

Appraisal Subcommittee Advisory Committee for the Development of Regulations (ASCAC)
Meeting Minutes
February 12 - 13, 2015
Hilton Garden Inn, 815 14th Street NW, Washington, DC 20005

Members

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

ASC Staff

Claire Brooks	Policy Manager
Denise Graves	Deputy Executive Director (2/13 only)
Girard Hull	Financial Manager (2/13 only)
Brian Kelly	Administrative Officer (2/12 only)
Jim Park	Executive Director
Dan Rhoads	Attorney-Advisor (2/13 only)
Alice Ritter	General Counsel
Lori Schuster	Management & Program Analyst, Designated Federal Officer

Observers

Ada Bohorfoush	Department of Housing & Urban Development (2/13 only)
Beth Buell	ServiceLink
Kelly Davids	Appraisal Foundation
Scott DiBiasio	Appraisal Institute (2/12 only)
Larry Disney	Kentucky Real Estate Appraisers Board
Suzy Gardner	Federal Deposit Insurance Corporation
Don Kelly	Kelly Group
Arthur Lindo	Federal Reserve Board
Steve Linville	National Association of Home Builders
Mira Marshall	Consumer Financial Protection Bureau (2/13 only)
Amy McClellan	Vermont Board of Real Estate Appraisers
Rae-Ann Miller	Federal Deposit Insurance Corporation (2/12 only)
Frank O'Neill	Stewart Lender Services

Bob Parson
Anne Petit
Brian Rodgers
Mark Schiffman
Tim Segerson

Office of the Comptroller of the Currency (2/13 only)
Ohio Division of Real Estate & Professional Licensing
Appraisal Institute (2/13 only)
REVAA
National Credit Union Administration (2/13 only)

Transcriber

Charles Morrison

Neal R. Gross & Company

Welcome and Introduction

Chair Ouellette called the meeting to order at 9:04 a.m. She welcomed those assembled to what may be the final meeting of ASCAC. Though this may be the final in-person meeting, there will most likely be some email discussions among the members on the refinement of wording to the recommendations. ASCAC members already being familiar with each other, she asked the members of the gallery to introduce themselves.

Federal Advisory Committee Act (FACA) Requirements

L. Schuster introduced herself and identified herself as the Designated Federal Officer of ASCAC. She serves as the liaison between the ASC and ASCAC, and ensures that all provisions of FACA are carried out with respect to ASCAC operations and ethics. ASCAC will issue a final report to the ASC within 60 days of its final meeting. She said that once ASCAC submits its final report of recommendations to the ASC, the report will be published on the ASC website, www.asc.gov. The report will include the review, analysis, advice and recommendations of ASCAC.

Public Comment

No members of the public provided comment.

General Discussion Items

Letter from Sherry Bren of the South Dakota Appraiser Certification Program

Chair Ouellette said ASCAC was in receipt of a letter from Sherry Bren, Executive Director of the Appraiser Certification Program within the South Dakota Department of Labor and Regulation. The letter expressed concern with language in two elements of the ASCAC sanctions grids the Committee has been developing; specifically, interim suspension of credential and revocation of credential – individual appraiser. To recommend these sanctions implies that the ASC in fact has such powers, which S. Bren believes it does not. She recommends removal of these options. Chair Ouellette has been in communication with Ms. Bren and would like to ensure that her concerns are addressed.

Chair Ouellette said she also spoke with A. Ritter about the terms “suspension” and “revocation” implying action resulting from an enforcement or disciplinary action. The Dodd-Frank Wall

Street Reform and Consumer Protection Act (Dodd-Frank Act) contemplates “removal” of credentials, not suspension or revocation. She asked ASCAC members to consider changing its sanctions definitions to “interim removal of credential” and “removal of credential – individual appraiser.” Such a change would more accurately reflect removal of individuals from the National Registry (Registry) who are not eligible to be on it.

Member Bright said she sees the reason for changing the wording. Because removal does not imply an enforcement action having taken place, individuals could reappear on the Registry after requirements are met. Member Hummel noted that removal of an individual’s credential from the Registry makes them ineligible to conduct appraisals for federally related transactions (FRTs). He asked if the ASC has the authority to remove individuals’ credentials from the Registry. In response, Ms. Ritter said any action the ASC takes is against the State appraiser regulatory agency. The ASC may require that a State remove an appraiser who has not met AQB Criteria, but it is the State that takes the action. Member Bright said she believes Sanction Key Definitions 9 and 10 should be revised based on this discussion. States rely on the Registry and the ASC should have the ability to ensure that appraisers who appear on the Registry are valid. Chair Ouellette agreed, noting the importance of the information-sharing role of the Registry. Member Callahan asked how this discussion bore on previous ASCAC discussions with respect to preventing States from issuing new temporary practice permits or other measures. In response, Chair Ouellette said the draft recommendations to the ASC contain definitions which refer to the fact that interim removal/suspension may be an individual credential or a group of credentials. Interim derecognition may entail no new credentials issued or added to the Registry, no upgrades issued to specific credential(s) and/or no temporary practice permits issued. Chair Ouellette restated her hope that these changes address Ms. Bren’s concerns and said the draft recommendations will be amended based on the changes that were discussed.

Letter from Member Christine McEntire – ASCAC Recommendations

Chair Ouellette said ASCAC was in receipt of a letter from Member Christine McEntire, not in attendance. The issues raised in her letter will be taken up when ASCAC considers its recommendations which pertain to information-sharing.

Recommendations on ASC State grant funds

Chair Ouellette said she wrote a new section of the draft recommendations for consideration by ASCAC, Section 5: Suggested Uses for ASC State Grant Funds. She noted that the Section begins by acknowledging that composition of such a list was not a specific charge of ASCAC. In sum, the Section recommends the continuation of State investigator training and the exploration of live and online trainings, and recommends against direct financial grants to State agencies. She opened the floor to comments from Members; especially whether the item related to grant awards based on a Poor Compliance Review Finding would reflect negatively on States.

Member Bright suggested leaving the pertinent sentences in the document as they would provide a basis for the ASCAC’s thinking. Member Pistilli asked whether there is any history showing that State regulatory agencies received a reduced budget in the State in the wake of direct grants from other sources. Member Bright said Iowa would not hire for a position based on grant

monies. Member Watkins said she thinks direct ASC grants to States are a good idea, and likes the draft language with respect to advisability. Perhaps the recommendation could utilize language with respect to ensuring conditions are met. Member Callahan said the recommendation should reflect the variability among the States and noted the current language shows a bias against direct funding grants, but the conversation demonstrates that different States would treat these grants differently. Member Pistilli suggested the second sentence of the recommendation be removed as it is speculative. Member Watkins disagreed with this suggestion and wanted the language kept in the recommendation. Member Bright suggested including language with respect to one-time technology grants for States.

Member Hummel asked for clarification around direct and indirect financial grants to States. Chair Ouellette suggested the language, "it may not be advisable to give an unrestricted financial grant to a State agency." Member Hummel agreed. Member Borges suggested inclusion of language with respect to benefitting "the entire system rather than, specifically, the State," e.g., databases and trainings. Chair Ouellette said she was considering an amended Recommendation 3 dealing with restricted grants, such as technology projects and live and/or online trainings. Member Bright said the language could include the hiring of staff to the extent that States felt comfortable and Chair Ouellette said that the recommendation could deal with hiring of temporary personnel like reviewers or investigators, for example. Member Kelton agreed, saying that budgets are often set early but conditions may require the temporary hiring of staff to get over an unforeseen influx of work. Member Watkins said, for States, budget issues are rarely unforeseen. Unforeseen circumstances should be treated separately since States know that certain functions need to be fulfilled, e.g., training. Member Hummel suggested the language center around fulfilling functions, as opposed to hiring staff. A. Ritter clarified that State investigator training, though administered by the Appraisal Foundation, the grant is actually to the States. This funding is separate and apart from the Foundation grant.

Chair Ouellette suggested the following online-training topics: the regulatory scheme (FIRREA, ASC, the Appraisal Foundation, USPAP, temporary practice, reciprocity, Registry submissions, etc.). Member Bright said treatment of these topics would be very helpful to average appraisers in the community; Chair Ouellette and Member Watkins agreed. Member Kelton said appraisers should already have an understanding of USPAP and thought enhancements dealing with State-specific rules would be helpful. Chair Ouellette said trainings could be produced for targeted audiences: administrative staff, agency attorneys, administrative law judges, board members and non-appraisers. Member Hummel suggested the addition of material pertaining to AMCs: their operations and functions. Member Demopulos agreed and volunteered to help develop such material.

Chair Ouellette said she would work more on the recommendations and send out another draft for Member consideration and comment.

Discussion on conflict of interest – e.g., State Board Member reviews a complaint against an individual in their firm

Chair Ouellette introduced the topic of conflict of interest, at the request of Member Kelton, especially where a State Board Member reviews a complaint against an individual in that Board

member's firm. Member Kelton said she realizes that this is out of scope of the recommendations that ASCAC will make to the ASC but wished to have a discussion on this. She added that some issues have arisen in which independence may have been compromised. The State Board should be held to the same standard as other appraisers and organizations. A. Ritter said Policy Statement 1 was phrased as it is to cover the varying rules by which States address conflict of interest. Member Pistilli suggested language: "When investigating or disciplining an appraiser, States should use the same rules that appraisers have to follow when they are completing their work." Member Hummel said he liked the language, but States have to follow their own laws and the language should reflect this reality. Ms. Ritter said if a complaint of unfair treatment yields evidence of such due to conflict of interest, a State may be written up as non-compliant with Title 11. Member Kelton said appraisers who have been wrongly discredited should have recourse to overturn sanctions imposed upon them. Chair Ouellette said enforcement actions are appealable. Member Watkins said Florida, and some other States, have a 30-day appellate window to reconsider final orders, given extraordinary circumstances. A. Ritter said the ASC has no authority to act as a court of appeal; ASC authority is strictly over the State appraiser regulatory agency. Member Watkins said Florida utilizes an independent agency, a Commission on Ethics, any time a complaint is registered against a public officer. Member Hood asked whether the ASC has authority to intervene in a State's ongoing ethics investigation and A. Ritter replied "no." Member Hummel said this topic is connected to the previous one: ASC should create training modules dealing with due process in appraiser and board sanctions and appeals, and it should be publicly available. Chair Ouellette said she sees no reason why these materials would be unavailable to the public. Members Callahan and Pistilli agreed.

ASCAC Recommendations to ASC

National Registries Recommendations

Chair Ouellette asked ASCAC members to consider the addition of a Recommendation 8 in this area, which reads, "Require that States notify the ASC of any disciplinary action that interrupts a credential holder's ability to practice within five days after the action is either final or effective." The recommendation clarifies the start of the clock from Policy Statement 3, five business days after the action is either final or effective.

Member Hummel asked whether agreeing to these recommendations implied agreeing to collection of all the information currently suggested for aggregation on the National Registry. Member McEntire, not present, in a memo to ASCAC, said collection and transmission of all this data falls outside the scope intended for the Registry and would be overly burdensome to States. Chair Ouellette said several items have been added and/or deleted to the proposed content for AMCs on the Registry, in addition to the proposed creation of a private side to that Registry. Member Kelton said the Registry should include a credential-holder's history of disciplinary action on the public side, since it is important to know whether a credential-holder was active on the Registry at the time of a particular transaction. With respect to appraisers, information regarding disciplinary action would only be public if it affects their current ability to practice. Member Hummel said National Registries Recommendation 3 needs to be amended to more accurately reflect the information available. Member Callahan said "historical data" needs to be defined because of the possibility for misinterpretation. Member Kelton suggested listing any

suspension, revocation or voluntary surrender of a license. Member Hummel said some States may have disciplinary categories besides the three just mentioned. Member Martin asked whether it would be useful to list individuals who have a 10% or greater ownership of an AMC on the public side of the Registry. A. Ritter said the Dodd-Frank Amendment to Title 11 requires that such individuals be of good moral character as determined by the State, and that they undergo a State-sanctioned background check. Chair Ouellette said, inasmuch as disciplining an AMC is conceivable, an AMC owner could also be disciplined. In response to a question from Member Bright, A. Ritter said good moral character is determined by individual States. Member Demopulos said the ASC should be careful as it undertakes regulating companies in addition to individuals. Member Watkins said she views the private side of the Registry as a substitute for the licensure history. Members Kelton and Pistilli oppose the Registry having private and public sides. Member Hummel said the Registry should answer the question: is this appraiser currently in good standing to practice. He favors the Registry having a private side. Member Demopulos said occasionally his clients require the use of appraisers with no disciplinary issues in their history, as this might weaken their case in disputes in the future. Member Watkins said publication of disciplinary action could affect appraisers' careers in a negative way. Vice-Chair Gregoire said the ASC is concerned with Federal agencies and whether a given appraiser is able to participate in FRTs. The ASC should not, in the present legal environment, make disciplinary information available. Member Bright asked how organizations deal with publication of complaints against appraisers and AMCs. Member Borges said the Registry will not answer whether an appraiser is competent, citing the example that many people with driver's licenses are still bad drivers. Member Hood said disciplinary information is very important to lenders, as they are the ones taking the financial risk. Member Martin says State law sometimes prohibits the publication of disciplinary action. Chair Ouellette asked why the ASC receives disciplinary actions if those actions do not affect appraisers' ability to practice. A. Ritter said the effort increases information-sharing among the States. Member Demopulos said the information in the Registry need not be complete, but it does need to be consistent.

Member Callahan said ASCAC was deeply divided on this issue and asked how this will be written in its recommendations. As a compromise, Member Pistilli suggested States disclose nothing more than the dates of previous consent orders issued against an appraiser, which would cause States to undertake further inquiry before issuing a temporary practice permit. Chair Ouellette said the ASC should know that ASCAC was unable to reach agreement in this area with respect to both appraisers and AMCs. Member Callahan said if disciplinary information is already public in the State; it should be public on the Registry.

Information-Sharing Recommendations

Chair Ouellette asked the Committee to consider Member McEntire's memo with respect to information-sharing. Member McEntire's memo expressed concern that States would be overly burdened by the information-sharing recommendations and Member Bright agreed. Member Bright said directing information-seekers to a single contact within a State reduces the possibility for error. Member Hummel suggested removing the following fields: newsletter, how often, contact to get on mailing list, social media page, link to State correspondence; Member Kelton agreed. Chair Ouellette said link to State correspondence should be retained as most of the

correspondence pertains to current or previous Compliance Review Findings. Chair Ouellette also suggested changing the parenthetical of one of the fields to “mandatory or mandatory for FRTs;” Member Hummel suggested “mandatory or voluntary.” Chair Ouellette suggested removal of the field “link to proposed rules and rule changes.” Some members suggested providing links to States fees as opposed to trying to break out the various fees individually. Vice-Chair Gregoire said the cost-benefit payoff did not justify the burden of having to collect and distribute information with respect to fees; Chair Ouellette agreed. By consensus, members agreed that it would be easier to provide a link to a State’s website to provide fee information. With respect to provision of temporary practice rules, Member Bright said such negates practitioners’ responsibility to know the rules of the State they are entering. Chair Ouellette suggested condensing the temporary practice domain to two links: the form and the States’ websites; no one voiced opposition. She made the same suggestion with respect to reciprocity. She suggested removal of the fields “require State approval” and “accept courses taken in another State” and removal of the field “statute of limitations on complaints.” Some members agreed that the field “residency requirements” could be a challenge to accurate reporting; by consensus, the field was removed. Member Kelton said the field for a bond requirement is very important to her institution. Chair Ouellette complimented ASCAC members, saying the list as amended collected only that information which is necessary.

Chair Ouellette asked ASCAC members to consider the amended information-sharing recommendations. Member Hummel said Recommendation 3 should comport with other changes previously made with respect to disciplinary actions. Member Hood said the recommendations should be “should” statements, not “musts.” Member Hummel suggested wording the recommendations as subjunctives, and will provide the Committee some new language.

Enforcement Recommendations

Chair Ouellette asked the Committee to consider the four new recommendations in this area. She said the complaint filing date is the date the State regulatory agency receives the complaint. A. Ritter said the ASC Policy Statements have three different milestone events in this area: received by, filed with, and serving as a basis for. Member Watkins said legal sufficiency of a complaint must also be considered. Member Kelton said the ASC will not be able to include language for all circumstances that may delay a case. Chair Ouellette suggested altering the language of special documented circumstances to clarify allowable delays. Member Martin said recommendations containing the phrase “such as” require more clarity. Member Stewart suggested removing Recommendations 2 and 3; several members agreed with removing one or both of them. Member Watkins said she needed more clarity around what constitutes sufficient documentation. Member Martin said delay is a common tool among respondents in some cases. Member Watkins said the average consumer is not capable of verbalizing the complaint they hold against their appraiser. By consensus of the Committee, Recommendation 2 was retained and Recommendation 3 was removed.

Chair Ouellette said Recommendation 4 was difficult to write and essentially boiled down to USPAP compliance. Most States are already conducting their investigations according to the USPAP framework. Discussion on this topic was tabled to the following morning so that an

ASC Policy Manager could be present. Member Kelton suggested a Recommendation 5 that ASCAC determine what the enforcement sanctions should be for unethical Board dispositions. Sanctions should be stiffer when the unethical actions were clearly deliberate. Chair Ouellette suggested this could be handled as an aggravating circumstance, as opposed to a separate line item, to which Member Kelton agreed. Member Watkins expressed concern that conflict of interest may be overly broad.

Chair Ouellette said an investigation could be almost anything, as long as the State is looking at it for USPAP compliance. A. Ritter said documentation is critical, especially with regard to dismissals. C. Brooks said the clock on cases referred from other offices within the State would start when they were received by the State regulatory agency. Member Watkins said the regulation should be crafted so that State Appraisal Boards may consider subsequent appraisal reports in addition to the precipitating report. Several members agreed that State Appraisal Boards must consider each complaint they receive. Member Hummel expressed concern that USPAP principles are not consistently applied by the various States.

Chair Ouellette asked ASCAC members to consider the list of proposed sanctions for enforcement to determine whether the list of definitions is complete. As noted before, suspension and revocation were changed to removal. Under interim derecognition, the sanction should read “no new credentials to be added to the National Registry.” Some members expressed concern around reciprocity to States that issue credentials to non-AQB-compliant individuals. By consensus the Committee agreed to the proposed changes.

As discussed previously, conflict of interest language will be added to the list of aggravating circumstances. Change in leadership and occurrence of a national disaster were added to the list of mitigating circumstances. Member Hummel suggested that non-responsiveness of an opposing party in a complaint may serve as a mitigating circumstance. Member Kelton said conflict of interest should not be allowed, whether disclosed or not. Member Bright suggested an aggravating circumstance: “blatant failure of equitable enforcement.”

Follow-Up Questions/Comments

The Enforcement Working Group made changes to its sanctions matrix, adding the word “documented” to the first violation, “consideration of merit” to the second, and “persons analyzing complaints for USPAP compliance must be knowledgeable in USPAP” as the third. These changes reflect the conversation of ASCAC at its previous meeting. The National Registry-Information Sharing sanctions matrix will be amended to reflect ASCAC discussion of FRTs and removal of credentials. The definitions will also be amended to reflect this discussion. ASCAC could opt to recommend that States be disallowed from referring to non-FRT credential holders as licensed or certified. Member Kelton noted that doing this would necessitate an additional line item on the enforcement matrix. Chair Ouellette said the change would also call for an additional recommendation with respect to information-sharing. The recommendation would be to adopt a recommendation to prohibit the use of certain terms. The Committee considered and made changes in the sanctions matrix. Member Kelton said she was not concerned about violations by individuals who are not on the Registry.

In response to a suggestion from Member Hummel, Chair Ouellette said the ASC does not have the authority to mandate that States provide certain information on their websites. She added that this might be an area for further consideration as a grant opportunity. Chair Ouellette said if the information is not consistent among the States, it will not help consumers.

R. Borges suggested that any training programs that will be developed by the ASC using grant funds go through the Request for Proposal process so that various organizations could bid on them. After agreement from other members, Chair Ouellette agreed to add this to the Recommendations for "Suggested Uses for ASC State Grant Funds."

Chair Ouellette said she would redraft the recommendations document and circulate it to the members for consideration and comment.

Final Comment/Public Comment

Vice-Chair Gregoire said while the entire Committee has worked hard, none of its members worked harder than Chair Ouellette. The Vice Chair expressed his appreciation for and admiration of the way she conducted the meetings. He also thanked the ASC staff for all their work.

Chair Ouellette thanked the ASCAC members for their work. Once ASCAC agrees to the recommendations document, Chair Ouellette will formally present it to the ASC, most likely at its May 13th Meeting.

There were no comments from members of the public.

Adjournment

Chair Ouellette adjourned the meeting at 2:32 p.m.

Respectfully Submitted:



Lori L. Schuster
DFO

Respectfully Submitted:



Roberta Ouellette
Chair