

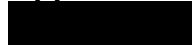
July 16, 2020

Timothy Segerson, Chair

Deputy Director, Office of Examination and Insurance
National Credit Union Administration



James R. Park, Executive Director
Appraisal Subcommittee



RE: New ASC Monitoring and Review Policy and Practical Guide

Dear Chair Segerson and Executive Director Park:

This communication acknowledges receipt of the Appraisal Subcommittee's (ASC) ASC Policy – TAF Monitor and Review – 6.24.20 and Monitoring and Reviewing TAF Practical Guide documents (attached) transmitted to us as representatives of The Appraisal Foundation (Foundation) by email on July 1, 2020. It is the Foundation's position that the policy and guide far exceed the ASC's authority. Additionally, under the guise of monitoring and review, the policy and guide enables the ASC staff to exert undue influence on decision-making and treats the Foundation unfairly and unequally. This overreach is unconscionable and counterproductive to the collaborative relationship built between our organizations over the last 31 years.

Congressional Intent – Federal Limitations

Back in 1989, it was understandable why Congress would place language into Title XI for monitoring the Foundation. Congress was entrusting the Foundation with significant responsibilities related to mortgage transactions backed by the federal government. At the time of enactment, the Foundation was a relatively new entity, created only two-years previously. Congress wanted assurances that this new organization and its practices, procedures, and activities were sufficient to maintain its Title XI responsibilities. While putting safeguards in place, Congress refrained from being too intrusive into the operations of the private, non-profit organization by limiting the federal government's role to a level of "monitoring and review" instead of giving it expanded "oversight."

Improper Exertion of Authority

The newly adopted policy and guide perilously move the ASC into the area of “oversight.” They erroneously expand the federal reach into non-Title XI areas that are under the purview of the Foundation’s Board of Trustees and staff. The government intrusion promoted in these documents attempts to exert control over areas such as the day-to-day operations of the Foundation and the organization’s Bylaws, project implementation and processes, and staff functions.

Over the past year, the Foundation has witnessed an increasingly heavy handed and authoritarian approach from ASC staff while performing monitoring activities. The policy and guide purport to ratify that approach and codify it for the future. Their unprofessional behavior has become commonplace including:

- Giving unsolicited opinions during private work sessions about decisions the ASC staff would like the Board to take.
- Disrupting private work sessions with ongoing chatter inappropriately laced with expletives.
- Confronting board members at breaks during in-person meetings with veiled threats emphasized by finger wagging.
- Making calls to Foundation board members and support staff prying into issues unrelated to Title XI and circumventing Foundation leadership.
- Making false statements in an attempt to strong-arm Foundation decisions to conform to staff wishes.

Foundation board and staff leadership, finding that the ASC staff behavior was inappropriate and causing harm, discussed these issues with ASC leadership. That the new policy and guide for expanded monitoring and review arrived shortly thereafter appears to be in retribution.

Undue Influence

This expanded monitoring and review regime includes the new practice of written meeting observations of the Board’s private discussions (examples attached). These documents create official records subject to the Freedom of Information Act. Subjects covered within these documents venture beyond Title XI-related matters, and they have contained false statements, creating the need for the Foundation to reply in writing to correct the record.

The most damaging result of these written observations, however, is the chilling effect they have on private discussions. Board members and staff state that they no longer feel free to express opinions that may be at odds with ASC staff for fear of having their disagreements show up in a written report. This damage is immeasurable. To produce the best product, it is critical for all Board and staff to freely express opinions or ideas for consideration.

Unequal Monitoring

Monitoring activities by ASC staff vary greatly depending on the audience. Consider federal financial regulatory agencies and the States:

- Monitoring of the federal financial regulatory agencies is accomplished by a visit with each agency annually. The ASC also reports appraisal-related decisions taken by an agency in the ASC Annual Report.
- Monitoring of the States involves two ASC staff members completing an on-site Compliance Review once every two years unless the jurisdiction is out of compliance. In February 2020, the ASC found the State of Illinois to be out of compliance for the 14th straight year. With a review finding of “Not Satisfactory”, Illinois was moved to a one-year Review Cycle.

In comparison, the monitoring and review of the Foundation is unjustifiably extensive. Two ASC staff members attend all private conference calls, work sessions, and committee meetings, as well as all public meetings of the Foundation Boards, advisory councils, committees, and task forces. They also attend various other events convened by the Foundation and receive all confidential and public documents associated with such private and public meetings and events.

The disparity in treatment by the ASC staff among the entities under the Title XI monitoring authority of the ASC is glaring. The unequal treatment of the Foundation extends far beyond monitoring and review; the only reasons for this are to intervene and exert control.

Balanced, Fair Approach for Moving Forward

ASC Attendance at Foundation Meetings and Events

The Foundation welcomes ASC monitoring and review in a fair and reasonable fashion as Congress intended. As evidenced by the ASC’s monitoring of the states and federal financial regulatory agencies, it is sufficient to complete such responsibilities for the Foundation through document desk reviews with an in-person visit every year or two.

If the ASC determines that attendance at meetings and events remains necessary, to help prevent undue influence on the Boards’ decision-making, ASC staff will have opportunity for monitoring and review going forward by:

- Attending public meetings of the Foundation’s boards and councils
- Viewing livestreamed meetings, webinars, and other events
- Reviewing meeting minutes of the Foundation’s boards, councils, and committees
- Receiving publicly released financial documents and other financial statements related to grants awarded to the Foundation.

Additional Opportunities for ASC staff to Interact with the Profession:

- ASC staff may be offered speaking opportunities at Foundation public meetings or events by invitation of the Chair or President
- ASC staff may attend private Board sessions, committee meetings, or briefings by invitation of the Chair or President.

Expected Conduct:

- ASC staff are guests at Foundation meetings and events and shall conduct themselves professionally at all times.
- When attending Foundation private meetings, sessions, or briefings,
 - ASC staff shall refrain from speaking unless specifically requested to do so by the Chair or President.
 - ASC staff shall not state or imply directives.
 - ASC staff shall not attempt to exert undue influence on the issues discussed.
- ASC staff displaying rude or unprofessional behavior or not abiding by these rules of conduct will be asked to leave.

Process for Communicating Between Organizations

Communications regarding any observations, concerns, ideas, or suggestions of either organization arising from ASC staff monitoring and review functions, shall be conveyed between the ASC Executive Director and Foundation President.

Conclusion

The type of scrutiny contained in the new ASC policy and guide is unprecedented, beyond Congressional intent, and is unbridled excessive oversight. Reasonable minds would find that as the Foundation's service to the profession has matured over the last three decades, the need for monitoring has diminished. In light of the Foundation's unblemished record, it is absurd that now, after 30+ years without issue, the ASC has autocratically declared an expansion of its role and beyond what Congress envisioned.

Throughout the last three decades, the Foundation has welcomed the input of the ASC and its staff. The partnership between our organizations and the state regulatory agencies has provided a system for supporting professionalism in appraising that is without compare across the globe. We encourage the ASC to reconsider its recent actions, policy, and guide and make the corrections necessary so that we may all ensure we are supporting the profession and appraiser regulatory system as Congress intended.

We would welcome an opportunity for our leadership to meet with yours regarding these matters. It is our hope that through an open discussion we can begin to find solutions to

deescalate the rising tensions between our organizations. To proceed in that regard, please contact Dave Bunton at [REDACTED] or by phone at [REDACTED]

Sincerely,



Leila Dunbar, Chair
Board of Trustees



David S. Bunton
President

Attachments:

[REDACTED]

cc:

ASC members:

John Schroeder, Bureau of Consumer Financial Protection, [REDACTED]

Maria Fernandez, Federal Housing Finance Agency, [REDACTED]

John Jilovec, Federal Deposit Insurance Corporation, [REDACTED]

Bobbi Borland, U.S. Department of Housing and Urban Development [REDACTED]

Arthur Lindo, Board of Governors of the Federal Reserve System, [REDACTED]

James Rives, Office of the Comptroller of the Currency, [REDACTED]

Denise Graves, Deputy Executive Director, [REDACTED]

Alice Ritter, General Counsel, [REDACTED]

Mark Lewis, Appraiser Qualifications Board, Chair, [REDACTED]

Wayne Miller, Appraisal Standards Board, Chair, [REDACTED]

The Appraisal Foundation Board of Trustees

Appraiser Qualifications Board

Appraisal Standards Board

Elliott Adler, General Counsel