

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

APPRAISAL SUBCOMMITTEE

PRIVACY ACT OF 1974; SYSTEM OF RECORDS; AMENDMENT

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice to amend record system and routine uses.

SUMMARY: The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (“ASC”) proposes to amend its system of records notice regarding the “National Registry of State Certified and Licensed Appraisers” (“National Registry”) under the Privacy Act of 1974, as amended (5 U.S.C. 552a) and the routine uses of the information collected.

DATES: This action will be effective without further notice on [Insert date 30 days after date of publication in the FEDERAL REGISTER], unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Marc L. Weinberg, General Counsel, by U.S. Mail at Appraisal Subcommittee; 2100 Pennsylvania Avenue, N.W., Suite 200; Washington, D.C. 20037, or by Internet E-mail at marcw1@asc.gov.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel; Appraisal Subcommittee, 2100 Pennsylvania Avenue, N.W., Suite 200; Washington, D.C. 20037.

SUPPLEMENTARY INFORMATION:

The ASC’s “notice of new system records” regarding the National Registry was published at 57 F.R. 11084 (April 1, 1992). Copies of this notice are available from the address above. The ASC proposes to amend this notice of new system records.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act, as amended, which would require the submission of a new or altered system report for each system.

The specific changes to the records system being amended are set forth below, followed by the notice as amended, published in its entirety.

The proposed amendments are the result of the National Registry “redesign project,” (“Project”), which has had as its central goal making publicly available to the greatest extent possible National Registry information via the Internet. Towards that end, the ASC, in July 1997, gave final approval to the Project, and, on September 22, 1997, approved amendments to ASC Policy Statement 8, *National Registry of State Certified and Licensed Appraisers*. In addition, the ASC issued letters to State appraiser regulatory agency officials on July 31, September 26, and September 30, 1997, describing the operational details of the Project.

As a result of these actions, since early 1998, virtually all information contained in the National Registry has been made available to the public at no cost through the ASC’s Internet Web site, www.asc.gov. Anyone with Internet access -- homebuyers and sellers, financial institutions, State appraiser regulatory agencies, and Federal and State agencies -- can retrieve, by virtually any data element in the National Registry database, the information contained in the database. Therefore, a remotely located bank with Internet access can almost immediately determine the name, address, and telephone number of a State certified real estate appraiser located near the bank or located near the property to be appraised. Homebuyers can download a listing of all State licensed appraisers or State certified residential appraisers located nearby. And, a State appraiser regulatory agency (“State agency”) can determine whether an out-of-State appraiser seeking a temporary practice permit within the State, in fact, is a certified or licensed appraiser, in good standing, in his or her home State. Finally, anyone can determine whether an appraiser’s license or certification is currently suspended, revoked or has been voluntarily surrendered in lieu of further State disciplinary action.

Only two National Registry data elements are protected by the Privacy Act of 1974 and are not generally releasable, through the Internet or otherwise. These elements are: (1) the National Registry Number (which is the appraiser's Social Security Number, where available, or an ASC randomly generated number, where it is not available); and (2) a symbol indicating that a State agency has ordered a final disciplinary action against an appraiser resulting in something other than a suspension, revocation or voluntary surrender in lieu of further State action, *e.g.*, additional education or a monetary fine. These data elements are available only to a very limited number of persons and situations, as outlined below.

The ASC has taken steps to ensure that the public posting of Registry information on the Internet will not violate State information protection laws. During the planning and implementation stages of the Project, the ASC worked with the States to ensure that any Privacy Act issues were discussed and resolved. For example, a number of States initially were very concerned about providing the ASC National Registry Numbers, which ideally are Social Security Numbers. In written communications and discussions, the ASC informed the States that these numbers only would be available to ASC members and staff and State-specified officials whose access would be ID and password protected. In some instances, State agencies specifically notified their certified or licensed appraisers about this use of the numbers and requested their consent to that use. The ASC has assigned unique National Registry numbers to persons not consenting to this use. Moreover, to further protect those numbers, the ASC has digitally encrypted them. Finally, the ASC's policy has been to honor State personal information protection laws. If a State were to inform us that a certain data element is private within the State, that element would not be made available on our Web site.

These changes not only significantly enhance the usefulness of the National Registry, consistent with the purposes of Title XI of the Financial Institutions Reform, Recovery, and

Enforcement Act of 1989, as amended, 12 U.S.C. §§3331-3351, they also greatly facilitate the ability of persons whose Privacy Act interests are affected by this System of Records, *i.e.*, State certified or licensed real estate appraisers, to exercise their rights under the Privacy Act. They can check immediately whether information pertaining to them exists in the system of records, can determine whether that information is accurate, and can request a correction of that information, if necessary.

All publicly available National Registry data elements will continue to be releasable to persons who do not have Internet access. Filing a Freedom of Information Act (“FOIA”) request with the ASC under ASC regulations at 12 CFR part 1102, subpart D, however, still will be needed.

Persons who do not have access to the Internet are not affected significantly by these changes. They continue to use FOIA and the Privacy Act (and the ASC respective implementing regulations, 12 CFR subpart 1102, subparts D and C) to meet their information needs regarding this system of records.

ASC-1

SYSTEM NAME:

National registry of State certified and licensed appraisers

CHANGES:

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with “State abbreviation; national registry number; State license number; license action; previous license number; last name; first name; middle initial; name suffix; date of birth; street (mailing); city (mailing); State (mailing); zip (mailing); company name; telephone; street (physical); city (physical); State (physical); zip (physical); county name;

FIPS county code; status; status date; license type; previous license type; effective date; expiration date; previous expiration date; amount paid; transaction date; years paid; classification; EDI capability; disciplinary code; effective date; ending date; release to public; release to government.”

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Delete entry “(10)” and replace with “(10) Using traditional, non-computerized methods, the information may be disclosed to Federal, State or local government agency personnel and duly authorized officers or employees of a financial institution, as that term is defined in section 1121(7) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3350(7), where records in this system of records pertain to a person seeking to qualify, or remain qualified, as a staff or fee appraiser eligible to perform an appraisal in connection with a federally related transaction.”

* * * * *

Add new entry “(11) All information in this system of records, except the national registry number and the disciplinary code relating to final disciplinary actions resulting in less than suspensions, revocations or voluntary surrenders of credentials in lieu of further State disciplinary action (collectively, ‘protected data’), may be disclosed to any member of the public through inquiry of the ASC’s Internet Web site. All information, with no exceptions, may be disclosed to authorized Federal and State agency officials through inquiry of the ASC’s Internet Web site.”

STORAGE:

Delete entry and replace with “Paper records in file drawers, computer diskettes, removable computer media (such as ‘zip disks’), computer hard disk drives, magnetic tapes, and computer memory. The public portion of the information also is stored in digital form at the data processing facilities of National Technical Information Services, Department of Commerce, Springfield, VA.”

RETRIEVABILITY:

Delete entry and replace with “National Registry information on the ASC’s Web site may be retrieved by any single data element or by any combination of data elements listed above in ‘Categories of Records in the System,’ except for protected data. Protected data cannot be retrieved by anyone other than persons authorized in the ‘Routine Uses’ section above. All information, except for protected data, can be retrieved by anyone by using preformatted or custom queries through the ASC’s Internet Web site. Only authorized ASC members and staff and State appraiser regulatory agency ‘Authorized Officials’ can retrieve protected data through the ASC Web site. For persons without Internet access to the ASC’s Web site, information may be retrieved by following the procedures in 12 C.F.R. part 1102, subpart C.”

SAFEGUARDS:

Delete entry and replace with: “Records submitted by State appraiser regulatory agencies are kept in limited access areas during duty hours and in locked office areas at all other times. These records are available only to those persons whose official duties require such access. Internet access to protected data is limited by using ‘Secure Socket Layer’ technology and by the ASC assigning user identifications and passwords to ‘Authorized Officials’ designated by State appraiser regulatory organizations and ASC members and staff. No one, other than duly authorized ASC personnel and other persons who are authorized, from time to time, by the

System Manager to assist the ASC in maintaining the ASC Web site, can edit or otherwise change the underlying database records contained in the system of records.”

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: “Executive Director, ASC, 2100 Pennsylvania Avenue, NW, Suite 200, Washington, DC 20037.”

NOTIFICATION PROCEDURE:

Delete entry and replace with: “Individuals without Internet access, who are seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves, must follow the procedures described in 12 CFR part 1102, subpart C.

Individuals with Internet access at any time can determine almost immediately whether this system of records contains information about themselves and whether the information is accurate (except for protected data). Therefore, persons with Internet access do not need to notify the ASC regarding their seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records. Notifications under 12 CFR part 1102, subpart C, however, are needed to obtain information about protected data in the system of records and to contest the content of any records in the system of records.”

RECORD ACCESS PROCEDURE:

Delete entry and replace with: “Records, other than those pertaining to protected data, may be accessed by anyone, at any time, via the ASC’s Internet Web site. Protected data are not publicly accessible; access is limited only to State agency ‘Authorized Officials’ and other State and Federal agency officials consistent with the ‘routine uses’ stated above. For persons without

Internet access, the procedure for accessing records in this system of records is set out in 12 CFR part 1102, subpart C.”

CONTESTING RECORD PROCEDURES:

Delete and replace with: “Notifications under 12 CFR part 1102, subpart C are needed to contest the content of any records in the system of records.”

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ASC-1

SYSTEM NAME:

National Registry of State Certified and Licensed Appraisers

SYSTEM LOCATION:

Appraisal Subcommittee of the Federal Financial Institutions Examination Council, 2100 Pennsylvania Avenue, N.W, Suite 200, Washington, D.C. 20037

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Individuals who are, or have been, licensed or certified by a State to perform appraisals in federally related transactions.

CATEGORIES OF RECORDS IN THE SYSTEM:

State abbreviation; national registry number; State license number; license action; previous license number; last name; first name; middle initial; name suffix; date of birth; street (mailing); city (mailing); State (mailing); zip (mailing); company name; telephone; street (physical); city (physical); State (physical); zip (physical); county name; FIPS county code; status; status date; license type; previous license type; effective date; expiration date; previous expiration date; amount paid; transaction date; years paid; classification; EDI capability; disciplinary code; effective date; ending date; release to public; release to government.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Sections 1103(a)(4) and 1109(a)(1), Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3332(a)(4) and 3338(a)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

- (1) The information in the system may be used by the ASC in any administrative proceeding before the ASC or in any other action or proceeding in which the ASC or its staff participates as a party or the ASC participates as *amicus curiae* and may be available to the extent required by law in response to a subpoena issued in the course of a proceeding in which the ASC is not a party;
- (2) In any case in which records in the system indicate a violation or a potential violation of law, whether civil, criminal or regulatory in nature, whether arising from general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the Statute, regulation, rule or order;
- (3) The information may be given or shown to anyone during the course of an ASC investigation if the ASC staff has reason to believe that disclosure to the person will further the investigation. Information also may be disclosed to Federal, State or local authorities in order to obtain information or records relevant to an ASC investigation;
- (4) The information may be given to independent auditors or other private firms with which the ASC has contracted to carry out an independent audit, or to collate, aggregate or otherwise refine and process data collected in the system of records. These contractors will be required to maintain Privacy Act safeguards with respect to such records;
- (5) The information may be disclosed to a Federal, State or local government agency where records in this system of records pertain to an application for employment or to a current

employer of that agency where the records are relevant and necessary to an agency decision concerning the hiring or retention of an employee or disciplinary or other administrative action concerning an employee;

- (6) The information may be disclosed to a Federal, State or local government agency in response with the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter;
- (7) The information may be disclosed to the Department of Justice or other counsel to the ASC for legal advice and also when the defendant in litigation is: (a) any component of the ASC or any member or employee of the ASC in his or her official capacity; or (b) the United States. The information also may be disclosed to counsel for any ASC member or employee in litigation or anticipated litigation in his or her individual capacity where the ASC or the Department of Justice agrees to represent such employee or authorizes representation by another;
- (8) The information may be disclosed to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;
- (9) The information may be disclosed to the news media in accordance with guidelines contained in 28 CFR 50.2 concerning the ASC's functions relating to civil, administrative and criminal proceedings;
- (10) Using traditional, non-computerized methods, the information may be disclosed to Federal, State or local government agency personnel and duly authorized officers or employees of a financial institution, as that term is defined in section 1121(7) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C.

3350(7), where records in this system of records pertain to a person seeking to qualify, or remain qualified, as a staff or fee appraiser eligible to perform an appraisal in connection with a federally related transaction;

- (11) All information in this system of records, except the national registry number and the disciplinary code relating to final disciplinary actions resulting in less than suspensions, revocations or voluntary surrenders of credentials in lieu of further State disciplinary action (collectively, 'protected data'), may be disclosed to any member of the public through inquiry of the ASC's Internet Web site. All information, with no exceptions, may be disclosed to authorized Federal and State agency officials through inquiry of the ASC's Internet Web site.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Paper records in file drawers, computer diskettes, removable computer media (such as "zip disks"), computer hard disk drives magnetic tapes, and computer memory. The public portion of the information also is stored in digital form at the data processing facilities of National Technical Information Services, Department of Commerce, Springfield, VA.

RETRIEVABILITY:

National Registry information on the ASC's Web site may be retrieved by any single data element or by any combination of data elements listed above in "Categories of Records in the System," except for protected data. Protected data cannot be retrieved by anyone other than persons authorized in the "Routine Uses" section above. All information, except for protected data, can be retrieved by anyone by using preformatted or custom queries through the ASC's Internet Web site. Only authorized ASC members and staff and State appraiser

regulatory agency “authorized Officials” can retrieve protected data through the ASC Web site. For persons without Internet access to the ASC’s Web site, information may be retrieved by following the procedures in 12 C.F.R. part 1102, subpart C.

SAFEGUARDS:

Records submitted by State appraiser regulatory agencies are kept in limited access areas during duty hours and in locked office areas at all other times. These records are available only to those persons whose official duties require such access. Internet access to protected data is limited by using ‘Secure Socket Layer’ technology and by the ASC assigning user identifications and passwords to “Authorized Officials” designated by State appraiser regulatory organizations and ASC members and staff. No one, other than duly authorized ASC personnel and other persons who are authorized, from time to time, by the System Manager to assist the ASC in maintaining the ASC Web site, can edit or otherwise change the underlying database records contained in the system of records.

RETENTION AND DISPOSAL:

System records are retained by the ASC indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, ASC, 2100 Pennsylvania Avenue, NW, Suite 200, Washington, DC 20037.

NOTIFICATION PROCEDURE:

Individuals without Internet access, who are seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves, must follow the procedures described in 12 CFR part 1102, subpart C.

Individuals with Internet access at any time can determine almost immediately whether this system of records contains information about themselves and whether the information is accurate (except for protected data). Therefore, persons with Internet access do not need to notify the ASC regarding their seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records. Notifications under 12 CFR part 1102, subpart C, however, are needed to obtain information about protected data in the system of records and to contest the content of any records in the system of records.

RECORD ACCESS PROCEDURE:

Records, other than those pertaining to protected data, may be accessed by anyone, at any time, via the ASC's Internet Web site. Protected data are not publicly accessible; access is limited only to State agency "Authorized Officials" and other State and Federal agency officials consistent with the "routine uses" stated above. For persons without Internet access, the procedure for accessing records in this system of records is set out in 12 CFR part 1102, subpart C.

CONTESTING RECORD PROCEDURES:

Notifications under 12 CFR part 1102, subpart C are needed to contest the content of any records in the system of records.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by State appraiser regulatory agencies. These agencies gather the information from individuals seeking to become State licensed or State certified appraisers, individuals seeking to renew their licenses or certifications, or qualified individuals seeking authority from an agency to perform appraisals in federally related transactions outside of their State of licensure or certification on a temporary basis.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council,

Ben Henson, Executive Director

Date

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