



## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS13-13]

### Appraisal Subcommittee; Policy Statements

**AGENCY:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

**ACTION:** Adoption of revised Policy Statements.

**SUMMARY:** The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council requested public comment on a proposal to revise its Policy Statements<sup>1</sup> providing guidance to ensure State appraiser regulatory programs (Programs)<sup>2</sup> comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI).<sup>3</sup> Comments were received from 29 individuals, companies and State entities. The ASC has considered comments received in adopting the revised Policy Statements as set forth in this notice. The revised Policy Statements supersede current Policy Statements on the date set forth below.

**EFFECTIVE DATE:** June 1, 2013

### FOR FURTHER INFORMATION CONTACT:

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<sup>1</sup> 77 FR 52721 (Aug. 30, 2012).

<sup>2</sup> The 50 States, the District of Columbia, and four Territories, which are the Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, and United States Virgin Islands, have State appraiser certifying and licensing agencies with Programs monitored by the ASC through the Compliance Review process.

<sup>3</sup> 12 U.S.C. §§3331-3355, 12 U.S.C. §1708(e).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Title XI was adopted to provide protection of Federal financial and public policy interests by establishing certain requirements for appraisals performed for federally related transactions.<sup>4</sup> The ASC<sup>5</sup> was established by Title XI to further these goals. The ASC monitors requirements established by the States for certification and licensing of individuals qualified to perform appraisals in connection with federally related transactions, including codes of professional responsibility, and also maintains the National Registry of State certified and licensed appraisers.<sup>6</sup> The ASC's obligation to monitor State Programs for compliance with the requirements of Title XI is met through periodic Compliance Reviews of each State's Program.

Policy Statements were adopted in 1993 by the ASC to assist States in developing and maintaining their Programs in compliance with Title XI, and were substantively supplemented in 1997 to address issues related to temporary practice and reciprocity. Since 1997, the Policy Statements have remained largely unchanged with the exception of amendments made in 2008 to Policy Statement 10, *Enforcement*. Passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010 and implementation of the ASC's revised Compliance Review process in 2009 necessitated revision of the existing Policy Statements to enhance guidance for States as they implement changes required by the Dodd-Frank Act. The revised Policy Statements are intended to provide States with the necessary information to maintain their Programs in compliance with Title XI. Further, the revised Policy Statements address the ASC's authority to evaluate a State Program for compliance with Title XI and to take sanctions against a State when its Program does not comply with Title XI. Policy Statements

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<sup>4</sup> Any real estate related financial transaction which: a) a federal financial institutions regulatory agency engages in, contracts for, or regulates; and b) requires the services of an appraiser (12 U.S.C. 3350(4)).

<sup>5</sup>The ASC Board is comprised of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and National Credit Union Administration). The other two members are designated by the heads of the Department of Housing and Urban Development and the Federal Housing Finance Agency (12 U.S.C. §3310, 12 USC §1708(e)).

<sup>6</sup> 12 U.S.C. §3332.

1 through 7 corresponded with the seven categories evaluated during the ASC's Compliance Review process and included in the ASC Compliance Review Report to a State. Policy Statement 8 addresses ASC procedures for imposition of interim sanctions against a State for failure to comply with the requirements of Title XI.

## **II. Analysis of Comments Received**

The ASC received a total of 29 comments from individuals, States, and organizations, electronically as well as by mail, on its proposed Policy Statements. These comments may be viewed on the ASC's website under the Federal Register Documents tab of the Public Documents Library of Resources and Records.

**Policy Statement 1:** *Statutes, Regulations, Policies and Procedures Governing State Programs.* The proposed Policy Statement addressed general issues such as a State's obligation to: establish appropriate organizational structures for appraiser certification, licensing and supervision; ensure adequate funding and staffing to enable the State Program to meet its Title XI obligations; adopt relevant Appraiser Qualifications Board (AQB) *Real Property Appraiser Qualification Criteria* (AQB Criteria) for the various identified appraiser classifications and/or such additional qualification criteria provided it does not preclude compliance with AQB Criteria; adopt the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board (ASB) as minimum standards for covered appraisals; prohibit discrimination based on membership or lack thereof in a particular professional organization; ensure that State provisions exempting appraisers from meeting certification or licensing requirements do not permit exempted appraisers to perform appraisals for federally related transactions; and permit ASC staff to attend Board meetings.

Some Commenters expressed concern that ASC staff attendance at closed meetings and executive sessions of their Boards may expose Boards and their members to litigation and potential liability because of restrictions imposed by State laws. Concern also was expressed that staff attendance at closed meetings where legal advice was being given could result in a waiver of applicable privilege as well as potential violation of State privacy laws, while an

additional commenter stated that the presence of ASC staff in closed Board meetings would hamper the free flow of information and discussion. The ASC recognizes these concerns and has amended the text in Policy Statement 1 to reflect the expectation that ASC staff would be permitted to attend open meetings, but not closed meetings or executive sessions. Further, the final Policy Statement notes that States are expected to make minutes of closed meetings and executive sessions available for review by ASC staff. The prohibition against discrimination contained in the proposed Policy Statement was considered by some Commenters as either too broad or without legal authority. The ASC has reconsidered this section and has deleted it from the Policy Statement since the prohibition against discrimination in Title XI applies to the Federal financial institutions regulatory agencies.<sup>7</sup> One Commenter stated that the proposed removal of the requirement that a State must ensure that adequate safeguards exist to preserve the independence of the appraiser regulatory function if co-located within a department regulating realty related activities would remove ongoing guidance to the States about the acceptability of such co-location. The language as published in the proposed Policy Statement is consistent with ASC authority pursuant to Title XI. The ASC believes that the proposal provided sufficient flexibility for States to organize the appraisal regulatory function as they deem appropriate while encouraging States to ensure that conflicts of interest are avoided and that highest ethical standards are maintained. Therefore, this language was retained in the final Policy Statement. Some Commenters addressed the proposed deletion from Policy Statement 2, *Temporary Practice*, of the provision dealing with appraisal review. Although these comments are considered more completely in the discussion of Policy Statement 2, language was added to Policy Statement 1 addressing appraisal review and applicable rules of the Federal financial institutions regulatory agencies. These rules define “appraisal” and identify which federally-related transactions require the use of a licensed or certified appraiser. Under these rules, an appraisal review which does not include the reviewer providing his or her own opinion of value would not constitute an appraisal. This is consistent with Advisory Opinion 20 issued by the Appraisal Standards Board which provides that an appraisal review assignment that does not

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<sup>7</sup> The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and National Credit Union Administration.

include the review appraiser's own opinion of value would not constitute an "appraisal" under USPAP.

**Policy Statement 2: *Temporary Practice.*** The proposed Policy Statement addressed what the ASC considered to be excessive fees or burdensome requirements to an out-of-State credentialed appraiser's ability to work in a State on a temporary basis. Burdensome requirements are specified separately for the "Home State agency" and the "Host State."

One Commenter stated that the Policy Statement failed to address the number of assignments covered by a temporary practice permit. The proposed Policy Statement set forth minimum requirements, consistent with Title XI, for temporary practice, and noted that individual States have the authority to adopt more stringent requirements so long as such requirements do not violate the standards in Title XI. In response to this comment, the ASC has deleted the language on any limits to the number of times an appraiser may request a temporary practice permit and acknowledges that States have the right to determine such limits.

One Commenter suggested that the ASC needs to clarify that appraisals performed under temporary practice permits are subject to USPAP and that a requirement for geographic competency be included in them. The ASC believes that additional guidance is unnecessary since appraisals performed under temporary practice permits for federally related transactions must be performed in compliance with USPAP, which addresses an appraiser's geographic competency. Therefore, the ASC has decided to not revise the language.

The following language in existing Policy Statement 5 concerning "technical review" was recommended for omission in the proposal as outdated and unnecessary:

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 majority of Commenters who addressed this issue, including one of the largest mortgage lenders in the country, objected to the removal of the language and noted that the existing temporary practice Policy Statement provided clarity on the credentialing requirements for appraisers conducting appraisal review. The Commenters objecting to the proposed change stated that it would result in States being permitted to require temporary practice permits for appraisers conducting appraisal reviews as part of a lender's credit due diligence process, and could increase the cost and time to approve a loan without a corresponding benefit to a potential borrower.

The basic premise of temporary practice has always encompassed an appraiser physically entering another State pursuant to a temporary practice permit to carry out an assignment for a federally related transaction. This long-standing interpretation of temporary practice leads to the conclusion that a review appraiser, regardless of the type of review conducted, is not acting within the scope of temporary practice if the activity is conducted outside of the State where the subject property is located. Any further assertion by a State of jurisdiction over an appraiser outside of its State does not fall within the purview of temporary practice or Title XI. Title XI § 1110 provides, however, that the Federal financial institutions regulatory agencies shall prescribe appropriate standards for the performance of appraisals in connection with federally related transactions, and require that such appraisals be subject to appropriate review for compliance with USPAP. Therefore, rather than address this as a temporary practice issue, Section F (*Appraisal Standards*) in final Policy Statement 1 has been revised to include a discussion of the applicable rules of the Federal financial institutions regulatory agencies.

**Policy Statement 3: *National Registry.*** The proposed Policy Statement addressed several Dodd-Frank Act amendments to Title XI concerning appraiser classifications and States' ASC National Registry reporting requirements. The proposal included a discussion on the ASC National Registry's extranet application and security requirements as well as requiring States to notify the ASC as soon as practicable if it is determined that a credential holder listed on the National Registry did not qualify for the credential held or in the event of voluntary surrenders,

suspensions and revocations, or any action that interrupts a credential holder's ability to practice. As discussed in the proposal, States would be required to submit all "disciplinary actions" (as defined in the proposed Policy Statement) for inclusion on the National Registry via the extranet application as of July 1, 2013.

Six Commenters addressed various aspects of this proposed Policy Statement. One Commenter suggested that the ASC collate Registry data to provide a centralized data repository so that States would not be required to establish routine communications with each other concerning appraiser credentials. One Commenter suggested that States be prohibited from reporting appraisal standard or ethical violations until the accused has exhausted all available appeals since immediate reporting may cause unwarranted harm to an appraiser where charges are minor or unfounded. Another Commenter expressed concern that States were not reporting promptly and suggested that specific processes and timelines be developed to maximize the benefits of the Registry. The language in the proposed Policy Statement is consistent with the mandates of Title XI and strikes an appropriate balance with the States' regulatory authority concerning the application of their individual disciplinary and administrative processes.

**Policy Statement 4: *Application Process.*** The proposed Policy Statement addressed the requirements applicable to a State Program's application processes under Title XI, including general processing of applications for appraiser credentials, qualifying education, continuing education, experience requirements, and examination.

Three of the five Commenters addressing this proposed Policy Statement stated that the 90-day period for processing applications should be removed or extended. They stated that this period was inadequate under their established application processing procedures. One Commenter noted that they relied on volunteer appraisers for conducting required experience reviews to release staff for investigations. One Commenter suggested that the ASC could specify a time when an application would be deemed complete. The ASC notes that the 90-day application process period in the proposal is a recommended time frame, and is based on extensive experience gained from the ASC reviews of State Programs. The ASC will consider a longer application process when a State can demonstrate that it has sound reasons for its application process taking longer than 90 days. Therefore, the ASC is retaining the proposed language in the

final policy and notes that establishing further parameters for processing of applications is a matter appropriately left for the States. The ASC will consider during a State review whether a State's application process is unreasonable or results in inappropriate delay.

Several Commenters noted difficulty with the requirement that States must verify that the qualifying/continuing education claimed by an appraiser is acceptable under AQB Criteria and consistent with the credential sought. These Commenters stated that for in-state classes or classes given by a national provider, the verification would be relatively simple, but verification of education provided out-of-state is more difficult absent a central data base. The ASC believes that it is the role of the States to approve courses for both qualifying and continuing education and, therefore, the ASC does not believe that it has the authority to establish a national database of approved courses given the varied approval standards and the ability of States to require standards higher than prescribed by the AQB. The final Policy Statement therefor does not include establishment of a national database of approved courses.

Another Commenter suggested that, absent documented abuse, States should be permitted to accept affidavits or certifications for upgrades and renewals. The ASC notes that Title XI provides the minimum requirements applicable to appraisers performing appraisals for federally related transactions, including meeting minimum criteria established by the AQB, with enforcement of those AQB Criteria being the province of the States, subject to monitoring by the ASC. Therefore, the ASC believes that the use of affidavits in support of applications and upgrades is inconsistent with the purpose of Title XI. The final Policy Statement retains the prohibition on the use of affidavits to demonstrate meeting AQB Criteria in certain circumstances.

**Policy Statement 5: *Reciprocity.*** The proposed Policy Statement addressed reciprocity policies consistent with Title XI. The Dodd-Frank act amended the Title XI provision on reciprocity to require that in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must, at a minimum, have a reciprocity policy in place that meets the Dodd-Frank Act. Such a policy requires issuance of a reciprocal credential if: (1) the appraiser is coming from a State that is "in compliance;" (2) the appraiser holds a valid credential from that State; and (3) the credentialing requirements of that State (as they currently exist) meet

or exceed those of the reciprocal credentialing State (as they currently exist). A State may have a more lenient or more open door policy; however, States cannot impose additional impediments to issuance of reciprocal credentials.

Several Commenters opined that it was an unreasonable burden on the State where a reciprocal credential was being sought (Reciprocal State) to be required to determine if the credentialing requirements of the applicant's home State (Home State) meet or exceed its own credentialing requirements since some States may not have the expertise or resources to make such determinations. One Commenter suggested that the ASC make such determinations on request. Several Commenters also noted that the "meet or exceeds" standard for credentialing requirements presents opportunities for States to adjust their credentialing requirements which then would serve as a basis for denying reciprocal applications. Support also was expressed for a strong national standard with one Commenter suggesting that reciprocal licenses could be issued solely on the basis that the Home State credential was in good standing and the Home State was "in compliance." The ASC notes that Title XI does not authorize the establishment of a national standard based solely on whether an applicant's credential is in good standing in a Home State that is "in compliance." The final Policy Statement does not adopt a national standard as suggested.

**Policy Statement 6: *Education.*** The proposed Policy Statement addressed specific requirements regarding course approval, including the approval of distance education courses (e.g., on-line courses), and referred to discussion in proposed Policy Statement 4 concerning qualifying and continuing education in the application process. As required by the Dodd-Frank Act, the ASC included language in the proposal to encourage States to accept courses approved by the AQB's Course Approval Program.

One Commenter opined that the ASC lacked legal authority to prohibit States from specifying a particular course provider in resolution of a disciplinary matter where there are multiple authorized providers of the same course/material in that State. The final Policy Statement has been revised to discourage States from treating one education provider more favorably than another equally qualified education provider.

**Policy Statement 7: *State Agency Enforcement.*** The proposed Policy Statement addressed specific requirements for an effective and compliant enforcement program. The proposal addressed: (1) timeliness of complaint investigations and initiating enforcement action; (2) effectiveness of a State’s enforcement process; (3) consistent and equitable treatment of an appraiser in the State’s enforcement process; and (4) appropriate complaint documentation in a State’s enforcement records, including specific requirements for tracking complaints of alleged appraiser misconduct or wrongdoing using an electronic complaint log.

A number of Commenters expressed concern that the proposed requirement to maintain complaint logs in an electronic sortable spreadsheet format would be expensive and time-consuming to implement with limited benefit. The ASC recognizes these concerns and has amended the language in the final Policy Statement to strongly encourage maintenance of complaint logs in such format. Further, in the final Policy Statement, the ASC sets forth the expectation that States will document that persons analyzing complaints for compliance with USPAP are knowledgeable about the appraisal process and USPAP.

The majority of the 17 Commenters addressing this proposed Policy Statement stated that the 12-month time period for complaint resolution was not realistic and unduly burdensome. Most of these Commenters noted that at various stages of investigation and discipline there are a number of instances when a State appraiser regulatory agency no longer has control of the process and, therefore, cannot affect the speed with which the process works, and that sanctioning a State Program for something beyond its control is unfair. Commenters provided a range of suggestions from establishing separate investigation and discipline tracks to extending the time period for complaint resolution from one year to two years or a “timely” period. The ASC notes that Title XI requires complaints to be processed and investigated in a reasonable time period. Nevertheless, the ASC recognizes the concerns expressed by these Commenters. Therefore, the ASC has included more specific language in the final Policy Statement clarifying that special documented circumstances such as the referral of a complaint to another agency for review or action may be a reason for a delay in complaint resolution. In those circumstances, the final Policy Statement notes that the ASC expects a State to document the dates and reasons for the referral.

Several Commenters expressed concern about excluding statutes of limitation as a basis for closing a complaint without completing an investigation of that complaint. In their view, this prohibition would create problems with record retention and other matters. One Commenter suggested application of the 10-year statute of limitations in 12 USC §1833a. The ASC notes that statutes of limitation vary widely among the States, not only in length but in the triggering event of the underlying transaction. Consequently, in some States the statute of limitations may expire before a complainant has a reasonable period of time to file a complaint. Moreover, a standard rule permitting the closure of investigations/complaints on the basis of statutes of limitations would be inconsistent with the requirements of Title XI. Therefore, the ASC has retained language that closing a complaint based on a statute of limitations is inconsistent with the Title XI requirement that States assure effective supervision of the activities of credentialed appraisers.

**Policy Statement 8:** *Interim Sanctions.* The proposed Policy Statement addressed due process procedures that would provide a State with an opportunity to be heard or to correct conditions before the ASC imposes an interim sanction. Pursuant to the Dodd-Frank Act, the ASC has the authority to impose interim actions and suspensions against a State agency as an alternative to or in advance of a non-recognition proceeding against a State agency that fails to have an effective Program.<sup>8</sup> The Dodd-Frank Act's interim sanction authority specifically authorizes the ASC 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.

Several Commenters suggested that the factors involved in analysis as well as mitigating or aggravating circumstances be identified and explained and that options for interim sanctions be identified also. Other Commenters expressed concern about removal of appraisers from the National Registry because of a State Program's failures and request clarification of that issue. One Commenter noted that removal in those circumstances may raise serious constitutional concerns. The ASC has addressed these comments in the final Policy Statement by clarifying the procedures set forth in Policy Statement 8, sections B and C, to address instances when action is

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<sup>8</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

being taken against a State Program/agency as an alternative to, or in advance of, a non-recognition proceeding.

The ASC believes the final Policy Statement is consistent with the requirements of Title XI. In this regard, the ASC notes that if a State Program is sanctioned for non-compliance with Title XI through a suspension of the State Program, or a portion thereof, appraisers credentialed by that State relative to the portion of the State Program being sanctioned may not be eligible to appraise for federally related transactions.

#### **Appendix A:** *Compliance Review Process*

The proposal contained a new rating system to provide greater gradation in the State compliance Findings and the time frame for the Review Cycle. As proposed, a State receiving an “Excellent” rating would be on a 2-year Review Cycle, as would a State receiving a rating of “Good” or “Needs Improvement.” A States receiving a “Needs Improvement” rating would, however, be subject to appropriate additional monitoring. One commenter stated that the Review Cycle provided little incentive for a State to achieve an “Excellent” rating and suggested that an increase in the period between full Compliance Reviews may be a suitable response to the State’s efforts to achieve that rating. The ASC notes that there is some potential value in this approach to extend the Review Cycle by reducing the burden of onsite Compliance Reviews on States with an “Excellent” rating. However, the ASC believes that additional experience is needed with this new rating system before extending the Review Cycle beyond two years. Therefore, the ASC is adopting the Compliance Review process and rating system as proposed and acknowledges that future refinements may be necessary.

#### **Proposed Appendix B:** *Summary of Requirements*

The proposed Appendix B provided a summary of requirements for each Policy Statement to aid States in compliance with the Title XI. Several Commenters suggested that this discussion was helpful and should be incorporated into the applicable Policy Statement. The ASC agrees with the Commenters and has eliminated the Appendix and moved the requirements to the applicable location in the final Policy Statements.

## **Final Appendix B (proposed Appendix C): *Glossary of Terms***

In response to Commenters request for clarity on several terms, the ASC made minor changes to the text in the final appendix. In particular, the discussion on “special documented circumstances” has been incorporated into final Policy Statement 7 and deleted from this appendix. Several editorial changes have been made to clarify ambiguities in definitions.

## **Proposed Appendix D: *ASC Bulletins and Supplements***

The relevant guidance provided in the ASC Bulletins and Supplements referenced in the Proposed Appendix has been incorporated into appropriate Policy Statements. The ASC consequently has deleted Proposed Appendix D.

For the reasons discussed in the preamble, the ASC adopts the revised Policy Statements as follows:

## **Introduction and Purpose**

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (Title XI), established the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).

<sup>1</sup> 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. Specifically those appraisals shall be 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.

Pursuant to Title XI, one of the ASC’s core functions is to monitor the requirements established

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<sup>1</sup> The ASC board is made up of seven members. Five members are designated by the heads of the FFIEC agencies (Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and National Credit Union Administration). The other two members are designated by the heads of the Department of Housing and Urban Development and the Federal Housing Finance Agency.

by the States<sup>2</sup> for certification and licensing of appraisers qualified to perform appraisals in connection with federally related transactions.<sup>3</sup> The ASC performs periodic Compliance Reviews<sup>4</sup> of each State appraiser regulatory program (Program) to determine compliance, or lack thereof, with Title XI, and to assess the Program’s implementation of the AQB Criteria as adopted by the Appraiser Qualifications Board (AQB).

Pursuant to authority granted to the ASC under Title XI, the ASC is issuing these Policy Statements<sup>5</sup> to provide States with the necessary information to maintain their Programs in compliance with Title XI. Policy Statements 1 through 7 correspond with the categories that are evaluated during the Compliance Review process and included in the ASC Compliance Review Report (Report). Policy Statement 8 entitled *Interim Sanctions* sets forth required procedures in the event that interim sanctions are imposed against a State by the ASC.

## **POLICY STATEMENT 1**

### **Statutes, Regulations, Policies and Procedures Governing State Programs**

#### **A. State Regulatory Structure**

Title XI requires the ASC to monitor each State appraiser certifying and licensing agency for the purpose of determining whether each such agency has in place policies, practices and procedures consistent with the requirements of Title XI.<sup>6</sup> The ASC recognizes that each State may have legal, fiscal, regulatory or other factors that may influence the structure and organization of its Program. Therefore, a State has flexibility to structure its Program so long as it meets its Title XI-related responsibilities.

States should maintain an organizational structure for appraiser certification, licensing and supervision that avoids conflicts of interest. A State agency may be headed by a board, commission

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<sup>2</sup> See Appendix B, Glossary of Terms, for the definition of “State.”

<sup>3</sup> See Appendix B, Glossary of Terms, for the definition of “federally related transaction.”

<sup>4</sup> See Appendix A, Compliance Review Process.

<sup>5</sup> These Policy Statements, adopted April 10, 2013, supersede all previous Policy Statements adopted by the ASC, the most recent version of which was issued in October 2008.

<sup>6</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

or an individual. State board<sup>7</sup> or commission members, or employees in policy or decision-making positions, should understand and adhere to State statutes and regulations governing performance of responsibilities consistent with the highest ethical standards for public service. In addition, Programs using private entities or contractors should establish appropriate internal policies, procedures, and safeguards to promote compliance with the State agency's responsibilities under Title XI and these Policy Statements.

## **B. Funding and Staffing**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended Title XI to require the ASC to determine whether States have sufficient funding and staffing to meet their Title XI requirements. Compliance with this provision requires that a State must provide its Program with funding and staffing sufficient to carry out its Title XI-related duties. The ASC evaluates the sufficiency of funding and staffing as part of its review of all aspects of a Program's effectiveness, including the adequacy of State boards, committees, or commissions responsible for carrying out Title XI-related duties.

## **C. Minimum Criteria**

Title XI requires States to adopt and/or implement all relevant AQB Criteria. Historically, requirements established by a State for certified residential or certified general classifications have been required to meet or exceed AQB Criteria. Effective July 1, 2013, requirements established by a State for licensed appraisers, as well as for trainee and supervisory appraisers, must also meet or exceed the AQB Criteria, as required by the Dodd-Frank Act.

## **D. Federally Recognized Appraiser Classifications**

### ***1. State Certified Appraisers***

"State certified appraisers" means those individuals who have satisfied the requirements for residential or general certification in a State whose criteria for certification meet or exceed the applicable minimum AQB Criteria. Permitted scope of practice and designation for State certified residential or certified general appraisers must be

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<sup>7</sup> See Appendix B, *Glossary of Terms*, for the definition of "State board."

consistent with State and Federal laws, including regulations and supplementary guidance.

## **2. *State Licensed Appraisers***

As of July 1, 2013, “State licensed appraisers” means those individuals who have satisfied the requirements for licensing in a State whose criteria for licensing meet or exceed the applicable minimum AQB Criteria. Effective July 1, 2013, the permitted scope of practice and designation for State licensed appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

## **3. *Trainee Appraiser and Supervisory Appraiser***

As of July 1, 2013, any minimum qualification requirements established by a State for individuals in the position of “trainee appraiser” and “supervisory appraiser” must meet or exceed the applicable minimum AQB Criteria. ASC staff will evaluate State designations such as “registered appraiser,” “apprentice appraiser,” “provisional appraiser,” or any other similar designation to determine if, in substance, such designation is consistent with a “trainee appraiser” designation and, therefore, administered to comply with Title XI. Effective July 1, 2013, the permitted scope of practice and designation for trainee appraisers and supervisory appraisers must be consistent with State and Federal laws, including regulations and supplementary guidance.

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 preclude compliance with AQB Criteria.

## **E. Non-federally Recognized Credentials**

States using non-federally recognized credentials or designations<sup>8</sup> must ensure that they are easily distinguished from the federally recognized credentials.

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<sup>8</sup> See Appendix B, *Glossary of Terms*, for the definition of “non-federally recognized credentials or designations.”

## F. Appraisal Standards

Title XI and the Federal financial institutions regulatory agencies' regulations mandate that all appraisals performed in connection with federally related transactions be in written form, prepared in accordance with generally accepted appraisal standards as promulgated by the Appraisal Standards Board (ASB) in the Uniform Standards of Professional Appraisal Practice (USPAP), and be subject to appropriate review for compliance with USPAP.<sup>9</sup> States that have incorporated USPAP into State law should ensure that statutes or regulations are updated timely to adopt the latest version of USPAP, or if State law allows, automatically incorporate the latest version of USPAP. States should consider ASB Advisory Opinions, Frequently Asked Questions, and other written guidance issued by the ASB regarding interpretation and application of USPAP.

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 preclude compliance with USPAP or the Federal financial institutions regulatory agencies' appraisal regulations for work performed for federally related transactions.

The Federal financial institutions regulatory agencies' appraisal regulations define "appraisal" and identify which real estate-related financial transactions require the services of a state certified or licensed appraiser. These regulations define "appraisal" as a "written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s) supported by the presentation and analysis of relevant market information." Per these regulations, an appraiser performing an appraisal review which includes the reviewer providing his or her own opinion of value constitutes an appraisal. Under these same regulations, an appraisal review that does not include the reviewer providing his or her own opinion of value does not constitute an appraisal. Therefore, under the Federal financial institutions regulatory agencies' regulations, only those transactions that involve appraisals for federally related transactions require the services of a state certified or licensed appraiser.

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<sup>9</sup> See Appendix B, *Glossary of Terms* for the definition of "Uniform Standards of Professional Appraisal Practice."

## H. Exemptions

Title XI and the Federal financial institutions regulatory agencies' regulations specifically require the use of only State certified or licensed appraisers in connection with the appraisal of certain real estate-related financial transactions.<sup>10</sup> A State may not exempt any individual or group of individuals from meeting the State's certification or licensing requirements if the individual or group member performs an appraisal when Federal statutes and regulations require the use of a certified or licensed appraiser. For example, an individual who has been exempted by the State from its appraiser certification or licensing requirements because he or she is an officer, director, employee or agent of a federally regulated financial institution would not be permitted to perform an appraisal in connection with a federally related transaction.

## I. ASC Staff Attendance at State Board Meetings

ASC staff regularly attends open State board meetings as part of the on-site Compliance Review process. States are expected to make available for review by ASC staff minutes of closed meetings and executive sessions. The efficacy of the ASC's Compliance Review process rests on the ASC's ability to obtain reliable information about all areas of a State's Program. States are encouraged to allow ASC staff to attend closed and executive sessions of State board meetings where such attendance would not violate State law or regulation or be inconsistent with other legal obligations of the State board. ASC staff is obligated to protect information obtained during the Compliance Review process concerning the privacy of individuals and any confidential matters.

## J. Summary of Requirements

1. States must require that appraisals be performed in accordance with the latest version of USPAP.<sup>11</sup>
2. States must, at a minimum, adopt and/or implement all relevant AQB Criteria.<sup>12</sup>
3. States must have policies, practices and procedures consistent with Title XI.<sup>13</sup>

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<sup>10</sup> Title XI § 1112, 12 U.S.C. 3341; Title XI § 1113, 12 U.S.C. 3342; Title XI § 1114, 12 U.S.C. 3343.

<sup>11</sup> Title XI § 1101, 12 U.S.C. 3331; Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>12</sup> Title XI §§ 1116 (a), (c) and (e), 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347.

<sup>13</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

4. States must have funding and staffing sufficient to carry out their Title XI-related duties.<sup>14</sup>
5. States must use proper designations and permitted scope of practice for certified residential or certified general classifications, and as of July 1, 2013, a State must use the proper designations and permitted scope of practice for the licensed classification, and trainee and supervisor classifications.<sup>15</sup>
6. State board members, and any persons in policy or decision-making positions, must perform their responsibilities consistent with Title XI.<sup>16</sup>
7. States' certification and licensing requirements must meet the minimum requirements set forth in Title XI.<sup>17</sup>
8. State agencies must be granted adequate authority by the State to maintain an effective regulatory Program in compliance with Title XI.<sup>18</sup>

## **POLICY STATEMENT 2**

### **Temporary Practice**

#### **A. Requirement for Temporary Practice**

Title XI requires State agencies to recognize, on a temporary basis, the certification or license of an out-of-State appraiser entering the State for the purpose of completing an appraisal assignment<sup>19</sup> for a federally related transaction. The out-of-State appraiser must register with the State agency in the State of temporary practice (Host State). A State may determine the process necessary for “registration” provided such process complies with Title XI and is not “burdensome” as determined by the ASC or involve excessive fees. Thus, a credentialed appraiser<sup>20</sup> from State A has a statutory right to enter State B (the Host State) to perform an assignment concerning a federally related transaction, so long as the appraiser registers with the State agency in State B prior to

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<sup>14</sup> *Id.*; Title XI § 1118 (b), 12 U.S.C. 3347.

<sup>15</sup> Title XI §§ 1116 (a), (c) and (e), 12 U.S.C. 3345; Title XI § 1118 (a), 12 U.S.C. 3347; Title XI § 1113, 12 U.S.C. 3342; AQB *Real Property Appraiser Qualification Criteria*.

<sup>16</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

<sup>17</sup> Title XI §§ 1116 (a), (c) and (e), 12 U.S.C. 3345.

<sup>18</sup> Title XI § 1118 (b), 12 U.S.C. 3347.

<sup>19</sup> See Appendix B, *Glossary of Terms*, for the definition of “assignment.”

<sup>20</sup> See Appendix B, *Glossary of Terms*, for the definition of “credentialed appraisers.”

performing the assignment. Though Title XI contemplates reasonably free movement of credentialed appraisers across State lines, an out-of-State appraiser must comply with the Host State's real estate appraisal statutes and regulations and is subject to the Host State's full regulatory jurisdiction. States should utilize the National Registry to verify credential status on applicants for temporary practice.

## **B. Excessive Fees or Burdensome Requirements**

Title XI prohibits States from imposing excessive fees or burdensome requirements, as determined by the ASC, for temporary practice.<sup>21</sup> Adherence by State agencies to the following mandates and prohibitions will deter the imposition of excessive fees or burdensome requirements.

1. Host State agencies must:
  - a. issue temporary practice permits on an assignment basis;
  - b. issue temporary practice permits within five business days of receipt of a completed application, or notify the applicant and document the file as to the circumstances justifying delay or other action;
  - c. issue temporary practice permits designating the actual date of issuance;
  - d. take regulatory responsibility for a temporary practitioner's unethical, incompetent and/or fraudulent practices performed while in the State;
  - e. notify the appraiser's home State agency<sup>22</sup> in the case of disciplinary action concerning a temporary practitioner; and
  - f. allow at least one temporary practice permit extension through a streamlined process.
2. Host State agencies may not:
  - a. limit the valid time period of a temporary practice permit to less than 6 months, except in the case of an appraiser not holding a credential in active status for at least that period of time;
  - b. limit an appraiser to one temporary practice permit per calendar year;<sup>23</sup>

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<sup>21</sup> Title XI § 1122 (a) (2), 12 U.S.C. 3351.

<sup>22</sup> See Appendix B, Glossary of Terms, for the definition of "home State agency."

<sup>23</sup> State agencies may establish by statute or regulation a policy that places reasonable limits on the number of times an out-of-State certified or licensed appraiser may exercise his or her temporary practice rights in a given year. If

- c. charge a temporary practice permit fee exceeding \$250, including one extension fee;
  - d. impose State appraiser qualification requirements upon temporary practitioners that exceed AQB Criteria for the credential held;
  - e. require temporary practitioners to obtain a certification or license in the State of temporary practice;
  - f. require temporary practitioners to affiliate with an in-State licensed or certified appraiser;
  - g. refuse to register licensed or certified appraisers seeking temporary practice in a State that does not have a licensed or certified level credential; or
  - h. prohibit temporary practice.
3. Home State agencies may not:
- a. delay the issuance of a written “letter of good standing” or similar document for more than five business days after receipt of a request; or
  - b. fail to take disciplinary action, if appropriate, when one of its certified or licensed appraisers is disciplined by another State agency for unethical, incompetent or fraudulent practices under a temporary practice permit.

### C. Summary of Requirements

1. States must recognize, on a temporary basis, appraiser credentials issued by another State if the property to be appraised is part of a federally related transaction.<sup>24</sup>
2. State agencies must adhere to mandates and prohibitions as determined by the ASC that deter the imposition of excessive fees or burdensome requirements for temporary practice.<sup>25</sup>

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such a policy is not established, a State agency may choose not to honor an out-of-State certified or licensed appraiser’s temporary practice rights if it has made a determination that the appraiser is abusing his or her temporary practice rights and is regularly engaging in real estate appraisal services within the State.

<sup>24</sup> Title XI § 1122 (a) (1), 12 U.S.C. 3351.

<sup>25</sup> Title XI § 1122 (a) (2), 12 U.S.C. 3351.

## **POLICY STATEMENT 3**

### **National Registry**

#### **A. Requirements for the National Registry**

Title XI requires the ASC to maintain a National Registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions.<sup>26</sup> Title XI further requires the States to transmit to the ASC: (1) a roster listing individuals who have received a State certification or license in accordance with Title XI; (2) reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, revocations and suspensions; and (3) the Registry fee as set by the ASC<sup>27</sup> from individuals who have received certification or licensing. States must notify the ASC as soon as practicable if a credential holder listed on the National Registry does not qualify for the credential held.

Roster and Registry fee requirements apply to all individuals who receive State certifications or licenses, originally or by reciprocity, whether or not the individuals are, in fact, performing or planning to perform appraisals in federally related transactions. If an appraiser is certified or licensed in more than one State, the appraiser is required to be on each State's roster of certified or licensed appraisers, and a Registry fee is due from each State in which the appraiser is certified or licensed.

Only AQB-compliant certified and, effective July 1, 2013, AQB-compliant licensed appraisers in active status on the National Registry are eligible to perform appraisals in connection with federally related transactions.

Some States may give State certified or licensed appraisers an option to not pay the Registry fee. If a State certified or licensed appraiser chooses not to pay the Registry fee, then the Program must

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<sup>26</sup> Title XI § 1103 (a) (3), 12 U.S.C. 3332.

<sup>27</sup> Title XI § 1109, *Roster of State certified or licensed appraisers; authority to collect and transmit fees*, requires the ASC to consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. (Title XI § 1109 (a), 12 U.S.C. 3338.)

ensure that any potential user of that appraiser's services is aware that the appraiser's certificate or license is limited to performing appraisals in connection with non-federally related transactions.<sup>28</sup> The Program must place a conspicuous notice directly on the face of any evidence of the appraiser's authority to appraise stating, "Not Eligible To Appraise Federally Related Transactions," and the appraiser must not be listed in active status on the National Registry.

The ASC extranet application allows States to update their appraiser credential information directly to the National Registry. Only Authorized Registry Officials are allowed to request access for their State personnel (see section C below). The ASC will issue a User Name and Password to the designated State personnel responsible for that State's National Registry entries. Designated State personnel are required to protect the right of access, and not share their User Name or Password with anyone. State agencies must adopt and implement a written policy to protect the right of access, as well as the ASC issued User Name and Password. The ASC will provide detailed specifications regarding the data elements on the National Registry and reporting procedures to those States not using the ASC extranet application.<sup>29</sup> The ASC strongly encourages the States to utilize the extranet application as a more secure method of submitting information to the National Registry.

The ASC creates a unique National Registry number for each listed appraiser and protects each appraiser's privacy rights. This unique identifier is available to appropriate State and Federal regulatory agencies to simplify multi-State queries regarding specific appraisers.

## **B. Registry Fee and Invoicing Policies**

Each State must remit to the ASC the annual Registry fee, as set by the ASC, for State certified or licensed appraisers within the State to be listed on the National Registry. Requests to prorate refunds or partial-year registrations will not be granted. If a State collects multiple-year fees for multiple-year certifications or licenses, the State may choose to remit to the ASC the total amount of the

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<sup>28</sup> See Appendix B, *Glossary of Terms*, for the definition of "non-federally related transactions."

<sup>29</sup> See section D, *Information Sharing*, below requiring all States to report disciplinary action via the extranet application by July 1, 2013.

multiple-year Registry fees or the equivalent annual fee amount. The ASC will, however, record appraisers on the National Registry only for the number of years for which the ASC has received payment. Nonpayment by a State of an appraiser's National Registry fee may result in the status of that appraiser being listed as "inactive." When a State's failure to pay a past due invoice results in appraisers being listed as inactive, the ASC will not change those appraisers back to active status until payment is received from the State. An inactive status on the National Registry, for whatever the reason, renders an appraiser ineligible to perform appraisals in connection with federally related transactions.

### **C. Access to National Registry Data**

The ASC website provides free access to the public portion of the National Registry at [www.asc.gov](http://www.asc.gov). The public portion of the National Registry data may be downloaded using predefined queries or user-customized applications.

Access to the full database, which includes non-public data (e.g., certain disciplinary action information), is restricted to authorized State and Federal regulatory agencies. States must designate a senior official, such as an executive director, to serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the designated Authorized Registry Official. States should ensure that the authorization information provided to the ASC is updated and accurate.

### **D. Information Sharing**

Information sharing (routine exchange of certain information among lenders, governmental entities, State agencies and the ASC) is essential for carrying out the purposes of Title XI. 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. The ASC believes that full implementation of this Title XI requirement is vital to the integrity of the system of State appraiser regulation. States are encouraged to develop and maintain procedures for sharing of information among themselves.

The National Registry's value and usefulness are largely dependent on the quality and frequency of State data submissions. Accurate and frequent data submissions from all States are necessary to maintain an up-to-date National Registry. States must submit appraiser data in a secure format to the ASC at least monthly. If there are no changes to the data, the State agency must notify the ASC of that fact in writing. States are encouraged to submit data as frequently as possible.

State agencies must report as soon as practicable any disciplinary action<sup>30</sup> taken against an appraiser to the ASC. Prior to July 1, 2013, at a minimum, this information must be submitted with the State's monthly, or more frequent, Registry data submission. As of July 1, 2013, all States will be required to report disciplinary action via the extranet application. States not reporting via the extranet application will be required to provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement. For the most serious disciplinary actions (i.e., voluntary surrenders, suspensions and revocations, or any action that interrupts a credential holder's ability to practice), the State agency must notify the ASC of such action as soon as practicable, but no later than five (5) business days after the disciplinary action is final, in order for the appraiser's status to be changed on the National Registry to "inactive," thereby making the appraiser ineligible to perform appraisals for federally related transactions or other transactions requiring the use of State certified or licensed appraisers.

Title XI also contemplates the reasonably free movement of certified and licensed appraisers across State lines. This freedom of movement assumes, however, that certified and licensed appraisers are, in all cases, held accountable and responsible for their actions while performing appraisal activities.

## **E. Summary of Requirements**

1. States must reconcile and pay National Registry invoices in a timely manner.<sup>31</sup>
2. States must submit all disciplinary actions to the ASC for inclusion on the National

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<sup>30</sup> See Appendix B, *Glossary of Terms*, for the definition of "disciplinary action."

<sup>31</sup> Title XI § 1118 (a), 12 U.S.C. 3347; Title XI § 1109 (a), 12 U.S.C. 3338.

Registry.<sup>32</sup>

3. As of July 1, 2013, all States will be required to report disciplinary action via the extranet application as soon as practicable.<sup>33</sup>
4. States must designate a senior official, such as an executive director, who will serve as the State's Authorized Registry Official, and provide to the ASC, in writing, information regarding the selected Authorized Registry Official, and any individual(s) authorized to act on their behalf.<sup>34</sup> (States should ensure that the authorization information provided to the ASC is kept current.)
5. States using the ASC extranet application must implement written policies to ensure that all personnel with access to the National Registry protect the right of access and not share the User Name or Password with anyone.<sup>35</sup>
6. States must ensure the accuracy of all data submitted to the National Registry.<sup>36</sup>
7. States must submit appraiser data to the ASC at least monthly. If a State's data does not change during the month, the State agency must notify the ASC of that fact in writing.<sup>37</sup>
8. States must notify the ASC as soon as practicable of voluntary surrenders, suspensions, revocations, or any other action that interrupts a credential holder's ability to practice.<sup>38</sup>
9. If a State certified or licensed appraiser chooses not to pay the Registry fee, the State must ensure that any potential user of that appraiser's services is aware that the appraiser's certificate or license is limited to performing appraisals only in connection with non-federally related transactions.<sup>39</sup>

## **POLICY STATEMENT 4**

### **Application Process**

AQB Criteria sets forth the minimum education, experience and examination requirements

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

applicable to all States for credentialing of real property appraisers. In the application process, States must, at a minimum, employ a reliable means of validating both education and experience credit claimed by applicants for credentialing.<sup>40</sup>

### **A. Processing of Applications**

States must process applications in a consistent, equitable and well-documented manner. 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 explain the delay. States must ensure appraiser credential applications submitted for processing do not contain expired examinations as established by AQB Criteria.

### **B. Qualifying Education for Initial or Upgrade Applications**

States must verify that:

- (1) the applicant's claimed education courses are acceptable under AQB Criteria; and
- (2) the applicant has successfully completed courses consistent with AQB Criteria for the appraiser credential sought.

Documentation must be provided to support education claimed by applicants for initial credentialing or upgrade. States may not accept an affidavit for education claimed from applicants for certification. Effective July 1, 2013, States may not accept an affidavit for education claimed from applicants for any federally recognized credential.<sup>41</sup> States must maintain adequate documentation to support verification of education claimed by applicants.

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<sup>40</sup> Includes applications for credentialing of State licensed, certified residential or certified general classifications, and trainee and supervisor classifications.

<sup>41</sup> If a State accepts education-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require documentation to support the appraiser's educational qualification for the certified classification, not just the incremental amount of education required to move from the non-certified to the certified classification. This requirement applies to all federally recognized credentials effective July 1, 2013.

## C. Continuing Education for Reinstatement and Renewal Applications

### 1. *Reinstatement Applications*

States must verify that:

- (1) the applicant's claimed continuing education courses are acceptable under AQB Criteria; and
- (2) the applicant has successfully completed all continuing education consistent with AQB Criteria for reinstatement of the appraiser credential sought.

Documentation must be provided to support continuing education claimed by applicants for reinstatement. States may not accept an affidavit for continuing education claimed from applicants for reinstatement. States must maintain adequate documentation to support verification of claimed education.

### 2. *Renewal Applications*

States must ensure that continuing education courses for renewal of an appraiser credential are consistent with AQB Criteria and that continuing education hours required for renewal of an appraiser credential were completed consistent with AQB Criteria. States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure that adheres to the following objectives and requirements:

- a. *Validation objectives* – The State's validation procedures must be structured to permit acceptable projections of the sample results to the entire population of subject appraisers. Therefore, the sample must include an adequate number of affidavits to have a reasonable chance of identifying appraisers who fail to comply with AQB Criteria, and the sample must include a statistically relevant representation of the appraiser population being sampled.
- b. *Minimum Standards* – The following minimum standards apply to these audits:
  - 1) Validation must include a prompt post-approval audit. Each audit of an affidavit for continuing education credit claimed must be completed within 60 days from the date the renewed credential is issued;

- 2) States must audit the continuing education-related affidavit for each credentialed appraiser selected in the sampling procedure;
- 3) The State must determine that the education courses claimed conform to AQB Criteria and that the appraiser successfully completed each course;
- 4) When a State determines that an appraiser's continuing education does not meet AQB Criteria, the State must take appropriate action to suspend the appraiser's eligibility to perform appraisals in federally related transactions until such time that the requisite continuing education has been completed. The State must notify the ASC as soon as practicable after taking such action in order for the appraiser's record on the National Registry to be updated appropriately; and
- 5) If more than ten percent of the audited appraisers fail to meet the AQB Criteria, the State must take remedial action<sup>42</sup> to address the apparent weakness of its affidavit process. The ASC will determine on a case-by-case basis whether remedial actions are effective and acceptable.

*c. Documentation* – States must maintain adequate documentation to support its affidavit renewal and audit procedures and actions.

*d. List of Education Courses* – To promote accountability, the ASC encourages States accepting affidavits for continuing education credit claimed for credential renewal to require that the appraiser provide a list of courses to support the affidavit.

#### **D. Experience for Initial or Upgrade Applications**

States must ensure that appraiser experience logs conform to AQB Criteria. States may not accept an affidavit for experience credit claimed by applicants for certification. Effective July 1, 2013, States may not accept an affidavit for experience credit claimed by applicants for any federally

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<sup>42</sup> For example:

- (1) a State may conduct an additional audit using a higher percentage of audited appraisers; or
- (2) a State may publically post action taken to sanction non-compliant appraisers to increase awareness in the appraiser community of the importance of compliance with continuing education requirements.

recognized credential.<sup>43</sup>

### **1. Validation Required**

States must implement a reliable validation procedure to verify that each applicant's:

- (1) experience meets AQB Criteria;
- (2) experience is USPAP compliant; and
- (3) experience hours have been successfully completed consistent with AQB Criteria.

### **2. Validation Procedures, Objectives and Requirements**

#### *a. Selection of Work Product*

Program staff or State board members must select the work product to be analyzed for USPAP compliance; applicants may not have any role in selection of work product.

States must analyze a representative sample of the applicant's work product.

#### *b. USPAP Compliance*

For appraisal experience to be acceptable under AQB Criteria, it must be USPAP compliant. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP. Persons analyzing work product for USPAP compliance must have sufficient knowledge to make that determination.

#### *c. Determination of Experience Time Periods*

When measuring the experience time period required by AQB Criteria, States must review each appraiser's experience log and note the dates of the first and last acceptable appraisal activity performed by the applicant. At a minimum, the time

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<sup>43</sup> See Appendix B, *Glossary of Terms*, for the definition of "federally recognized credential." If prior to July 1, 2013, a State accepted experience-related affidavits from applicants for initial licensure in any non-certified classification, upon the appraiser's application to upgrade to a certified classification, the State must require experience documentation to support the appraiser's qualification for the certified classification, not just the incremental amount of experience required to move from the non-certified to the certified classification. For example, if a State accepted an experience affidavit from an appraiser to support the appraiser's initial hours to qualify for the licensed classification, and subsequently that appraiser applies to upgrade to the certified residential classification, the State must require documentation to support the full experience hours required for the certified residential classification, not just the difference in hours between the two classifications.

period spanned between those appraisal activities must comply with the AQB Criteria.

*d. Supporting Documentation*

States must maintain adequate documentation to support validation methods. The applicant's file, either electronic or paper, must include the information necessary to identify each appraisal assignment selected and analyzed by the State, notes, letters and/or reports prepared by the official(s) evaluating the report for USPAP compliance, and any correspondence exchanged with the applicant regarding the appraisals submitted. This supporting documentation may be discarded upon the completion of the first ASC Compliance Review performed after the credential issuance or denial for that applicant.

## **E. Examination**

States must ensure that an appropriate AQB-approved qualifying examination is administered for each of the federally recognized appraiser classifications requiring an examination.

## **F. Summary of Requirements**

### *Processing of Applications*

1. States must process applications in a consistent, equitable and well-documented manner.<sup>44</sup>
2. States must ensure appraiser credential applications submitted for processing do not contain expired examinations as established by AQB Criteria.<sup>45</sup>

### *Education*

1. States must verify that the applicant's claimed education courses are acceptable under AQB Criteria, whether for initial credentialing, renewal, upgrade or reinstatement.<sup>46</sup>
2. States must verify that the applicant has successfully completed courses consistent with AQB Criteria for the appraiser credential sought, whether for initial credentialing, renewal, upgrade or reinstatement.<sup>47</sup>

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<sup>44</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

<sup>45</sup> Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

3. States must maintain adequate documentation to support verification.<sup>48</sup>
4. States may not accept an affidavit for education claimed from applicants for certification. Effective July 1, 2013, States may not accept an affidavit for education claimed from applicants for any federally recognized credential.<sup>49</sup>
5. States may not accept an affidavit for continuing education claimed from applicants for reinstatement.<sup>50</sup>
6. States may accept affidavits for continuing education credit claimed for credential renewal so long as the State implements a reliable validation procedure.<sup>51</sup>
7. Audits of affidavits for continuing education credit claimed must be completed within sixty days from the date the renewed credential is issued.<sup>52</sup>
8. States are required to take remedial action when it is determined that more than ten percent of audited appraiser's affidavits for continuing education credit claimed fail to meet the minimum AQB Criteria.<sup>53</sup>
9. States must require the 7-hour National USPAP Update Course for renewals consistent with AQB Criteria.<sup>54</sup>
10. States must take appropriate action to suspend an appraiser's eligibility to perform appraisals in federally related transactions when it determines that the appraiser's continuing education does not meet AQB Criteria until such time that the requisite continuing education has been completed. The State must notify the ASC as soon as practicable after taking such action in order for the appraiser's record on the National Registry to be updated appropriately.<sup>55</sup>

### *Experience*

1. States may not accept an affidavit for experience credit claimed from applicants for certification. Effective July 1, 2013, States may not accept an affidavit for experience credit

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<sup>48</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>52</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

<sup>53</sup> *Id.*

<sup>54</sup> Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>55</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

claimed from applicants for any federally recognized credential.<sup>56</sup>

2. States must ensure that appraiser experience logs conform to AQB Criteria.<sup>57</sup>
3. States must use a reliable means of validating appraiser experience claims on all initial or upgrade applications for appraiser credentialing.<sup>58</sup>
4. States must select the work product to be analyzed for USPAP compliance on all initial or upgrade applications for appraiser credentialing.<sup>59</sup>
5. States must analyze a representative sample of the applicant's work product on all initial or upgrade applications for appraiser credentialing.<sup>60</sup>
6. States must exercise due diligence in determining whether submitted documentation of experience or work product demonstrates compliance with USPAP on all initial applications for appraiser credentialing.<sup>61</sup>
7. Persons analyzing work product for USPAP compliance must have sufficient knowledge to make that determination.<sup>62</sup>

#### *Examination*

1. States must ensure that an appropriate AQB-approved qualifying examination is administered for each of the federally recognized credentials requiring an examination.<sup>63</sup>

## **POLICY STATEMENT 5**

### **Reciprocity**

#### **A. Reciprocity Policy**

Title XI contemplates the reasonably free movement of certified and licensed appraisers across State lines. Beginning July 1, 2013, the ASC will monitor Programs for compliance with the reciprocity provision of Title XI as amended by the Dodd-Frank Act.<sup>64</sup> Title XI requires that in

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<sup>56</sup> *Id.*

<sup>57</sup> Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>58</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

<sup>59</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>64</sup> Title XI § 1122 (b), 12 U.S.C. 3351.

order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a policy in place for issuing reciprocal credentials IF:

- a. the appraiser is coming from a State (Home State) that is "in compliance" with Title XI as determined by the ASC; AND
- b. (i) the appraiser holds a valid credential from the Home State; AND  
(ii) the credentialing requirements of the Home State (as they exist at the time of application for reciprocal credential) meet or exceed those of the reciprocal credentialing State (Reciprocal State) (as they exist at the time of application for reciprocal credential).

An appraiser relying on a credential from a State that does not have such a policy in place may not perform appraisals for federally related transactions. A State may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy. However, States cannot impose additional impediments to issuance of reciprocal credentials.<sup>65</sup>

For purposes of implementing the reciprocity policy, States with an ASC Finding<sup>66</sup> of "Poor" do not satisfy the "in compliance" provision for reciprocity. Therefore, States are not required to recognize, for purposes of granting a reciprocal credential, the license or certification of an appraiser credentialed in a State with an ASC Finding of "Poor."

## **B. Application of Reciprocity Policy**

The following examples illustrate application of reciprocity in a manner that complies with Title XI. The examples refer to the reciprocity policy requiring issuance of a reciprocal credential IF:

- a. the appraiser is coming from a State that is "in compliance"; AND
- b. (i) the appraiser holds a valid credential from that State; AND  
(ii) the credentialing requirements of that State (as they currently exist) meet or exceed those of the reciprocal credentialing State (as they currently exist).

### ***1. Additional Requirements Imposed on Applicants***

State A requires that prior to issuing a reciprocal credential the applicant must certify that disciplinary proceedings are not pending against that applicant in any

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<sup>65</sup> Effective July 1, 2013, States will be evaluated for compliance with this Title XI requirement.

<sup>66</sup> See Appendix A, *Compliance Review Process*, for an explanation of ASC Findings.

jurisdiction. Under b (ii) above, if this requirement is not imposed on all of its own applicants for credentialing, STATE A cannot impose this requirement on applicants for reciprocal credentialing.

### ***2. Credentialing Requirements***

An appraiser is seeking a reciprocal credential in STATE A. The appraiser holds a valid credential in STATE Z, even though it was issued in 2007. This satisfies b (i) above. However in order to satisfy b (ii), 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.

### ***3. Multiple State Credentials***

An appraiser credentialed in several states is seeking a reciprocal credential in State A. That appraiser's initial credentials were obtained through examination in the original credentialing State and through reciprocity in the additional States. State A requires the applicant to provide a "letter of good standing" from the State of original credentialing as a condition of granting a reciprocal credential. State A may not impose such a requirement since Title XI does not distinguish between credentials obtained by examination and credentials obtained by reciprocity for purposes of granting reciprocal credentials.

## **C. Appraiser Compliance Requirements**

In order to maintain a credential granted by reciprocity, appraisers must comply with the credentialing State's policies, rules and statutes governing appraisers, including requirements for payment of certification and licensing fees, as well as continuing education.<sup>67</sup>

## **D. Summary of Requirements**

1. Effective July 1, 2013, in order for a State's appraisers to be eligible to perform appraisals for federally related transactions, the State must have a reciprocity policy in place for issuing a reciprocal credential to an appraiser from another State under the

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<sup>67</sup> A State may offer to accept continuing education (CE) for a renewal applicant who has satisfied CE requirements of a home State; however a State may not impose this as a requirement for renewal, thereby imposing a requirement for the renewal applicant to retain a home State credential.

conditions specified in Title XI.<sup>68</sup>

2. States may be more lenient in the issuance of reciprocal credentials by implementing a more open door policy; however, States may not impose additional impediments to issuance of reciprocal credentials.<sup>69</sup>

## **POLICY STATEMENT 6**

### **Education**

AQB Criteria sets forth minimum requirements for appraiser education courses. This Policy Statement addresses proper administration of education requirements for compliance with AQB Criteria. (For requirements concerning qualifying and continuing education in the application process, see Policy Statement 4, *Application Process*.)

#### **A. Course Approval**

States must ensure that approved appraiser education courses are consistent with AQB Criteria and maintain sufficient documentation to support that approved appraiser education courses conform to AQB Criteria.

States should ensure that course approval expiration dates assigned by the State coincide with the endorsement period assigned by the AQB's Course Approval Program or any other AQB-approved organization providing approval of course design and delivery.

States should ensure that educational providers are afforded equal treatment in all respects.<sup>70</sup>

The ASC encourages States to accept courses approved by the AQB's Course Approval Program.

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<sup>68</sup> Title XI § 1122 (b), 12 U.S.C. 3351.

<sup>69</sup> *Id.*

<sup>70</sup> For example:

(1) consent agreements requiring additional education should not specify a particular course provider when there are other providers on the State's approved course listing offering the same course; and

(2) courses from professional organizations should not be automatically approved and/or approved in a manner that is less burdensome than the State's normal approval process.

## B. Distance Education

States must ensure that distance education courses meet AQB Criteria and that the delivery mechanism for distance education courses offered by a non-academic provider has been approved by an AQB-approved organization providing approval of course design and delivery.

## C. Summary of Requirements

1. States must ensure that appraiser education courses are consistent with AQB Criteria.<sup>71</sup>
2. States must maintain sufficient documentation to support that approved appraiser courses conform to AQB Criteria.<sup>72</sup>
3. States must ensure the delivery mechanism for distance education courses offered by a non-academic provider has been approved by an AQB-approved organization providing approval of course design and delivery.<sup>73</sup>

# POLICY STATEMENT 7

## State Agency Enforcement

### A. State Agency Regulatory Program

Title XI requires the ASC to monitor the States for the purpose of determining whether the State processes complaints and completes investigations in a reasonable time period, appropriately disciplines sanctioned appraisers and maintains an effective regulatory program.<sup>74</sup>

### B. Enforcement Process

States must ensure that the system for processing and investigating complaints<sup>75</sup> and sanctioning appraisers is administered in a timely, effective, consistent, equitable, and well-documented

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<sup>71</sup> Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>72</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

<sup>73</sup> Title XI § 1118 (a), 12 U.S.C. 3347; AQB *Real Property Appraiser Qualification Criteria*.

<sup>74</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

<sup>75</sup> See Appendix B, *Glossary of Terms*, for the definition of “complaint.”

manner.

### ***1. Timely Enforcement***

States must process complaints of appraiser misconduct or wrongdoing in a timely manner to ensure effective supervision of appraisers, and when appropriate, that incompetent or unethical appraisers are not allowed to continue their appraisal practice. Absent special documented circumstances, final administrative decisions regarding complaints must occur within one year (12 months) of the complaint filing date. Special documented circumstances are those extenuating circumstances (fully documented) beyond the control of the State agency that delays normal processing of a complaint such as: complaints involving a criminal investigation by a law enforcement agency when the investigative agency requests that the State refrain from proceeding; final disposition that has been appealed to a higher court; documented medical condition of the respondent; ancillary civil litigation; and complex fraud cases that involve multiple individuals and reports. Such special documented circumstances also include those periods when State rules require referral of a complaint to another State entity for review and the State agency is precluded from further processing of the complaint until it is returned. In that circumstance, the State agency should document the required referral and the time period during which the complaint was not under its control or authority.

### ***2. Effective Enforcement***

Effective enforcement requires that States investigate allegations of appraiser misconduct or wrongdoing, and if allegations are proven, take appropriate disciplinary or remedial action. Dismissal of an alleged violation solely due to an “absence of harm to the public” is inconsistent with Title XI. Financial loss or the lack thereof is not an element in determining whether there is a violation. The extent of such loss, however, may be a factor in determining the appropriate level of discipline.

Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP and States must document how such persons are so qualified.

States must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint.

Closure of a complaint based on a State's statute of limitations results in dismissal of a complaint without the investigation of the merits of the complaint, and is inconsistent with the Title XI requirement that States assure effective supervision of the activities of credentialed appraisers.<sup>76</sup>

### ***3. Consistent and Equitable Enforcement***

Absent specific documented facts or considerations, substantially similar cases within a State should result in similar dispositions.

### ***4. Well-Documented Enforcement***

“Well-documented” means that States obtain and maintain sufficient relevant documentation pertaining to a matter so as to enable understanding of the facts and determinations in the matter and the reasons for those determinations.

#### ***a. Complaint Files***

Complaint files must:

- include documentation outlining the progress of the investigation;
- demonstrate that appraisal reports are analyzed and all USPAP violations are identified;
- include rationale for the final outcome of the case (i.e., dismissal or imposition of discipline);
- include documentation explaining any delay in processing, investigation or adjudication;
- contain documentation that all ordered or agreed upon discipline, such as probation, fine, or completion of education is tracked and that completion of

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<sup>76</sup> Title XI § 1117, 12 U.S.C. 3346.

all terms is confirmed; and

- be organized in a manner that allows understanding of the steps taken throughout the complaint, investigation, and adjudicatory process.

*b. Complaint Logs*

States must track all complaints using a complaint log. The complaint log must record all complaints, regardless of their procedural status in the investigation and/or resolution process, including complaints pending before the State board, Office of the Attorney General, other law enforcement agencies, and/or offices of administrative hearings. The complaint log must include the following information (States are strongly encouraged to maintain this information in an electronic, sortable format):

1. Case number
2. Name of respondent
3. Actual date the complaint was received by the State
4. Source of complaint (e.g., consumer, lender, bank regulator, appraiser, hotline)
5. Current status of the complaint
6. Date the complaint was closed (e.g., final disposition by the administrative hearing agency, Office of the Attorney General, State Appraiser Regulatory Agency or Court of Appeals)
7. Method of disposition (e.g., dismissal, letter of warning, consent order, final order)

### **C. Summary of Requirements**

1. States must maintain relevant documentation to enable understanding of the facts and determinations in the matter and the reasons for those determinations.<sup>77</sup>
2. States must resolve all complaints filed against appraisers within one year (12 months) of the complaint filing date, except for special documented circumstances.<sup>78</sup>

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<sup>77</sup> Title XI § 1118 (a), 12 U.S.C. 3347.

<sup>78</sup> *Id.*

3. States must ensure that the system for processing and investigating complaints and sanctioning appraisers is administered in an effective, consistent, equitable, and well-documented manner.<sup>79</sup>
4. States must track complaints of alleged appraiser misconduct or wrongdoing using a complaint log.<sup>80</sup>
5. States must appropriately document enforcement files and include rationale.<sup>81</sup>
6. States must regulate, supervise and discipline their credentialed appraisers.<sup>82</sup>
7. Persons analyzing complaints for USPAP compliance must be knowledgeable about appraisal practice and USPAP, and States must document how such persons are so qualified.<sup>83</sup>

## **POLICY STATEMENT 8**

### **Interim Sanctions**

#### **A. Authority**

Title XI grants the ASC authority to impose interim sanctions on individual appraisers pending State agency action and on State agencies that fail to have an effective Program as an alternative to or in advance of a non-recognition proceeding. In determining whether a Program is effective the ASC shall conduct an analysis as required by Title XI. An ASC Finding of Poor on the Report issued to a State at the conclusion of an ASC Compliance Review will trigger an analysis by the ASC for potential interim sanction(s).<sup>84</sup> The following provisions apply to the exercise by the ASC of its authority to impose interim sanction(s) on State agencies.

#### **B. Opportunity to be Heard or Correct Conditions**

The ASC shall provide the State agency with:

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Imposition of an interim sanction against a State agency may result in appraisers credentialed by that State being removed from the National Registry on an interim basis, not to exceed 90 days, pending State agency action.

1. written notice of intention to impose an interim sanction; and
2. opportunity to respond or to correct the conditions causing such notice to the State.

Notice and opportunity to respond or correct the conditions shall be in accordance with section C, *Procedures*.

### **C. Procedures**

This section prescribes the ASC's procedures which will be followed in arriving at a decision by the ASC to impose an interim sanction against a State agency.

#### ***1. Notice***

The ASC shall provide a written Notice of intention to impose an interim sanction (Notice) to the State agency. The Notice shall contain the ASC's analysis as required by Title XI of the State's licensing and certification of appraisers, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers, the investigation of complaints, and enforcement actions against appraisers.<sup>85</sup> The ASC shall verify the State's date of receipt, and publish both the Notice and the State's date of receipt in the *Federal Register*.

#### ***2. State Agency Response***

Within 15 days of receipt of the Notice, the State may submit a response to the ASC's Executive Director. Alternatively, a State may submit a Notice Not to Contest with the ASC's Executive Director. The filing of a Notice Not to Contest shall not constitute a waiver of the right to a judicial review of the ASC's decision, findings and conclusions. Failure to file a Response within 15 days shall constitute authorization for the ASC to find the facts to be as presented in the Notice and analysis. The ASC, for good cause shown, may permit the filing of a Response after the prescribed time.

#### ***3. Briefs, Memoranda and Statements***

Within 45 days after the date of receipt by the State agency of the Notice as published in the *Federal Register*, the State agency may file with the ASC's Executive Director a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice and analysis.

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<sup>85</sup> *Id.*

#### **4. Oral Presentations to the ASC**

Within 45 days after the date of receipt by the State agency of the Notice as published in the *Federal Register*, the State may file a request with the ASC's Executive Director to make oral presentation to the ASC. If the State has filed a request for oral presentation, the matter shall be heard within 45 days. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding, and is not a Meeting<sup>86</sup> of the ASC. On the appropriate date and time, the State agency will make the oral presentation before the ASC. Any ASC member may ask pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. Summary notes will be taken by ASC staff and made part of the record on which the ASC shall decide the matter.

#### **5. Conduct of Interim Sanction Proceedings**

(a) *Written Submissions.* All aspects of the proceeding shall be conducted by written submissions, with the exception of oral presentations allowed under subsection 4 above.

(b) *Disqualification.* An ASC member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record.

(c) *Authority of ASC Chairperson.* The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings.

#### **(d) Rules of Evidence**

Except as is otherwise set forth in this section, relevant material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) and other applicable law.

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<sup>86</sup> The proceeding is more in the nature of a Briefing not subject to open meeting requirements. The presentation is an opportunity for the State to brief the ASC – to offer, emphasize and clarify the facts, policies and laws concerning the proceeding, and for the ASC members to ask questions. Additional consideration is given to the fact that this stage of the proceeding is pre-decisional.

### **6. *Decision of the ASC and Judicial Review***

Within 90 days after the date of receipt by the State agency of the Notice as published in the *Federal Register*, or in the case of oral presentation having been granted, within 30 days after presentation, the ASC shall issue a final decision, findings and conclusions and shall publish the decision promptly in the *Federal Register*. The final decision shall be effective on issuance. The ASC's Executive Director shall ensure prompt circulation of the decision to the State agency. A final decision of the ASC is a prerequisite to seeking judicial review.

### **7. *Computing Time***

Time computation is based on business days. The date of the act, event or default from which the designated period of time begins to run is not included. The last day is included unless it is a Saturday, Sunday, or Federal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday.

### **8. *Documents and Exhibits***

Unless otherwise provided by statute, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the ASC's Executive Director in the proceeding's file and will be available for public inspection and copying.

### **9. *Judicial Review***

A decision of the ASC under this section shall be subject to judicial review. The form of proceeding for judicial review may include any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction in a court of competent jurisdiction.<sup>87</sup>

## **Appendix A – Compliance Review Process**

The ASC monitors State Programs for compliance with Title XI. The monitoring of a State Program is largely accomplished through on-site visits known as a Compliance Review (Review). A Review is conducted over a two- to four-day period, and is scheduled to coincide

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<sup>87</sup> 5 U.S.C. § 703 - *Form and venue of proceeding*.

with a meeting of the Program’s decision-making body whenever possible. ASC staff reviews the seven compliance areas addressed in Policy Statements 1 through 7. Sufficient documentation demonstrating compliance must be maintained by a State and made available for inspection during the Review. ASC staff reviews a sampling of documentation in each of the seven compliance areas. The sampling is intended to be representative of the State Program in its entirety.

Based on the Review, ASC staff provides the State with an ASC staff report detailing preliminary findings. The State is given 60 days to respond to the ASC staff report. At the conclusion of the Review, a Compliance Review Report (Report) is issued to the State with the ASC Finding on the Program’s overall compliance, or lack thereof, with Title XI. Deficiencies resulting in non-compliance in any of the seven compliance areas are cited in the Report. “Areas of Concern”<sup>88</sup> which potentially expose a Program to compliance issues in the future are also addressed in the Report. The ASC’s final disposition is based upon the ASC staff report, the State’s response and staff’s recommendation.

The following chart provides an explanation of the ASC Findings and rating criteria for each ASC Finding category. The ASC Finding places particular emphasis on whether the State is maintaining an effective regulatory Program in compliance with Title XI.

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<sup>88</sup> See Appendix B, *Glossary of Terms*, for the definition of “Areas of Concern.”

ASC Finding	Rating Criteria	Review Cycle*
Excellent	<ul style="list-style-type: none"> <li>• State meets all Title XI mandates and complies with requirements of ASC Policy Statements</li> <li>• State maintains a strong regulatory Program</li> <li>• Very low risk of Program failure</li> </ul>	2-year
Good	<ul style="list-style-type: none"> <li>• State meets the majority of Title XI mandates and complies with the majority of ASC Policy Statement requirements</li> <li>• Deficiencies are minor in nature</li> <li>• State is adequately addressing deficiencies identified and correcting them in the normal course of business</li> <li>• State maintains an effective regulatory Program</li> <li>• Low risk of Program failure</li> </ul>	2-year
Needs Improvement	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies are material but manageable and if not corrected in a timely manner pose a potential risk to the Program</li> <li>• State may have a history of repeated deficiencies but is showing progress toward correcting deficiencies</li> <li>• State regulatory Program needs improvement</li> <li>• Moderate risk of Program failure</li> </ul>	2-year with additional monitoring
Not Satisfactory	<ul style="list-style-type: none"> <li>• State does not meet all Title XI mandates and does not comply with all requirements of ASC Policy Statements</li> <li>• Deficiencies present a significant risk and if not corrected in a timely manner pose a well-defined risk to the Program</li> <li>• State may have a history of repeated deficiencies and requires more supervision to ensure corrective actions are progressing</li> <li>• State regulatory Program has substantial deficiencies</li> <li>• Substantial risk of Program failure</li> </ul>	1-year
Poor <sup>89</sup>	<ul style="list-style-type: none"> <li>• State does not meet Title XI mandates and does not comply with requirements of ASC Policy Statements</li> <li>• Deficiencies are significant and severe, require immediate attention and if not corrected represent critical flaws in the Program</li> <li>• State may have a history of repeated deficiencies and may show a lack of willingness or ability to correct deficiencies</li> <li>• High risk of Program failure</li> </ul>	Continuous monitoring

\*Program history or nature of deficiency may warrant a more accelerated Review Cycle.

<sup>89</sup> An ASC Finding of “Poor” may result in significant consequences to the State. See Policy Statement 5, *Reciprocity*; see also Policy Statement 8, *Interim Sanctions*.

The ASC has two primary Review Cycles: two-year and one-year. Most States are scheduled on a two-year Review Cycle. States may be moved to a one-year Review Cycle if the ASC determines more frequent on-site Reviews are needed to ensure that the State maintains an effective Program. Generally, States are placed on a one-year Review Cycle because of non-compliance issues or serious areas of concerns that warrant more frequent on-site visits. Both two-year and one-year Review Cycles include a review of all aspects of the State's Program.

The ASC may conduct Follow-up Reviews and additional monitoring. A Follow-up Review focuses only on specific areas identified during the previous on-site Review. Follow-up Reviews usually occur within 6-12 months of the previous Review. In addition, as a risk management tool, ASC staff identifies State Programs that may have a significant impact on the nation's appraiser regulatory system in the event of Title XI compliance issues. For States that represent a significant percentage of the credentials on the National Registry, ASC staff performs annual on-site Priority Contact visits. The primary purpose of the Priority Contact visit is to review topical issues, evaluate regulatory compliance issues, and maintain a close working relationship with the State. This is not a complete Review of the Program. The ASC will also schedule a Priority Contact visit for a State when a specific concern is identified that requires special attention. Additional monitoring may be required where a deficiency is identified and reports on required or agreed upon corrective actions are required monthly or quarterly. Additional monitoring may include on-site monitoring as well as off-site monitoring.

## **Appendix B – Glossary of Terms**

**AQB Criteria:** Refers to the *Real Property Appraiser Qualification Criteria* as established by the Appraiser Qualifications Board of the Appraisal Foundation setting forth minimum education, experience and examination requirements for the licensure and certification of real property appraisers, and minimum requirements for "Trainee" and "Supervisory" appraisers.

**Assignment:** As referenced herein, for purposes of temporary practice, "assignment" means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement.

**Complaint:** As referenced herein, any document filed with, received by, or serving as the basis for possible inquiry by the State agency regarding alleged violation of Title XI, Federal or State

law or regulation, or USPAP by a credentialed appraiser, appraiser applicant, or for allegations of unlicensed appraisal activity. A complaint may be in the form of a referral, letter of inquiry, or other document alleging appraiser misconduct or wrongdoing.

**Credentialed appraisers:** Refers to State licensed, certified residential or certified general appraiser classifications.

**Disciplinary action:** As referenced herein, corrective or punitive action taken by or on behalf of a State agency which may be formal or informal, or may be consensual or involuntary, resulting in any of the following:

- a. revocation of credential
- b. suspension of credential
- c. written consent agreements, orders or reprimands
- d. probation or any other restriction on the use of a credential
- e. fine
- f. voluntary surrender in lieu of disciplinary action
- g. other acts as defined by State statute or regulation as disciplinary

With the exception of voluntary surrender, suspension or revocation, such action may be exempt from reporting to the National Registry if defined by State statute, regulation or written policy as “non-disciplinary.”

**Federally related transaction:** Refers to any real estate related financial transaction which:  
a) a federal financial institutions regulatory agency engages in, contracts for, or regulates; and  
b) requires the services of an appraiser. (See Title XI § 1121 (4), 12 U.S.C. 3350.)

**Federal financial institutions regulatory agencies:** Refers to the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration. (See Title XI § 1121 (6), 12 U.S.C. 3350.)

**Home State agency:** As referenced herein, State agency or agencies that grant an appraiser a licensed or certified credential. Residency in the home State is not required. Appraisers may have more than one home State agency.

**Non-federally recognized credentials or designations:** Refers to any State appraiser credential or designation other than State licensed, certified residential or certified general classifications, and trainee and supervisor classifications as defined in Policy Statement 1, and which is not recognized by the federal regulators for purposes of their appraisal regulations.

**Real estate related financial transaction:** Any transaction involving:  
a) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;  
b) the refinancing of real property or interests in real property; and  
c) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(See Title XI § 1121 (5), 12 U.S.C. 3350.)

**State:** Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands. (American Samoa does not have a Program.)

**State board:** As referenced herein, “State board” means a group of individuals (usually appraisers, bankers, consumers, and/or real estate professionals) appointed by the Governor or a similarly positioned State official to assist or oversee State Programs. A State agency may be headed by a board, commission or an individual.

**Uniform Standards of Professional Appraisal Practice (USPAP):** Refers to appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation establishing minimum requirements for development and reporting of appraisals, including real property appraisal. Title XI requires appraisals prepared by State certified and licensed appraisers to be performed in conformance with USPAP.

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By the Appraisal Subcommittee,

Darrin Benhart, Vice Chairman

Dated: May 2, 2013.

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