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**Jeff Colyer, M.D., Governor**

March 30, 2018

House Taxation Committee  
Statehouse, Room 346-S  
Topeka, Ks 66612-1504

Dear Committee Members:

Re: SB-419

My name is Sally Pritchett, Executive Director of the Kansas Real Estate Appraisal Board. I am submitting written testimony on behalf of the Board in support of SB-419.

These changes are being requested so the Kansas Real Estate Appraisal Board Appraisal Management Program be in compliance with the national requirements set out by the Appraisal Subcommittee. Please see attached changes that are being requested.

Sally Pritchett, Executive Director  
On behalf of the Kansas Real Estate Appraisal Board

**58-4721. Same; removal of appraiser, limitation.** (a) ~~Except within the first 30 days after an appraiser is first added to the appraiser panel of an AMC, no~~ No AMC shall remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraiser services to an appraiser without

**58-4709. Same; limitation on ownership interest in an AMC; conditions.** (a) No single interest in an AMC applying for, holding, or renewing a registration under this act shall ~~exceed 10% when~~ be owned by:

**New statute** to give the Board authority to transmit registration information and disciplinary action on AMC's (Appraisal Management Company) to the National Registry of the ASC (Appraisal Subcommittee).  
**THIS ONLY APPLIES TO THE KANSAS AMC ACT, NOT THE KANSAS APPRAISERS ACT.**

# ***PART B: AMC PROGRAM***

## ***POLICY STATEMENT 8***

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

#### ***A. Participating States and ASC Oversight***

States are not required to establish an AMC registration and supervision program. For those States electing to participate in the registration and supervision of AMCs (participating States), ASC staff will informally monitor the State's progress to implement the requirements of Title XI and the AMC Rule.<sup>97</sup> Formal ASC oversight of State AMC Programs will begin at the next regularly scheduled Compliance Review of a State after a State elects to register and supervise AMCs pursuant to the AMC Rule. Formal ASC oversight will consist of evaluating AMC Programs in participating States during the Compliance Review process to determine compliance or lack thereof with Title XI, and to assess implementation of the minimum requirements for State registration and supervision of AMCs as established by the AMC Rule. Upon expiration of the statutory implementation period (see Policy Statement 11, *Statutory Implementation Period*), Compliance Reviews will include ASC oversight of AMC Programs for any participating State.

#### ***B. Relation to State Law***

Participating States may establish requirements in addition to those in the AMC Rule.

Participating States may also have a more expansive definition of AMCs.<sup>98</sup> However, if a participating State has a more expansive definition of AMCs than in Title XI (thereby

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<sup>97</sup> Title XI § 1103 (a)(1)(B), 12 U.S.C. § 3332. AMC Rule means the interagency final rule on minimum requirements for State registration and supervision of AMCs (12 CFR 34.210 -- 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26.

<sup>98</sup> Title XI as amended by the Dodd-Frank Act defines "appraisal management company" to mean, in part, an external third party that oversees a network or panel of more than 15 appraisers (State certified or licensed) in a State, or 25 or more appraisers nationally (two or more States) within a given year. (12 U.S.C.

encompassing State regulation of AMCs that are not within the Title XI definition of AMC), the State must ensure such AMCs are identified as such in the State database, just as States currently do for non-federally recognized credentials or designations. Only those AMCs that meet the Federal definition of AMC will be eligible to be on the AMC Registry.

### ***C. Funding and Staffing***

The Dodd-Frank Act amended Title XI to require the ASC to determine whether participating States have sufficient funding and staffing to meet their Title XI requirements. Compliance with this provision requires that a State must provide its AMC 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 an AMC Program's effectiveness, including the adequacy of State boards, committees, or commissions responsible for carrying out Title XI-related duties.

### ***D. Minimum Requirements for Registration and Supervision of AMCs as Established by the AMC Rule***

#### ***1. AMC Registration and Supervision***

If a State chooses to participate in the registration and supervision of AMCs in accordance with the AMC Rule, the State will be required to comply with the minimum requirements set forth in the AMC Rule. States should refer to the AMC Rule for compliance requirements<sup>99</sup> as this Policy Statement merely summarizes what the AMC Rule requires of participating States.

- (a) The AMC Rule includes requirements for participating States to establish and maintain within the State appraiser certifying and licensing agency an AMC Program with the legal authority and mechanisms to:

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3350(11)). Title XI as amended by the Dodd-Frank Act also allows States to adopt requirements in addition to those in the AMC Rule. (12 U.S.C. 3353(b)). For example, States may decide to supervise entities that provide appraisal management services, but do not meet the size thresholds of the Title XI definition of AMC. If a State has a more expansive regulatory framework that covers entities that provide appraisal management services but do not meet the Title XI definition of AMC, the State should only submit information regarding AMCs meeting the Title XI definition to the AMC Registry.

<sup>99</sup> See footnote 97.

- (1) Review and approve or deny AMC initial registration applications and/or renewals for registration;
- (2) Examine records of AMCs and require AMCs to submit information;
- (3) Verify that appraisers on AMCs' panels hold valid State credentials;
- (4) Conduct investigations of AMCs to assess potential violations of appraisal-related laws, regulations, or orders;
- (5) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates appraisal-related laws, regulations, or orders; and
- (6) Report an AMC's violation of appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the ASC.

(b) The AMC Rule includes requirements for participating States to impose requirements on AMCs that are not Federally regulated AMCs<sup>100</sup> to:

- (1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;
- (2) Engage only State-certified or State-licensed appraisers for federally related transactions in conformity with any federally related transaction regulations;
- (3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise,

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<sup>100</sup> "Federally regulated AMCs," meaning AMCs that are subsidiaries owned and controlled by an insured depository institution or an insured credit union and regulated by a Federal financial institutions regulatory agency, are not required to register with the State (Title XI § 1124 (c), 12 U.S.C. § 3353(c)).

and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder.

## ***2. Ownership Limitations for State-registered AMCs***

### *A. Appraiser certification or licensing of Owners*

An AMC subject to State registration shall not be registered by a State or included on the AMC Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause,<sup>101</sup> as determined by the State appraiser certifying and licensing agency. A State's process for review could, for example, be by questionnaire, or affidavit, or background screening, or otherwise. States must document to the file the State's method of review and the result.

### *B. Good Moral Character of Owners*

An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

- (1) Is determined by the State not to have good moral character; or
- (2) Fails to submit to a background investigation carried out by the State.

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<sup>101</sup> An AMC subject to State registration is not barred from being registered by a State or included on the AMC Registry of AMCs if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified. (12 CFR 34.210 – 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26.

A State's process for review could, for example, be by questionnaire, or affidavit, or background screening, or otherwise. The ASC would expect written documentation of the State's method of review and the result.

### ***3. Requirements for Federally Regulated AMCs***

Participating States are not required to identify Federally regulated AMCs<sup>102</sup> operating in their States, but rather the Federal financial institution regulatory agencies are responsible for requiring such AMCs to identify themselves to participating States and report required information.

A Federally regulated AMC shall not be included on the AMC Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the ASC.

### ***E. Summary of Requirements***

1. Participating States must establish and maintain an AMC Program with the legal authority and mechanisms consistent with the AMC Rule.<sup>103</sup>
2. Participating States must impose requirements on AMCs consistent with the AMC Rule.<sup>104</sup>
3. Participating States must enforce and document ownership limitations for State-registered AMCs.<sup>105</sup>
4. Only those AMCs that meet the Federal definition of AMC will be eligible to be on the AMC Registry. Therefore, participating States that have a more expansive

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<sup>102</sup> See footnote 97.

<sup>103</sup> 12 CFR 34.210 – 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

definition of AMCs than in the AMC Rule must ensure such non-Federally recognized AMCs are identified as such in the State database.<sup>106</sup>

5. States must have funding and staffing sufficient to carry out their Title XI-related duties.<sup>107</sup>

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<sup>106</sup> Title XI § 1118 (b), 12 U.S.C. § 3347.

<sup>107</sup> *Id.*



## ***POLICY STATEMENT 9***

### ***National Registry of AMCs (AMC Registry)***

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

Title XI requires the ASC to maintain the AMC Registry of AMCs that are either registered with and subject to supervision of a participating State or are operating subsidiaries of a Federally regulated financial institution.<sup>108</sup> Title XI further requires the States to transmit to the ASC: (1) reports on a timely basis of supervisory activities involving AMCs, including investigations resulting in disciplinary action being taken; and (2) the registry fee as set by the ASC<sup>109</sup> from AMCs that are either registered with a participating State or are Federally regulated AMCs.<sup>110</sup>

As with appraiser registry fees, Title XI, § 1109(a)(4)(b) requires the AMC registry fee to be collected by each participating State and transmitted to the ASC. Therefore, as with appraisers, an AMC will pay a registry fee in each participating State in which the AMC operates. As with appraisers, an AMC operating in multiple participating States will pay a registry fee in multiple States in order to be on the AMC Registry for each State.

States must notify the ASC as soon as practicable if an AMC listed on the AMC Registry is no longer registered with or operating in the State. The ASC extranet application allows States to update their AMC information directly to the AMC Registry.

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

Each State must remit to the ASC the annual registry fee, as set by the ASC, for AMCs to be listed on the AMC Registry. Requests to prorate refunds or partial-year registrations will not be granted. If a State collects multiple-year fees for multiple-years, the State may choose

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<sup>108</sup> Title XI § 1103 (a) (6), 12 U.S.C. § 3332.

<sup>109</sup> Title XI § 1109 (a) (4), 12 U.S.C. § 3338.

<sup>110</sup> Title XI § 1109 (a) (3) and (4), 12 U.S.C. § 3338.

to remit to the ASC the total amount of the multiple-year registry fees or the equivalent annual fee amount. The ASC will, however, record AMCs on the AMC Registry only for the number of years for which the ASC has received payment. States must reconcile and pay registry invoices in a timely manner (45 calendar days after receipt of the invoice).

### ***C. Reporting Requirements***

State agencies must report all disciplinary action<sup>111</sup> taken against an AMC to the ASC via the extranet application within 5 business days after the disciplinary action is final, as determined by State law. States not reporting via the extranet application must provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement. For the most serious disciplinary actions (*e.g.*, any action that interrupts an AMCs ability to provide appraisal management services), the AMCs status must be changed on the AMC Registry to “inactive.” A Federally regulated AMC operating in a State must report to the State the information required to be submitted by the State to the ASC, pursuant to the ASC’s policies regarding the determination of the AMC registry fee.

### ***D. Access to AMC Registry Data***

The ASC website provides free access to the public portion of the AMC Registry at [www.asc.gov](http://www.asc.gov). The public portion of the AMC 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 must ensure that the authorization information provided to the ASC is updated and accurate. States must adopt and implement a written policy to protect the right of access, as well as the ASC issued User Name and Password.

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<sup>111</sup> See Appendix B, *Glossary of Terms*, for the definition of “disciplinary action.”

## ***E. Summary of Requirements***

1. States must reconcile and pay registry invoices in a timely manner (45 calendar days after receipt of the invoice).<sup>112</sup>
2. State agencies must report all disciplinary action taken against an AMC to the ASC via the extranet application within 5 business days after the disciplinary action is final, as determined by State law.<sup>113</sup>
3. States not reporting via the extranet application must provide, in writing to the ASC, a description of the circumstances preventing compliance with this requirement.<sup>114</sup>
4. For the most serious disciplinary actions (*e.g.*, any action that interrupts an AMC's ability to provide appraisal management services), the AMC's status must be changed on the AMC Registry to "inactive."<sup>115</sup>
5. States must notify the ASC as soon as practicable if an AMC listed on the AMC Registry is no longer registered with or operating in the State.
6. 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>116</sup>
7. States must adopt and implement a written policy to protect the right of access to the AMC Registry, as well as the ASC issued User Name and Password.<sup>117</sup>
8. States must ensure the accuracy of all data submitted to the AMC Registry.<sup>118</sup>

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<sup>112</sup> Title XI § 1118 (a), 12 U.S.C. § 3347; Title XI § 1109 (a), 12 U.S.C. § 3338.

<sup>113</sup> Title XI § 1118 (a), 12 U.S.C. § 3347.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

## ***POLICY STATEMENT 10***

### ***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 AMCs and maintains an effective regulatory program.<sup>119</sup>

#### ***B. Enforcement Process***

States must ensure that the system for processing and investigating complaints<sup>120</sup> and sanctioning AMCs is administered in a timely, effective, consistent, equitable, and well-documented<sup>121</sup> manner.

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

States must process complaints against AMCs in a timely manner to ensure effective supervision of AMCs. 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

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<sup>119</sup> Title XI § 1118 (a), 12 U.S.C. § 3347.

<sup>120</sup> See Appendix B, *Glossary of Terms*, for the definition of “complaint.”

<sup>121</sup> See Appendix B, *Glossary of Terms*, for the definition of “well-documented.”

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 complaints, and if allegations are proven, take appropriate disciplinary or remedial action.

## ***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***

States must 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;
- 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 is tracked and that completion of 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, AMC, bank regulator, appraiser, hotline) or name of complainant
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 AMC Program 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>122</sup>
2. States must resolve all complaints filed against AMCs within one year (12 months) of the complaint filing date, except for special documented circumstances.<sup>123</sup>

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<sup>122</sup> Title XI § 1118 (a), 12 U.S.C. § 3347.

<sup>123</sup> *Id.*

3. States must ensure that the system for processing and investigating complaints and sanctioning AMCs is administered in an effective, consistent, equitable, and well-documented manner.<sup>124</sup>
4. States must track complaints of alleged AMC misconduct or wrongdoing using a complaint log.<sup>125</sup>
5. States must appropriately document enforcement files and include rationale.<sup>126</sup>

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

## ***POLICY STATEMENT 11***

### ***Statutory Implementation Period***

Title XI and the AMC Rule set forth the statutory implementation period.<sup>127</sup> The AMC Rule was effective on August 10, 2015. As of 36 months from that date (August 10, 2018), an AMC may not provide appraisal management services for a federally related transaction in a non-participating State unless the AMC is a Federally regulated AMC. Appraisal management services may still be provided for federally related transactions in non-participating States by individual appraisers, by AMCs that are below the minimum statutory panel size threshold, and as noted, by Federally regulated AMCs.

The ASC, with the approval of the Federal Financial Institutions Examination Council (FFIEC), may extend this statutory implementation period for an additional 12 months if the ASC makes a finding that a State has made substantial progress toward implementing a registration and supervision program for AMCs that meets the standards of Title XI.<sup>128</sup>

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<sup>127</sup> Title XI § 1124 (f)(1), 12 U.S.C. § 3353 and 12 CFR 34.210 – 34.216; 12 CFR 225.190 – 225.196; 12 CFR 323.8 -323.14; 12 CFR 1222.20 – 1222.26.

<sup>128</sup> Title XI § 1124 (f)(2), 12 U.S.C. § 3353.



# ***PART C: INTERIM SANCTIONS***

## ***POLICY STATEMENT 12***

### ***Interim Sanctions***

#### ***A. Authority***

Title XI grants the ASC authority to impose sanctions on a State that fails to have an effective Appraiser or AMC Program.<sup>129</sup> The ASC may remove a State credentialed appraiser or a registered AMC from the Appraiser or AMC Registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration and disciplinary proceedings as an alternative to or in advance of a non-recognition proceeding.<sup>130</sup> In determining whether an Appraiser or AMC Program is effective, the ASC shall conduct an analysis as required by Title XI. An ASC Finding of Poor on the Compliance Review Report<sup>131</sup> issued to a State at the conclusion of an ASC Compliance Review may trigger an analysis by the ASC for potential interim sanction(s). 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:

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*.

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<sup>129</sup> Title XI § 1118 (a), 12 U.S.C. § 3347.

<sup>130</sup> *Id.*

<sup>131</sup> *See Appendix A - Compliance Review Process.*

## ***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 registration of AMCs, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and AMCs, the investigation of complaints, and enforcement actions against appraisers and AMCs.<sup>132</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

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<sup>132</sup> Title XI § 1118 (a), 12 U.S.C. § 3347.

and policy and legal arguments regarding the matters set out in the Notice and analysis.

#### **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>133</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*

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<sup>133</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.

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. §§ 551-559) and other applicable law.

**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>134</sup>

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<sup>134</sup> 5 U.S.C. § 703 - *Form and venue of proceeding.*

# ***APPENDICES***

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

The ASC monitors State Appraiser and AMC Programs for compliance with Title XI. The monitoring of State Programs 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 with a meeting of the Program's decision-making body whenever possible. ASC staff reviews the Appraiser Program and the seven compliance areas addressed in Policy Statements 1 through 7. ASC staff reviews a participating State's AMC Program and the three compliance areas addressed in Policy Statements 8 through 10. 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 compliance areas. The sampling is intended to be representative of a State Program in its entirety.

Based on the Review, ASC staff provides the State with an ASC staff report for the Appraiser Program, and if applicable, an ASC staff report for the AMC Program, detailing preliminary findings. The State is given 60 days to respond to the ASC staff report(s). At the conclusion of the Review, a Compliance Review Report (Report) is issued to the State for the Appraiser Program, and if applicable, a Report is also issued for the AMC Program, with the ASC Finding on each Program's overall compliance, or lack thereof, with Title XI. Deficiencies resulting in non-compliance in any of the compliance areas are cited in the Report. "Areas of Concern" 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.

ASC Finding	Rating Criteria	Review Cycle (Program history or nature of deficiency may warrant a more accelerated 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>	Two-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>	Two-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>	Two-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>	One-year
Poor <sup>135</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

<sup>135</sup> An ASC Finding of "Poor" may result in significant consequences to the State. See Policy Statement 5, *Reciprocity*; see also Policy Statement 12, *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 Appraiser 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.



- c. written consent agreements, orders or reprimands
- d. probation or any other restriction on the use of a credential
- e. fine
- f. voluntary surrender<sup>136</sup>
- 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 trainee, State licensed, certified residential or certified general classifications as defined in Policy Statement 1, and which is not recognized by Title XI.

**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.)

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<sup>136</sup> A voluntary surrender that is not deemed disciplinary by State law or regulation, or is not related to any disciplinary process need not be reported as discipline provided the individual’s Appraiser Registry record is updated to show the credential is inactive.

**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, AMC representatives, 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.

**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.