January 28, 2025

Matt Ponzar
Acting Executive Director and General Counsel
Appraisal Subcommittee (ASC)

RE: ASC-2024-0022-0001, Appraisal Subcommittee Enforcement Authority Regarding the Effectiveness of State Appraiser and Appraisal Management Company Regulatory Programs

Mr. Ponzar,

ValuSight Consulting[1] appreciates the opportunity to provide comments in connection with the above-captioned rulemaking. While we appreciate the ASC's effort to formalize through regulations its longstanding enforcement authority over state appraiser and appraisal management company (AMC) licensing agencies, we believe this effort is hollow. Given the underlying statutory authority and subsequent regulatory developments since the enactment of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), it is our view that the ASC possesses limited authority to regulate state appraiser agency activities.

12 USC 3332 clearly establishes that the ASC's charge is to "monitor the requirements established by States for the certification and licensing of individuals who are qualified to perform appraisals in connection with **federally related transactions**" [emphasis added]. The key phrase – federally related transactions[2] (FRT) – speaks 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." [shortened for clarity]

In turn Title XI of FIRREA defines a "real estate-related financial transaction" to mean (generally) any purchase, refinance, or other finance transaction where real property is used as security for the loan.

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[1] ValuSight Consulting provides full-service business development and growth services to individuals and organizations connected with the valuation profession. Additionally, our principal has over 15 years of extensive legislative and policy experience related to appraisal issues.

[2] For a more thorough analysis of the evolution of the definition of FRTs, see On FRTs and Unanticipated Consequences | ValuSight Consulting.

This construction afforded the federal financial institutions regulatory agencies (herein Agencies) broad authority to determine what constitutes an FRT, as well as what real estate-related financial transactions require the services of an appraiser. While Congress had intended for Title XI to broadly impose its appraisal requirements on real estate-related financial transactions (as a rection to the Savings and Loan debacle of the 1980s), the Agencies themselves decided instead to carve out vast swaths of activity from Title XI's requirement.

As early as 1994[3], the Agencies not only increased the original appraisal threshold from $50,000 to $250,000[4], they also excepted all real estate-related financial transactions either guaranteed (in part or whole) by a federal agency or eligible for sale to any of the government sponsored enterprises (GSEs), such as Fannie Mae and Freddie Mac. In sum, most real estate-related financial transactions are no longer FRTs.

While a plain reading of the ASCs authority ties its work to those who are merely "qualified to perform appraisals in connection with federally related transactions" this begs a larger question: If almost all the appraisal activity occurring today is non-FRT, non-Title XI connected work, what exactly is the ASC monitoring?

This same language granting authority would also, by its nature, limit the ability of the ASC to look at any aspect of a state appraiser licensing agency's work that exceeds Title XI's requirements. States who mandate appraiser licensing regardless of whether the underlying transaction is "federally related" do so under the right of states to exceed federal law. Choosing to exceed Title XI's requirements does not open a state appraiser licensing agency to scrutiny for its additional authorities or activities within the borders of that state.

Having the ASC assess only the Title XI connected FRT activities of a "mandatory" appraiser licensing jurisdiction is impractical at best and provides no meaningful benefit in those jurisdictions where the decision was made to exceed federal requirements.

Even if we accept the validity of the ASCs ability to monitor and assess all aspects of a state appraiser licensing agency's work, state appraiser licensing agency conformance to the ASC's policy statements is generally sound. Per the ASC's own listing[5], **44 of 55** jurisdictions have agencies whose performance rates as "excellent" or "good", and only three state agencies are "not satisfactory".

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[3] See [Federal Register: June 7, 1994]

[4] This was subsequently increased to $400,000 as part of the prior Economic Growth and Regulatory Paperwork Reduction Act review process. With the most recent observed median home sales price observed by the St. Louis Federal Reserve at $420,400, almost half of all purchase transactions are exempt from Title XI appraisal requirements. This effect is greater in markets with lower median home sales prices.

[5] Appraiser Regulatory Program Compliance Review Findings | ASC gov. We note here the proposed change in grading to use "effective, moderately effective, slightly effective, and ineffective."

Were there significant deficiencies in state adherence to Title XI's requirements for their appraiser licensing agency, the work of the ASC would be vital to ensuring public trust. The overwhelmingly positive work in the states, however, calls into question the ongoing utility for regular monitoring – which the ASC itself acknowledges in its proposed rule. To the extent that ongoing reviews of state appraiser licensing agencies are beneficial, performing these through a routine independent audit for compliance with federal laws and regulations could be as effective as a bureaucratically executed process.

By reserving itself the right to adjust primary review cycles (and citing an alternative 3-year/2-year model), the ASC tacitly acknowledges that state appraiser licensing agency performance is generally effective – in the process, highlighting the lack of continuing need for monitoring of state agency performance of their Title XI obligations.

Likely an unintended consequence of the Agencies actions since 1989, the husking out of the FRT definition leaves ASC extraordinarily little to monitor, and what it does monitor has become self-effectuating at a state level. Although the ultimate decision regarding the ASC's continued monitoring efforts rests with Congress, we believe this aspect of the ASC's work deserves scrutiny.

It is also important to note the delay between the work of the ASC's Advisory Committee (ASCAC) and the issuance of this proposed rulemaking raises concerns about the current relevance of the ASCAC's recommendations. Appraisal practices have evolved significantly since 2015, and these changes are not reflected in the ASCAC's work. Additionally, there is the forthcoming implementation of an updated Uniform Appraisal Dataset (UAD) and a shift in how appraisers conduct appraisals related to mortgage lending transactions. Therefore, it could be beneficial to reconstitute the ASCAC and update the original recommendations upon which this proposal is based, assuming there is value in advancing this regulatory proposal.

While not germane to this rulemaking, there exist other aspects of the ASC's work that raise questions. For example, the ASC has clear statutory authority to make grants to both the Appraisal Foundation (TAF) and state appraiser licensing agencies. However, the total amount of grants made pales compared to the overall fund balance[6] held by the ASC – balances built over time through the collection of fees paid by appraisers and AMCs for listing on their respective National Registries.

We also understand the ASC to take a proscriptive view of how it can deploy its funds through grantmaking and imposing significant requirements upon its grantees, further limiting its effectiveness to deploying funds raised by licensees. None of these outcomes supports public trust in the appraisal profession, its participants, or its regulatory authorities.

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[6] See Appraisal Subcommittee 2023 Annual Report at page 25, citing a $27.8 million reserve against grant activities of $4.9 million.

In fairness to ASC, its National Appraiser Registry and National AMC Registry are useful for state appraiser and AMC licensing agencies when assessing the status of practitioners or companies that operate in numerous jurisdictions. ASC also implemented and oversees the Appraisal Complaint National Hotline, serving as a conduit for those who believe they have suffered harm from a deficient appraisal and need help in finding the correct agency to file a complaint.

Notwithstanding these positives, there exists a central unresolved question: In the current environment and under existing regulations and definitions, does the ASC have a raison d'être to warrant its continued mission? In our view, the answer is no. Its main function – monitoring and oversight of state appraiser licensing agencies – provides little added benefit to public trust given how strongly states are operating today, and has limited applicability given subsequent regulatory developments.

Those aspects of the ASC's work that are useful – registries and grantmaking using collected funds – are readily portable and could be performed as well (if not better) by other participants in the appraiser regulatory system.

Lastly, we see this as an opportunity to call for a fresh look at the whole of the appraiser regulatory system. When enacted thirty-six years ago, FIRREA's intent was to address an immediate and critical need, ensuring that appraisals were performed by individuals who possessed certain minimum qualifications and to a standard that provided replicability and enforceability by states under the new licensing regime.

Though standards have evolved and matured, reflecting settled practices tested by financial systems and courts alike, the lasting impact of state-level licensing has been to turn minimum "floors" for who can perform appraisals into de-facto "ceilings". Many appraisers today never go beyond the minimum qualifications established by TAF's Appraiser Qualifications Board and seek out the bare minimum of continuing education for maintaining their state-issued credentials.

While there are market forces that can often disincentivize appraisers from going beyond these minimums, the net effect has been a commoditization of appraisers – treated as entirely fungible by the mortgage lending space and lacking for meaningful distinctions that *should* inform who is best positioned to accept an appraisal assignment. Whether this outcome was foreseeable in 1989, everyone who relies on appraisers today feels its effects.

The ASC and its work monitoring state appraiser licensing agencies is a vestige of this approach, and its waning relevance today should provide a clarion call to everyone who relies on the work of appraisers and the public trust placed in the profession: It is past time to rethink how appraisers are regulated.

Again, we appreciate the opportunity to provide comments on this rulemaking and look forward to any questions you may have.

Sincerely,

John D. Russell, JD
Principal, ValuSight Consulting