APPRAISAL SUBCOMMITTEE
OPEN SESSION MEETING MINUTES
JULY 21, 2011

LOCATION: Office of the Comptroller of the Currency, 250 E Street SW, Room 8C, Washington, DC 20219

ATTENDEES

ASC MEMBERS:	OCC – D. Merkle FDIC – S. Gardner FHFA – S. Cooper FRB – G. Gibbs HUD – P. Gillispie NCUA – J. Lee
ASC STAFF:	Executive Director – J. Park Deputy Executive Director – D. Graves General Counsel – A. Ritter Administrative Officer – C. Brooks Administrative Officer – L. Schuster Policy Manager – V. Ledbetter-Metcalf
OBSERVERS:	D. Bunton – Appraisal Foundation C. Johnson – Appraisal Foundation M. Vasquez – Appraisal Foundation P. Sanford – Consumer Financial Protection Bureau (CFPB) M. Mellon – FDIC W. McEwen - FRB

The meeting was called to order at 10:30 a.m. by D. Merkle.

<OPEN SESSION>

1. **Opening Remarks**

   D. Merkle welcomed the observers to the meeting.

2. **Summary Agenda**

   - **June 8, 2011 minutes – Open Session**

   S. Gardner moved for approval of the June 8th Open Session minutes as amended. P. Gillispie seconded, and all members voted to approve except S. Cooper, G.

Gibbs and J. Lee who abstained from voting. S. Cooper, G. Gibbs and J. Lee abstained from voting since they did not attend the June 8th open session meeting.

3. Discussion Agenda

- **Agreed Upon Procedures on the Appraisal Foundation 2010 Grant Report**

J. Park presented the Independent Accountants' Report on Applying Agreed Upon Procedures, which is to be used by the ASC to evaluate the Appraisal Foundation's compliance with the grant agreement during the year ended December 31, 2010. J. Park confirmed that the accounting firm of O'Connor and Drew, PC found no inappropriate expenditures or any activities charged to an incorrect account, or any non-grant activities charged to the grant account. An ASC member provided some historical background regarding the transfer of the annual audit from HUD to GSA in 1996. The purpose of the audit is to assess whether the grant funds provided by the ASC to the Appraisal Foundation are being used as authorized in the grant award. In response to a question, J. Park confirmed that the auditor used the same agreed-upon procedures as in previous Reports and that no additional procedures were performed. A. Ritter confirmed the ASC Executive Director approved the Report under delegated authority and therefore the Report is not presented to the ASC for a vote.

- **Appraisal Foundation March 2011 Grant Reimbursement Request**

J. Park presented the March 2011 grant reimbursement request in the amount of $67,132. The Foundation's request included expenses associated with salaries and overhead, psychometric services provided by COMIRA for the Appraiser Qualifications Board (AQB) licensing and certification examinations, board consulting, and an inspection of the PSI Testing Site in Tyler, TX. In the discussion that followed, J. Park confirmed the Foundation provides documentation for email-related charges submitted by its Board members and that ASC staff address any questions or concerns with the Foundation. P. Gillispie moved to approve the March 2011 grant reimbursement request in the amount of $67,132. G. Gibbs seconded; all members present voted to approve.

- **Idaho Compliance Review Report and letter**

D. Graves presented the Idaho Compliance Review Report and letter. ASC staff has determined Idaho is not in substantial compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI). ASC staff identified one area of non-compliance which pertained to complaints against appraisers not being resolved in a timely manner. Staff identified as an area of concern the limited staff resources available to the appraiser regulatory program due to a hiring freeze and staff shortages. Staff recommends Idaho remain on a two-year Review Cycle. In the ensuing discussion, an ASC member requested clarification as to the ASC staff findings relative to Idaho's appraiser program in comparison to the findings from the Vermont Compliance review given the resolutions were different, notwithstanding that the States appeared to have the same issue. Staff responded that while Vermont had five complaints that were open for more than one year, Idaho had 40 aged cases. Since the Compliance Review, Vermont claimed to have resolved four of the five aged complaints. The complaints were to be closed at Vermont's May Board meeting. However, staff has not verified whether the complaints were closed. In response to an ASC member's question, staff provided an overview of the Policy Managers' communications with States between Compliance Reviews.

P. Gillispie moved for approval of the Idaho Compliance Review Report and letter with edits, noting Idaho is not in substantial compliance with Title XI, delegating authority to the ASC Chair to review and sign the letter. S. Cooper seconded; all members present voted to approve.

- **Tennessee Compliance Review Report and Letter**

D. Graves presented the Tennessee Compliance Review Report and letter. ASC staff has determined Tennessee is in substantial compliance with Title XI. Staff recommends retaining Tennessee on a two-year Review Cycle. G. Gibbs moved for approval of the Tennessee Compliance Review Report and letter, noting Tennessee is in substantial compliance with Title XI, delegating authority to the ASC Chair to review and sign the letter. S. Cooper seconded; all members present voted to approve.

ASC staff suggested for future meetings that the ASC could consider placing State Compliance Reviews that are in substantial compliance with Title XI on the Summary agenda. The ASC members agreed that this should be considered.

- **Vermont Compliance Review Report and Letter**

D. Graves presented the Vermont Compliance Review Report and letter. ASC staff has determined Vermont is not in substantial compliance with Title XI. ASC staff identified one area of non-compliance which pertained to complaints against appraisers not being resolved in a timely manner. Staff identified three areas of concern: 1) Vermont's regulations are not consistent with the Appraiser Qualifications Board Real Property Appraiser Qualification Criteria (AQB Criteria); 2) Vermont did not conduct a prompt post-approval audit of an adequate number of continuing education affidavits to identify appraisers who failed to comply with Federal and State law; and 3) enforcement files were not well documented. Staff recommends Vermont remain on a two-year Review Cycle.

In response to an ASC member's questions, ASC staff explained that the Policy Managers were not allowed to attend the executive session of the Vermont Board meeting because the Board was deliberating on a case. Pursuant to State statute vesting that authority with the Board, the State's Board attorney asserted that it would be inappropriate for ASC staff to observe the session. ASC staff agreed to document in internal files the basis for the State's conclusion and the ASC staff decision to not attend the session, noting that a State's Board attorney may ask ASC staff to leave such a session if they feel staff's presence would be a hindrance to the deliberative process. The ASC then discussed whether the Recommended State Action for Vermont to amend its regulations to meet AQB Criteria should be a Required State Action in light of our authority under the Dodd-Frank Act for licensed appraisers to comply with AQB Criteria. Staff commented that the ASC will begin monitoring for compliance with this requirement on July 1, 2013.

In response to questions, ASC staff provided clarification on whether Vermont responded to the issue regarding enforcement file documentation, and added that Vermont should provide ASC staff a copy of their procedures for enforcement file documentation. ASC staff agreed to address in the Compliance Review Report whether Vermont responded to ASC staff findings. S. Gardner moved for approval of the Vermont Compliance Review Report and letter with edits, noting Vermont is not in substantial compliance with Title XI. She also added the Report needs to note whether Vermont responded to ASC staff's finding (documentation in the enforcement files is lacking), and for the ASC Policy Manager to follow up with Vermont about our concerns. G. Gibbs added to the motion to delegate authority to the ASC Chair to review and sign the letter. J. Lee seconded; all members present voted to approve.

- **Idaho Request for an Extension of the Effective Date of the Modified National Registry Fee**

J. Park summarized the background on the request, dated March 2, 2011, from Idaho for an extension of the January 1, 2012 effective date for the modified National Registry fee. In October 2010, the ASC raised the National Registry from $25 to $40. J. Park explained the circumstances around Idaho's representation that the State legislature is not in a position to adopt a rulemaking to implement the modified Registry fee by January 1, 2012, which is the effective date established by the ASC. J. Park explained that ASC staff has not received similar requests from any other State to date. Based on information discussed with State regulatory officials, including some discussions held during the spring 2011 conference of the Association of Appraiser Regulatory Officials (AARO), ASC staff has no reason to believe other States will request a similar extension. However, ASC staff explained that other States may have challenges implementing the modified Registry fee by the effective date given the time necessary to implement legislation and rulemakings.

J. Park explained that ASC staff explored with Idaho whether the State could implement a temporary or emergency rule. However, Idaho informed ASC staff that the Governor has not and would not allow use of a temporary or emergency rule to enact a fee or fee increase. ASC staff stated that there are three options for the ASC to consider: 1) the ASC could grant an extension to Idaho as requested, and extend the effective date for all States; 2) the ASC could deny the request; or 3) the ASC could allow Idaho to defer payment of the increased fee. He added that staff believes the third option is not viable.

In the discussion that followed, ASC staff explained that they explored with Idaho the possibility of paying the fee increase retroactive to January 1, 2012, in the event the ASC approved an extension of the modified Registry fee effective date. However, Idaho informed ASC staff that it could not implement a retroactive increase under its current authority and that the Governor's office would not use its authority to make the fee increase retroactive in the legislation. ASC members shared their observations that it appears Idaho has made a good faith effort to implement the rule and also said that it would appear Section 1109 of Title XI does provide the ASC with flexibility.

After some discussion, there was general agreement among the ASC members that the ASC could consider granting an extension to Idaho until July 1, 2012, noting there are extenuating circumstances and that Idaho has made a good faith effort to comply. The ASC members were also in general agreement that other States should be allowed to request an extension on a case-by-case basis, provided extenuating circumstances prevented compliance, notwithstanding the State's good faith efforts to fully comply with the modified Registry fee by the January 1, 2012 effective date. The ASC members discussed the basis for a determination that extenuating circumstances prevented compliance.

A. Ritter cautioned the ASC in relying on the language in Section 1109 to grant the extension requested by Idaho or similar requests from other States. If the ASC were to grant an extension to one State, that would be the equivalent of granting an exception or waiver. The authority for the ASC to grant waivers is specifically authorized by Title XI of FIRREA in only specific circumstances and requires FFIEC approval. Staff also added that some States may claim it is disparate treatment to grant an extension to one State while other States have passed emergency legislation or rules to comply with the modified National Registry fee.

The ASC members discussed the provisions in Title XI of FIRREA relative to the granting of waivers that require approval by the FFIEC, noting that the provisions pertain to statutory deadlines. It was stated that the ASC chose January 1, 2012 as an effective date for the fee modification and it was not a statutory requirement.

The ASC members were in general agreement that if the ASC were to allow extensions of the effective date, the ASC should set a date, such as November 2011, by which States must request an extension in order for the ASC to consider taking action.

There was some discussion as to whether Idaho appraisers who renew or are issued a license after January 1, 2012 would pay a $25 or $40 National Registry fee. It was confirmed that Idaho appraisers would pay $25 until Idaho has passed legislation to increase the fee to $40 from the current $25. These appraisers, therefore, would be listed as active on the National Registry. There was further discussion of possible scenarios around the granting of an extension.

There was general agreement among the ASC members that any decision to grant an extension to Idaho would be consistent with the Dodd-Frank Act. An ASC member asked A. Ritter whether there are any legal considerations relative to possible legal challenges if the ASC were to grant an extension of the effective of the modified Registry fee to all States. A. Ritter noted that the ASC would need to define extenuating circumstances to avoid subjectivity.

There was some discussion that such extenuating circumstance would include, but are not limited to: 1) the State appraiser regulatory program was unable to get legislation on the docket or an emergency ruling passed; or 2) the increased fee would have to come from another source other than the appraiser, i.e., the program's budget. An ASC member asked A. Ritter to address the potential for any legal challenges and what would constitute such a challenge. A. Ritter responded that a legal challenge could be in the form of a strongly worded letter or phone call from a State, or a State could file an action in court.

S. Gardner offered to have FDIC legal staff draft a memorandum as to whether a decision is legally defensible, under general standards of federal statutory interpretation, that the ASC may grant individual exceptions to the deadline the ASC established for States to comply with the increased annual National Registry fee pursuant to Section 1109 from Title XI of FIRREA. She also volunteered to have FDIC legal staff rewrite the ASC staff recommendation to reflect the complete background relative to the issue of law, the draft Bulletin to State appraiser regulatory officials, the draft Federal Register Notice and the draft letter to the Idaho Appraiser Board. The ASC members accepted the FDIC's offer and asked that the revised documents be provided to the ASC in a timely manner.

The ASC members were in general agreement that ASC staff should work with the FDIC legal staff to revise the ASC recommendation memorandum. An ASC member disagreed saying staff has given recommendations in the memorandum and it should not be necessary to rewrite it. The other ASC members were in general agreement that the documents supporting an official ASC action must provide a complete background of the extenuating circumstances and representations submitted by the State, as well as a comprehensive analysis of the legal and policy issues as well as the conclusions. Further, the recommendation memorandum would need to be revised to set forth the general consensus of the ASC and the final recommendation that forms the basis for the ASC vote, as well as the statutory authority in Title XI of FIRREA that sets forth the legal basis for the ASC action.

The ASC General Counsel and other staff members said that since the ASC members appeared to have reached a consensus there could be a notation vote following a motion. ASC staff also advised that the ASC members could complete a notation vote on whether to approve the revised documents circulated by the FDIC. S. Gardner made a motion to: (1) approve Idaho's request for an extension of the effective date of the modified Registry fee until the earlier of July 1, 2012, or the passage of legislation by Idaho that implements the modified National Registry fee, (2) grant the extension in light of extenuating circumstances encountered by Idaho; and (3) have the ASC inform States that there is the opportunity to submit a request for an extension to the ASC for action by no later than October 31, 2011. The ASC members were in general agreement that any extension requests would be approved on a case-by-case basis and would have to demonstrate that extenuating circumstances prevent compliance with the effective date of the Modified National Registry fee increase. J. Lee seconded and all other members present approved.

- **AQB Compliance Status for Licensed Appraisers Listed on the National Registry**

J. Park presented staff's recommendation that the ASC approve a Supplement to ASC Bulletin 2011-01. The Supplement, if approved, would be distributed to States in response to questions concerning how non AQB-compliant licensed appraisers would be reflected on the ASC National Registry as of July 1, 2013. By July 1, 2013, any State issuing a State license credential must adopt or implement the minimum AQB Criteria. ASC staff indicated that in States that do not comply, it could result in that State's licensed appraisers being listed on the National Registry as "inactive" and therefore ineligible to perform appraisals for federally related transactions.

The ASC members addressed various scenarios as to how certain AQB-compliant or non AQB-compliant licensed appraisers would be listed on the Registry for a State that has not adopted or implemented the AQB Criteria.

Consistent with the ASC staff recommendation, it was explained that if the appraiser is listed as non-AQB Compliant, they would be listed as inactive, but those licensed appraisers that are listed as AQB-compliant would remain as active on the National Registry. An ASC member said the wording in the memorandum is confusing on that point and should be clarified. Another ASC member noted that the ASC should consider whether the options under consideration would have unintended consequences, such as having States reach a conclusion to not offer a licensed category.

An ASC member asked staff to define in the Bulletin what other cause(s) would affect an appraiser's status. An ASC member replied that a disciplinary action, e.g., a suspension, could affect their status. Staff was asked if the six affected States would be asked prior to July 1, 2013 if they would adopt or implement the AQB Criteria before that date. If those States have not adopted or implemented the AQB Criteria, would those appraisers be shown as inactive on the National Registry as of July 1, 2013. Staff said a Priority Contact or Compliance Review would be done on those States before July 1, 2013, to determine whether or not the affected States will meet the July 1, 2013 deadline. An ASC member said staff has to be clear in its recommendation what will happen to non AQB-compliant licensed appraisers after July 1, 2013. An ASC member asked if licensed appraisers who are currently non AQB-compliant have to meet the AQB Criteria that was in effect when they applied for a license. Staff responded that the State agency would need to determine whether the appraiser's examination, education and experience met AQB Criteria at the time the State issued the license. If any deficiency exists, the licensed appraiser would have to comply with the AQB Criteria that is in effect now for the deficiency only. (S. Gardner left the meeting.) Some ASC members had concerns about the Supplement and would like to submit edits. The ASC agreed to table this item and directed staff to revise the staff recommendation memo, bulletin and Federal Register document. An ASC member suggested that this item be the first item on the August 10th Open Session discussion agenda and all other ASC members agreed.

The Open Session adjourned at 1:20 p.m. into Closed Session. The observers, with the exception of P. Sanford of the CFPB, left the meeting.