asc.gov).

### Yearly Appraiser Credential Trends



### Monthly Appraisers Credential Trends

As of Mar 26, 2019





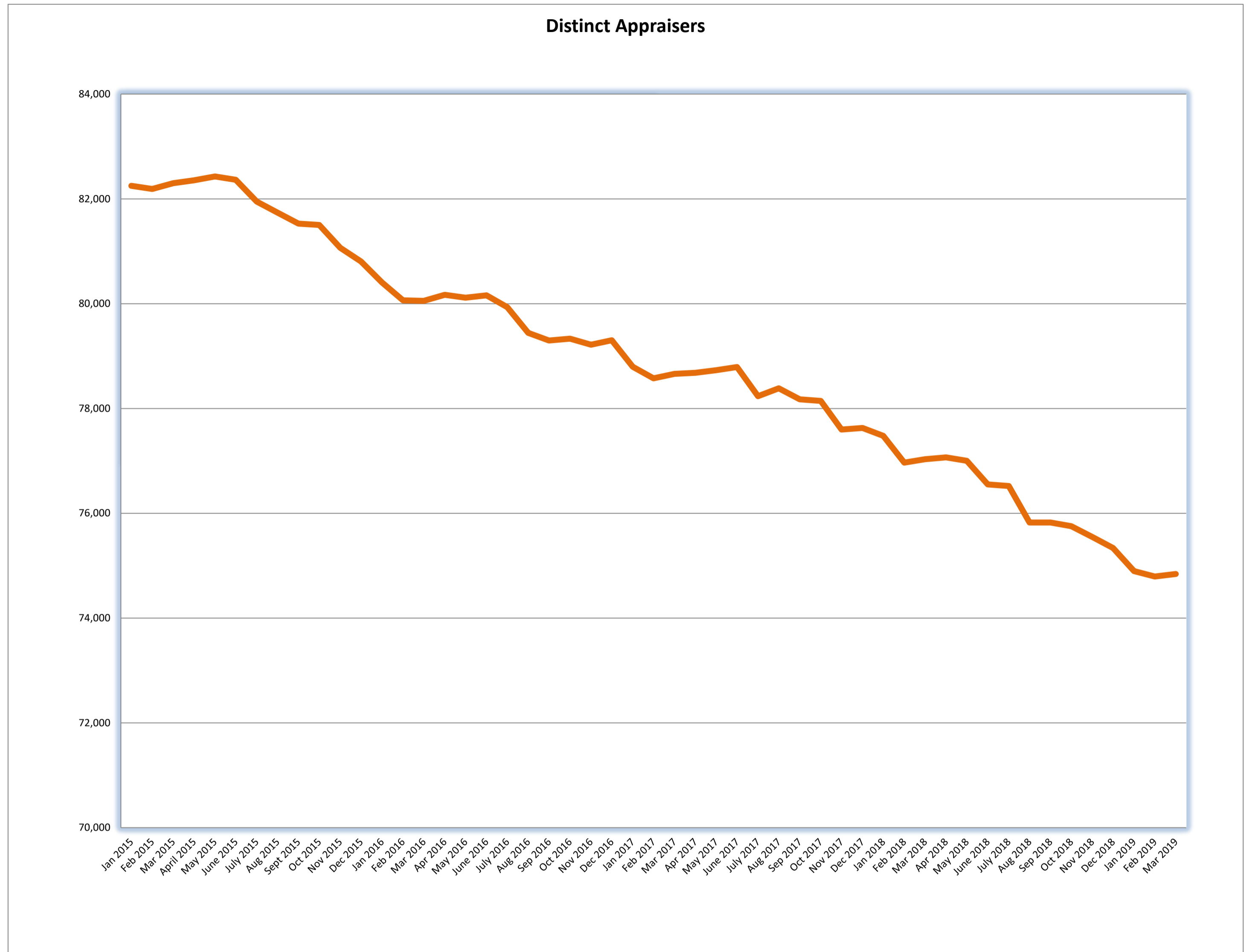
## Year-End Appraiser Credentials

Year-End	Certified General	Certified Residential	Licensed	Transitional	Total Credentials
1992	23,133	19,772	18,406	4,405	65,716
1993	30,348	26,163	27,316	8,882	92,709
1994	32,450	29,949	17,960	6,043	86,402
1995	32,305	32,733	19,375	2,244	86,657
1996	31,628	33,141	16,984	226	81,979
1997	32,519	32,161	17,371	318	82,369
1998	34,485	35,697	15,287	23	85,492
1999	34,082	34,237	18,676	24	87,019
2000	34,609	34,702	19,755	28	89,094
2001	33,246	34,401	19,837	23	87,507
2002	32,959	35,233	21,261	37	89,490
2003	33,394	37,418	21,575	47	92,434
2004	33,725	40,726	25,095	46	99,592
2005	34,074	43,327	28,185	52	105,638
2006	34,812	46,701	29,921	51	111,485
2007	36,881	54,177	30,286	63	121,407
2008	37,851	56,704	25,931	65	120,551
2009	38,061	57,253	21,434	43	116,791
2010	37,807	55,522	16,674	23	110,026
2011	38,016	54,201	13,900	13	106,130
2012	37,834	52,504	11,875	12	102,225
2013	38,332	51,893	10,648	1	100,874
2014	38,777	51,240	9,507	0	99,524
2015	39,257	50,472	8,622	0	98,351
2016	39,246	49,631	7,926	0	96,803
2017	39,262	48,720	7,749	0	95,731
2018	39,135	47,908	7,481	0	94,524

## Monthly Appraiser Credential Trends

Date	Certified General	Certified Residential	Licensed	Transitional	Total Credentials	Appraisers (+/- 5%)
Jan 2015	38,828	51,419	9,460	0	99,707	82,249
Feb 2015	38,865	51,448	9,358	0	99,671	82,187
Mar 2015	39,012	51,538	9,342	0	99,892	82,299
April 2015	38,828	51,419	9,460	0	99,707	82,354
May 2015	39,315	51,680	9,249	0	100,242	82,428
June 2015	39,435	51,617	9,195	0	100,247	82,366
July 2015	39,290	51,335	9,101	0	99,726	81,950
Aug 2015	39,309	51,164	9,009	0	99,482	81,740
Sept 2015	39,284	51,056	8,889	0	99,229	81,527
Oct 2015	39,480	51,085	8,833	0	99,398	81,502
Nov 2015	39,282	50,672	8,751	0	98,705	81,069
Dec 2015	39,257	50,472	8,622	0	98,351	80,806
Jan 2016	39,032	50,105	8,378	0	97,515	80,407
Feb 2016	39,027	50,104	8,379	0	97,510	80,062
Mar 2016	39,187	50,107	8,325	0	97,619	80,055
Apr 2016	39,288	50,097	8,294	0	97,679	80,170
May 2016	39,352	50,072	8,277	0	97,701	80,114
June 2016	38,818	51,936	10,202	0	100,956	80,160
July 2016	39,394	50,010	8,196	0	97,600	79,935
Aug 2016	39,099	49,672	8,078	0	96,849	79,441
Sep 2016	39,092	49,622	7,995	0	96,709	79,297
Oct 2016	39,201	49,622	8,001	0	96,824	79,334
Nov 2016	39,128	49,591	7,934	0	96,653	79,219
Dec 2016	39,246	49,631	7,926	0	96,803	79,302
Jan 2017	39,119	49,210	7,899	0	96,228	78,794
Feb 2017	39,029	49,131	7,842	0	96,002	78,577
Mar 2017	39,196	49,173	7,851	0	96,220	78,663
Apr 2017	39,256	49,214	7,854	0	96,324	78,683
May 2017	39,333	49,265	7,852	0	96,450	78,732
June 2017	39,429	49,259	7,855	0	96,543	78,789
July 2017	39,513	49,309	7,833	0	96,655	78,235
Aug 2017	39,265	48,994	7,793	0	96,052	78,386
Sep 2017	39,241	49,005	7,759	0	96,005	78,174
Oct 2017	39,404	49,022	7,778	0	96,204	78,142
Nov 2017	39,229	48,763	7,757	0	95,749	77,596
Dec 2017	39,262	48,720	7,749	0	95,731	77,629
Jan 2018	39,316	48,689	7,744	0	95,749	77,478
Feb 2018	39,087	48,420	7,635	0	95,142	76,968
Mar 2018	39,190	48,492	7,644	0	95,326	77,034
Apr 2018	39,310	48,530	7,628	0	95,468	77,066
May 2018	39,418	48,556	7,637	0	95,611	77,002
June 2018	39,627	48,700	7,638	0	95,965	76,551
July 2018	39,623	48,603	7,643	0	95,869	76,519
Aug 2018	39,126	48,126	7,529	0	94,781	75,825
Sep 2018	39,246	48,195	7,518	0	94,959	75,822
Oct 2018	39,300	48,219	7,514	0	95,033	75,751
Nov 2018	39,302	48,217	7,503	0	95,022	75,548
Dec 2018	39,135	47,908	7,481	0	94,524	75,339
Jan 2019	39,320	47,990	7,483	0	94,793	74,894
Feb 2019	39,305	47,953	7,449	0	94,707	74,793
Mar 2019	39,468	48,007	7,426	0	94,901	74,839

State or Territory	Number of Distinct Active Appraisers Mar 26, 2019 (+/- 5%)
Alabama	1308
Alaska	229
Arizona	2071
Arkansas	853
California	9580
Colorado	2569
Connecticut	1250
Delaware	553
District Of Columbia	743
Florida	5963
Georgia	3288
Guam	22
Hawaii	492
Idaho	723
Illinois	3665
Indiana	2164
Iowa	1095
Kansas	1039
Kentucky	1404
Louisiana	1262
Maine	552
Maryland	2166
Massachusetts	1959
Michigan	2668
Minnesota	1919
Mississippi	984
Missouri	1907
Montana	430
Nebraska	646
Nevada	979
New Hampshire	707
New Jersey	2640
New Mexico	605
New York	3738
North Carolina	3036
North Dakota	284
Northern Mariana Islands	3
Ohio	2875
Oklahoma	1008
Oregon	1451
Pennsylvania	3267
Puerto Rico	339
Rhode Island	426
South Carolina	2055
South Dakota	373
Tennessee	1937
Texas	5229
Utah	1216
Vermont	265
Virgin Islands	24
Virginia	3299
Washington	2616
West Virginia	587
Wisconsin	1900
Wyoming	306
<b>All States and Territories</b>	<b>74839</b>



**State Program Summary Report**

State or Territory	AL		AK		AZ		AR		CA		CO		CT		DE		DC		FL		GA		GU		HI	
Review Year	2018		2017		2018		2018		2018		2018		2018		2017		2017		2017		2018		2015		2017	
Review Month	Jan		Jul		Jun		Mar		Oct		Aug		Jun		Jan		Apr		Feb		Mar		Nov		Dec	
ASC Finding	Good		Good		Excel		Good		Excel		Good		Excel		Good		Good		Excel		Good		Good		Excel	
Review Cycle Assigned (in years)	2		2		2		2		2		2		2		2		2		2		2		2		2	
Required State Actions or Off Site Monitoring																										
Follow-Up ( in months)																										
Out of Compliance (OC) Area of Concern (AC)	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC
Statutes, Regulations, Policies and Procedures:		1		1			1																2	1		
Temporary Practice:	1														1											
National Registry:		1		1				1												1						
Application Process:																		1							1	
Reciprocity:																									1	
Education:								1																		
Enforcement										1															1	
TOTAL OUT OF COMPLIANCE	1		-		-		1		-		-		-		-		-		-		-		2		-	
TOTAL AREA OF CONCERN	2		2		-		2		-		1		-		1		1		-		1		4		-	
Last Review Finding	Good (2016)	Good (2015)	Excel (2016)	Good (2016)	Excel (2016)	Excel (2016)	Good (2016)	Good (2015)	Good (2015)	Good (2015)	Excel (2016)	Needs Imp (2013)	Good (2015)													
Previous Review Finding	Good (2014)	Not Sat (2014)	Excel (2014)	Good (2014)	Good (2014)	Excel (2014)	Good (2014)	NISC (2013)	NISC (2013)	ISC (2013)	Needs Imp (2014)	ISC (2007)	Good (2013)													
FTE	5.6	0.57	4.28	3	23	9.6	1.75	0.5	1.5	9	5.8	0.14	0.75													
Independent or Under Umbrella (I/UU)	I	UU	UU	I	UU	UU	UU	UU	UU	UU	I	UU	UU													
Board	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes													
# Credentials on National Registry	1,369	239	1,349	1,369	10,340	2,553	1,314	564	727	6,024	3,354	21	572													
# Trainees	86	10	173	86	738	n/a	58	43	49	431	103	3	23													
Complaints Received in Review Cycle	107	15	225	107	583	274	60	24	19	364	247	0	14													
Complaints Outstanding	28	2	45	28	134	95	8	9	2	78	50	0	5													
Complaints Outstanding Over 1 Year (No SDC)	0	0	0	0	0	11	0	0	0	0	0	0	0													
Special Documented Circumstances (SDC)	6	0	0	6	11	0	0	1	0	2	2	0	0													
AMC Laws and Regulations	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Pending													

Legend: NISC = Not in Substantial Compliance; ISC = In Substantial Compliance; NIC = Not in Compliance; Excel = Excellent; Needs Imp = Needs Improvement; Not Sat = Not Satisfactory

**State Program Summary Report**

State or Territory	ID	IL	IN	IA	KS	KY	LA	ME	CNMI	MD	MA	MI	MN
Review Year	2017	2017	2017	2017	2017	2017	2018	2017	2015	2018	2018	2018	2018
Review Month	Apr	Nov	Jan	Jul	Oct	Mar	Apr	May	Nov	Apr	May	Sep	Sep
ASC Finding	Excel	Needs Imp	Good	Excel	Excel	Excel	Excel	Good	Needs Imp	Excel	Needs Imp	Needs Imp	Good
Review Cycle Assigned (in years)	2	2	2	2	2	2	2	2	2	2	2	2	2
Required State Actions or Off Site Monitoring		Yes							Yes		Yes		
Follow-Up ( in months)											6		
Out of Compliance (OC) Area of Concern (AC)	OC AC	OC AC	OC AC	OC AC	OC AC	OC AC	OC AC	OC AC	OC AC	OC AC	OC AC	OC AC	OC AC
Statutes, Regulations, Policies and Procedures:			2		1				1		2		
Temporary Practice:												1	
National Registry:			3									3	
Application Process:			1	1						1		2	1
Reciprocity:													
Education:				1									1
Enforcement			1							1		2	1
TOTAL OUT OF COMPLIANCE	-		5		-		-		-	1		2	
TOTAL AREA OF CONCERN	-		4		1		-		-	-		2	
<b>Last Review Finding</b>	Good (2015)	Needs Imp (2013)	Needs Imp (2015)	Excel (2015)	Excel (2015)	Excel (2015)	Good (2016)	Good (2015)	Needs Imp (2013)	Good (2016)	Needs Imp (2016)	Good (2016)	Good (2016)
<b>Previous Review Finding</b>	NISC (2013)	Needs Imp (2013)	ISC (2013)	Excel (2013)	Excel (2013)	ISC (2013)	Good (2014)	Excel (2013)	ISC (2007)	Good (2014)	Needs Imp (2014)	Good (2014)	Good (2014)
FTE	0.1	3.6	3.1	0.95	2	2.2	3	0.57	0.3	3.5	2.75	1.56	2.18
Independent or Under Umbrella (I/UU)	UU	UU	UU	UU	1	UU	UU	UU	UU	UU	UU	UU	UU
Board	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
# Credentials on National Registry	699	3,871	2,094	1,111	981	1,399	1,313	557	9	2,200	2,045	2,526	1,946
# Trainees	35	442	113	95	13	184	216	27	0	195	74	439	542
Complaints Received in Review Cycle	46	416	106	92	28	42	49	67	0	100	74	130	170
Complaints Outstanding	13	71	37	12	4	17	9	13	0	12	29	51	25
Complaints Outstanding Over 1 Year (No SDC)	2	8	0	0	0	0	0	0	0	0	4	10	0
Special Documented Circumstances (SDC)	0	17	3	0	0	0	0	1	0	1	6	7	4
AMC Laws and Regulations	No	Yes	Yes	Pending	Yes	Yes	Yes	No	No	Yes	Pending	Yes	Yes

Legend: NISC = Not in Substantial Compliance; ISC = In Substantial Compliance; NIC = Not in Compliance; Excel = Excellent; Needs Imp = Needs Improvement; Not Sat = Not Satisfactory

**State Program Summary Report**

<b>State or Territory</b>	<b>MS</b>		<b>MO</b>		<b>MT</b>		<b>NE</b>		<b>NV</b>		<b>NH</b>		<b>NJ</b>		<b>NM</b>		<b>NY</b>		<b>NC</b>		<b>ND</b>		<b>OH</b>	
Review Year	2017		2018		2017		2017		2018		2017		2018		2017		2017		2018		2018		2017	
Review Month	May		Jun		Sep		Mar		June		May		Nov		Apr		Sep		Nov		Jun		Aug	
ASC Finding	Excel		Good		Good		Good		Good		Excel		Good		Needs Imp		Good		Excel		Excel		Excel	
Review Cycle Assigned (in years)	2		2		2		2		2		2		2		2		2		2		2		2	
Required State Actions or Off Site Monitoring															Yes									
Follow-Up ( in months)															10									
Out of Compliance (OC) Area of Concern (AC)	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC
Statutes, Regulations, Policies and Procedures:				1				1						1		2								
Temporary Practice:								1																
National Registry:						1				2								2						
Application Process:														1										
Reciprocity:																								
Education:																								
Enforcement										1						4								
TOTAL OUT OF COMPLIANCE		-		-		-		-		-		-		-		5		-		-		-		-
TOTAL AREA OF CONCERN		-		1		1		2		3		-		1		2		2		-		-		-
<b>Last Review Finding</b>	Needs Imp (2015)		Excel (2016)		Good (2015)		Good (2015)		Excel (2016)		Excel (2015)		Needs Imp (2016)		Good (2015)		Needs Imp (2015)		Excel (2016)		Excel (2016)		Excel (2015)	
<b>Previous Review Finding</b>	ISC (2013)		Good (2014)		Needs Imp (2013)		Good (2013)		Good (2014)		Good (2013)		Needs Imp (2014)		Good (2013)		Needs Imp (2013)		Excel (2014)		Good (2014)		Good (2013)	
FTE	4.8		2		3.8		3		2.4		1.8		2.5		3.95		3.8		5.5		1.4		5.5	
Independent or Under Umbrella (I/UU)	UU		UU		UU		I		UU		UU		UU		UU		UU		I		I		UU	
Board	Yes		Yes		Yes		Yes		Yes		Yes		Yes		Yes		Yes		Yes		Yes		Yes	
# Credentials on National Registry	1,066		2,045		382		646		967		733		2,611		641		3,804		2,976		297		2,944	
# Trainees	31		74		27		49		87		13		48		71		446		429		34		296	
Complaints Received in Review Cycle	66		77		36		28		61		34		88		46		153		151		23		145	
Complaints Outstanding	10		15		6		4		37		4		17		31		31		33		11		42	
Complaints Outstanding Over 1 Year (No SDC)	0		0		0		1		5		0		0		8		0		0		0		0	
Special Documented Circumstances (SDC)	2		0		0		3		1		0		4		3		5		1		6		0	
AMC Laws and Regulations	Yes		Yes		Yes		Yes		Yes		Yes		Pending		Yes		No		Yes		Yes		No	

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**State Program Summary Report**

State or Territory	OK		OR		PA		PR		RI		SC		SD		TN		TX		UT		VT		VI	
Review Year	2017		2018		2018		2018		2017		2017		2018		2019		2018		2019		2018		2016	
Review Month	Sep		Jul		May		Dec		Oct		Feb		Aug		Jan		Feb		Feb		Aug		Nov	
ASC Finding	Excel		Needs Imp		Needs Imp		Needs Imp		Excel		Excel		Good		Good		Good		Good		Needs Imp		Needs Imp	
Review Cycle Assigned (in years)	2		2		2		2		2		2		2		2		2		2		2		2	
Required State Actions or Off Site Monitoring			Yes				Yes														Yes		Yes	
Follow-Up ( in months)																					12		6 to 9	
Out of Compliance (OC) Area of Concern (AC)	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC
Statutes, Regulations, Policies and Procedures:			1	2		1	3								1								2	1
Temporary Practice:																							1	
National Registry:						1							1		1			2		1				1
Application Process:																								
Reciprocity:								1																1
Education:															1									
Enforcement			1		1						1												2	
<b>TOTAL OUT OF COMPLIANCE</b>	-		2		1		3		-		-		-		1		-		-		3		3	
<b>TOTAL AREA OF CONCERN</b>	-		2		2		1		-		1		1		2		2		1		-		2	
<b>Last Review Finding</b>	Good (2015)	Excel (2016)		Needs Imp (2016)	Needs Imp (2016)	Needs Imp (2015)	Needs Imp (2015)	Excel (2016)	Good (2017)	Excel (2016)	Good (2017)		Needs Imp (2016)	Needs Imp (2014)										
<b>Previous Review Finding</b>	Excel (2013)	Good (2014)		Needs Imp (2014)	Good(2015)	Good (2013)	ISC (2013)	Good (2014)	Excel (2015)	Good (2014)	Good (2015)	Good (2014)	Good (2014)	NISC (2012)										
FTE	3.75	5.2		2.85	1	1.7	3.1	2	3	13.5	3.6	0.71	1											
Independent or Under Umbrella (I/UU)	UU	1		UU	UU	UU	UU	UU	UU	1	UU	UU	UU											
Board	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes											
# Credentials on National Registry	997	1,487		3,158	27	439	1,991	377	1,936	5,256	1,242	264	27											
# Trainees	77	126		359	n/a	145	156	61	215	999	135	16	n/a											
Complaints Received in Review Cycle	87	76		208	1	4	221	16	119	330	63	10	1											
Complaints Outstanding	43	66		70	1	0	47	4	15	65	15	13	0											
Complaints Outstanding Over 1 Year (No SDC)	0	31		16	0	0	0	0	0	0	0	10	0											
Special Documented Circumstances (SDC)	2	5		11	0	0	1	0	1	6	1	0	0											
AMC Laws and Regulations	Yes	Yes		Yes	No	Pending	No	Yes	Yes	Yes	Yes	Yes	No											

Legend: NISC = Not in Substantial Compliance; ISC = In Substantial Compliance; NIC = Not in Compliance; Excel = Excellent; Needs Imp = Needs Improvement; Not Sat = Not Satisfactory

**State Program Summary Report**

State or Territory	VA		WA		WV		WI		WY			
Review Year	2017		2018		2018		2017		2017		# Excel	20
Review Month	Aug		Aug		Dec		Jun		Aug		# Good	24
ASC Finding	Good		Excel		Good		Needs Imp		Good		# Needs Imp	11
Review Cycle Assigned (in years)	2		2		2		2		2		# Not Sat	0
Required State Actions or Off Site Monitoring							Yes				# Poor	0
Follow-Up ( in months)							12					
Out of Compliance (OC) Area of Concern (AC)	OC	AC	OC	AC	OC	AC	OC	AC	OC	AC	OC TOTAL	AC TOTAL
Statutes, Regulations, Policies and Procedures:								2		2	14	19
Temporary Practice:											3	3
National Registry:						1		1			4	21
Application Process:							2				8	6
Reciprocity:											0	3
Education:						1					1	4
Enforcement		1						1			11	8
TOTAL OUT OF COMPLIANCE		-		-		-		2		-	41	
TOTAL AREA OF CONCERN		1		-		2		4		2		64
<b>Last Review Finding</b>	Needs Imp (2015)		Excel (2016)		Good (2016)		Good (2015)		Good (2015)			
<b>Previous Review Finding</b>	ISC (2013)		Excel (2014)		Needs Imp (2015)		Needs Imp (2013)		Good (2013)			
FTE	1.8		4.5		2		3.8		1.5			
Independent or Under Umbrella (I/UU)	UU		UU		I		UU		UU			
Board	Yes		Yes		Yes		Yes		Yes			
# Credentials on National Registry	3,363		2,616		559		1,897		316			
# Trainees	107		363		35		n/a		81			
Complaints Received in Review Cycle	182		204		35		114		19			
Complaints Outstanding	34		25		2		24		3			
Complaints Outstanding Over 1 Year (No SDC)	0		0		0		2		0			
Special Documented Circumstances (SDC)	0		4		1		2		0			
AMC Laws and Regulations	Yes		Yes		Yes		No		Yes			

Legend: NISC = Not in Substantial Compliance; ISC = In Substantial Compliance; NIC = Not in Compliance; Excel = Excellent; Needs Imp = Needs Improvement; Not Sat = Not Satisfactory

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**Appraisal Subcommittee**  
*Federal Financial Institutions Examination Council*

March 14, 2019

Mr. Charles F. Kirk, Executive Director  
State Real Estate Appraisers Board  
Division of Consumer Affairs  
Department of Law & Public Safety  
PO Box 45032  
Newark, NJ 07101

RE: ASC Compliance Review of New Jersey's Appraiser Regulatory Program

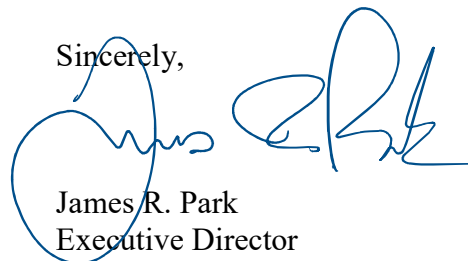
Dear Mr. Kirk:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of the New Jersey appraiser regulatory program (Appraiser Program) on November 14-16, 2018, to determine the Program's compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

The ASC considered the preliminary results of the Review and the State's response to those results. The Appraiser Program has been awarded an ASC Finding of "Good." An area of concern that was identified is being addressed by the Appraiser Program. New Jersey will remain on a two-year Review Cycle. The final ASC Compliance Review Report (Report) of the New Jersey Appraiser Program is attached.

This letter and the attached Report are public records and available on the ASC website. Please contact us if you have any questions about this Report.

Sincerely,



James R. Park  
Executive Director

Attachment

cc: Mr. Joseph Palumbo, Board President



## ASC Finding Descriptions

ASC Finding	Rating Criteria	Review Cycle*
Excellent	<ul style="list-style-type: none"> <li>• State meets all Title XI mandates and complies with requirements of ASC Policy Statements</li> <li>• State maintains a strong regulatory Program</li> <li>• Very low risk of Program failure</li> </ul>	2-year
Good	<ul style="list-style-type: none"> <li>• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements</li> <li>• Deficiencies are minor in nature</li> <li>• State is adequately addressing deficiencies identified and correcting them in the normal course of business</li> <li>• State maintains an effective regulatory Program</li> <li>• Low risk of Program failure</li> </ul>	2-year
Needs Improvement	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program</li> <li>• State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies</li> <li>• State regulatory Program needs improvement</li> <li>• Moderate risk of Program failure</li> </ul>	2-year with additional monitoring
Not Satisfactory	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program</li> <li>• State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing</li> <li>• State regulatory Program has substantial deficiencies</li> <li>• Substantial risk of Program failure</li> </ul>	1-year
Poor <sup>1</sup>	<ul style="list-style-type: none"> <li>• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements</li> <li>• Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program</li> <li>• State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies</li> <li>• High risk of Program failure</li> </ul>	Continuous monitoring

\*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

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<sup>1</sup> An ASC Finding of “Poor” may result in significant consequences to the State. See Policy Statement 5, *Reciprocity*; see also Policy Statement 8, *Interim Sanctions*.

## ASC State Appraiser Program Compliance Review Report

ASC Finding: Good

Final Report Issue Date: March 14, 2019

**New Jersey Appraiser Regulatory Program (State)**

Real Estate Appraisers Board (Board) PM: V. Metcalf

ASC Compliance Review Date: November 14-16, 2018

Review Period: September 2016 - November 2018

Umbrella Agency: Division of Consumer Affairs, Department of Law & Public Safety

Number of State Credentialed Appraisers on National Registry: 2,611

Review Cycle: Two Year

Applicable Federal Citations	Compliance (YES/NO) Areas of Concern (AC)			ASC Staff Observations	State Response	Required/Recommended State Actions	General Comments
	YES	NO	AC				
<b>Statutes, Regulations, Policies and Procedures:</b>			X				
States must have funding and staffing sufficient to carry out their Title XI-related duties. (12 U.S.C. § 3347; Policy Statement 1 B.)				<p>The 9-member Board has 6 vacant positions. This leaves the Board vulnerable to a lack of quorum for meetings and enforcement actions. There is a risk of Program failure, if any of the current Board members resign or are otherwise unable to fulfill their responsibilities and no appointments/reappointments are made.</p> <p>The Program steadily lost staff over the last 4 years, currently having only 1.5 full time equivalent positions (FTEs) budgeted compared to 6.5 in 2014. The State does not intend to fill the positions even though the Program will begin implementing a new AMC Registration Program in 2019.</p> <p>Resource concerns were noted in the September 2014 and September 2016 Compliance Review Reports.</p>	<p>On March 5, 2019, the State reported that the Governor's appointment office was made aware of the ASC's concern and is going through the vetting process for candidates for the Board.</p> <p>The State also reported that the current staffing level is 2.5 FTEs. The State believes this is sufficient and added that additional staff will be used as needed to administer the AMC Registration Program.</p>	<p>The State should monitor the appointment process and encourage the appointment of members to the 6 vacant positions.</p> <p>In addition, the State should monitor to ensure staffing resources remain sufficient to perform their Title XI-related duties.</p>	<p>During the next Compliance Review, ASC staff will pay particular attention to these areas for compliance with Title XI and ASC Policy Statement 1.</p>
<b>Temporary Practice:</b>	X			No compliance issues noted.	N/A	None	None
<b>National Registry:</b>	X			No compliance issues noted.	N/A	None	None
<b>Application Process:</b>	X			No compliance issues noted.	N/A	None	None
<b>Reciprocity:</b>	X			No compliance issues noted.	N/A	None	None
<b>Education:</b>	X			No compliance issues noted.	N/A	None	None
<b>Enforcement:</b>	X			No compliance issues noted.	N/A	None	None

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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

April 19, 2019

Mr. Carter Lawrence, Deputy Commissioner  
Tennessee Department of Commerce & Insurance  
Real Estate Appraiser Commission  
500 James Robertson Parkway  
Nashville, TN 37243

RE: ASC Compliance Review of Tennessee's Appraiser Regulatory Program

Dear Mr. Lawrence:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of the Tennessee appraiser regulatory program (Appraiser Program) on January 14-17, 2019, to determine the Program's compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

The ASC considered the preliminary results of the Review and the State's response to those results. The Appraiser Program has been awarded an ASC Finding of "Good." The final ASC Compliance Review Report (Report) of the Tennessee Appraiser Program is attached.

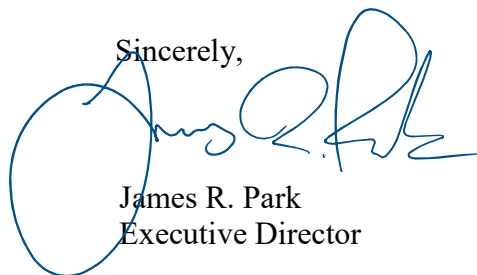
The ASC identified the following area of non-compliance:

- State requirements for trainee appraisers and supervisory appraisers must meet or exceed the AQB Criteria.<sup>1</sup>

ASC staff will confirm that appropriate corrective actions have been taken during the next Review. Tennessee will remain on a two-year Review Cycle.

This letter and the attached Report are public records and available on the ASC website. Please contact us if you have any questions about this Report.

Sincerely,



James R. Park  
Executive Director

Attachment

cc: Ms. Roxana Gumucio, Executive Director, TN Real Estate Appraiser Commission

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<sup>1</sup> 12 U.S.C. § 3345; 12 U.S.C. § 3347; 12 U.S.C. § 3342; Policy Statement 1 C.

## ASC Finding Descriptions

ASC Finding	Rating Criteria	Review Cycle*
Excellent	<ul style="list-style-type: none"> <li>• State meets all Title XI mandates and complies with requirements of ASC Policy Statements</li> <li>• State maintains a strong regulatory Program</li> <li>• Very low risk of Program failure</li> </ul>	2-year
Good	<ul style="list-style-type: none"> <li>• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements</li> <li>• Deficiencies are minor in nature</li> <li>• State is adequately addressing deficiencies identified and correcting them in the normal course of business</li> <li>• State maintains an effective regulatory Program</li> <li>• Low risk of Program failure</li> </ul>	2-year
Needs Improvement	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program</li> <li>• State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies</li> <li>• State regulatory Program needs improvement</li> <li>• Moderate risk of Program failure</li> </ul>	2-year with additional monitoring
Not Satisfactory	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program</li> <li>• State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing</li> <li>• State regulatory Program has substantial deficiencies</li> <li>• Substantial risk of Program failure</li> </ul>	1-year
Poor <sup>2</sup>	<ul style="list-style-type: none"> <li>• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements</li> <li>• Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program</li> <li>• State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies</li> <li>• High risk of Program failure</li> </ul>	Continuous monitoring

\*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

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<sup>2</sup> An ASC Finding of “Poor” may result in significant consequences to the State. See Policy Statement 5, *Reciprocity*; see also Policy Statement 8, *Interim Sanctions*.

## ASC State Appraiser Program Compliance Review Report

ASC Finding: Good

Final Report Issue Date: April 19, 2019

### Tennessee Appraiser Regulatory Program (State)

Tennessee Real Estate Appraisers Commission  
(Board)

PM: J. Tidwell

ASC Compliance Review Date: January 14-17, 2019

Review Period: January 2017 to January 2019

Umbrella Agency: Tennessee Department of Commerce & Insurance, Regulatory Boards

Number of State Credentialed Appraisers on National Registry: 1,936

Review Cycle: Two Year

Applicable Federal Citations	Compliance (YES/NO) Areas of Concern (AC)			ASC Staff Observations	State Response	Required/Recommended State Actions	General Comments
	YES	NO	AC				
<b>Statutes, Regulations, Policies and Procedures:</b>		X					
State requirements for trainee appraisers and supervisory appraisers must meet or exceed the AQB Criteria. (12 U.S.C. § 3345; 12 U.S.C. § 3347; 12 U.S.C. § 3342; Policy Statement 1 C.)				AQB Criteria requires Supervisory Appraisers must personally inspect each appraised property with the Trainee Appraiser until the Supervisory Appraiser determines the Trainee Appraiser is competent to inspect the property, in accordance with the COMPETENCY RULE of USPAP for the property type. Tennessee regulation 1255-01-.12 (10)(c)1 requires Supervising Appraisers to accompany the registered trainee on all assignments until the Trainee Appraiser has completed 500 hours of acceptable appraisal experience. The regulation does not require the Supervisory Appraiser to continue to personally inspect each appraised property if he/she determines that the Trainee Appraiser is not competent after reaching the minimum 500 hours.	On April 1, 2019, the State reported that it will begin the process to amend the rule at the Board's April 15, 2019 meeting.	The State must continue the process to amend its rule to bring it into compliance with AQB Criteria, and provide the ASC staff with a copy of the rules once finalized.	During the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 1.
<b>Temporary Practice:</b>	X						
				No compliance issues noted.	N/A	None	None
<b>National Registry:</b>			X				
States must ensure the accuracy of all data submitted to the National Registry. (12 U.S.C. § 3347; Policy Statement 3 A, D, E.)				Letters of Warning and Letters of Instruction were not accurately reported to the National Registry.	On April 1, 2019, the State reported that all Letters of Warning and Letters of Instruction have been correctly reported to the National Registry. The State also set up a procedure to ensure future actions are correctly reported.	None	During the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 3.
<b>Application Process:</b>	X						
				No compliance issues noted.	N/A	None	None
<b>Reciprocity:</b>	X						
				No compliance issues noted.	N/A	None	None

**ASC State Appraiser Program Compliance Review Report**

ASC Finding: Good  
Final Report Issue Date: April 19, 2019

<b>Tennessee Appraiser Regulatory Program (State)</b>			
Tennessee Real Estate Appraisers Commission (Board)	PM: J. Tidwell	ASC Compliance Review Date: January 14-17, 2019	Review Period: January 2017 to January 2019
Umbrella Agency: Tennessee Department of Commerce & Insurance, Regulatory Boards		Number of State Credentialed Appraisers on National Registry: 1,936	Review Cycle: Two Year

Applicable Federal Citations	Compliance (YES/NO) Areas of Concern (AC)			ASC Staff Observations	State Response	Required/Recommended State Actions	General Comments
	YES	NO	AC				
<b>Education:</b>			<b>X</b>				
States must ensure the delivery mechanism for distance education courses offered by a non-academic provider, including secondary providers, has been approved by an AQB-approved organization providing approval of course design and delivery. (12 U.S.C. § 3347; Policy Statement 6 B, C.)				Courses were renewed without ensuring that secondary providers of appraiser courses maintained the required delivery mechanism approval.	On April 1, 2019, the State reported that the approved course listing has been corrected. The State also set up a procedure to ensure secondary providers provide correct information at renewal.	None	During the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 6.
<b>Enforcement:</b>	<b>X</b>						
				No compliance issues noted.	N/A	None	None

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**Appraisal Subcommittee**  
*Federal Financial Institutions Examination Council*

April 2, 2019

Mr. Jonathan Stewart, Director  
Division of Real Estate  
Real Estate Appraiser Licensing and Certification Board  
P O Box 146711  
Salt Lake City, UT 84114-6711

RE: ASC Compliance Review of Utah's Appraiser Regulatory Program

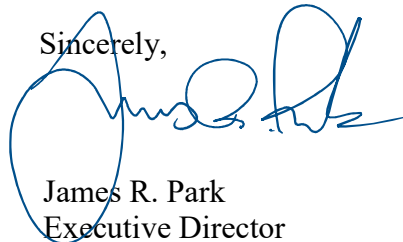
Dear Mr. Stewart:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of the Utah appraiser regulatory program (Appraiser Program) on February 25-27, 2019, to determine the Program's compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

The ASC considered the preliminary results of the Review and the State's response to those results. The Appraiser Program has been awarded an ASC Finding of "Good." An area of concern that was identified is being addressed by the Appraiser Program. Utah will remain on a two-year Review Cycle. The final ASC Compliance Review Report (Report) of the Utah Appraiser Program is attached.

This letter and the attached Report are public records and available on the ASC website. Please contact us if you have any questions about this Report.

Sincerely,



James R. Park  
Executive Director

Attachment

cc: Mr. Mark Fagergren, Director of Licensing and Education  
Ms. Kadee Wright, Chief Investigator  
Mr. Justin Barney, Hearing Officer

## ASC Finding Descriptions

ASC Finding	Rating Criteria	Review Cycle*
Excellent	<ul style="list-style-type: none"> <li>• State meets all Title XI mandates and complies with requirements of ASC Policy Statements</li> <li>• State maintains a strong regulatory Program</li> <li>• Very low risk of Program failure</li> </ul>	2-year
Good	<ul style="list-style-type: none"> <li>• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements</li> <li>• Deficiencies are minor in nature</li> <li>• State is adequately addressing deficiencies identified and correcting them in the normal course of business</li> <li>• State maintains an effective regulatory Program</li> <li>• Low risk of Program failure</li> </ul>	2-year
Needs Improvement	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program</li> <li>• State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies</li> <li>• State regulatory Program needs improvement</li> <li>• Moderate risk of Program failure</li> </ul>	2-year with additional monitoring
Not Satisfactory	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program</li> <li>• State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing</li> <li>• State regulatory Program has substantial deficiencies</li> <li>• Substantial risk of Program failure</li> </ul>	1-year
Poor <sup>1</sup>	<ul style="list-style-type: none"> <li>• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements</li> <li>• Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program</li> <li>• State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies</li> <li>• High risk of Program failure</li> </ul>	Continuous monitoring

\*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

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<sup>1</sup> An ASC Finding of “Poor” may result in significant consequences to the State. See Policy Statement 5, *Reciprocity*; see also Policy Statement 8, *Interim Sanctions*.



## ASC State Appraiser Program Compliance Review Report

ASC Finding: Good  
Final Report Issue Date: April 2, 2019

### Utah Appraiser Regulatory Program (State)

Real Estate Appraiser Licensing and Certification Board (Board)	PM: K. Klamet	ASC Compliance Review Date: February 25-27, 2019	Review Period: July 2017 to February 2019
Umbrella Agency: Department of Commerce, Division of Real Estate		Number of State Credentialed Appraisers on National Registry: 1,224	Review Cycle: Two Year

Applicable Federal Citations	Compliance (YES/NO) Areas of Concern (AC)			ASC Staff Observations	State Response	Required/Recommended State Actions	General Comments
	YES	NO	AC				
<b>Statutes, Regulations, Policies and Procedures:</b>	X			No compliance issues noted.	N/A	None	None
<b>Temporary Practice:</b>	X			No compliance issues noted.	N/A	None	None
<b>National Registry:</b>			X				
States must report all disciplinary action taken against an appraiser to the ASC. (12 U.S.C. § 3347; 12 U.S.C. § 3338; Policy Statement 3 A, D.)				The State did not report all disciplinary actions to the ASC National Registry.	On March 14, 2019, the State reported the discipline was submitted to the Registry on February 26, 2019, the day the oversight was identified by ASC staff.  The State also reported steps have been taken to ensure all disciplinary actions are reported to the Registry in the future.	None	During the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 3.
<b>Application Process:</b>	X			No compliance issues noted.	N/A	None	None
<b>Reciprocity:</b>	X			No compliance issues noted.	N/A	None	None
<b>Education:</b>	X			No compliance issues noted.	N/A	None	None
<b>Enforcement:</b>	X			No compliance issues noted.	N/A	None	None

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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

March 29, 2019

Ms. Elissa Runyon, Board Chair  
Board of Real Estate Appraisers  
Department of Licensing and Consumer Affairs  
Property & Procurement Building 8201  
Subbase, Suite #1  
St. Thomas, VI 00802

RE: ASC Compliance Review of Virgin Islands' Appraiser Regulatory Program

Dear Ms. Runyon:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of the Virgin Islands appraiser regulatory program (Appraiser Program) on December 5-6, 2018, to determine the Program's compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

The ASC considered the preliminary results of the Review and the State's response to those results. The Appraiser Program is given an ASC Finding of "Needs Improvement." The final ASC Compliance Review Report (Report) of the Virgin Islands Appraiser Program is attached.

The ASC identified the following areas of non-compliance:

- States must, at a minimum, adopt and/or implement all relevant AQB Criteria;<sup>1</sup> and
- States must have a policy for issuing a reciprocal credential to an appraiser from another State under the conditions specified in Title XI.<sup>2</sup>

ASC staff will confirm that appropriate corrective actions have been taken through off-site monitoring and during the next Review. Virgin Islands will remain on a two-year Review Cycle.

This letter and the attached Report are public records and available on the ASC website. Please contact us if you have any questions about this Report.

Sincerely,



Arthur Lindo  
Chairman

Attachment

cc: Mr. Devin Carrington, Commissioner  
Ms. Nathalie Hodge, Assistant Commissioner

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<sup>1</sup> 12 U.S.C. § 3345; 12 U.S.C. § 3347; Policy Statement 1 C, D.

<sup>2</sup> 12 U.S.C. § 3351; Policy Statement 5.

## ASC Finding Descriptions

ASC Finding	Rating Criteria	Review Cycle*
Excellent	<ul style="list-style-type: none"> <li>• State meets all Title XI mandates and complies with requirements of ASC Policy Statements</li> <li>• State maintains a strong regulatory Program</li> <li>• Very low risk of Program failure</li> </ul>	2-year
Good	<ul style="list-style-type: none"> <li>• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements</li> <li>• Deficiencies are minor in nature</li> <li>• State is adequately addressing deficiencies identified and correcting them in the normal course of business</li> <li>• State maintains an effective regulatory Program</li> <li>• Low risk of Program failure</li> </ul>	2-year
Needs Improvement	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program</li> <li>• State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies</li> <li>• State regulatory Program needs improvement</li> <li>• Moderate risk of Program failure</li> </ul>	2-year with additional monitoring
Not Satisfactory	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program</li> <li>• State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing</li> <li>• State regulatory Program has substantial deficiencies</li> <li>• Substantial risk of Program failure</li> </ul>	1-year
Poor <sup>3</sup>	<ul style="list-style-type: none"> <li>• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements</li> <li>• Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program</li> <li>• State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies</li> <li>• High risk of Program failure</li> </ul>	Continuous monitoring

\*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

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<sup>3</sup> An ASC Finding of “Poor” may result in significant consequences to the State. See Policy Statement 5, *Reciprocity*; see also Policy Statement 8, *Interim Sanctions*.

**ASC State Appraiser Program Compliance Review Report**

ASC Finding: Needs Improvement  
 Final Report Issue Date: March 29, 2019

**Virgin Islands Appraiser Regulatory Program (State)**

**Board of Real Estate Appraisers (Board)**      **PM: V. Metcalf**      **ASC Compliance Review Date: December 5-6, 2018**      **Review Period: November 2016 - December 2018**  
**Umbrella Agency: Department of Licensing & Consumer Affairs**      **Number of State Credentialed Appraisers on National Registry: 29**      **Review Cycle: Two Year**

Applicable Federal Citations	Compliance (YES/NO) Areas of Concern (AC)			ASC Staff Observations	State Response	Required/Recommended State Actions	General Comments
	YES	NO	AC				
<b>Statutes, Regulations, Policies and Procedures:</b>		<b>X</b>					
States must, at a minimum, adopt and/or implement all relevant AQB Criteria. (12 U.S.C. § 3345; 12 U.S.C. § 3347; Policy Statement 1 C, D.)				Prior to reactivation, a credential holder in an inactive status must complete the continuing education (CE) that would have been required if the credential holder had been in active status. Regulation §436-2(b), only requires credential holders to submit CE for the year immediately preceding the date of reactivation.  This concern was noted in the November 2014 and 2016 Compliance Reviews.	On March 5, 2019, the State reported that a proposed amendment to §436-2(b), intended to correct this concern, was filed with the offices of the Department of Justice, Solicitor General’s Office and Lieutenant Governor.	The State must continue the process to amend its regulations to bring them into compliance with ASC Policy Statement 1, and-provide the ASC staff with quarterly updates on the progress of the amendments until finalized.	Through off-site monitoring and during the next Compliance Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 1.
<b>Statutes, Regulations, Policies and Procedures continued:</b>		<b>X</b>					
States must, at a minimum, adopt and/or implement all relevant AQB Criteria. (12 U.S.C. § 3345; 12 U.S.C. § 3347; Policy Statement 1 C, D.)				Up to one-half of an appraiser's CE requirement may be granted for participation, other than as a student, in such activities as teaching or authoring a textbook. Regulation §440-1(e) does not limit the amount of CE that may be acquired for these types of activities.  This concern was noted in the December 2012, November 2014, and 2016 Compliance Reviews.	On January 25, 2019, the State provided a copy of a proposed amendment to §440-1(e), intended to correct this concern, was filed with the offices of the Department of Justice, Solicitor General’s Office and Lieutenant Governor.	The State must continue the process to amend its regulations to bring them into compliance with ASC Policy Statement 1, and provide the ASC staff with-quarterly updates on the progress of the amendments until finalized.	Through off-site monitoring and during the next Compliance Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 1.

## ASC State Appraiser Program Compliance Review Report

ASC Finding: Needs Improvement  
Final Report Issue Date: March 29, 2019

**Virgin Islands Appraiser Regulatory Program (State)**

**Board of Real Estate Appraisers (Board)**      **PM: V. Metcalf**      **ASC Compliance Review Date: December 5-6, 2018**      **Review Period: November 2016 - December 2018**  
**Umbrella Agency: Department of Licensing & Consumer Affairs**      **Number of State Credentialed Appraisers on National Registry: 29**      **Review Cycle: Two Year**

Applicable Federal Citations	Compliance (YES/NO) Areas of Concern (AC)			ASC Staff Observations	State Response	Required/Recommended State Actions	General Comments
	YES	NO	AC				
<b>Statutes, Regulations, Policies and Procedures continued:</b>		X					
States must have a policy for issuing a reciprocal credential to an appraiser from another State under the conditions specified in Title XI. (12 U.S.C. § 3351; Policy Statement 5.)				The Virgin Islands Statute §436(b) does not comply with Title XI which requires a reciprocal credential to be issued when the applicant holds a valid credential from a State whose program is in compliance with Title XI and whose credentialing requirements meet or exceed the requirements of the State where the application is made.  This concern was noted in the November 2014 and 2016 Compliance Reviews.	On January 25, 2019, the State-provided a copy of the proposed statutory amendment to §436(b), intended to correct this concern, and reported that it was filed with the offices of the Department of Justice, Solicitor General's Office and Lieutenant Governor.	The State must continue the process to amend its statute to bring them into compliance with Title XI and ASC Policy Statement 5, and provide the ASC staff with quarterly updates on the progress of the amendments until finalized.	Through off-site monitoring and during the next Compliance Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 1.
<b>Temporary Practice:</b>	X			No compliance issues noted.	N/A	None	None
<b>National Registry:</b>	X			No compliance issues noted.	N/A	None	None
<b>Application Process:</b>	X			No compliance issues noted.	N/A	None	None
<b>Reciprocity:</b>			X				
States must have a reciprocity policy in place for issuing a reciprocal credential to an appraiser from another State under the conditions specified in Title XI in order for the State's appraisers to be eligible to perform appraisals for federally related transactions. (12 U.S.C. § 3351; Policy Statement 5.)				The Virgin Islands statutory authority is not consistent with the federal requirements concerning reciprocity. In practice, the Virgin Islands complies with Title XI.  This concern was noted in the November 2014 and 2016 Compliance Reviews.	On January 25, 2019, the State provided a copy of the proposed statutory amendment to §436(b), intended to correct this concern, and reported that it was filed with the offices of the Department of Justice, Solicitor General's Office and Lieutenant Governor.	The State should continue the process to amend its statute to bring them into compliance with Title XI and ASC Policy Statement 5, and provide the ASC staff with a copy of the statute once finalized.	ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 5 during the next Compliance review.
<b>Education:</b>	X			No compliance issues noted.	N/A	None	None
<b>Enforcement:</b>	X			No compliance issues noted.	N/A	None	None

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**Appraisal Subcommittee**  
*Federal Financial Institutions Examination Council*

March 8, 2019

Ms. Patricia Rouse Pope, Executive Director  
West Virginia Real Estate Appraiser Licensing & Certification Board  
405 Capitol Street, Suite 906  
Charleston, WV 25301

RE: ASC Compliance Review of West Virginia's Appraiser Regulatory Program

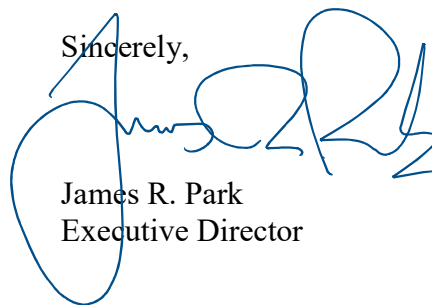
Dear Ms. Pope:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of the West Virginia appraiser regulatory program (Appraiser Program) on December 10-12, 2018, to determine the Program's compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

The ASC considered the preliminary results of the Review and the State's response to those results. The Appraiser Program has been awarded an ASC Finding of "Good." Areas of concern that were identified are being addressed by the Appraiser Program. West Virginia will remain on a two-year Review Cycle. The final ASC Compliance Review Report (Report) of the West Virginia Appraiser Program is attached.

This letter and the attached Report are public records and available on the ASC website. Please contact us if you have any questions about this Report.

Sincerely,



James R. Park  
Executive Director

Attachment

cc: Mr. Dean Dawson, Chair

## ASC Finding Descriptions

ASC Finding	Rating Criteria	Review Cycle*
Excellent	<ul style="list-style-type: none"> <li>• State meets all Title XI mandates and complies with requirements of ASC Policy Statements</li> <li>• State maintains a strong regulatory Program</li> <li>• Very low risk of Program failure</li> </ul>	2-year
Good	<ul style="list-style-type: none"> <li>• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements</li> <li>• Deficiencies are minor in nature</li> <li>• State is adequately addressing deficiencies identified and correcting them in the normal course of business</li> <li>• State maintains an effective regulatory Program</li> <li>• Low risk of Program failure</li> </ul>	2-year
Needs Improvement	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program</li> <li>• State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies</li> <li>• State regulatory Program needs improvement</li> <li>• Moderate risk of Program failure</li> </ul>	2-year with additional monitoring
Not Satisfactory	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program</li> <li>• State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing</li> <li>• State regulatory Program has substantial deficiencies</li> <li>• Substantial risk of Program failure</li> </ul>	1-year
Poor <sup>1</sup>	<ul style="list-style-type: none"> <li>• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements</li> <li>• Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program</li> <li>• State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies</li> <li>• High risk of Program failure</li> </ul>	Continuous monitoring

\*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

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<sup>1</sup> An ASC Finding of “Poor” may result in significant consequences to the State. See Policy Statement 5, *Reciprocity*; see also Policy Statement 8, *Interim Sanctions*.

## ASC State Appraiser Program Compliance Review Report

ASC Finding: Good  
 Final Report Issue Date: March 8, 2019

**West Virginia Appraiser Regulatory Program (State)**

<b>West Virginia Real Estate Appraiser Licensing &amp; Certification Board (Board)</b>	PM: C. Brooks	ASC Compliance Review Date: December 10–12, 2018	Review Period: December 2016 to December 2018
<b>Umbrella Agency: Independent</b>		<b>Number of State Credentialed Appraisers on National Registry: 561</b>	<b>Review Cycle: Two Year</b>

Applicable Federal Citations	Compliance (YES/NO) Areas of Concern (AC)			ASC Staff Observations	State Response	Required/Recommended State Actions	General Comments
	YES	NO	AC				
<b>Statutes, Regulations, Policies and Procedures:</b>	X			No compliance issues noted.	N/A	None	None
<b>Temporary Practice:</b>	X			No compliance issues noted.	N/A	None	None
<b>National Registry:</b>			X				
States must ensure that the authorization information provided to the ASC is updated and accurate. (12 U.S.C. § 3347; Policy Statement 3 C.)				The State failed to revoke the ASC Appraiser National Registry permissions for two individuals who left the Program.	On February 26, 2019, the State reported the Appraiser National Registry access was removed for the two individuals who left the Program. In addition the State updated the Appraiser National Registry Access Policy to ensure future compliance.	None	During the next Compliance Review, ASC staff will pay particular attention to this area for compliance with ASC Policy Statement 3.
<b>Application Process:</b>	X			No compliance issues noted.	N/A	None	None
<b>Reciprocity:</b>	X			No compliance issues noted.	N/A	None	None
<b>Education:</b>			X				
States must ensure that appraiser education courses are consistent with AQB Criteria. (12 U.S.C. § 3347; Policy Statement 6 A.)				AQB Criteria requires qualifying education (QE) to be a minimum length of 15 hours where the student successfully completes an examination. The State approved QE courses under 15 hours with no examination.	On February 26, 2019, the State reported the courses were approved for continuing education and inadvertently added to the wrong list. The courses were removed from the QE approved course list and all course lists were reviewed for accuracy.	None	During the next Compliance Review, ASC staff will pay particular attention to this area for compliance with AQB Criteria and ASC Policy Statement 6.
<b>Enforcement:</b>	X			No compliance issues noted.	N/A	None	None



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# Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

April 19, 2019

Mr. Carter Lawrence, Deputy Commissioner  
Tennessee Department of Commerce & Insurance  
Real Estate Appraiser Commission  
500 James Robertson Parkway  
Nashville, TN 37243

RE: ASC Compliance Review of Tennessee's Appraisal Management Company (AMC) Regulatory Program

Dear Mr. Lawrence:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of the Tennessee AMC regulatory program (AMC Program) on January 14-17, 2019, to determine the AMC Program's compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

The ASC considered the preliminary results of the Review and the State's response to those results. The AMC Program has been awarded an ASC Finding of "Good." The final ASC Compliance Review Report (Report) is attached.

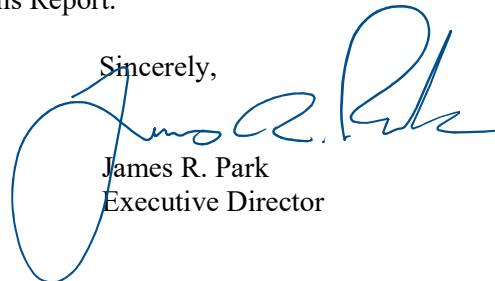
The ASC identified the following areas of non-compliance:

- Participating States must impose requirements on AMCs consistent with the AMC Rule;<sup>1</sup> and
- Participating States must enforce and document ownership limitations for State-registered AMCs.<sup>2</sup>

ASC staff will confirm that appropriate corrective actions have been taken during the next Review. Tennessee will remain on a two-year Review Cycle.

This letter and the attached Report are public records and available on the ASC website. Please contact us if you have any questions about this Report.

Sincerely,



James R. Park  
Executive Director

Attachment

cc: Ms. Roxana Gumucio, Executive Director, TN Real Estate Appraiser Commission

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<sup>1</sup> 12 CFR 34.210 – 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26; Policy Statement 8.

<sup>2</sup> 12 CFR 34.210 – 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26; Policy Statement 8.

## ASC Finding Descriptions

ASC Finding	Rating Criteria	Review Cycle*
Excellent	<ul style="list-style-type: none"> <li>• State meets all Title XI mandates and complies with requirements of ASC Policy Statements</li> <li>• State maintains a strong regulatory Program</li> <li>• Very low risk of Program failure</li> </ul>	2-year
Good	<ul style="list-style-type: none"> <li>• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements</li> <li>• Deficiencies are minor in nature</li> <li>• State is adequately addressing deficiencies identified and correcting them in the normal course of business</li> <li>• State maintains an effective regulatory Program</li> <li>• Low risk of Program failure</li> </ul>	2-year
Needs Improvement	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program</li> <li>• State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies</li> <li>• State regulatory Program needs improvement</li> <li>• Moderate risk of Program failure</li> </ul>	2-year with additional monitoring
Not Satisfactory	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program</li> <li>• State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing</li> <li>• State regulatory Program has substantial deficiencies</li> <li>• Substantial risk of Program failure</li> </ul>	1-year
Poor	<ul style="list-style-type: none"> <li>• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements</li> <li>• Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program</li> <li>• State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies</li> <li>• High risk of Program failure</li> </ul>	Continuous monitoring

\*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

**ASC State AMC Program Compliance Review Report**

ASC Finding: Good  
Final Report Issue Date: April 19, 2019

<b>Tennessee AMC Regulatory Program (State)</b>			
Tennessee Real Estate Appraisers Commission (Board)	PM: J. Tidwell	ASC Compliance Review Date: January 14-17, 2019	Review Period: January 2017 to January 2019
Umbrella Agency: Tennessee Department of Commerce & Insurance, Regulatory Boards		Number of AMCs on National Registry: 0	Review Cycle: Two Year

Applicable Federal Citations	Compliance (YES/NO) Areas of Concern (AC)			ASC Staff Observations	State Response	Required/Recommended State Actions	General Comments
	YES	NO	AC				
<b>Statutes, Regulations, Policies and Procedures:</b>		<b>X</b>					
Participating States must impose requirements on AMCs consistent with the AMC Rule. (12 CFR 34.210 – 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26; Policy Statement 8.)				An AMC must notify appraisers on its appraiser panel, before their removal from the panel. The State allows AMCs to remove an appraiser from the panel without notice within 30 days from the date the appraiser is initially added to the panel.	On April 1, 2019, the State reported that it intends to comply with the requirements and will seek the needed statutory amendments in the next legislative session in early 2020.	The State must amend its Statute to bring it into compliance with Title XI and ASC Policy Statement 8 and provide the ASC staff with a copy once finalized.	During the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 8.
<b>Statutes, Regulations, Policies</b>		<b>X</b>					
Participating States must enforce and document ownership limitations for State-registered AMCs. (12 CFR 34.210 – 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26; Policy Statement 8.)				An AMC shall not be registered or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause. The State limits the certification of this requirement to owners of 10% or more.	On April 1, 2019, the State reported that it intends to comply with the requirements and will seek the needed statutory amendments in the next legislative session in early 2020.	The State must amend its Statute to bring it into compliance with Title XI and ASC Policy Statement 8 and provide the ASC staff with a copy once finalized.	During the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 8.
<b>National Registry:</b>	<b>X</b>						
				No compliance issues noted.	N/A	None	None
<b>Enforcement:</b>	<b>X</b>						
				No compliance issues noted.	N/A	None	None

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## Appraisal Subcommittee

*Federal Financial Institutions Examination Council*

April 2, 2019

Mr. Jonathan Stewart, Director  
Division of Real Estate  
Real Estate Appraiser Licensing and Certification Board  
P O Box 146711  
Salt Lake City, UT 84114-6711

RE: ASC Compliance Review of Utah's Appraisal Management Company (AMC) Regulatory Program

Dear Mr. Stewart:

The Appraisal Subcommittee (ASC) staff conducted an ASC Compliance Review (Review) of the Utah AMC regulatory program (AMC Program) on February 25-27, 2019, to determine the AMC Program's compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

The ASC considered the preliminary results of the Review and the State's response to those results. The AMC Program has been awarded an ASC Finding of "Good." The final ASC Compliance Review Report (Report) is attached.

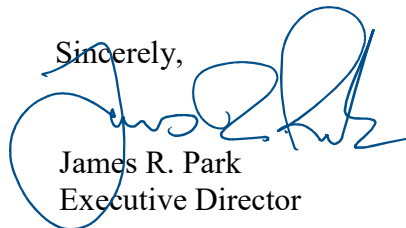
The ASC identified the following area of non-compliance:

- Participating States must impose requirements on AMCs consistent with the AMC Rule.<sup>1</sup>

ASC staff will confirm that appropriate corrective actions have been taken during the next Review. Utah will remain on a two-year Review Cycle.

This letter and the attached Report are public records and available on the ASC website. Please contact us if you have any questions about this Report.

Sincerely,



James R. Park  
Executive Director

Attachment

cc: Mr. Mark Fagergren, Director of Licensing and Education  
Ms. Kadee Wright, Chief Investigator  
Mr. Justin Barney, Hearing Officer

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<sup>1</sup> 12 CFR 34.210 – 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26; Policy Statement 8.

## ASC Finding Descriptions

ASC Finding	Rating Criteria	Review Cycle*
Excellent	<ul style="list-style-type: none"> <li>• State meets all Title XI mandates and complies with requirements of ASC Policy Statements</li> <li>• State maintains a strong regulatory Program</li> <li>• Very low risk of Program failure</li> </ul>	2-year
Good	<ul style="list-style-type: none"> <li>• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements</li> <li>• Deficiencies are minor in nature</li> <li>• State is adequately addressing deficiencies identified and correcting them in the normal course of business</li> <li>• State maintains an effective regulatory Program</li> <li>• Low risk of Program failure</li> </ul>	2-year
Needs Improvement	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program</li> <li>• State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies</li> <li>• State regulatory Program needs improvement</li> <li>• Moderate risk of Program failure</li> </ul>	2-year with additional monitoring
Not Satisfactory	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program</li> <li>• State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing</li> <li>• State regulatory Program has substantial deficiencies</li> <li>• Substantial risk of Program failure</li> </ul>	1-year
Poor	<ul style="list-style-type: none"> <li>• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements</li> <li>• Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program</li> <li>• State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies</li> <li>• High risk of Program failure</li> </ul>	Continuous monitoring

\*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

**ASC State AMC Program Compliance Review Report**

ASC Finding: Good  
Final Report Issue Date: April 2, 2019

<b>Utah AMC Regulatory Program (State)</b>			
Real Estate Appraiser Licensing and Certification Board (Board)	PM: K. Klamet	ASC Compliance Review Date: February 25-27, 2019	Review Period: July 2017 to February 2019
Umbrella Agency: Department of Commerce, Division of Real Estate		Number of AMCs on National Registry: 2	Review Cycle: Two Year

Applicable Federal Citations	Compliance (YES/NO) Areas of Concern (AC)			ASC Staff Observations	State Response	Required/Recommended State Actions	General Comments
	YES	NO	AC				
<b>Statutes, Regulations, Policies and Procedures:</b>		X					
Participating States must impose requirements on AMCs consistent with the AMC Rule. (12 CFR 34.210 – 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26; Policy Statement 8.)				A regulated AMC must notify appraisers on its appraiser panel before their removal from the panel. Utah statute 61-2e-306 (1) allows regulated AMCs to remove an appraiser from its panel, without notice, within the first 30 days after the appraiser is first added to the appraiser panel.	On March 14, 2019, the State reported that the necessary amendments to correct this area of concern will be included in the Program's proposed statutory changes for the 2020 legislative session.	The State must continue the process to amend its statute to bring them into compliance with Title XI, and provide the ASC staff with a copy of the statute once finalized.	During the next Compliance Review, ASC staff will pay particular attention to this area for compliance with Title XI and ASC Policy Statement 8.
<b>National Registry:</b>	X						
				No compliance issues noted.	N/A	None	None
<b>Enforcement:</b>	X						
				No compliance issues noted.	N/A	None	None

**APPRAISAL SUBCOMMITTEE  
OPEN SESSION MEETING MINUTES  
AUGUST 29, 2018**

LOCATION: Federal Reserve Board – International Square location  
1850 K Street NW, Washington, DC 20006

**ATTENDEES**

**ASC MEMBERS:** FRB – Art Lindo (Chair)  
CFPB – Veronica Spicer  
FDIC – Marianne Hatheway  
FHFA – Robert Witt  
HUD – Cheryl Walker  
NCUA – Tim Segerson  
OCC – Richard Taft

**ASC STAFF:** Executive Director – Jim Park  
Deputy Executive Director – Denise Graves  
General Counsel – Alice Ritter  
Financial Manager – Girard Hull  
Attorney-Advisor – Ada Bohorfoush  
Management and Program Analyst – Lori Schuster  
Administrative Officer – Brian Kelly  
Policy Manager – Jenny Tidwell

**OBSERVERS:** Appraisal Foundation – Dave Bunton  
Appraisal Foundation – Edna Nkemngu  
Appraisal Institute – Brian Rodgers  
CFPB – Deana Krumhansl  
CFPB – Philip Neary  
FDIC – Michael Briggs  
FDIC – Rich Foley  
FDIC – Ben Gibbs  
FRB – Gillian Burgess  
FRB – Carmen Holly  
FRB – Matt Suntag  
FRB – Kirin Walsh  
OCC – Will Binkley  
REVAA – Tom Tilton

The Meeting was called to order at 10:00 a.m. by A. Lindo.

**REPORTS**

- **Chairman**

A. Lindo welcomed observers to the Meeting. He said that the FFIEC will meet on September 13<sup>th</sup>, but the ASC is not scheduled to make a presentation at that meeting.

- **Executive Director**

J. Park updated the ASC on recent staff activities.

- J. Park reported that the AMC Registry was operational on July 16, 2018. Rhode Island has added seven AMCs thus far. ASC staff developed a PowerPoint presentation that provides an overview of the AMC Registry system as well as a YouTube webinar entitled “Implementation of AMC Programs for State Regulators.” Links to both items are in the What’s New box on the ASC website. Also available on the website is a chart showing the States’ Status on Implementation of AMC Programs.
- On August 1<sup>st</sup>, the ASC received a joint temporary waiver submission from the North Dakota Governor’s Office, North Dakota Department of Financial Institutions and North Dakota Bankers Association. The ASC staff is currently reviewing the submission.
- ASC staff attended the Appraisal Standards Board (ASB) Work Session in July in Washington, DC and the Appraisal Foundation Board of Trustees Meeting in June in Cleveland, OH.
- Under other items, J. Park announced that ASC staff will be working remotely as of October 1, 2018. ASC staff will have a mailing address and office space available for meetings and staff use. G. Hull was presented with a plaque for five years of service with the ASC and A. Ritter was presented with a plaque for ten years of service.

- **Delegated State Compliance Reviews**

A. Bohorfoush reported on State Compliance Reviews completed pursuant to delegated authority since the ASC’s May 9<sup>th</sup> Meeting. Eight State Compliance Reviews were finalized and approved by the Executive Director under delegated authority. Connecticut and Louisiana were both awarded a Finding of “Excellent” and will remain on a two-year Review Cycle. Alabama, Arkansas, Georgia, Missouri, Nevada and Texas were awarded a Finding of “Good” and all will remain on a two-year Review Cycle.

A. Bohorfoush said that Illinois has addressed each of the ASC’s concerns. A Follow-up Review is scheduled for September 5<sup>th</sup>.



- **Financial Manager**

G. Hull reported that National Registry fee revenue as of June 30<sup>th</sup> was \$2.9M. This is a \$300,000 increase over the same period in 2017 and 84% of the total targeted FY18 revenue estimate of \$3.5M. Expenditures through June 30<sup>th</sup> totaled \$2.8M. This represents 78% of the ASC's total budgeted expenditure amount of \$3.6M. The cumulative ASC Reserve balance, as of June 30<sup>th</sup>, was \$4.8M. He added that, due to increased revenue collections and asset expense reclassification, along with savings in the areas of travel and unexpended grant funds, the ASC is projecting a net loss of approximately \$21,000.

G. Hull reported that the Appraisal Foundation (Foundation) submitted grant reimbursement requests for January-April in the amounts of \$18,000, \$44,000, \$21,000 and \$45,000, respectively. These requests covered costs for AQB and ASB expenses for Meetings as well as the Investigator Training Program. Of the \$660,000 total grant award, \$404,000 remains available.

- **Notation Votes**

- **Notation Vote to approve the 2017 ASC Annual Report**

The notation vote passed by a 7-0 vote on May 11, 2018.

- **Notation Vote on the Request for Extension of the Implementation Period to August 10, 2019, for the State of South Dakota to establish an AMC registration and supervision program**

The notation vote passed 7-0 on June 25, 2018.

- **Notation Vote on the Request for Extension of the Implementation Period to August 10, 2019, for the State of Michigan to establish an AMC registration and supervision program**

The notation vote passed 7-0 on July 31, 2018.

- **Notation Vote on the Request for Extension of the Implementation Period to August 10, 2019 for the District of Columbia to establish an AMC registration and supervision program**

The notation vote passed 7-0 on July 31, 2018.

- **Notation Vote on the Request for Extension of the Implementation Period to August 10, 2019 for the State of New Hampshire to establish an AMC registration and supervision program**

The notation vote passed on a 7-0 vote on July 31, 2018.

## **ACTION ITEMS**

- **April 23, 2018 Open Session Minutes**

R. Taft made a motion to approve the April 23<sup>rd</sup> open session meeting minutes as amended by M. Hatheway. V. Spicer seconded and all members present voted to approve.

- **May 9, 2018 Open Session Minutes**

M. Hatheway made a motion to approve the May 9<sup>th</sup> open session meeting minutes as presented. R. Taft seconded and all members present voted to approve.

- **June 8, 2018 Open Session Minutes**

M. Hatheway made a motion to approve the June 8<sup>th</sup> open session meeting minutes as presented. R. Taft seconded and all members present voted to approve.

- **Appraisal Foundation FY19 Grant Proposal**

D. Bunton and E. Nkemngu were present from the Foundation to discuss the FY19 Grant Proposal. They reported the following:

The Foundation adopted AQB Criteria revisions for alternative pathways to obtain a credential; it has been very well received thus far. The Foundation is working on *Practical Applications of Real Estate Appraisal*, which is simulated training using various property models. The program will consist of 75% simulated appraisals and 25% supervisory training. Exam statistics thus far in 2018 indicate a 20% increase in first-time test takers from 2016-17.

The ASB distributed a survey to approximately 500 key stakeholders regarding emerging issues not covered in USPAP. Approximately 100 responses were received. Topics addressed were hybrid and bifurcated appraisals as well as evaluations. The Foundation is proposing one reporting format; users would determine if an appraisal report would be restricted and would need to include a disclaimer as to its purpose.

R. Taft asked if the proposed format would still be called a report. D. Bunton responded that there is no specific terminology as noted in the current Exposure Draft out for comment. R. Witt asked if USPAP would note what has to be contained in the report and what has to be contained in the work file. D. Bunton responded that he would forward the question to J. Brenan. Regarding the simulated training, A. Lindo asked if the simulations would be easily adjustable to match changing economic conditions. D. Bunton responded that a 12-minute demo is being developed for the upcoming AQB Meeting. The Foundation has not partnered with a company to develop the simulations and will go through the Request for Proposal process. R. Witt said that Trainees will still need to find a Supervisory Appraiser for the hands-on training.

In regard to the Investigator Training Program (ITP), D. Bunton said approximately 1,000 State staff have attended the three courses. Attendance at levels two and three decreased in 2018, so the fund request for 2019 decreased as well. He added the request for \$2,000 for an instructional designer has been removed from the Proposal. A. Lindo asked what the biggest

challenge for the Foundation has been thus far in 2018. D. Bunton responded that there have been efforts in States to carve out USPAP exemptions. He added that proposed changes in USPAP should reduce that effort. The Foundation is also considering extending the cycle of USPAP to 3-4 years rather than the current 2-year cycle. The International Valuation Standards have gone to a 4-year cycle. There is the unanswered question of what will happen if there is a change that takes place mid-cycle. A. Lindo asked how alternatives to USPAP are affecting appraisals. D. Bunton responded that Virginia allows appraisals that are not in compliance with USPAP; but the Federal interagency guidelines still need to be followed.

- **FY19 ASC Budget Proposal**

J. Park discussed the FY19 ASC budget proposal. The ASC may see an increase in revenue based on FY18 projected revenue. J. Park said the Bureau of Labor Statistics is anticipating a 14% increase in appraisers/assessors. AMC Revenue is not included in the FY19 budget proposal. Regarding expenses, J. Park said converting all staff to remote duty will save approximately \$250,000 in lease and personnel expenses. A. Lindo asked how staff would communicate once all staff are working remotely. J. Park responded that staff currently uses Skype and Microsoft Team to work collaboratively. He added that personnel expenses would increase due to a proposed 1.9% salary increase and scheduled staff step increases. The proposed budget also requests to fill the vacant Regulatory Affairs Specialist and a new Grant Administrator position. Travel costs were increased due to adding an extra day to Compliance Reviews to review States' AMC Programs. Staff also anticipates a 59% increase in contracted services by GSA/USDA. Asset depreciation is included in the budget proposal; this was not included in previous budgets. A request of \$10,000 was also included in the proposal to develop an AMC Investigation Training Course and \$10,000 for the Roundtable in November. M. Hatheway asked about where data would be housed, as well as costs for IT servers. B. Kelly responded that the servers are stored with our data center. Internally the ASC uses Office 365 under a contract with government-secured services. M. Hatheway asked if files are backed up regularly. B. Kelly responded that files are backed up nightly to a data center outside of the Washington, DC area. He added that \$40,000 is included in the budget proposal to create a back-up and recovery service to support the server network. The addition of this feature would provide a 48-72 hour recovery window if any files needed to be restored.

J. Park said ASC staff is recommending \$350,000 for the Foundation grant to cover grant-eligible activities of the AQB and ASB and \$278,000 for the ITP. The Foundation requested \$730,000 to fund the grant-eligible activities of the AQB and ASB. If that amount were approved, the ASC would have to use a significant portion of its Reserve. M. Hatheway asked how the Foundation would use the proceeds of a separate, related request to reprogram \$8,000 for course redesign. D. Bunton responded that \$7,500 is budgeted, which amounts to \$2,500 per course. The total was raised to \$8,000 to cover more extensive revisions to be developed by an instructor and former Foundation board member. M. Hatheway suggested that an independent consultant who does not have ties to the Foundation should be used to ensure transparency of selection and content development. After further discussion, R. Taft

moved to approve the FY19 ASC budget as presented and to approve the FY19 Foundation grants in the amounts of \$350,000 for grant-eligible activities of the AQB and ASB and \$278,000 for the ITP. C. Walker seconded and all members present voted to approve.

- **FY19-23 ASC Strategic Plan**

J. Park presented the FY19-23 ASC Strategic Plan which would become effective on October 1, 2018, if approved. He met with ASC members over the past several months to discuss the Strategic Plan. V. Spicer moved to approve the Plan with edits as discussed. R. Taft seconded and all members present voted to approve. A. Lindo requested semi-annual progress reports from ASC staff at Open Session Meetings.

The Open Session adjourned at 11:15 a.m. The next ASC Meeting will be November 14, 2018.