

July 26, 2024

Kelly Davids
President
Appraisal Foundation
1155 15th Street NW, Suite 1111
Washington, DC 20005

Dear President Davids:

Thank you for the opportunity to provide feedback on the proposed Standards of Conduct and Ethics (Code) under consideration by the Appraisal Foundation (TAF) Board of Trustees (BOT). The following comments are given as part of the Appraisal Subcommittee's (ASC) legal responsibility to monitor and review the Foundation's practices, procedures, activities, and organizational structure.

We appreciate that the Foundation published the Code for public feedback. The ASC staff also appreciate the changes made to the proposed Code in response to the ASC's previous feedback, although ASC staff continue to have concerns about the Code.

Recommend Stronger Recusal Obligations

The ASC staff continue to have concerns about the recusal obligations. A significant difference between the proposed draft and the federal government ethics standards continues to be that there are clear prohibitions in the federal rules that put the onus on employees to ensure compliance with the rules and avoid even the appearance of a financial conflict of interest. For example, a federal employee is prohibited from participating in a particular matter that would directly and predictably affect the employee's financial interest or certain financial interests imputed to the employee. This is true regardless of whether the employee has raised the potential issue with a federal agency or ethics department. The onus is on the employee to ensure that they do not participate in a matter where there is a potential conflict of interest unless or until they receive ethics guidance indicating otherwise.

In contrast, the Foundation's Standards of Conduct and Ethics appears to say that "If an individual declares a conflict that has not been investigated, the individual shall leave the meeting during the discussion of, and the vote on, the matter before the body." We would recommend stronger language requiring the employee to completely recuse themselves from participating in the matter until the individual has received specific guidance concerning the potential conflict. As explained below, the recusal should apply immediately.

The following language remains troubling despite the Foundation's edit:

All Persons must notify the Foundation in writing promptly, but in no event later than 30 days of any material change in the EDS, including (1) a change in status of an existing actual, apparent or potential conflict of interest and (2) the identification of a new actual, apparent or potential conflict of interest.

Why is a person given up to 30 days to notify the Foundation after identification of a new actual, apparent, or potential conflict of interest? Given the statement above that an individual shall leave a meeting and not vote on a matter "if an individual declares a conflict that has not been investigated" yet, we are concerned that an employee or board member of the Foundation may technically participate in matters where they have identified a potential conflict but have not yet reported it. Again, it is our view that the recusal requirement should apply as soon as the individual identifies a potential conflict. It should extend to all types of participation and not just attending meetings or voting in actions.

Recommend Expansion of the Gift Rules

The gift rules in these proposed Standards of Conduct and Ethics remain significantly narrower than similar rules applied to federal employees. The ASC staff appreciates the changes on lines 206-209 requiring that persons must not accept gifts given due to their position or affiliation with the Foundation.

The gift rules continue to exempt gifts of "nominal value" of less than \$100 on an occasional basis in certain circumstances but does not define "occasional". Also, the federal government ethics rules define nominal as \$25, which ASC staff would recommend as a clearer, standardized definition.

The Code also does not have any rules concerning gifts between Foundation employees. ASC staff recommends that TAF prohibit gifts from lower-level employees to higher-level employees or Board members as similarly required by the federal government ethics rules.

Definitions

The Code uses some important terms that it does not define. The ASC staff recommends the Code include definitions for "immediate family member," which is referenced in several locations, "indirectly" on line 228, and "conflicts with official duties" on line 626.

Sexual and Other Unlawful Harassment

In addition to prohibiting harassment based on the protected classes identified, ASC staff suggests the Code also prohibits discrimination based on the same classes. Additionally, please consider adding: "conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive" to the definition of sexual harassment.

Specific Conflicts of Interest

The ASC staff recommends that the specific conflict of interest rules prohibit:

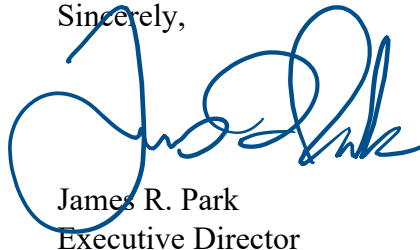
- Foundation staff from having any financial conflict of interest prohibited to any Board member;
- BOT members from having a financial interest in any organization that is a sponsor or partner of the Foundation;
- ASB members from having a financial interest in any organization that is in a business relationship with the Foundation; and
- AQB members from having a financial interest in any organization that is in a business relationship with the Foundation or is an appraisal education provider.

Foundation Panel

The Code provides that a panel of Foundation employees at the Program Manager and Director levels will review self-identified conflicts of interest. However, the Code does not indicate the panel's assessment criteria or inclusion of anyone with expertise in this area.

Once again, we appreciate the opportunity to provide input on the proposed Standards of Conduct and Ethics policies. Let me know if we can answer any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "James R. Park", is positioned above the printed name and title.

James R. Park
Executive Director