



NORTH CAROLINA APPRAISAL BOARD

5830 SIX FORKS ROAD
RALEIGH, NC 27609
TELEPHONE: 919-870-4854
FAX: 919-870-4859

E-mail: ncab@ncab.org
Website: www.ncappraisalboard.org

November 27, 2012

Appraisal Subcommittee
Attention: Lori Schuster
1401 H. Street, NW, Suite 760
Washington, DC 20005

Dear Ms. Schuster:

The North Carolina Appraisal Board has reviewed the Proposed Policy Statements published in the Federal Register and has the following comments.

Policy Statement 1

Statutes, Regulations, Policies and Procedures Governing State Programs

G. Prohibition Against Discrimination

This section of Proposed Policy Statement 1 states that the state agencies must prohibit a federally regulated financial institution from excluding an appraiser from consideration for an assignment solely by virtue of a membership or lack of membership in a particular organization. It goes on to state "Such discrimination is also inappropriate by States in the administration of their Programs."

North Carolina state law states that no more than three of our nine Appraisal Board members may be members of the same trade organization. This has been the case since the inception of the Board, in order to assure that one trade organization may not dominate the Board and thus have a potential for bias in favor of its members. It is our understanding that several other states have a similar prohibition.

Either this section needs to be stricken, or an exception should be made for state laws designed to prevent bias by Board members.

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I. ASC Staff Attendance at State Board Meetings

We disagree that ASC staff should be able to attend executive and/or closed session of Appraisal Board meetings. The issue is not confidentiality. Although ASC staff believes that observing such sessions is somehow vital to determining if the Board is in compliance, the presence of ASC staff during such a session serves only to distract Board members and prevent the free flow of information and discussion. It is for that reason that hearings and closed sessions are seldom scheduled for a North Carolina Appraisal Board meeting when the ASC is performing an on-site Compliance Review. This results in postponing important matters and in further delay for resolving complaints. There are reasons for closed sessions, and the ASC presence during them would thwart the purpose. State law provides that the public is excluded during closed session. There are no provisions in the law for anyone other than the Board members, its attorney and its management to be present during a closed session. There is simply no valid reason for the ASC staff to attend a closed session.

Policy Statement 2

Temporary Practice

A. Requirement for Temporary Practice

This section of Proposed Policy Statement 2 states that a credentialed appraiser has the right to enter another state to perform an assignment as long as the appraiser "registers" with the other state agency. Obtaining a temporary practice permit should require more than simple registration. A state agency receiving such a request must verify the applicant's credential, receive the proper fee, and clarify the actual assignment for the temporary practice permit. Out of state appraisers may begin a temporary assignment as soon as they send in the request for the permit, wrongly believing that they have "registered" once the application is mailed. A more proper term would be that the appraiser has a statutory right to enter another state for an assignment so long as the appraiser "obtains a temporary practice permit from the State agency...".

Policy Statement 3

National Registry

A. Requirements for the National Registry

It is appropriate that the ASC formally recognizes that states may decide not to require that all of its licensed and certified appraisers be on the National Registry.

Policy Statement 4

Application Process

A. Processing of Applications

This Proposed Policy Statement requires state agencies to process applications for credentials within 90 days. North Carolina will take an application once education and experience are complete. Once the application is received, it is screened to make sure all required information is included (proper fee, background check, education completed, etc.). Normally the applicant is notified by email that there is a problem with the application, and the application is held in the office until the problem is solved. After the application passes initial screening, we request that the applicant send in appraisals we have selected from the log to review. Once they are received and the work is deemed acceptable, an examination ticket is issued. If the work is not acceptable, a complaint may be opened or additional samples may be requested. If a complaint is opened, the application is tabled until the matter is resolved. At that point an examination ticket may be issued, or the application could be denied. Once an application ticket is sent, the applicant has three attempts at the exam or one year, whichever comes first. Failure to pass the examination after three attempts or after one year results in the application being cancelled. Once the exam is passed, the credential is generally issued within a week, unless there is a character issue with the applicant. If so, the application might be on hold until a formal hearing before the Appraisal Board.

So, when does the clock start ticking? The day the application is received? The day it passes screening? Once the exam ticket is issued? We would argue that if a time period for processing application is stated in the Policy Statement, it should begin once the application is complete; e.g., when education, experience, examination and character check have all been successfully completed. It would be better to leave out the (within 90 days) portion of the Proposed Policy Statement; or, in the alternative, it should be clearly defined as to when any such time period starts to run.

B. Qualifying Education for Initial or Upgrade Applications

This section requires that states verify that an applicant's claimed education courses are acceptable under AQB criteria and consistent with the criteria for the appraiser credential sought. This is generally an easy process if the applicant took classes in our state or from a national provider. If the applicant is coming from another state by reciprocity or is trying to upgrade an out of state credential, it is extremely difficult for states to verify the content of those courses.

C. Continuing Education for Reinstatement and Renewal Applications

Verification of continuing education for out of state credential holders is difficult, if not impossible. North Carolina has always relied on a letter of good standing from the appraiser's home state to determine if the appraiser is in compliance with that state's continuing education requirement.

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This can be troublesome as well, for an appraiser could be licensed in several states, with no one state checking continuing education. It is for this reason that a centralized database of all appraiser continuing education would be of great value to states.

Policy Statement 5

Reciprocity

This Proposed Policy Statement requires states to have a reciprocity policy in place for issuing a reciprocal credential if the appraiser is coming from a state that is "in compliance", the appraiser holds a valid credential from that state, and the credentialing requirement of the home state meets or exceeds that of the reciprocal credentialing State. Since states with an ASC finding of "Poor" are considered not in compliance, how will states know when states have such a finding? Will this information be sent to states or posted on the ASC website in a manner that is easily accessed? May a state allow reciprocal applicants in on a case-by-case basis, or must all reciprocal applicants from that state be rejected? Will states be notified when the finding of non-compliance is lifted?

Policy Statement 6

Education

The content of this Proposed Policy Statement is consistent with what is now in place. We have no additional comments.

Policy Statement 7

State Agency Enforcement

The ASC continues to require a one year limit for final administrative decisions regarding complaints. This historically has been the one area most often cited in the Compliance Review process. Although there does need to be a time limit imposed, it would make more sense to require that the investigation be completed within one year, and an initial decision made by the agency whether to dismiss the complaint or proceed to a hearing (a probable cause determination).

In some states, an administrative law judge hears the cases. The ALJ will set the date and time for the hearing. An ALJ may require preliminary briefs or discovery before the hearing would even be scheduled. Even after the ALJ renders a decision (which could be months after the hearing), often the agency must consider whether to accept or reject the ALJ's decision. In order to meet a one year time frame, states will have to rush through their investigations. The agency may decide not to call matters to hearing simply because of the time involved.

This Proposed Policy Statement says that “States must analyze each complaint to determine whether additional violations, especially those related to USPAP, should be added to the complaint.” Given the short amount of time to finalize a complaint, states may decide to skip this step in order to meet the one year deadline. This does not ensure that the system for sanctioning appraisers is effective, consistent and equitable.

Some examples of special documents circumstances are included in Appendix C. While we commend the inclusion of these examples, there are others that may also provide guidance for states. For example, a state may receive a complaint on one appraisal and discover during the investigation that the appraiser has engaged in a pattern and practice of issuing misleading reports. The scope of the investigation would expand, which would lead to a longer investigation period. It is also possible that an investigation would reveal new issues that require more time to process. For example, a complaint may come in from a homeowner regarding the value of the property, but during the course of the investigation it is discovered that the appraiser who signed the report was not the person who performed the inspection. These issues are not beyond the control of the agency. Our concern is that if the ASC insists on limiting the complaint process to one year, states may decide to close their eyes to additional issues in order to meet this deadline. A state could open a separate case, but any sanction against the appraiser should be based on the totality of the circumstances, not one issue at a time. For that reason, we suggest adding language to this Appendix considering additional issues discovered during an investigation to also be extenuating circumstances.

This Proposed Policy Statement also requires states to track all complaints in an electronic, sortable spreadsheet format. Most states have at least a basic database of appraisers and complaints. It makes sense to require states to maintain a written record for each file that enables understanding of the facts and determinations and reason for those determinations in each case. The issue is with the requirement of an electronic complaint log. States would have to purchase and integrate additional case management software to meet this proposed requirement. If the ASC institutes such a requirement, we would suggest that they provide grants for the software cost and technical support to meet this requirement.

Policy Statement 8

Interim Sanctions

Although there is a lot of information in this Proposed Policy Statement regarding the process for interim sanctions, there is little information regarding what factors will go into the decision to impose them. The proposal simply states that a finding of “Poor” will “trigger an analysis”. What factors go into the analysis? Are there aggravating and mitigating circumstances to be considered? These should be outlined and explained so that states know what to expect and how to respond to a notice of intention to impose an interim sanction.

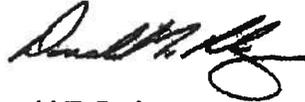
Appendix A – Compliance Review Process

It is unclear why five categories are needed for rating states. There does not appear to be a reason to differentiate between “excellent” and “good”, or “needs improvement” and “not satisfactory”. For example, “excellent and “good” states both have a two year review cycle. There is no particular incentive for a state to achieve the “excellent” rating as opposed to “good” since there is no difference between the two in the review cycle.

If the ASC decides to go to a five tier rating system, we suggest that for states with a rating of “excellent”, the review cycle should be changed to every three or four years. There could be a priority visit or a limited scope review between formal reviews. This could be done after two consecutive findings of “Excellent”. Preparing for and participating in the review takes a substantial amount of time for a program already stretched to handle its statutory duties. It would be an incentive for agencies to try and achieve a rating of “excellent”. This would be particularly beneficial in years where there have been no changes to the criteria. It would reduce expenses for the ASC, and allow more time and resources to deal with states that have a finding of “Not Satisfactory” or “Poor”.

We thank you for your efforts and for allowing us to express our opinions and comments concerning these proposed revisions.

Very truly yours,



Donald T. Rodgers
Executive Director

DTR/ms

Lori Schuster
Management and Program Analyst
Appraisal Subcommittee
1401 H Street, NW
Suite 760
Washington, DC 2005

RE: Docket Number AS12-16

Dear Ms. Schuster

We would like to thank you for the opportunity to comment on the Proposed Revisions to the ASC Policy Statements. The North Dakota Appraiser Board is appreciative of the work you and your colleges have put forth related to these proposed revisions.

Policy Statement 7 – Item B, Enforcement Process, sub-item 1 is a concern as there are times when final administrative decisions regarding complaints simply can not be resolved within a one year (12 month) period from the complaint filing date.

As you are aware, an individual has a vested right in an occupational license and must be afforded due process when any action is taken that would impact this vested right.

The court system, including the administrative hearing process and a variety of legal procedures can add complexity and is not, in anyway, controlled by a State regulatory agency. Quite simply, the legal adjudication process can involve several steps that can lead to delays in case processing and these potential delays are simply beyond the control of any State regulatory agency.

While timelines is certainly important, time alone should not be the issue, when determining if a State regulatory agency has met it's obligation of public protection.

Rather it is due process that must be closely and vigorously protected.

We suggest that the time frame be extended to allow for due process and further suggest that the State regulatory agency be held responsible only for the timeliness of the complaint adjudication within its reasonable control.

Obviously case loads and adequacy of staffing can have an impact on the timeliness of complaint adjudication and there will be times when a State regulatory agency should be allowed to fully document these as anomalies (special documented circumstances).



Department of Commerce

Division of Real Estate &
Professional Licensing
John R. Kasich, Governor
David Goodman, Director

November 26, 2012

James R. Park
Executive Director, Appraisal Subcommittee
1401 H Street, NW
Suite 760
Washington, DC 20005

RE: Public Comment on proposed revisions to ASC Policy Statements

Dear Mr. Park:

On behalf of the Ohio Division of Real Estate & Professional Licensing, thank you for the opportunity to share our comments on the proposed revisions to the ASC Policy Statements with the Subcommittee. The following are comments we wish the ASC to consider before adopting the Policy Statements as published in the Federal Register:

Policy Statement #1. I – ASC Staff Attendance at State Board Meetings

In policy statement 1, we agree with the proposal that ASC staff should not attend State board deliberations for quasi-judicial proceedings. However, we request that the proposal be expanded to also exclude ASC staff attendance any time the Board is authorized by state law to go into closed or private session. Permitting ASC staff to be present in a private session when the Board is receiving legal advice from its counsel would compromise its attorney-client privilege. Similarly, discussing personnel matters that do not have bearing on the operation of the State's program and other issues privileged under Ohio's Open Meetings Act with ASC staff in attendance would cause compliance problems for the Board regarding our public meetings regulation.

Policy Statement #7. B – ASC Staff Attendance at State Board Meetings

In policy statement 7.B.1, we encourage the ASC to consider the complexity of the appraisal that is the subject of a complaint in determining the length of time permitted for administrative disposition of a case. Specifically, as jurisdictions begin to receive more complaints on commercial/industrial appraisals the time involved in adequately investigating and adjudicating the case is more likely to be past the twelve (12) months currently allowed. Our recommendation would be that with proper documentation substantiating the need, commercial/industrial cases be set for 18 months to final disposition.

With regard to statement 7.B.2, the Division would object to any statement which eliminates the use of any statute of limitation for dismissing complaints. Statutes of limitation are well established in law; are permitted in criminal and civil cases; and serve a legitimate purpose. Administrative law is no different - witnesses become more difficult to find, memories fade, and data becomes more limited. Appraisers have a record keeping requirement in USPAP and that requirement has been incorporated into Ohio law. Appraisers regularly rely on these provisions. There would be serious due process issues for the jurisdictions if they are required to prosecute an appraiser who has properly destroyed a workfile in accordance with USPAP and state law.

Policy Statement #8. B – ASC Staff Attendance at State Board Meetings

In policy statement 8.B, we object to the statement regarding the removal of a State licensed or certified appraiser from the National Registry on an interim basis. Ultimately, this provision is confusing: does the possible interim sanction result only from a jurisdiction's "Poor" rating, or, as it currently reads, may the ASC impose an interim sanction on an individual appraiser for that credential holder's own actions?

The statement does not address the method by or for what reasons an appraiser may be removed from the National Registry. The statement also fails to take into account what effect this action may have on the State's ability to issue its sanctions permitted under state law. Arguably, the appraiser in question could be sanctioned at two different points in time for the same action. As a result, any State action may be diminished or eliminated based upon the argument that the appraiser has already been sanctioned for the same misconduct. Lastly, the statement does not address when the removal of the State licensed or certified appraiser from the National Registry can occur. This raises significant due process issues for the appraiser as the State has the burden of proof to show there is sufficient evidence of a violation license law which may only then trigger, among other sanctions, a suspension.

Thank you for the opportunity to provide our comments on the proposed changes to the Policy Statements and for the continued cooperative spirit employed by the ASC and its staff.

Sincerely,

Anne M. Petit
Superintendent

Cc: David Goodman, Director, Ohio Department of Commerce
Richard Hoffman, Chairman, Ohio Real Estate Appraiser Board



OKLAHOMA REAL ESTATE APPRAISER BOARD

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November 26, 2012

Via E-Mail Transmission to: webmaster@asc.gov

Lori Schuster, Management and Program Analyst
Appraisal Subcommittee
1401 H Street, NW, Suite 760
Washington, D.C. 20005

Re: Proposed Policy Statements – Docket #AS12-16

Dear Ms. Schuster:

Thank you for the opportunity to review and respond to the Appraisal Subcommittee's proposed Policy Statements which will replace the current Policy Statements once adopted. Please be advised that the comments below are my own, and do not necessarily represent the opinion of the Oklahoma Real Estate Appraiser Board individually or as a whole.

Policy Statement 1: The persons allowed in executive session to discuss a pending action are limited by Oklahoma law. A public body may convene in executive session under the Oklahoma Open Meeting Act for confidential communications with its attorney concerning "a pending investigation, claim, or action" if the body and its attorney determine that disclosure will "seriously impair" the public body's ability to address the issue in the public interest. 25 O.S. § 307(B) (4). A "pending" claim can refer to litigation or an administrative action which either presently exists or is merely potential or anticipated. This would include deliberations on Hearing Panel recommendations. Whether any particular communication between a public body and its attorney is a valid basis for discussion in executive session as a "pending investigation, claim, or action" is a question of fact. 74 O.S. § 18b(A)(5). This interpretation was adopted by the attorney general. 2005 OK AG 29. A willful violation of this act can subject each member of the Board to criminal actions. 74 O.S. §308(F). Accordingly, it is possible that the attendance of members of the ASC in the Board's executive sessions could lead to the Board's members being charged with criminal actions and exposing the Board to litigation.

Policy Statement 3: B. Registry Fee and Invoicing Policies: What I believe is missing from the revised language in Policy Statement 3 is a lack of framework to gauge at what marker the ASC will deem invoices past due. Removal of an entire's state appraiser population from the Registry is a strong move that will effectively put those appraisers out of business and put a hold on all mortgage activity in that state. I would like to see further clarification of the language in Policy Statement 3 as to what constitutes past due, as well as an explanation as to whether or not this decision will be made as a last effort and whether or not the decision will be made on a case-by-case basis.

Lori Schuster, Management and Program Analyst
Appraisal Subcommittee

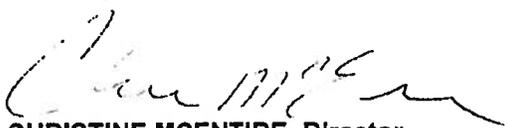
November 26, 2012

Policy Statement 7: 4. Well-Documented Enforcement: Following a very detailed list of requirements for the content of a Complaint File at 4(a), 4(b) begins with the requirements of a Complaint Log. Oklahoma has maintained, for many years, a Complaint Log in an Excel format outlining most of the information set forth in 4(b) of this Policy Statement. We also maintain a separate Spreadsheet containing the names of the filing parties, the respondent appraiser, and the assigned file number. Both of these spreadsheets are sufficiently detailed and very lengthy. To combine them into a single spreadsheet would lead to an unnecessarily large spreadsheet of information. The language in this policy statement that worries me the most, however, is the requirement to include the "last action taken and date taken", "the current status of the complaint", and a "chronological record of each action taken". This requirement seems redundant from the standpoint that all of these documents, letters, memos, appraisals and any other supporting documentation should already be date or file-stamped and kept in the file in chronological order. In fact, the proposed Policy Statement requires it at 4(a). To also require that these documents and events be summarized onto a spreadsheet seems burdensome and duplicative.

From Oklahoma's standpoint, most of the items, except the "chronological record of each action taken" are kept on a spreadsheet. We do keep track of the important dates such as date of probable cause review, the dismissal or adoption as a full complaint, the forwarding of a file to an attorney, the hearing date, and then the final Board meeting and disposition. As long as our files contain a record of all documentation in a chronological fashion, these essential dates on our Complaint log should be sufficient. I understand the thought process behind the new Policy Statement language, but for those states that are not compliant, and/or are unable to maintain their enforcement program within a twelve-month time frame, the requirement to document each action taken, in addition to the actual act of performing the task, and then documenting the file, seems to be overkill. If I have misinterpreted the "chronological record" component, I think clarification should be made to the policy statement language. I respectfully request that the ASC take another look at what it is really asking the jurisdictions to do by this language.

I appreciate the work of the Subcommittee in bringing the Policy Statements current and allowing the opportunity for feedback from the jurisdictions. If I can answer any questions, or be of assistance, please do not hesitate to contact me at any time.

Sincerely,



CHRISTINE MCENTIRE, Director
Real Estate Appraiser Board



Appraiser Certification Program

Tel: 605.773.4608

Fax: 605.773.5369

www.state.sd.us/appraisers

November 28, 2012

James R. Park, Executive Director
 Appraisal Subcommittee
 1401 H Street NW, Suite 760
 Washington, DC 20005

RE: Comments – Proposed Policy Statement
 Docket No. AS12-16

Dear Mr. Park:

The Department of Labor and Regulation, Appraiser Certification Program staff appreciates the opportunity to provide the Appraisal Subcommittee with comments regarding the proposed ASC Policy Statements.

Department Comments:

Policy Statement 4. – Application Process

A. Processing of Applications – Applications for credentialing should be timely processed by State agencies (within 90 days). Any delay in the processing of applications should be sufficiently documented in the file to justify the delay.

The requirements should not include the ninety-day time limit. Applications should be processed in a timely manner, however, it is unreasonable to impose a ninety-day time limit. The file documentation would reveal if the State agency is processing applications appropriately and if not, the ASC has grounds for action against the State agency.

South Dakota requires a work product review to be performed when an application is received from an applicant for state-licensed, state-certified residential and state-certified general credentials. The review process includes requesting appraisals from the applicant, redacting the applicant’s identifying information and submission to an examiner for a USPAP compliance review. If no significant violations are cited that would warrant a denial of an application, the applicant is approved to sit for the National Appraiser Examination. If there are significant violations cited the applicant is asked to complete remedial education and submit appraisal reports for review to ensure USPAP compliance. This process cannot be performed within the prescribed timeframe for either of these circumstances.

Mr. Park
November 28, 2012
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Policy Statement 5. – Reciprocity

C. Appraiser Compliance Requirements – Appraisers granted reciprocity must comply with the home State agencies' and reciprocating States' policies, rules and statutes governing appraisers, including requirements for payment of certification and licensing fees, as well as continuing education.

The reciprocating State agency should be granted the discretion to allow a reciprocal appraiser to renew a certificate without verifying successful completion of continuing education.

South Dakota does not require a reciprocal appraiser to verify successful completion of continuing education in order to renew a certificate. The reciprocal appraiser must be in good standing with the home State agency.

The AQB Criteria requires each jurisdiction to verify that each credential holder has completed the minimum AQB continuing education requirements. The appraiser's home State agency is responsible for verifying successful completion of the continuing education requirements. It is unnecessary to have the credential holder complete additional continuing education in order to meet the reciprocal state requirements.

Policy Statement 7 – State Agency Enforcement

B. 1. Timely Enforcement – ... Absent special documented circumstances, final administrative decisions regarding complaints must occur within one year (12 months) of the complaint filing date.

The above requirement is not reasonable.

State agencies should be required to reach final administrative decisions in a timely manner. The "Complaint Logs" that are required in Policy Statement B.4.b. will provide the Appraisal Subcommittee (ASC) evidence to determine if a State agency has reached final administrative decisions for complaints in a timely manner and if not, the ASC has grounds for action against the State agency.

Policy Statement 8 – Interim Sanctions

A. Authority – Title XI as amended by the Dodd-Frank Act states that the ASC shall have the authority to impose interim actions and suspensions, as an alternative to or in advance of a non-recognition proceeding, against a State agency that fails to have an effective Program. ...

No opposition.

Mr. Park
November 28, 2012
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B. Interim Sanctions – Title XI as amended by the Dodd-Frank Act grants the ASC authority to remove a State licensed or certified appraiser from the National Registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, or disciplinary proceedings.

For clarification, Section B. should be revised to read, "... authority to remove a State licensed or certified appraiser from the National Registry on an interim basis, not to exceed 90 days, pending State agency action regarding a State licensed or certified appraiser's licensing, certification, registration or disciplinary proceedings.

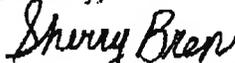
It should be clear that an individual appraiser may not be removed from the National Registry if the ASC alleges that a State agency has failed to maintain an effective program that complies with Title XI and takes action to commence proceedings for interim sanction.

It is not clear when using the term 'interim actions and suspension' in Section A. and 'interim sanctions' in Section B. that these ASC actions are addressing two entirely different situations.

Department staff sincerely encourages the ASC to thoughtfully consider the above comments and recommendations regarding the proposed ASC Policy Statements.

Thank you for the opportunity.

Sincerely,



Sherry Bron, Executive Director
Appraiser Certification Program

CC: Advisory Council

**TALCB Board Members**

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Douglas E. Oldmixon
Commissioner

Comments to ASC Revised Policy Statements [Docket No. AS12-16]:

These comments are submitted on behalf of the Texas Appraiser Licensing & Certification Board (TALCB):

- In Policy Statement 1. A, in the second paragraph, after the first sentence talking about avoiding conflicts of interests with other real estate related professions, TALCB requests that the following two sentences from the current ASC Policy Statement 1 be added back in: "A State, however, may choose to locate its State agency within an existing regulatory body. Any State with its appraiser regulatory function in a department that regulates realty related activities must ensure that adequate safeguards exist to protect the independence of the appraiser regulatory function." Given the current constrained fiscal environment of many state governments, the future consolidation of state agencies is likely to continue. We think that keeping this current language in the proposed policy statement offers important ongoing guidance to states and reassures them of the acceptable nature of such a structure while preserving the associated key safeguard instruction language.
- In Policy Statement 1. I., TALCB agrees that not allowing ASC staff to attend closed sessions of State Board meetings for "quasi-judicial" proceedings is appropriate as proposed, but believes that consideration is too narrowly expressed. We request that the text be expanded to exclude attendance of ASC staff any time a State Board convenes in closed session "to receive advice of counsel" specifically authorized by State statute or regulation. Allowing ASC staff to be present when the Board is receiving advice of counsel would waive the Board's attorney-client privilege for any matters discussed in the presence of ASC staff and/or will prevent such privileged communication from taking place. ASC attendance during such sessions would also be considered a violation of current relevant provisions of the Texas Open Meetings Act.
- In Policy Statement 7.B.2, TALCB suggests that ASC provide clarification to the language requiring a state to analyze each complaint "...whether additional violations, especially those related to USPAP, should be added to the complaint." When reviewing reports for USPAP compliance, it is more important that the focus be on the significant characteristics of the subject and comparable properties and the essential elements of the transactions that may have a material impact on the value conclusion. Automated systems currently exist which purport to provide a "USPAP Compliance Review" of a report, but these are generally limited to ensuring that there are no missing requirements in the report form, that certain measurable aspects of the scope of work were adhered to and that there are not mathematical errors, among other similar administrative matters. Such compliance checks are insufficient to render an opinion as to whether the appraiser used acceptable methodologies and applied them appropriately. For complaints, review of these "administrative" details should not generally be required if the

agency's report review is focused on the more important significant characteristics of the subject and comparable properties and the essential elements of the transactions that may have a material impact on the value conclusion. Minor technical USPAP violations should not be the focus of the efforts of an agency's enforcement review. Much time and effort is currently expended in reviewing reports for ANY USPAP related violation under the assumption that this is required by ASC policy. Clarifying the focus of this requirement will greatly assist state agencies in allocating resources appropriately and could help reduce overall complaint processing times.

- Also in Policy Statement 7.B.2, TALCB objects to the statement that appears to eliminate the use of any statute of limitations for dismissing complaints. This policy is inconsistent with well-established state and federal public policy allowing the use of statutes of limitation in criminal, civil and administrative cases. We respectfully request that ASC define the parameters of what they consider an acceptable statute of limitations for administrative appraiser cases, including the important distinction between "occurrence" based statutes of limitation and "discovery" based statutes of limitation. It appears from prior state review reports that "occurrence" based statutes of limitations shorter than 4 years are unacceptable to ASC; and no comments were discovered that considered "discovery" based statutes of limitation to be a problem for ASC. We think that guidance regarding this period should certainly not require any state to exceed the ten year statute of limitations for taking civil action against an appraiser as currently set forth in FIRREA (12 U. S. C. §1833a).
- In Policy Statement 8. A & B, TALCB objects to the use of the interim sanction of removing a State licensed or certified appraiser from the National Registry for up to 90 days when a state receives an ASC rating of "poor" on an ASC compliance report. While §1118(a) of FIRREA does specifically grant ASC the authority to remove a state licensed or certified appraiser from the National Registry for up to 90 days, there is certainly an implied link to a pending state agency disciplinary or licensing action against the appraiser. This section of FIRREA also grants ASC the authority to impose interim sanctions against a state agency as an alternative to derecognition. TALCB does not see the connection between the proposed interim sanction against an appraiser and the "poor" rating earned by the agency. It is unclear from proposed Policy Statement 8 how suspending a licensee will translate into better compliance by the state agency. Furthermore, the removal of a state licensed or certified appraiser from the National Registry for the sole purpose of encouraging compliance of a State agency raises serious questions regarding the constitutionality of that action, particularly the takings clause of the 5th Amendment.



Kerri T. Galvin
General Counsel & Deputy Commissioner



GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

State of Utah
Department of Commerce
Division of Real Estate

FRANCINE A. GIANI
Executive Director

THAD LEVAR
Deputy Director

JONATHAN C. STEWART
Real Estate Division Director

November 28, 2012

Appraisal Subcommittee
1401 H Street N.W.
Suite 760
Washington, D.C. 20005

Re: Comment on Proposed Revisions to ASC Policy Statements

To whom it may concern:

In response to the open comment period for the proposed revision of the ASC's Policy Statements, the Utah Division of Real Estate would like to offer a comment. The Division's comments are focused on Policy Statement 7, Paragraph B(1): Timely Enforcement.

To begin, we agree with the intent of timely enforcement, in that all state appraisal agencies should be held to a standard of timeliness when conducting investigations regarding appraisal complaints. We differ though on the standard which has been set by this policy statement to have "final administrative decisions regarding complaints within one year (12 months) of the complaint filing date."

This standard for state agencies seems to be unreasonable for a variety of reasons. The main reason is due to the fact that final administrative decisions within the 12 month period are not necessarily within the control of state appraisal agencies. What each state agency can control is the amount of time that particular agency investigates a complaint.

For example, in our state, once our enforcement section concludes an investigation and decides to take an administrative action against an appraiser, the process is such that our agency does not have complete control over how long it will take to be adjudicated through our administrative process. We can encounter a number of delays outside of our agency control, some of which include the following: (1) our completed cases are referred to a prosecutor with the Attorney General's office, and there can be some delays between the time our agency refers the case and a hearing notice is filed; (2) in our state, the Division must give respondents a 30 notice prior to a hearing, but almost all respondents, especially when represented by counsel, request continuances in order to prepare their defense; (3) our state Appraisal Board meets once a month, meaning we can only schedule so many hearings each month; thus, if there are already hearings scheduled for a particular month, some hearings are delayed due to the lack of time for the Board to hear the case until an open time is available; (4) some of our cases go through a formal administrative procedure, which means there are further delays since there are additional requirements (e.g. discovery deadlines, motion filings/responses, etc.) that must occur, and the hearing date is set based on the calendar of an Administrative Law Judge instead of our Appraisal Board; and (5) some cases result in criminal charges, and the criminal court system can take at least a year before a final resolution is reached.

Granted, the policy allows for "special documented circumstances", which as defined in Appendix C, would not cover any of the circumstances outlined above. Also, when Division staff has attended events hosted by AARO and/or the Appraisal Foundation, there has been conflicting advice given as to what would constitute "special documented circumstances". It is our belief that some of the circumstances outlined above, when documented, should be acceptable under the category of special documented circumstances and acceptable as to the reason for a final administrative decision not occurring within the 12 month deadline.

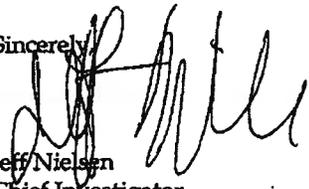
Based on attendance by Division staff at the AARO/Appraisal Foundation meetings over the last year, it has also become apparent that our state is not the only jurisdiction to have problems with this policy. Some of the statistics discussed or shown at these conferences has shown approximately 70% of states which have had examinations fail this particular policy. One state administrator at one of these events suggested that with a failure rate that high, a logical conclusion might be that the policy is an unreasonable goal with which state agencies can comply.

Multiple suggestions have been made at these meetings to modify how states are evaluated regarding this policy. One suggestion our Division would have is to hold states agencies accountable based on how long they have to work investigations. We think having a 12 month deadline for an agency to conclude an investigation is appropriate. Possibly shortening the time to a nine month period would probably be more acceptable.

Another possible consideration would be to redefine the special documented circumstances by allowing for delays which arise outside of agency control (e.g. some of the above outlined items). Recently, another state administrator even suggested averaging case disposition times and challenging the state agencies to have this average at 12 months or less.¹

In conclusion, it seems as if the timely enforcement policy needs some reconsideration, and it is our belief that most other state agencies would be in agreement with our Division on this matter. We ask that you consider some other alternative time frame or standard for this policy. State appraisal agencies need to be held accountable for their work on cases, but the state appraisal agencies should only be held accountable for the work they do and the timeliness of their actions.

Sincerely,



Jeff Nielsen
Chief Investigator
Utah Division of Real Estate

¹ While our Division would see this as being more reasonable than current policy, we still have the same problem in that this system of evaluation would also include all of the circumstances outlined above, which are arguably outside of a state appraisal agency's control.

Lori L. Schuster

From: kernssandy@aol.com
Sent: Thursday, November 29, 2012 10:25 PM
To: webmaster@asc.gov
Cc: kernss@mail.wvnet.edu
Subject: Docket No. AS12-16

On behalf of the West Virginia Real Estate Appraiser Licensing and Certification Board and staff, I would like to respond to your request for public comments on the proposed revisions to the ASC Policy Statements.

We would like to specifically comment on Policy Statement 7, Section B.1. (Timely Enforcement), which states, "Absent special documented circumstances, final administrative decisions regarding complaints must occur within one year (12 months) of the complaint date."

The WV Board believes this to be neither a realistic, nor reasonable requirement. It further believes it will lead to many jurisdictions being designated as non-compliant.

While our Board can most often process a complaint in under one year, the Board has no control over the process once it has made a recommended decision and turned the case over to the attorney representing the Board and/or the complaint has entered into the judicial process. Additionally, the *West Virginia Code*, Chapter 30, Article 1, which governs all West Virginia Professions and Occupations, allows 18 months to process a complaint and acknowledges the complaint process can take even longer.

The Kentucky Board's suggestion that the policy be amended to include a segregation of time that differentiates between the time under direct control of the agency and time that is not is a practical proposal. It appears unfair to cite the regulatory board for circumstances beyond their control.

The West Virginia Real Estate Appraiser Licensing and Certification Board and staff encourages the ASC to amend this policy prior to implementation.

Thank you for the opportunity to provide comments on the proposed changes to the Policy Statements.

Sincerely,

Sandy Kerns
Executive Director
West Virginia Real Estate Appraiser Licensing and Certification Board



Wells Fargo Bank, NA
wellsfargo.com

November 28, 2012

Appraisal Subcommittee
1401 H Street NW, Suite 760
Washington, DC 20005
webmaster@asc.gov

RE: Docket No. AS12-16

Honorable Members of the Appraisal Subcommittee,

Thank you for the opportunity to comment on proposed changes to the ASC statement published in the Federal Registry August 30, 2012. Wells Fargo has reviewed the changes suggested and respectfully request that Statement 5 be retained except as it must be changed to meet the requirements of Dodd Frank.

Specifically we request the following actions:

1. The term "technical review" be replace with the term appraisal review, and
2. The following statement be retained:

"The ASC, however, has concluded that for federally related transactions the review appraiser need not register for temporary practice or otherwise be subjected to the regulatory jurisdiction of the State agency in which the appraisal was performed, so long as the review appraiser does not perform the technical review in the State within which the property is located."

We understand the word "technical review" has different meaning and has resulted in misunderstanding the function being performed. This term is not defined in USPAP. Rather than removing the entire language, we recommend replacing "technical review" with "appraisal review" which is defined in USPAP as "the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal, appraisal review, or appraisal consulting assignment." Doing so will eliminate confusion as to the scope of work being discussed.

The second area of concern is the proposed elimination of the following:

"The ASC, however, has concluded that for federally related transactions the review appraiser need not register for temporary practice or otherwise be subjected to the regulatory jurisdiction of the State agency in which the appraisal was performed, so long as the review appraiser does not perform the technical review in the State within which the property is located."

We were informed some of the rational for deletion of Statement 5, in addition to Dodd Frank compliance, is FIRREA does not specifically state or grant the authority for the statement referenced above. A review of FIRREA, the Federal Registry publication of FIRREA, and subsequent clarifications are clear the requirements for certification/licensing are silent as to the certification/license being specific to the property's state. FIRREA requires individual states establish license/certification programs and it is these state programs that limit activity of appraisers to individuals licensed/certified by that state. Additionally, at least one of the original drafters of FIRREA has publically stated FIRREA's silence as to an appraiser having to be licensed/certified by the state in which a property is located was deliberate on the part of the drafters. We believe the removal of this section of Statement 5 potentially will result in states requiring a reviewer be certified/licensed in the property's domicile state even when that reviewer is physically located elsewhere and has not entered the property's state as part of the review process.

Such a requirement potentially will materially extend the time to complete a review as reciprocity is sought and will be detrimental to commerce by causing undue delay or by providing a competitive advantage to institutions located in the property's state. This in turn may result in financial institutions using non-certified/licensed individuals to perform reviews and/or conduct those reviews only for compliance matters not including value.

Alternatively this will potentially force the use of outside [fee] reviewers in states where an institution doesn't have local staff; thus adversely affecting the quality of reviews as they will be accomplished by individuals lacking specific understanding of the risk concerns and parameters of the institution.

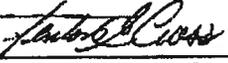
While a federally regulated institution may not be subject to these state requirements based "preemption", state licenses or certifications are held by individuals who are not covered by preemption; and thus, the institution would not have the desire or capability to proceed.

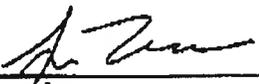
At the risk of being redundant we have bullet pointed our concerns below:

- Removal of Statement 5 expands the opportunity for states to require certification/license for review of properties located within a state by individual not in state.
- Such a provision if enforceable would slow processing of loan transactions while temporary certification/license is sought,
- Since license/certification is an individual's property, not a corporate qualification, even if "federal preemption" was relevant it would not protect the licenses from potential disciplinary action. This would put the staff appraiser in an untenable position.
- Limit a financial institutions use of in-house staff in favor of fee reviewers located within a specific state. This could lead to a lessening of quality of reviews as individuals not affiliated with an institution are not necessarily cognizant of the institutions risk considerations, may be hesitant to criticize a vendor they know personally, and likely aren't experienced in appraisal review for lending purposes.
- For highly complex/specialized real estate, particularly in less urbanized states, the change could limit the financial institutions access to a reviewer with property type expertise
- Strictly from the appraisal perspective, the rationale for requiring local certification/licensing is geographic expertise. If the financial institution hires a competent fee appraiser, the document provided and other sources of information available through pay and open interne are more than sufficient to provide the reviewer with needed geographic expertise, while maintaining the institutions ability to require risk analyses and property type expertise available through using internal staff.
- Requiring a reviewer to be locally certified or obtain temporary practice permits will increase the cost to the borrower and the time for closing a lending transaction.
- For transactions with national or regional borrowing potential, i. e. the borrower has the ability to solicit multiple lenders outside the immediate property's location; it will provide a competitive advantage to local institutions without regard to timing, pricing or capability. This will restrict the competitive environment for securing and pricing of loans. Net effect will be to reduce competition and restrict interstate commerce.
- Many of the original drafters of FIRREA also developed the ASC statements. They have opined FIRREA was specific in its not requiring certification of the appraiser in the property's state for purposes of a Federally Related Transaction and satisfying FIRREA. And relative to the review of appraisals specifically clarified that in the ASC Statements.

Thank you for your consideration of these comments in making your final decision.

Sincerely,


Fedton E. Cross, MAI, MRICS
Group Head, RETECHS
Chief Appraiser


Dave Nole
Group Head, Residential Valuation Services
Chief Appraiser



1801 MARKET STREET, SUITE 300 • PHILADELPHIA, PA 19103 • 215-446-4000 • FAX 215-446-4101 • www.rmahq.org

November 29, 2012

VIA FAX (202) 289-4101
and E-MAIL: webmaster@asc.gov

Federal Financial Institutions Examination Council
Appraisal Subcommittee
Attention: Lori Schuster
1401 H Street N.W.
Suite 760
Washington, D.C. 20005

**Re: Appraisal Subcommittee; Proposed Policy Statements; Docket No. AS12-16 (the "NPR")
Response of The Risk Management Association's Chief Appraiser's Roundtable**

Dear Ms. Schuster:

This letter comprises the response of participants of the Chief Appraiser's Roundtable of The Risk Management Association ("RMA") to the above-referenced NPR. RMA is a member-driven professional association whose sole purpose is to advance the use of sound risk principles in the financial services industry. RMA helps its members use sound risk principles to improve institutional performance and financial stability, and enhance the risk competency of individuals through information, education, peer-sharing and networking.

One of the most important components of RMA's mission is to provide independent analysis on matters pertaining to risk and capital regulation. In this regard, the comments contained herein are informed by subject matter experts from member institutions of RMA's Chief Appraiser's Roundtable. The Chief Appraiser's Roundtable (the "CART") is an ad hoc working group formed by RMA to facilitate peer-sharing among RMA member institutions with respect to issues of importance to and affecting appraisers. The participants of the CART are listed in Attachment A to this letter. They are listed for identification purposes only. This letter does not necessarily represent the views of RMA's institutional membership at large, or the views of the individual institutions whose staff have participated in the CART.

Proposed Policy Statement 2 set forth in the NPR is designed to replace current Policy Statement 5 (Temporary Practice) and is intended to address the second area of review in the

November 29, 2012

ASC Compliance Review Process pertaining to temporary practice for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

According to the NPR, the language in current Policy Statement 5 concerning the requirements of an appraiser to register for temporary practice in a State to perform a “technical review” is not included in Proposed Policy Statement 2 because that text has been deemed unnecessary and outdated. While the term “technical review” is not defined in the Policy Statement, it is a term of art that is well understood and generally accepted and, importantly, relied upon in the appraisal industry. We respectfully request that the Appraisal Subcommittee reconsider including the following language of current Policy Statement 5 in Proposed Policy Statement 2:

For federally related transactions the review appraiser need not register for temporary practice or otherwise be subjected to the regulatory jurisdiction of the State agency in which the appraisal was performed, so long as the review appraiser does not perform the technical review in the State within which the property is located.

The removal of the foregoing language from Policy Statement 5 is being interpreted by many of our members as potentially requiring reviewers employed by financial service institutions to acquire state licenses or temporary practice permits in order to review appraisal reports of properties located in states where they are not currently licensed.

Policy Statement 5 as presently effective provides the foundation upon which federally regulated institutions permit their reviewers who are licensed or certified to perform appraisal reviews in states where they are not certified providing they don't enter the subject property state. If this statement is removed, and in the presence of a state law requiring local certification, there is no authority to rely upon for this standard and necessary industry practice. Our member institutions and their employees comply with the law[s] of the state where they are domiciled, the states where they directly provide services, and federal law and regulatory guidance. The members of the CART have consistently considered Statement 5 as federal guidance and have relied upon it to support the way that the member institutions conduct business.

The removal would significantly increase complexity and costs for federally regulated institutions and significantly hamper interstate commerce. This would result in an unintended negative impact to federally-regulated financial services institutions and the consumers they serve.

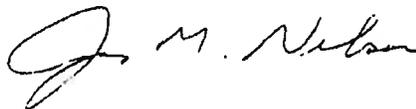
November 29, 2012

While the Appraisal Subcommittee may not feel it has the jurisdiction to address individual state licensing, the national effect of the existing patchwork of individual state requirements and the resulting impact on interstate commerce is certainly within the purview of a federal organization. We respectfully request that Proposed Policy Statement 5 be retained and modified only as necessary to satisfy the express requirements of the Dodd-Frank Act.

Thank you, on behalf of the CART, for the opportunity to comment on the Proposed Policy Statement. The CART would be pleased to engage in a dialogue about our response.

Please contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "J. M. Nelson". The signature is fluid and cursive, with a large initial "J" and "M".

James M. Nelson, CRC,
Director, Credit Risk

November 29, 2012

Attachment A

The members of the CART that participated in the preparation of this letter are listed below. They are provided for identification purposes only. This letter does not necessarily reflect the views of RMA's institutional membership at large, or the views of the individual institutions whose staff have participated in the drafting or reviewing of this letter.

Astoria Federal Savings & Loan	Renasant Bank
Bank of America	Sterling Bank
Bank of the West	Synovus
Banner Bank	TD Bank
BBVA Compass	The PrivateBank
CapitalOne Bank	Trustmark National Bank
Comerica Bank	Union Bank
First Merit Bank	U.S. Bank
Hancock Bank	Washington Trust Bank
M&T Bank	Wells Fargo
OneWest Bank	Whitney Bank

November 29, 2012

Appraisal Subcommittee
Attn: Ms. Lori Schuster
1401 H Street NW, Suite 760
Washington, DC 20005

RE: Docket # AS12-16

Via Electronic Mail: webmaster@asc.gov

Dear Ms. Schuster:

Thank you for the opportunity to comment on the Appraisal Subcommittee's proposed revisions to its Policy Statements.

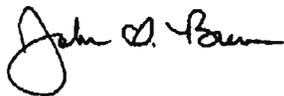
The Appraisal Foundation would like to offer a brief comment with respect to Policy Statement 2, *Temporary Practice*, and Policy Statement 5, *Reciprocity*.

In both cases, we believe it is critical for the Policy Statements to clearly reflect the obligation for the appraiser to comply with the *Uniform Standards of Professional Appraisal Practice* (USPAP), with particular emphasis on *geographic competency*.

We are all aware of widely-reported accounts of appraisers performing assignments that are clearly outside the geographic marketplace in which an appraiser typically operates. Although there are some assignments that do not necessarily require geographic competence, there are a great number that do require it in order to produce credible assignment results.

While we note that both Policy Statements 2 and 5 mandate compliance with state requirements, neither appears to specifically refer to compliance with USPAP. Furthermore, we believe it is equally important to emphasize the geographic competence obligations within USPAP that are referenced above.

Sincerely,



John S. Brennan
Director of Appraisal Issues

**CONSUMER MORTGAGE COALITION
INDEPENDENT COMMUNITY BANKERS of AMERICA**

November 29, 2012

James R. Park
Executive Director
Appraisal Subcommittee of the
Federal Financial Institutions Examination Council
1401 H Street N.W., Suite 760
Washington, D.C. 20005

Re: Proposed Policy Statement Amendments
Docket No. AS12-16

Dear Mr. Park:

The undersigned trade associations appreciate the opportunity to comment on the Appraisal Subcommittee's ("ASC") proposed amendments to its Policy Statements, which would implement some amendments the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") made to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The proposal would also reflect the ASC's implementation of its revised Compliance Review process in 2009.

At the outset, we appreciate the ASC's extension of the public comment period. The mortgage industry has been submitting a large number of comment letters in the past several weeks, some of which were complex and lengthy. The extension enabled us to submit more meaningful comments both to the ASC and in the many mortgage rulemakings.

The Dodd-Frank Act amended FIRREA, in part, to require the Appraisal Subcommittee to monitor each State appraiser certifying and licensing agency to determine whether the agency's policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence, and whether the State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence.¹ The Proposed Policy Statements are designed to support the ASC's important role in maintaining appraisal independence and quality, and we generally support them. We do comment on the reciprocity aspects of the proposal, and suggest a technical clarification.

Reciprocity Should Be Based on Compliance with ASC Requirements

Congress required reciprocity to be available, consistent with appraisal quality. The Dodd-Frank Act requires states to adopt reciprocity policies, as follows:

¹ 12 U.S.C. § 3351(g).

“a federally related transaction shall not be appraised by a certified or licensed appraiser unless the State appraiser certifying or licensing agency of the State certifying or licensing such appraiser has in place a policy of issuing a reciprocal certification or license for an individual from another State when—

- (1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and
- (2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.”²

Proposed Policy Statement 5 would have States make the determinations of whether one State’s requirements meet or exceed those of another State. It is not clear how States could do this accurately and in a timely manner. It also would permit States to deny reciprocity to an appraiser from a State that is in full compliance with all ASC requirements, which would interfere with the purpose of reciprocity. We suggest that reciprocity should be permitted to appraisers credentialed in a state that is in compliance with ASC requirements. Alternatively, we recommend that the ASC make the “meet or exceed” determinations and maintain a current list on which States and lenders could rely.

Review Appraisers Should Not Need to be Credentialed in the State Where the Property is Located

Existing Policy Statement 5 provides:

Finally, some State agencies have sought to require that an appraiser register for temporary practice if the appraiser is certified or licensed in another State, performs a technical review of an appraisal in that other State and changes, or is authorized to change, a value in the appraisal. The ASC, however, has concluded that for federally related transactions the review appraiser need not register for temporary practice or otherwise be subjected to the regulatory jurisdiction of the State agency in which the appraisal was performed, so long as the review appraiser does not perform the technical review in the State within which the property is located.

The Proposed Policy Statements do not contain similar language. The ASC explains that this language is “outdated and unnecessary.”³ The Proposed Policy Statements do not appear to apply their reciprocity provisions to review appraisers. The result appears to be that review appraisers would need to be credentialed in the state where the property is located in all instances. We believe this is unnecessary and that it would increase costs to consumers without a benefit.

² 12 U.S.C. § 3351(b).

³ 77 Fed. Reg. 52721, 52723 (August 30, 2012).

Any appraisal review occurs only after a properly credentialed appraiser performs the actual appraisal. Requiring the appraisal to be performed, not reviewed, by a qualified appraiser is the purpose of FIRREA's appraisal requirements:

“The purpose of this chapter is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.”⁴

An appraisal performed by a properly qualified appraiser meets this purpose. Requiring any person who reviews the appraisal to meet the requirements of the state where the property is located would be excessive. This would mean lenders would need to employ additional appraisers from more states, or would need to retain them on a loan-by-loan basis and pass the appraisers' charges through to consumers.

We urge clarification that a review appraiser does not need to be credentialed in the state where a property is located, as long as the review appraiser is properly credentialed in the state where the review occurs. The actual appraiser would meet the state's requirements.

Alternatively, we recommend that review appraisers who are employed by financial institutions regulated by one of the FFIEC member agencies be *per se* qualified to perform appraisal reviews.

Technical Clarification Request

The Dodd-Frank Act limited the definition of “State licensed appraiser” to appraisers licensed in a state whose licensing criteria meet or exceed the minimum criteria issued by the Appraisal Qualifications Board (“AQB”) of The Appraisal Foundation for licensing real estate appraisers.⁵ Proposed Policy Statement 3 states:

Only AQB-compliant certified appraisers in active status on the National Registry are eligible to perform appraisals in connection with federally related transactions. In order for a licensed appraiser to be listed on the National Registry as AQB-compliant, that individual must satisfy requirements for licensing in a State whose criteria meet or exceed AQB Criteria. Beginning July 1, 2013, only AQB-compliant licensed appraisers in active status on the National Registry are eligible to perform appraisals in connection with federally related transactions.⁶

The first and last quoted sentences seem to contradict each other, first stating that only certified appraisers may appraise properties in federally-related transactions, then that only licensed appraisers may do so. The apparent intent is to clarify that, beginning July

⁴ 12 U.S.C. § 3331.

⁵ 12 U.S.C. § 3345(c).

⁶ 77 Fed. Reg. 52721, 52727-28 (August 30, 2012).

1, 2013, trainee appraisers and apprentice appraisers that are not licensed may not perform appraisals for federally-related transactions. It might be clearer to say that directly.

Conclusion

We appreciate the ASC's consideration of our comments. We suggest that the final Policy Statements support reciprocity.

Sincerely,

Consumer Mortgage Coalition
Independent Community Bankers of America



National Association of Home Builders

1201 15th Street NW
Washington, DC 20005

T 800 368 5242
F 202 266 8400

www.nahb.org

Housing Finance & Regulatory Affairs

David L. Ledford
Senior Vice President

November 29, 2012

Appraisal Subcommittee
Attn: Lori Schuster
1401 H Street NW, Suite 760
Washington, DC 20005

Re: Appraisal Subcommittee; Proposed Policy Statements
Docket No. AS12-16

Dear Ms. Schuster:

On behalf of the National Association of Home Builders (NAHB), I would like to submit comments on the Appraisal Subcommittee's (ASC) request for comment on their Proposed Policy Statements. NAHB is a Washington-based trade association representing more than 140,000 member firms involved in a wide variety of businesses related to housing and home building.

The proposed Policy Statements provide guidance to ensure State appraiser regulatory programs (Program) comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended. The proposed Policy Statements would supersede the current ASC Policy Statements.

The present economic situation has brought to the forefront the importance of effective appraiser guidance and regulation. NAHB is committed to addressing the systemic appraisal issues that the housing industry experienced both before and after the housing crisis.

Since 2009, NAHB has convened five Appraisal Summits, with the most recent Summit held on October 24, 2012. NAHB's Appraisal Summits bring together representatives of major housing and financial institution stakeholders, appraisal organizations, and federal housing and banking regulators to discuss appraisal problems and solutions. We appreciate the participation of ASC's Executive Director, members, and their representatives at the Summits. There has been broad agreement at the Summits that the stakeholder organizations should work together to address the critical appraisal issues that remain a major impediment to the housing recovery and, therefore, finding solutions to these problem continues to be a major priority for NAHB.

Background

Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (Title XI), established the Appraisal Subcommittee. The purpose of Title XI is to provide protection of federal financial and public policy interests by upholding Title XI requirements for appraisals performed for federally related transactions.

Pursuant to Title XI, the ASC performs periodic Compliance Reviews of each State's Program to determine its compliance, or lack thereof, with Title XI, and to assess its implementation of the *Real Property Appraiser Qualification Criteria* (AQB Criteria), as adopted by the Appraiser Qualifications Board (AQB).

The ASC originally adopted the Policy Statements in 1993 and in 1997 added Policy Statements governing temporary practice and reciprocity. Since 1997 the Policy Statements have remained largely unchanged. Two recent occurrences necessitated revision of the Policy Statements:

- Passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act); and
- ASC implementation of its revised Compliance Review process in 2009.

The proposed Policy Statements are intended to provide States with the necessary information to maintain their Programs in compliance with Title XI. The proposal also excludes provisions from the current Policy Statements that have become outdated or lack enforceability. Additionally, the proposal reflects consideration of recent amendments to the Uniform Standards of Professional Appraisal Practice (USPAP) and the AQB Criteria.

In January 2012, The Government Accountability Office (GAO) released a report, "Real Estate Appraisals – Appraisal Subcommittee Needs to Improve Monitoring Procedures". The report identified several weaknesses that have limited the ASC's effectiveness, including weak enforcement tools and reporting procedures; and, inadequate policies and procedures for monitoring appraisal requirements. NAHB believes the proposed Policy Statements are a step toward resolving many of the deficiencies identified by the GAO. Our comments on the specific Policy Statements follow.

Policy Statement 1: Regulations, Policies and Procedures Governing State Programs.

NAHB supports the preservation of essential language concerning independence and ethical standards with deference given to State standards. States should retain primary responsibility for certifying and overseeing appraisers and the quality of their work. Enforcement actions against licensees should continue to occur at the State level. Federal policy should dictate that disciplinary actions are meted out in a consistent manner.

Recognizing the primacy of State rights, NAHB believes that the States would greatly benefit from more prescriptive direction and enforcement from the ASC that would better integrate, consolidate and streamline the jumble of existing policies generated independently at the state level. This would contribute to uniform and consistent standards and avoid the current multitude of conflicting and confusing requirements which creates inefficiencies, duplicated efforts and additional cost burdens for the states.

NAHB strongly supports the authority granted to the ASC, by the Dodd-Frank Act, to review State Programs for adequate funding and staffing. States must have an independent appraisal board with funding from license activities, fines and where appropriate grants from the ASC. States should be forbidden from commingling appraisal license fees with other general funds and absolutely forbidden from sweeping any funds supplied through the ASC as grants.

NAHB supports the amendment to the current Policy Statement's discussion on prohibiting discrimination against appraisers with or without membership in a nationally recognized professional appraisal organization. However, NAHB recognizes the importance of developing an appraisal organization that would represent the broadest possible range and number of appraisers because the appraisal profession appears to be the most fractured group under the real estate umbrella. Unfortunately, most appraisers belong to no organization, leaving appraisers with little to no representation. Without representation, appraisers are profoundly powerless to be involved in effecting change within their own profession.

Policy Statement 2: Temporary Practice

NAHB supports the recognition, on a temporary basis, the certification or license of an out-of-state appraiser entering a state and not being subjected to excessive fees or burdensome requirements, for the purpose of completing an appraisal assignment. It is equally important to ensure the out-of-state appraiser's competency meets or exceeds the requirements of the assignment.

Policy Statement 3: National Registry

ASC's National Registry is a critical tool providing industry stakeholders accurate and timely information to determine who is and, just as importantly, who is not eligible to perform appraisals in federally related transactions. Having real time data regarding the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, revocations and suspensions provides industry stakeholders due diligence tools to ensure the integrity of appraisers and the appraisal process.

NAHB does have concerns, however, that not all States are expeditiously reporting actions, including disciplinary actions, to the National Registry. NAHB would recommend the ASC develop very specific processes and procedures with timelines in which the States must comply. ASC grants could assist States if it is determined that they do not have adequate resources. NAHB also recommends that the ASC maximize the information sharing benefits and integrity of the National Registry by identifying ways to increase standardization and functionality of the National Registry.

Policy Statement 5: Reciprocity

NAHB supports establishing uniform credentialing standards that would be applied across all jurisdictions. A strong federal standard would support managing reciprocal credentials providing efficiencies for states. Reciprocity should be automatic provided the appraiser license status is in good standing. NAHB suggests additional clarification on how reciprocity would occur with States that are in a Poor or Non-Compliance status. Notice of disciplinary actions imposed upon appraisers should be made available to any and all parties charged with engaging an appraiser.

Policy Statement 7: State Agency Enforcement

NAHB supports a timely enforcement process to ensure that States are processing and investigating complaints to ensure effective supervision of appraisers. The process must

incorporate and enforce definitive penalties and remove incompetent appraisers from the pool when appropriate.

The single largest complaint of NAHB members is the lack of a standard for appeals on an appraisal. The current enforcement process does nothing with regard to a pending transaction. NAHB supports the establishment of a timely value dispute resolution process that is fair, balanced and appropriate to allow interested parties to appeal appraisal values when appraisal assumptions are incorrect. An appeals structure similar in design to that of the Department of Veterans Affairs Loan Guaranty Service Home Loan Program should be considered.

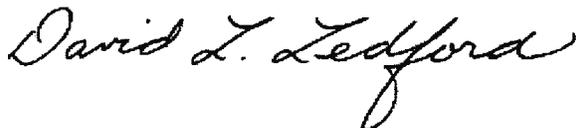
Policy Statement 8: Interim Sanctions

NAHB supports the Dodd-Frank Act in providing the ASC with the authority to impose interim actions and suspensions, as an alternative to a non-recognitions proceeding against a State. This is an important step forward for the ASC's enforcement and oversight of State Programs.

Conclusion

NAHB remains committed to working with ASC, and other industry stakeholders to address the problems in the current U.S. appraisal system. Again, we appreciate the opportunity to comment. Please contact Steve Linville, NAHB's Director, Single Family Finance, at 202-266-8597 with any questions you may have regarding this letter.

Sincerely,

A handwritten signature in cursive script that reads "David L. Ledford". The signature is written in black ink and is positioned above the printed name.

David L. Ledford



Dennis Badger
& Associates, Inc.

November 29, 2012

Mr. Peter Gillispie
Appraisal Subcommittee
1401 H Street, NW
Suite 760
Washington, DC 20005

RE: Proposed Policy Statements (Docket No. AS12-16)

Mr. Gillispie and Members of the Appraisal Subcommittee:

Thank you for the opportunity to provide comments to the proposed Policy Statements. I appreciate the work of the ASC and applaud your efforts to provide States, Territories and the District of Columbia (States) with information to help maintain compliance with Title XI.

Of the proposed changes, I am primarily concerned with proposed Policy Statement 7.

As stated in Title XI § 1118(a) [12 U.S.C. 3347], the ASC shall monitor State appraiser certifying and licensing agencies to determine whether such agency “processes complaints and completes investigations in a reasonable time period.” The requirement to appropriately discipline sanctioned appraisers then continues separately on the subsequent line item.

Under proposed Policy Statement 7, final administrative decisions regarding complaints must occur within one year (12 months) of the complaint filing date, absent special documented circumstances.

Since Title XI, as amended, ties “a reasonable time period” to the processing of complaints and the completion of the investigations, would it not be more appropriate to do the same within the proposed Policy Statement 7? Often times Agencies can process complaints and complete investigations within a relatively short period of time. However, most Agencies are not autonomous and must rely upon other branches of State government to resolve final administrative decisions. Consequently, the timeline associated with final disposition frequently morphs beyond the control of the individual Agency.

While imposing a time period for functions generally within the Agencies’ control is reasonable, holding an Agency accountable for functions designated beyond their control appears to the contrary.

141 Prosperous Place, Suite 26 ♦ P.O. Box 23220 ♦ Lexington, KY 40523
(859) 252-3445 ♦ fax (859) 245-2941 ♦ <http://dennisbadger.com>

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As such, it is my recommendation that the prescribed time period should pertain solely to the processing of complaints and completion of investigations, as stated in § 1118 [12 U.S.C. 3347], rather than the State in its entirety.

In response to the five (5) specific questions posed in the Request for Comment section, I offer the following comments:

1. *Do the proposed rating criteria in Appendix A provide sufficient clarity to understand the differences among the ASC Finding categories?*

Yes.

2. *Do the ASC Finding categories appropriately identify the degree of perceived risk of a Program's potential failure?*

Yes, given the proposed rating criteria.

3. *Do the ASC Finding rating criteria provide enough information to explain the judgment factors that the ASC will use to assess whether a State is in compliance with Title XI?*

Yes, though there are several terms utilized that may provide differences of opinion.

4. *Do the revised Policy Statements achieve the ASC's goal in improving the understandability and enforceability of Title XI and the AQB Criteria?*

The revised policy statements are an improvement to the current policy statements (October 2008). However, it is difficult to discern if the ASC's goal has been accomplished at this point given the extent of changes. This question may be better answered after several review cycles have been accomplished.

5. *Do the revised Policy Statements provide State Programs with the necessary information to understand the ASC's expectations of the Program during a Compliance Review?*

Yes, the revised policy statements proposed are an improvement in providing an understanding of the ASC's expectations during a Compliance Review. However, to promote ease of understanding, please consider relocating the summary of requirements and related implementation standards from Appendix B to their respective Policy Statements.

As part of the Compliance Review process, I would ask that the ASC formally begin requesting information and supporting documentation regarding the source of complaint referrals. According to the Interagency Appraisal and Evaluation Guidelines, federally regulated institutions are encouraged to make referrals to state appraiser regulatory agencies when they suspect that a state licensed or certified appraiser failed to comply with USPAP, applicable laws, or engaged in unethical or unprofessional conduct.

Institutions must file a complaint with state appraiser certifying and licensing agencies under certain circumstances addressed in Regulation Z (12 CFR 226.42(g)). Furthermore, the proposed Policy Statement 3 states, "Title XI requires the ASC, any other Federal agency or instrumentality, or any federally recognized entity to report any action of a State certified or licensed appraiser that is contrary to the purposes of Title XI to the appropriate State agency for disposition." I believe the subsequent statement in proposed Policy 3 sums this up best, "The ASC believes that full implementation of this Title XI requirement is vital to the integrity of the system of State appraiser regulation."

I greatly appreciate your consideration and desire to promote effective and consistent appraiser regulatory programs for State licensed and certified appraisers. Should you have any questions, please do not hesitate to contact me at (859) 252-3445.

Kindest regards,

Dennis Badger

LAWRENCE T. FOLEY, ASA, MRICS

November 29, 2012

VIA E-MAIL: webmaster@asc.gov

Federal Financial Institutions Examination Council
Appraisal Subcommittee
Attention: Lori Schuster
1401 H Street N.W. Suite 760
Washington, D.C. 20005

Subject: Appraisal Subcommittee; Proposed Policy Statements; Docket No. AS12-16 (the "NPR")

Dear Ms. Schuster:

Proposed Policy Statement 2 set forth in the NPR is designed to replace current Policy Statement 5 (Temporary Practice) and is intended to address the second area of review in the ASC Compliance Review Process pertaining to temporary practice for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended.

According to the NPR, the language in current Policy Statement 5 concerning the requirements of an appraiser to register for temporary practice in a State to perform a "technical review" is not included in Proposed Policy Statement 2 because that text has been deemed unnecessary and outdated. While the term "technical review" is not defined in the Policy Statement, it is a term that is well understood and generally accepted and, importantly, relied upon in the appraisal industry. I respectfully request that the Appraisal Subcommittee reconsider including the following language of current Policy Statement 5 in Proposed Policy Statement 2:

"For federally related transactions the review appraiser need not register for temporary practice or otherwise be subjected to the regulatory jurisdiction of the State agency in which the appraisal was performed, so long as the review appraiser does not perform the technical review in the State within which the property is located."

The removal of the foregoing language from Policy Statement 5 could be interpreted as requiring reviewers employed by financial service institutions to acquire state licenses or temporary practice permits in order to review appraisal reports of properties located in states where they are not currently licensed.

Policy Statement 5 as presently effective provides the foundation upon which federally regulated institutions permit their reviewers who are licensed or certified to perform appraisal reviews in states where they are not certified providing they don't enter the subject property state. If this statement is removed, and in the presence of a state law requiring local certification, there is no authority to rely upon for this standard and necessary industry practice. Financial service institutions have consistently considered Statement 5 as federal guidance and have relied upon it to support the way that they conduct business.

The removal would significantly increase complexity and costs for federally regulated institutions and significantly hamper interstate commerce. This would result in an unintended negative impact to federally-regulated financial services institutions and the consumers they serve.

While the Appraisal Subcommittee may not feel it has the jurisdiction to address individual state licensing, the national effect of the existing patchwork of individual state requirements and the resulting impact on interstate commerce is certainly within the purview of a federal organization. We respectfully request that Policy Statement 5 be retained and modified only as necessary to satisfy the express requirements of the Dodd-Frank Act.

Thank you for the opportunity to comment on the Proposed Policy Statement.

Lawrence T. Foley



Dennis Badger
& Associates, Inc.

November 30, 2012

Mr. Peter Gillispie
Appraisal Subcommittee
1401 H Street, NW, Suite 760
Washington, DC 20005

RE: Proposed Policy Statements (Docket No. AS12-16) follow-up comment

Mr. Gillispie and Members of the Appraisal Subcommittee:

Once again, I sincerely appreciate the opportunity you have afforded the public comment on the proposed Policy Statements. While I understand the official comment period has expired, I would like to offer one additional, minor suggestion for increased clarity and understandability.

In the proposed section entitled, "Policy Statement 1, D. Federally Recognized Appraiser Classifications, 3. Trainee Appraiser and Supervisory Appraiser," it states:

"Any State or Federal agency may impose additional appraiser qualification requirements for State licensed, certified residential or certified general classifications, or for trainee and supervisor classifications, if they consider such requirements necessary to carry out their responsibilities under Federal and/or State statutes and regulations, so long as the additional qualification requirements do not **conflict** with AQB Criteria." [emphasis added]

In order to avoid future debates over meaning and intent of the term "conflict," perhaps an alternate word or phrase, such as, "preclude compliance" would be more direct?

A similar substitution may also be beneficial in the section entitled "Policy Statement 1, F. Appraisal Standards" where it states:

"Any State or Federal agency may impose additional appraisal standards if they consider such standards necessary to carry out their responsibilities, so long as additional appraisal standards do not **conflict** with USPAP for work performed for federally related transactions." [emphasis added]

Again, thank you for your time and consideration.

Respectfully,

Dennis Badger

141 Prosperous Place, Suite 26 ♦ P.O. Box 23220 ♦ Lexington, KY 40523
(859) 252-3445 ♦ fax (859) 245-2941 ♦ <http://dennisbadger.com>

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November 30, 2012

Mr. Jim Park
Executive Director
Appraisal Subcommittee
H Street NW., Suite 760
Washington, DC 20005

Re: Proposed ASC Policy Statements

Dear Mr. Park:

On behalf of the 23,000 designated, candidates and affiliate members of the Appraisal Institute, we thank you for the opportunity to comment on the draft Policy Statements of the Appraisal Subcommittee.

Generally, we are puzzled that the ASC has chosen not to undertake the formal rulemaking process where Congress specifically granted authorization, including complex and extremely important areas of enforcement, reciprocity and temporary practice. We believe that these issues would benefit from the formal advisory committees to be established by the ASC when undertaking a formal rulemaking. Further, we believe that the ultimate outcome would benefit from a thorough vetting of the issues. We urge the ASC to adopt Policy Statements in the areas not authorized by Dodd-Frank, and to commence formal rulemakings in the areas of enforcement, temporary practice and reciprocity.

We also are concerned about the selective basis for which Title XI is being interpreted and enforced by the ASC through its Policy Statements. On the one hand, the ASC apparently believes that it does not have the authority to require states to undertake certain policies, while on the other hand, the ASC has embraced the broadest interpretation possible, attempting to require states to establish certain policies where there is no authorization or authorizations were intended to address different issues. State appraisal boards, users of appraisal services, and professional appraisers deserve more than selective interpretation of Title XI appraisal requirements. We urge the ASC to revise the Policy Statements to be consistent with the Title XI and Dodd-Frank authorizations and to refrain from "activist" policymaking.

We have specific comments for each Policy Statement, which are found below, as follows:

Policy Statement 1 – Statutes, Regulations, Policies and Procedures Governing State Programs

We long have been concerned about the way in which the ASC has interpreted Section 1122(d) of Title XI related to professional appraisal designations. This provision prohibits a federally regulated financial institution from excluding an appraiser from consideration for an assignment solely by virtue of a membership or lack of membership in a particular organization. This is a *miscellaneous* provision from Title XI that is directed to the federal financial institutions regulatory agencies, Fannie Mae and Freddie Mac, related to appraiser hiring policies, not policies related to the operations of state appraisal regulatory agencies. While the ASC is authorized under Section 1103 to monitor the requirements established by the Federal financial institutions regulatory agencies, with respect to appraisal standards and certification requirements, we see no direct authorization for the ASC to apply this provision to state appraiser regulatory agency operations. This is not to say that we support an unequal playing field at any level; rather we do not believe that this provision is authorized by Congress. As in other areas of the draft Policy Statement where it apparently does not feel it has sufficient authorization, we urge the ASC to *not* include this interpretation in the final Policy Statements.

Further, from a public policy standpoint, we urge the ASC to reconsider the draft policy prohibiting states from specifying education providers in consent agreements that require additional education. To this point, we believe that state appraiser regulatory agencies deserve and/or need the flexibility to be able to mandate that appraisers

who are being sanctioned by the agency take specific courses or other educational programs that the agency knows will rectify the issue that resulted in the appraiser being sanctioned in the first place. It is not sufficient for an agency to only be allowed to require an appraiser to "take a course in green valuation." Rather, the agencies should be permitted to mandate that an appraiser take a course that the agency knows will result in the appraiser receiving training in the problem area.

Policy Statement 1 also encourages states to consider Appraisal Standards Board Advisory Opinions, Frequently Asked Questions, and other written guidance issued by the ASB regarding the interpretation and application of USPAP. The USPAP AOs and FAQs are voluntary guidance documents – they are not part of USPAP. As such, they should not be used as the basis for enforcement action. We urge the ASC to include a clarifying statement to this effect in the final Policy Statement. We also believe that it would be useful for the ASC to clarify that any materials developed by the Appraisal Standards Board also are voluntary guidance and are NOT to be used by any state appraiser regulatory agency as the basis for an enforcement action.

Policy Statement 2 – Temporary Practice

Language currently found in Policy Statement 5 (Temporary Practice), related to employees of financial institutions who perform "technical reviews" that do not result in the development of an opinion of value, was not carried over to the draft Policy Statement 2. According to the Policy Statement, "The ASC believes that text is outdated and unnecessary."

Currently, Policy Statement 5 says that, for federally related transactions, states generally cannot require reviewers who do not develop an opinion of value to be credentialed in the state where the property is located, unless the review is conducted in the state where the property is located. However, the rewrite of the ASC Policy Statements removes this statement from Policy Statement 5. The new Policy Statements are silent on the issue of credentialing appraisal reviewers. It is likely that the omission of this clarification from the Policy Statements will result in numerous states moving to require that all reviewers of appraisals of subject properties that are located in their state must obtain an appraiser credential from their agency.

As the ASC is aware, this policy change to not prohibit states from requiring licensure for technical reviews will, among other things, have a dramatic impact on many financial institutions that have spent considerable time and money investing in an appraisal review infrastructure based, in part, on the current Policy Statement. We find it unfortunate that the ASC has failed to offer any justification for this significant policy change in the draft Policy Statement, and we believe that such a failure will cause many institutions unnecessary harm from an organizational planning standpoint. Further, we suspect that many employees of financial institutions will agree that the policy was "outdated" or "unnecessary," as the ASC has claimed.

It appears as if the ASC does not believe that it has the authority to adopt a policy such as is currently found in Statement 5 under its statutory authority contained in Title XI. At a minimum, the ASC should provide justification for this significant policy change.

Beyond this concern, we support the proposal to define excessive fees and policies for obtaining a temporary practice permit. In particular, we support the \$250 temporary fee cap and the six-month validation period for temporary practice permit holders. We urge retention of these provisions in the final Policy Statement 2.

Additionally, we request that the ASC include an additional limitation related to states requiring applicants of temporary practice permits to submit copies of engagement letters or copies of completed appraisals. We are aware that some state appraiser regulatory agencies have enacted such requirements for applicants for temporary practice permits. Identification of the physical address of the assignment may be appropriate, but requiring identification of the client and the submission of a full copy of a completed appraisal is excessive and may present complications with confidentiality for the appraiser and his/her client. This is particularly true if such information is available via Freedom of Information Act requests.

We have heard of instances where copies of information submitted as part of an application for a temporary practice permit, specifically the client name and property address, has been provided to other, in-state appraisers, who then contact the client and attempt to inappropriately compete with the out-of-state appraiser. As such, we

strongly encourage the ASC to prohibit state appraiser regulatory agencies from requiring that appraisers submit this information as part of an application for a temporary practice permit.

Policy Statement 3 – National Registry

We have a general concern with the way that state appraiser regulatory agencies are required to provide information on disciplinary actions to the National Registry. Currently, once an appraiser has been charged with a violation, their name is "tagged" on the National Registry. We believe that the original intent of immediate public notification was that the lender community had to be protected from unethical or incompetent appraisers. However, members who are involved in reviewing disciplinary actions against appraisers are sometimes finding that many charges are unsubstantiated, minor violations, or even without merit. These charges sometimes have the effect of ruining an appraiser's career.

For example, recently, a minor violation, such as not completing a state's continuing education on time (a charge later found to be false), was enough for an appraiser to be barred from appraising for several clients until the state agreed that the education had been completed on time (but reported incorrectly). This process took several months. We believe that state appraiser regulatory agencies should be prohibited from reporting appraiser standard or ethical violations until the accused has exhausted any appeals that might be available after having been convicted by the appropriate agency, and we further urge inclusion of such a policy in the final Policy Statement 3.

Beyond this, we note that the programs administered by the ASC under Policy Statement 3 are largely outdated and outmoded. We note that the ASC is utilizing an "extranet" system that appears to be widely out of the date, from a technological standpoint, and antiquated for the purpose of sharing information among agencies. Further, systems such as the National Mortgage Licensing System (NMLS) are paving the way for the future of professional oversight and regulation with real-time data-sharing among state agencies. Such systems are far more user-friendly for state regulatory officials and more effective at information-sharing across state lines. We see systems such as the NMLS as the way of the future.

Policy Statement 4 – Application Process

The draft Policy Statement 4 maintains prohibitions of the use of affidavits for qualifying education, but extends the prohibition to upgrade applications. Barring documented abuse of the use of affidavits in upgrade applications, we see no reason not to accept affidavits, so long as states have a validation process in place. As such, we support upgrade applications being treated similarly to renewal applications and encourage the ASC to accept such a process for upgrades in the final Policy Statement.

Further, we believe that states should be allowed to accept signed certifications by appraisers seeking to upgrade or renew, in addition to formal affidavits. The affidavit process adds unnecessary red tape to the process of upgrading or renewing by appraisers, as state appraiser regulatory agencies already may revoke a credential for falsifying information.

Policy Statement 5 – Reciprocity

Generally speaking, we support consistent reciprocity policies that promote commerce and reduce unnecessary red tape on practicing appraisers. At the same time, we acknowledge that the complexities of promoting such a system in the "federal" system found in the United States. Still, the ASC has vast authority in this area, both in terms of writing policy statements and also in potential formal rulemaking, which was granted to the agency under the Dodd-Frank Act. Reciprocity is one area for which we believe formal rulemaking in support of consistent reciprocity requirements to support commerce is warranted. We do not believe that the ASC has accurately interpreted the spirit of the Dodd-Frank Act, as it relates to reciprocity.

In Policy Statement 5, the revised policy proposes that States must only have a reciprocity policy in place for issuing a reciprocal credential to an appraiser from another State. A State may have a more lenient or more open-door policy; however, a State cannot impose additional requirements on applicants for reciprocal credentials than are imposed on their own licensees. By merely requiring that states have a policy in place, states could simply

say that it is their position that no state has credentialing requirements that meet or exceed theirs and, as such, they are not going to grant a reciprocal credential to an appraiser from any state. This type of a policy would meet the ASC requirements, but certainly would not be in the spirit of the Dodd-Frank Act. Our interpretation of the Dodd-Frank Act requirement is that a state MUST grant a reciprocal credential to an appraiser who holds a credential in good standing, conferred by a state that has been found to be in compliance with the AQB requirements. Unfortunately, ASC policy still will permit states to deny the issuance of a reciprocal credential based upon the receiving state having superior credentialing requirements than the sending state.

In addition, States would not be required to grant a reciprocal credential to an appraiser credentialed in another State with a current ASC Finding of "Poor." Here, we believe that the ASC should reconsider allowances for states that have been graded "Not satisfactory," as findings such as "State does not meet all Title XI mandates," "Deficiencies present a significant risk," and "Substantial risk of Program failure" do not appear to warrant acceptance by other states.

Further, we have concerns with the following statement found in one of the illustrations:

STATE A would evaluate STATE Z's credentialing requirements as they currently exist to determine whether they meet or exceed STATE A's current requirements for credentialing.

This appears to require each state to evaluate every other state to determine whether or not the other state's requirements meet or exceed the receiving state's requirements. Some states likely are not capable of making such a judgment, or may look to the ASC for guidance in this area. As such, we support the ASC helping states make such determinations upon written request. Further, we can envision scenarios where some states may enact protectionist requirements simply to say that another state's requirements don't meet or exceed their own requirements, thus, allowing them to deny reciprocity to appraisers from that state. We do not believe that is consistent with the goal of promoting the "reasonably free movement of credentialed appraisers across State lines."

Policy Statement 6 – Education

In relation to "Course Approval," the draft Policy Statement states that States should ensure that educational providers are afforded equal treatment. A footnote states that:

Consent agreements requiring additional education may not specify a particular course provider, thereby discriminating against other providers on the State's approved course listing offering the same course.

In our view, there is no nexus between Course Approval and education-related consent agreements with individual appraisers who are subject to disciplinary action by the state agencies. As such, this footnote has no place in an ASC Policy Statement related to course approval. We urge that this reference and provision be struck from the final Policy Statement.

Similar to the ASC's current policy related to technical reviews, we do not believe that the ASC has the legal authority to prohibit states from imposing a specific education requirement for disciplinary purposes. Title XI allows states to enact requirements that exceed Title XI requirements. Such a requirement would be an example of a state exceeding minimum requirements in the area of remedial education.

Should the ASC ignore this request, and implement a policy that prohibits states from imposing requirements that appraisers satisfy specific educational requirements, we believe that the Policy Statement should include an exception in cases where there is only one course provider in the state that offers a course in the subject matter that is in need of redress.

Policy Statement 7 – Enforcement

The Policy Statement related to Enforcement states that "Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP." Given that most of the concerns that prompted Congress to enact additional Dodd-Frank appraisal amendments relate to concerns regarding enforcement by the

ASC and state appraisal boards, we do not believe that this requirement is adequate. The ASC should mandate that such individuals analyzing complaints for USPAP compliance be certified or licensed real estate appraisers, at a minimum, and that the conduct of any review of an appraisal be done in accordance with USPAP. In addition, reviewers must be competent to review the complaint under review. Complaints involving Certified General Real Property Appraisers should not be reviewed by Certified Residential Real Property appraisers. Further, individuals analyzing complaints must comply with USPAP in their analysis, especially when the assignments involve a value opinion. Lastly, we believe that reviewers should be required to take continuing education for review appraisal and be required to complete and pass a 15-hour USPAP within the USPAP update cycle.

Policy Statement 8 – Interim Sanctions

The entire direction of the Interim Sanctions Policy Statement completely misses the mark, in our opinion.

The intent of Section 1473(k) of the Dodd-Frank Act is two-fold. First, the ASC is given the authority to remove a State licensed or certified appraiser or appraisal management company from the National Registry on an interim basis, not to exceed 90 days, pending State agency adjudication of a disciplinary action against the appraiser. Second, the ASC is given the authority to impose interim sanctions on the state agencies themselves that have been found to have deficient appraiser regulatory programs. These interim sanctions are in advance of the ultimate de-recognition of a State agency.

These two provisions – the ability to sanction an appraiser on an interim basis and the ability to sanction a state on an interim basis – are separate and apart from one another.

Unfortunately, comments made by representatives of the ASC at a recent meeting of the Association of Appraiser Regulatory Officials totally and completely disregarded the authority granted to the ASC to remove an appraiser who is the subject of a state disciplinary action from the National Registry for a period not to exceed 90 days. This is an important provision and is designed to prevent bad appraisers from continuing to operate, even though they may be the subject of a disciplinary action for a serious violation of the State appraiser regulations. In addition, the possibility of a state imposing an interim sanction against an appraiser is also intended to encourage appraisers to resolve their cases in a speedy manner. Unfortunately, the comments made by the ASC tied the removal of an appraiser from the National Registry on an interim basis to actions that are being taken against the state agency for deficiencies in the appraiser regulatory program. This is not correct.

As drafted, revised Policy Statement 8 does not contain any references to what steps a state appraiser agency must take to remove an appraiser who is the subject of a disciplinary action from the National Registry for the permitted 90-day period. We strongly urge the ASC to revise Policy Statement 8 to include provisions related to the interim sanctions that can be imposed against appraisers who are the subject of state disciplinary action.

The idea of this section of the Dodd-Frank Act is that the interim sanctions could be imposed on a state while a more detailed investigation and "due process" action was undertaken to impose more severe sanctions, currently known as the "atomic bomb" or de-certification of a state appraiser regulatory agency. As it is currently drafted, it would be virtually impossible for the ASC to actually impose an interim sanction. Specifically, Policy Statement 8 would take a minimum of 180 days to impose an interim sanction. Then the state agency would be allowed judicial review of the ASC's decision. The due process requirements that would be necessary in order to impose an interim sanction make the whole idea of an interim sanction completely moot.

In addition, revised Policy Statement 8 does not outline what interim sanctions the ASC would have at its disposal to impose against a state appraiser regulatory agency. What are the options that the ASC has at its disposal? Fines? Requirements for Board members to take additional education? Temporary or permanent replacement of the head of a state regulatory agency? Hiring of temporary staff to clear backlogs of applications, renewals or complaints? Policy Statement 8 is unclear concerning what options the ASC has at its disposal. Clarification is required.

The ASC has shown historical reluctance to issue sanctions against a "sovereign" state. Rather than issue a misguided Policy Statement that will result in further inaction, we suggest that the ASC undertake a formal

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rulemaking in this area that would issue monetary fines and other penalties against states that fail to comply with Title XI mandates.

Appendix A – Compliance Review Process

We commend the ASC for developing a detailed matrix illustrating the revised program compliance review process. One item that we believe deserves definition or elaboration is the term “Program Failure.” This term is found in the rating criteria but not within any of the Policy Statement and carries no definition. Such a definition appears essential for establishing some context for the rating system.

Thank you for the opportunity to comment on the proposed Policy Statements. If you have any questions or require additional information, please contact Bill Garber, Director of Government and External Relations, at 202-298-5586 or bgarber@appraisalinstitute.org.

Sincerely,

//c

Appraisal Institute