

Appraisal Subcommittee Advisory Committee for the Development of Regulations (ASCAC)
Meeting Minutes
October 15 - 16, 2014
DoubleTree Hotel, 300 Army Navy Drive, Arlington, VA 22202

Members

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

ASC Staff

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| Denise Graves | Deputy Executive Director |
| Vicki Metcalf | Policy Manager (October 16 th only) |
| Jim Park | Executive Director (October 15 th only) |
| Alice Ritter | General Counsel |
| Lori Schuster | Management & Program Analyst, Designated Federal Officer |

Observers

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| Aaron Arnold | South Dakota Department of Labor & Regulation |
| Nikole Avers | Tennessee Real Estate Appraisers Commission |
| Morey Barnes Yost | Alston & Bird, LLP |
| Sherry Bren | South Dakota Department of Labor & Regulation |
| Beth Buell | ServiceLink |
| Bob Danehy | CoreLogic (October 15 th only) |
| Kelly Davids | Appraisal Foundation |
| Larry Disney | Kentucky Real Estate Appraisers Board (October 15 th only) |
| Kim Drake-Loy | MCS Valuations/CoreLogic (October 16 th only) |
| Bill Garber | Appraisal Institute (October 15 th only) |
| Don Kelly | Kelly Group (October 16 th only) |
| Paul Link | ATI Valuations |
| Will Maness | ATI Valuations |
| Amy McClellan | Vermont Board of Real Estate Appraisers |

widely available for a variety of uses including compliance and enforcement. The Institute does not support establishing of background check standards for State appraisal boards. He commented that the National Registry should differentiate between administrative and more serious disciplinary actions, and that appraisers should receive warning of their need to complete education requirements prior to imposition of suspension. He said the ASCAC should ask for clarification of the ASC's authority to remove appraisers from the National Registry, and that the ASCAC should recommend the ASC defer action with respect to AMC registration until after the federal agencies have completed their rulemaking.

Temporary Practice Working Group

Member Borges, Chair of the Working Group, provided the report. The Working Group developed a matrix of recommendations for a system of sanctions to be imposed in the event of violations. The Working Group believes there are no minor violations in this area. As an example, the violation "fail to take disciplinary action, if appropriate, when one of its appraisers is disciplined in another State" based on the matrix could lead to derecognition of a State's appraisal program following multiple infractions. This response is also bifurcated based on whether the infraction was caused by incompetency or a lapse of ethics. The Working Group submitted its recommendations to ASCAC for consideration.

Members voiced no opposition to the recommendations, and were inclined to include the matrix in ASCAC's recommendation package.

National Registry/Information Sharing Working Group

Member Hummel, Chair of the Working Group, provided the report. The Working Group discussed ASC Policy Statement 3 and its impact on the National Registry. Infractions on the sanction matrix range through minor, material, significant and severe, and are broken out along repeat infractions. Interim derecognition is recommended for three 3rd-severe infractions: (1) does not transmit a roster listing individuals who have received a State certification or license at least monthly; (2) does not report the most serious disciplinary actions within 5 business days after the action is final; and (3) must report all disciplinary actions to the National Registry in 30 days. Interim suspension of credential is recommended for two 3rd-severe infractions: (1) places non-AQB compliant appraisers on the Registry; and (2) does not remit Registry fees in a timely fashion. Most of the sanction responses start with training for State staff to ensure that pertinent entities understand their responsibilities.

Member Demopulos said the group is recommending reducing the number of "strikes" for each infraction from as many as nine down to three. In response to Member Bright's question about letters of good standing, Member Hummel said the group decided to focus on the current generation of regulations, as opposed to new regulations which may be promulgated. Member McEntire said certain infractions should include a sanction of continuous monitoring. Member Brown suggested the possibility of appraisers being unable to opt off the National Registry if they have previously been subject to disciplinary action. Ms. Graves said there is no way to report disciplinary actions on the National Registry against appraisers who do not themselves appear on the Registry, though such action could be taken in the event the appraiser was

previously registered but is currently inactive. Members discussed the timely payment of fees: what is timely, what happens when fees are not timely paid, the role of States in fee processing, et cetera. Vice Chair Gregoire suggested adding an additional “strike” to the sanctions matrix for the offense “does not report the most serious disciplinary actions within five business days after the action is final.” Member Kelton said, with respect to several sanctions, greater clarity is needed as to the severity of the infraction. Vice Chair Gregoire questioned whether successor officeholders should inherit the disciplinary record of their predecessors. Member Moss said ASCAC should consider the eventuality in which an organization presents multiple infractions over several matrices, indicating more concern than individual infractions.

Aggravating/Mitigating Circumstances Working Group

Chair Ouellette previously drafted a set of aggravating and mitigating circumstances for consideration by the ASCAC. These circumstances would affect in what light other sanctions matrices will be viewed.

ASCAC discussed the list of aggravating circumstances. Member Hummel suggested an amendment: “Deficiencies are material and, if not corrected in a timely manner, will pose a potential risk to the program, *licensees or the public.*” Vice Chair Gregoire further suggested adding “*financial institutions or the agencies*” to the list. Member Hood suggested an amendment: “*Pattern of* prior deficiencies of the same type.” Chair Ouellette agreed and suggested the same change could be made to “Prior deficiencies of another type that have not been corrected.” Vice Chair Gregoire asked whether a lack of ability to correct deficiencies constitutes an aggravating circumstance. Member Hood said that derecognition would trigger an immediate crisis in a State’s economy. Member Pistilli commented that a program that is out of compliance does no good to the license-holders, the public or the users. Member Hummel said the aggravating circumstances are not intended to serve a punitive function but rather as a guide to staff as to how a program may best be helped to achieve compliance. Member Bright said similar concerns in different programs may be interpreted variably among aggravating and mitigating circumstances, possibly leading to allegations of favoritism. Member Hummel suggested rewording the phrase around “efforts to correct deficiencies,” to which several members agreed. Member Stewart said different stakeholders have very different views of the success of a program. Member Moss suggested adding “numerous deficiencies of varying types.”

ASCAC discussed the list of mitigating circumstances. Chair Ouellette suggested changing one item to read “Personnel issues such as loss of a key staff member.” Additionally, she suggested adding an item to address turnover of administration. Consensus on this issue was not clear. Vice Chair Gregoire suggested adding an item pertaining to natural disasters. Chair Ouellette suggested an amendment: “State has an *otherwise efficient and effective* regulatory program,” for the case in which a State has only one specific issue amidst an otherwise well-run program.

Enforcement Working Group

Member Brown, Chair of the Working Group, provided the group’s report. The Working Group suggested that footnotes be added to each matrix regarding the following: (A) the actions are

based on multiple State reviews, not one single review; (B) the actions are suggestions; (C) the ASC has the discretion to add or subtract actions based on the number and severity of the violations found; and (D) the goal of the matrix is to ensure fair, equitable and consistent actions taken by the ASC. The Working Group was unable to reach agreement regarding derecognition. All listed infractions would follow the “12-strike” arrangement of the matrix, although Member Feik said more serious infractions may jump to higher sanctions. Chair Ouellette suggested the Working Group hone its list of sanctions down to three per infraction, to which Member Brown agreed. ASCAC members discussed what constitutes an investigation according to their various constituencies.

Temporary Practice Recommendations

Chair Ouellette previously drafted a set of temporary practice recommendations. Having discussed these recommendations at prior ASCAC meetings, the Chair put it to the members as to whether the recommendations needed any further changes. Recommendation 1 as printed contained an editorial error and should in part read: “Once all States report such data weekly, the Committee recommends *not* finding the use of a letter of good standing as burdensome.” Member Hummel expressed concern that the recommendation would not take effect until all States began reporting pertinent data. Member Bright said she believes letters of good standing are antiquated and burdensome. Member Watkins said States are more likely to opt for continued use of letters of good standing rather than doing the hard, expensive work of implementing new technologies for tracking appraisers. Member Kelton said obtaining temporary practice permits is sometimes more difficult than obtaining permits in a home State. Member Brown said she believes letters of good standing are burdensome to both applicants and issuing States and Member Pistilli agreed. Member Hummel said the ASC does not have the authority to limit States in their decision to ask for a letter of good standing. ASCAC members generally agreed that it would be burdensome to require letters of good standing for appraisers already listed on the National Registry.

At a previous meeting of the ASCAC, staff confirmed that the ASC does not have the authority to require criminal background checks. Is it burdensome to require a criminal background check for issuance of a temporary practice permit? Recommendation 2 is essentially no recommendation at all. Member Demopoulos suggested removing the following sentence because it is neither needed nor appropriate: “As a result it will be many years before all credentialed appraisers will have undergone a criminal history check.” Member Kelton commented with respect to temporary practice permits questioning who we are trying to protect. Members Hood and Stewart said they supported the current wording of Recommendation 2.

With respect to Recommendation 3, it depends on the State whether disciplinary actions would appear on the public side of the National Registry. ASC staff is developing software language to comport with Recommendation 3.

National Registries (Appraisers and AMCs) Recommendations

Chair Ouellette previously drafted a set of National Registries recommendations. Member Hummel asked whether trainees should be included on the National Registry on a strictly

voluntary basis, though the consensus of ASCAC was to keep the recommendation as is, citing concerns around confusion and burden. Member Borges suggested use of other terms besides trainee, as this term has a deleterious effect on recruitment of young workers to the field. No objections were voiced with respect to Recommendations 2, 3 and 4. With respect to Recommendation 5, some members expressed confusion on how trainees would be included on the Registry as subordinates of appraisers if they (the trainees) were already excluded according to Recommendation 1. Should the ASC track the number and distribution of appraisers' trainees? Member Callahan asked how the ASC might enforce the inclusion of trainees under appraisers. Member Hummel asked whether the proposed additional fields would appear on the public side of the National Registry. Chair Ouellette said the public side displays an appraiser's current ability to practice; disciplinary action (type, effective and ending dates) would appear on the private side only. Some members expressed support for inclusion of disciplinary information except where State or other laws specifically forbid this information's publication. Member Callahan said disciplinary information is already publicly available in many States; the question is whether the National Registry will publish information which is already available in an appraiser's home State. Member Brown asked ASCAC to consider that the States have varying standards of what types of violations will be made public. Vice Chair Gregoire said, though the States may have disparate practices, the National Registry should maintain consistency so consumers can have confidence in the information they receive there, and the National Registry should not be the clearinghouse for disciplinary information on all licensees. Member Kelton said the public side should include whether an appraiser's license has been suspended and for what period of time. Member Demopoulos said a number of his customers demand exclusive use of licensees with no disciplinary actions on their records. Member Moss said users could make their own decisions about disciplinary information provided it is presented in a venue where it may be appropriately interpreted. The consensus of the ASCAC seemed to form around Vice Chair Gregoire's reading of the statute that the National Registry should provide a listing of who may perform appraisal services for federally related transactions (FRTs), though resolution was not reached and conversation continued the following day.

Ms Ritter said the statutory mandate of the National Registry is to reflect those appraisers who are eligible to perform FRTs, and this is published on the public side of the Registry. The regulatory (private) side is the result of numerous interactions between ASC staff and State regulatory programs. States had varying levels of comfort in how much information would be shared, and many wanted to know what the ASC would do to ensure that private information remained so. Member Lavertu said until consistency among the States can be achieved including variable levels of disciplinary information will only confuse the public. Several members said they saw no harm in the recommendation, as it provides information to the public and is completely voluntary, though there was no clear consensus. Member Callahan said the record should show that there was vigorous debate on the topic, and that there was significant support voiced both for the status quo and for other alternatives.

With respect to Recommendation 7, Member Demopoulos said person-specific email addresses should be removed from the list of proposed content for AMCs on the AMC National Registry. Member Hood said he appreciated Member Demopoulos' privacy concerns, but "the ability to get to the right person quickly outweighs that." It was suggested that it may be necessary to segregate the AMC Registry into public and private sides. Member Callahan suggested contact

telephone numbers be included. Member Kelton suggested AMCs be assigned unique identifiers, as has been proposed for individual appraisers. Members Bright and Hummel suggested removing the fields relating to bond requirement and amount. Member Brown suggested adding “out of business” to the list of statuses available. Member Bright suggested adding a list of AMCs in receipt of disciplinary action to the daily email, as is the case with individual appraisers. Member Watkins suggested adding “deceased” to the list of available statuses. Member Pistilli suggested the controlling person of an AMC be identified on the public side of the Registry. Member Hummel suggested tabling the discussion until proposed rules are released. Vice Chair Gregoire suggested the regulatory private side contain information as to the ownership of an AMC. Member Pistilli suggested there be no difference between public and private sides of the AMC Registry, for the benefit of information-sharing. Member Kelton said impacts to institutions and AMCs would be disproportionate. Member Bright expressed concern that a single AMC might operate as multiple independent agencies within different States. Member Brown said in Idaho, the only differentiation between individual appraisers and AMCs is whether they are identified by an SSN or EIN. Member Pistilli suggested framing proposed content around performance-based indicators and collect information that would deter fraud and provide streamlined efficiencies for users. Chair Ouellette will redraft the proposed content in this area for further ASCAC consideration.

THURSDAY, October 16, 2014

Enforcement Working Group

Member Brown said the Working Group met to provide an updated matrix of sanctions for ASCAC consideration. No violations fall into the “minor” category. Two violations, dismissal of case without investigation and complaint log missing, are considered severe beginning with the first infraction, and may ultimately lead to interim derecognition. The Working Group sought guidance under the violation, persons analyzing complaints are not knowledgeable about USPAP. Among other commenters, Member Kelton said the statement was “too open to inconsistencies” and should be broken into two categories of workers: screeners and their supervisors. Member Hummel suggested the violation qualifies as significant, and Chair Ouellette agreed. Member Kelton suggested that the violation “enforcement dispositions are not consistent” qualifies as at least significant, to which Member Feik said concerns in this area pertaining to fraud would automatically change the violation to “dispositions are not appropriate and equitable,” and would therefore be significant. Member Hummel suggested that a third infraction of the violation “cases not resolved within one year with no special circumstances documented” would qualify as severe. Vice Chair Gregoire said sometimes cases are not resolved within one year through no fault of the regulator. The ASCAC agreed that the violation “cases not resolved within one year with no special circumstances documented” would follow this progression: material 1 (1, 2, 3), significant 2 (4, 5), significant 3 (6, 7). Member Stewart said it never seems appropriate to derecognize State programs as the consequences will be so severe, especially for parties who may not have done anything wrong. Other members said use of this “nuclear option” contained more discretion than may initially be understood. Members Brown and Hood said they did not feel the infraction warranted a derecognition sanction, either interim or otherwise.

With respect to the violation “dismissal of case without investigation,” Member Watkins explained in Florida, all legally insufficient cases are dismissed without investigation, and in fact cannot be investigated. Member Hood suggested the wording “dismissal of case without review on the merits.” The violation “not analyzing to determine if additional violations should be added to the complaint” was moved from material to significant, mirroring the violation pertaining to USPAP knowledgeability. The Working Group’s remaining suggested sanctions were accepted without change.

National Registries (Appraisers and AMCs) Recommendations, Continued

Chair Ouellette said Recommendation 6 would increase the frequency with which appraiser data and information regarding disciplinary actions would be submitted to the ASC. This information would be visible on the public side of the Registry.

Information-Sharing Recommendations

Chair Ouellette previously drafted a set of information-sharing recommendations, as well as a list of proposed content for each State appraiser regulatory agency on the ASC National Registry. Member Brown said that “link to proposed rules” should be “link to proposed rule changes.” She also suggested providing a breakout of a State’s various fee structures. Member Bright expressed concern around the increased burden of maintaining redundant or possibly conflicting information in multiple venues. Members Kelton, Callahan, Hummel and Moss agreed that the information proposed would be helpful to their organizations. Vice Chair Gregoire said, as a set of suggested content on the Registry, it is a reasonable list. The field “general contact name” is intended to reach an administrator or executive director within the State. “Compliance review standing” pertains to a State’s review finding, the lowest category, poor, being of chief concern. Member Watkins suggested adding a field pertaining to Recovery Fund payments, and that the field “require reciprocity agreement with applicant’s State” be removed. The Appraisal Foundation has assembled a task force to create a digest of USPAP cases. The digest would be free to regulatory agencies and available for sale to other interested parties. Should the ASC compile a similar list of appraiser disciplinary actions? Member Bright replied no. Vice Chair Gregoire said Recommendation 3 was intended to act as an aid to State programs or legal counsel who may not be as well versed in appraisal law as may be others. Member Borges suggested that Recommendation 3 be removed, and by show of hands, the ASCAC decided to do so.

Enforcement Recommendations

Chair Ouellette said she is developing language for recommendations pertaining to special documented circumstances, investigation of the merits of a complaint and encouraging the use of the matrix. She opened the floor to ASCAC members who wished to make suggestions for further enforcement recommendations. Vice Chair Gregoire suggested a recommendation be composed pertaining to quality of investigation and due process. Member Watkins suggested the ASCAC conduct a larger conversation about how programs could weave quality into the conduct of their business, either in training or other means. Chair Ouellette said ASCAC would discuss the use of grant funds at a later meeting. ASCAC and ASC staff will continue work in this area.

Discussion Items

Tying State grant funding to State compliance review funding

Chair Ouellette commented that a direct cash grant to most States will not be the answer. Making more money available to low performers may entice States to intentionally lower their effectiveness and efficiency. In previous meetings, the ASCAC considered training for board members and administrative law judges. A member of the public suggested distributing grant monies equitably across all States, proportional to the number of appraisers. Member Demopulos said disbursing monies equally would be unfair to large States' programs. Member Watkins said Florida instituted focused trainings to make more effective use of grants. Member Kelton suggested making more grant money available for online training in order to reach more people. Chair Ouellette supported online and in-person training events where people can make networking connections. Member Bright suggested an online training module around Title XI, its history and Policy Statements; Member Kelton agreed. Member Pistilli suggested training for States in consistency of adopting appraiser, AMC, surety bond, application and renewal requirements; Member Demopulos agreed. Member Callahan suggested training on SOAP software; Member Kelton agreed and said it should be put under a larger umbrella of start-up initiatives. Further discussion on the use of grant money was tabled for a future meeting.

The discussion of conflict of interest (where a State board member is involved in the review of a complaint against an individual in their firm) was tabled for a future meeting.


Final Comments/Public Comment

Sherry Bren of the South Dakota Department of Labor and Regulation, asked for comment with respect to a State's ability to revoke or suspend a credential, and specifically where a State's authority in this area resides. Chair Ouellette said States make the ultimate determination presently in these matters.

Adjournment

Chair Ouellette said the next meeting of the ASCAC will be held February 12 and 13, 2015 in Washington, D.C. She adjourned the meeting at 3:30 p.m.

Respectfully Submitted:



Lori L. Schuster
DFO

Respectfully Submitted:



Roberta Ouellette
Chair