

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS24–22]

RIN 3139–AA01

Appraisal Subcommittee Enforcement Authority Regarding the Effectiveness of State Appraiser and Appraisal Management Company Regulatory Programs

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council invites comment on a proposed rule to implement a framework to govern the ASC's enforcement authority regarding the effectiveness of Appraiser and Appraisal Management Company (AMC) Programs overseen by State Appraiser Regulatory Agencies. The proposed rule would codify the existing compliance review process with modifications. The proposed rule would require an analysis to assess program effectiveness, outline requirements for maintaining effective programs, and authorize the ASC to bring enforcement actions against such agencies that fail to maintain effective programs.

DATES: Send comments on or before February 4, 2025.

ADDRESSES: Commenters are strongly encouraged to submit comments through the Federal eRulemaking Portal or by email, if possible. You may submit comments, identified by Docket Number AS24–22, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* webmaster@asc.gov. Include the docket number in the subject line of the message.
- *Mail:* Address to Appraisal Subcommittee—FFIEC, Attn: Lori

Schuster, Management and Program Analyst, 1325 G Street NW, Suite 500, Washington, DC 20005.

- *Hand Delivery/Courier:* Address to Appraisal Subcommittee—FFIEC, Attn: Lori Schuster, Management and Program Analyst, 1325 G Street NW, Suite 500, Washington, DC 20005.

Instructions: All submissions must include the agency name and docket number for this document. All comments and any supporting materials or attachments received will be posted without change to <https://www.regulations.gov>, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Commenters should submit only information that the commenter wishes to make available publicly. Please do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Docket: To read comments regarding this proposed rulemaking, go to: <https://www.regulations.gov>, insert docket number AS24–22 in the “Search” box, and follow the prompts. You may also personally inspect comments at the Appraisal Subcommittee's office, 1325 G Street NW, Suite 500, Washington, DC 20005. To make an appointment, please contact Lori Schuster at (202) 595–7578 or lori@asc.gov.

FOR FURTHER INFORMATION CONTACT: Natalie Lutz, Attorney Advisor, 202–792–1217, natalie@asc.gov or Matt Ponzar, General Counsel, 202–595–7577, matt@asc.gov, Appraisal Subcommittee, 1325 G Street NW, Suite 500, Washington, DC 20005. The above phone numbers are not toll-free numbers. Persons with hearing or speech impairments may access these numbers by dialing 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Introduction

The following section discusses the proposed rule's objectives, the legal basis for this proposed rule, background information, the reasoning behind issuing this proposed rule, and a summary of the applicable recommendations made by the Appraisal Subcommittee Advisory Committee for the Development of Regulations (ASCAC).

A. Proposed Rule's Objectives

The proposed rule (proposal or proposed rulemaking) is intended to establish an effective and consistent enforcement approach to the Appraisal Subcommittee's (ASC) oversight of State Appraiser Regulatory Agencies.¹ The ASC believes that the proposal would significantly improve its effectiveness in monitoring and bringing enforcement actions against State Appraiser Regulatory Agencies that may not have effective Appraiser and Appraisal Management Company (AMC) Programs. The ASC also believes that the proposed rulemaking would be beneficial in clarifying requirements for State Appraiser Regulatory Agencies to promote the effectiveness of their Appraiser and AMC Programs. Finally, the proposed rule would provide additional transparency to State Appraiser Regulatory Agencies and other stakeholders regarding the ASC's procedures for monitoring Appraiser and AMC Programs and the potential for enforcement actions against State Appraiser Regulatory Agencies. In general, the proposed rule would codify the existing ASC compliance review process consistent with the ASC's current practices and processes for conducting compliance reviews, with some modifications and minor corrections.

B. Statutory Authority

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010 (Title XI).²

Section 1103(a)(1)(A)³ of Title XI requires the ASC to monitor requirements established by State Appraiser Regulatory Agencies for the certification and licensing of individuals qualified to perform appraisals in connection with federally related transactions,⁴ including a code

¹ 12 U.S.C. 3332(a)(5), uses the term “State Appraiser Regulatory Agencies.” As discussed further below, for purposes of the proposed rule, this term is synonymous with “State appraiser certifying and licensing agency” as defined in section 1121(1) of Title XI (12 U.S.C. 3350(1)).

² Public Law 111–203, sec. 1473, 124 Stat. 2190–2199 (2010).

³ 12 U.S.C. 3332(a)(1)(A).

⁴ Federally related transaction refers to any real estate-related financial transaction which: (a) a Federal financial institutions regulatory agency

of professional responsibility. Section 1103(a)(1)(B) also requires the ASC to monitor the requirements established by State Appraiser Regulatory Agencies for the registration and supervision of the operations and activities of AMCs.⁵

Additionally, section 1118(a) of Title XI requires the ASC to monitor State Appraiser Regulatory Agencies to determine whether each State Appraiser Regulatory Agency:

(1) has policies, practices, funding, staffing, and procedures that are consistent with Title XI;

(2) processes complaints and completes investigations in a reasonable time period;

(3) appropriately disciplines sanctioned appraisers and AMCs;

(4) maintains an effective regulatory program; and

(5) reports complaints and disciplinary actions on a timely basis to the national registries of appraisers and AMCs maintained by the ASC.⁶

Section 1118(a) of Title XI further provides that the ASC can impose certain sanctions against a State Appraiser Regulatory Agency that fails to have an effective appraiser regulatory program.⁷ For the purposes of the proposed rule, the term “enforcement actions” would be used instead of “sanctions.” In determining whether a program is effective, the ASC must include an analysis of (1) the licensing and certification of appraisers, (2) the registration of AMCs, (3) the issuance of temporary licenses and certifications for appraisers, (4) the receiving and tracking of submitted complaints against appraisers and AMCs, (5) the investigation of complaints, and (6) enforcement actions against appraisers and AMCs.⁸ Under the proposal, the evaluation criteria are referred to as “program functions.”

Section 1118(a) of Title XI also specifically authorizes the ASC to impose interim actions and suspensions against a State Appraiser Regulatory Agency as an alternative to, or in advance of, the non-recognition of a State Appraiser Regulatory Agency.⁹ Under the proposed rule, these “interim actions and suspensions” would be known as “interim enforcement actions.”

engages in, contracts for, or regulates; and (b) requires the services of an appraiser. See 12 U.S.C. 3350(4).

⁵ 12 U.S.C. 3332(a)(1)(B).

⁶ 12 U.S.C. 3347(a).

⁷ *Id.*

⁸ *Id.* (numbering of the program functions is added for emphasis).

⁹ *Id.*

Consistent with section 1118 of Title XI,¹⁰ the proposal would outline three types of enforcement actions: interim actions, suspensions, and non-recognition. Title XI refers to non-recognition as derecognition.¹¹ Under the proposed rule, the term “non-recognition” would be used instead of “derecognition” to be consistent with subpart B of 12 CFR part 1102, which sets forth the ASC rules of practice and procedure governing non-recognition proceedings for State Appraiser Regulatory Agencies.

Finally, section 1106 of Title XI provides that the ASC has, among other powers, the authority to promulgate regulations regarding certain specified areas, one of which is enforcement.¹² House Report 111–94 indicates that the term “enforcement” covers the actions the ASC may take in evaluating State Appraiser Regulatory Agencies and the gamut of sanctions that the ASC may impose against such agencies.¹³ For purposes of prescribing regulations, the ASC must establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, real estate agents, and government agencies, and hold meetings as necessary to support the development of regulations.¹⁴

C. Background

Congress enacted Title XI in response to concerns that problematic appraisals played a major role in the savings and loan crisis of the 1980s.¹⁵ The purpose of Title XI is to provide that Federal financial and public policy interests in real estate transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are 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.¹⁶ To help ensure that the purpose of Title XI was carried out, Congress established a regulatory framework to monitor and oversee the real estate appraisal industry, including establishing the ASC.¹⁷

¹⁰ 12 U.S.C. 3347.

¹¹ *Id.*

¹² 12 U.S.C. 3335.

¹³ See H. Rept. 111–94, at 96 (2009).

¹⁴ 12 U.S.C. 3335.

¹⁵ See Government Accountability Office, GAO–03–404, Regulatory Programs: Opportunities to Enhance Oversight of the Real Estate Appraisal Industry, at 1 and 6 (2003).

¹⁶ 12 U.S.C. 3331.

¹⁷ The ASC is composed of seven members, each designated by the head of a Federal agency (the Board of Governors of the Federal Reserve System (Board), the Consumer Financial Protection Bureau

Since the enactment of Title XI, one of the ASC’s functions has been to monitor the requirements established by State Appraiser Regulatory Agencies for the certification and licensing of real estate appraisers qualified to perform appraisals in connection with federally related transactions.¹⁸ The monitoring is accomplished through periodic or accelerated compliance reviews of Appraiser Programs of each State¹⁹ to assess whether the program is operating in a manner consistent with Title XI and to assess the implementation of minimum requirements for licensing and certifying appraisers as adopted by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation²⁰ pursuant to section 1116 of Title XI.²¹ The ASC also maintains a national registry of State licensed and certified appraisers eligible to perform appraisals in federally related transactions (Appraiser Registry).²²

In 2010, Title XI was amended by the Dodd-Frank Act.²³ Subsection 1473(f) of the Dodd-Frank Act expanded the ASC’s functions to include monitoring the requirements established by State Appraiser Regulatory Agencies for the registration and supervision of the operations and activities of AMCs.²⁴

(CFPB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA), the Department of Housing and Urban Development (HUD), and the Federal Housing Finance Agency (FHFA)). See 12 U.S.C. 3310 and 12 U.S.C. 1708(g)(2).

¹⁸ 12 U.S.C. 3332(a)(1)(A).

¹⁹ All 50 States, the District of Columbia, and four U.S. territories have established Appraiser Programs to ensure the availability of licensed and certified appraisers and effective supervision of their activities. The four territories include Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. American Samoa does not have an Appraiser Program.

²⁰ The Appraiser Qualifications Board of the Appraisal Foundation adopts the “Real Property Appraiser Qualification Criteria” (AQB Criteria), which establishes the minimum education, experience, and examination requirements for the licensure and certification of real property appraisers and minimum requirements for trainee and supervisory appraisers. See AQB Criteria, available at https://www.appraisalfoundation.org/imis/TAF/Standards/Qualification_Criteria/Qualification_Criteria_RP_TAF/AQB_RPAQC.aspx.

²¹ 12 U.S.C. 3345.

²² 12 U.S.C. 3332(a)(3).

²³ See *supra* note 2.

²⁴ Public Law 111–203, sec. 1473(f), 124 Stat. 2191–2192; 12 U.S.C. 3332(a)(1)(B). See *supra* note 13 at 97. Presently, 50 States and the District of Columbia have AMC Programs. Hawaii’s AMC Program sunset on June 30, 2023. However, Hawaii House Bill 2641 was signed into law on June 21, 2024, to reenact the version of the AMC Program that was originally part of the Hawaii Department of Commerce and Consumer Affairs. The Hawaii AMC Program established pursuant to House Bill 2641 commenced on September 1, 2024. American

State Appraiser Regulatory Agencies with an AMC Program are evaluated through periodic or accelerated compliance reviews to assess whether the program is operating in a manner consistent with Title XI and to assess the implementation of the minimum requirements for State registration and supervision of AMCs.²⁵ Subsection 1473(f) also established a parallel Federal system of oversight for an AMC that operates as a subsidiary of a financial institution overseen by a Federal banking regulator.²⁶ These entities are referred to as “federally regulated AMCs” under this proposal. Federally regulated AMCs are not required to register with a State Appraiser Regulatory Agency.²⁷ Finally, subsection 1473(f) required the ASC to maintain a national registry of AMCs that are either registered with and subject to supervision of a State Appraiser Regulatory Agency or operating subsidiaries of a federally regulated financial institution (AMC Registry).²⁸

In addition to authorities related to AMCs, subsection 1473(k) of the Dodd-Frank Act improved the ASC’s ability to oversee State Appraiser Regulatory Agencies in several important ways.²⁹ First, subsection 1473(k) added funding and staffing to the list of criteria against which the ASC must evaluate a State Appraiser Regulatory Agency.³⁰ Second, subsection 1473(k) requires the ASC to evaluate whether a State Appraiser Regulatory Agency processes complaints and completes its investigations in a reasonable time period, whether a State Appraiser Regulatory Agency appropriately disciplines sanctioned appraisers and AMCs, whether a State Appraiser

Regulatory Agency maintains an effective regulatory program, and whether a State Appraiser Regulatory Agency reports complaints and disciplinary actions to the Appraiser and AMC Registries on a timely basis.³¹ Third, subsection 1473(k) permits the ASC to impose interim actions and suspensions against State Appraiser Regulatory Agencies under certain circumstances.³²

Finally, subsection 1473(d) of the Dodd-Frank Act added the authority to promulgate regulations concerning “temporary practice, national registry, information sharing, and enforcement.”³³ If the ASC decides to undertake rulemaking on any of the four areas identified above,³⁴ subsection 1473(d) further requires the ASC to establish an advisory committee of industry participants and hold meetings as necessary to support the development of regulations.³⁵

D. Reasons for Issuing This Proposed Rule

Title XI did not originally provide the ASC with the authority to issue legislative rulemaking, nor the authority to enforce its own standards and pursue incremental improvements in the regulatory performance of State Appraiser Regulatory Agencies through interim actions and suspensions (interim enforcement actions).³⁶

Instead of regulations, the ASC has issued and relied on Policy Statements with respect to monitoring State Appraiser Regulatory Agencies.³⁷ The Policy Statements address the requirements of Title XI and offer guidance to State Appraiser Regulatory Agencies regarding compliance with Title XI and the rules promulgated thereunder.³⁸ Additionally, prior to the Dodd-Frank Act, the only enforcement action that the ASC could take against a State Appraiser Regulatory Agency

was non-recognition, which would prohibit all licensed and certified appraisers from that State from performing appraisals in connection with federally related transactions.³⁹ Non-recognition is a severe enforcement action that could affect the real estate markets and financial institutions within the State. To date, the ASC has not imposed non-recognition against a State Appraiser Regulatory Agency.

As discussed above, the Dodd-Frank Act provided the ASC with additional enforcement authorities to take against State Appraiser Regulatory Agencies, when appropriate, along with related rulemaking authority.⁴⁰ The ASC is now issuing this proposed rule to implement these additional enforcement authorities included in the Dodd-Frank Act.

E. Recommendations by the ASCAC

On February 18, 2014, following the enactment of the Dodd-Frank Act, the ASC established the ASCAC in accordance with the Federal Advisory Committee Act.⁴¹ The purpose of the ASCAC was to provide independent advice and recommendations to the ASC regarding the development of regulations that may be prescribed by the ASC concerning temporary practice, the Appraiser and AMC Registries, information sharing, and enforcement.⁴² The ASCAC was comprised of eighteen members nominated by the ASC Executive Director and approved by the ASC Chairperson in consultation with the ASC Board members.⁴³ The ASCAC met four times: April 16–17, July 22–23, and October 15–16, 2014, and February

³⁹ Public Law 101–73, 103 Stat. 511–519 (1989). See *supra* note 13 at 58.

⁴⁰ See *supra* note 2.

⁴¹ 5 U.S.C. chapter 10. Membership in the ASCAC was determined in accordance with the Amended Balanced Membership Plan dated June 18, 2014. See Balanced Membership Plan, dated February 18, 2014, available at <https://www.asc.gov/sites/default/files/documents/GeneralCorrespondence/Balanced%20Membership%20Plan%20-%20Final%202014.02.12.pdf>. See also Amended Balanced Membership Plan, dated June 18, 2014, available at <https://www.asc.gov/sites/default/files/documents/GeneralCorrespondence/Amended%20Balanced%20Membership%20Plan%202014.06.18.pdf>.

⁴² 12 U.S.C. 3335.

⁴³ See ASCAC Member List, available at <https://www.asc.gov/sites/default/files/2023-03/2014.07.14%20Advisory%20Committee%20Member%20List%20-%20amended%201.21.15.pdf>. The ASCAC members represented a balance of expertise across a range of industry participants and stakeholders as contemplated by section 1106 of Title XI, 12 U.S.C. 3335, including appraisers, AMCs, lenders, consumer advocates, real estate agents, and government agencies. All ASCAC members had experience regarding the appraiser regulatory framework for federally related transactions.

Samoa, Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands do not have AMC Programs.

²⁵ The Dodd-Frank Act added section 1124 to Title XI, Appraisal Management Company Minimum Requirements, which required the OCC, Board, FDIC, NCUA, FHFA, and CFPB to establish, by rule, minimum requirements for the registration and supervision of AMCs by State Appraiser Regulatory Agencies that elect to register and supervise AMCs pursuant to Title XI. See 12 U.S.C. 3353(a). The related final rule was published in the *Federal Register* on June 9, 2015, with an effective date of August 10, 2015. See 80 FR 32658 (June 9, 2015).

²⁶ Public Law 111–203, sec. 1473(f), 124 Stat. 2192; 12 U.S.C. 3353(c). See *supra* note 13 at 97.

²⁷ Public Law 111–203, sec. 1473(f), 124 Stat. 2192; 12 U.S.C. 3353(c).

²⁸ Public Law 111–203, sec. 1473(f), 124 Stat. 2192; 12 U.S.C. 3332(a)(6).

²⁹ Public Law 111–203, sec. 1473(k), 124 Stat. 2196; 12 U.S.C. 3347. See *supra* note 13 at 96–97.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Public Law 111–203, sec. 1473(d), 124 Stat. 2191; 12 U.S.C. 3335. See *supra* note 13 at 96.

³⁴ See Curtis W. Copeland, Cong. Research Serv., R41472, Rulemaking Requirements and Authorities in the Dodd-Frank Wall Street Reform and Consumer Protection Act, at 59 and 87 (Nov. 3, 2010).

³⁵ Public Law 111–203, sec. 1473(d), 124 Stat. 2191; 12 U.S.C. 3335.

³⁶ See *supra* note 13 at 58.

³⁷ *Id.* See also Government Accountability Office, GAO–12–147, Real estate Appraisals: Appraisal Subcommittee Needs to Improve Monitoring Procedures, at 11 and 30 (2012).

³⁸ 83 FR 9144 (Mar. 5, 2018). See also Policy Statements, available at <https://asc.gov/resources/governance>. (hereinafter Policy Statements).

12–13, 2015.⁴⁴ The ASCAC completed its recommendation report on April 30, 2015,⁴⁵ and presented its recommendations to the ASC on May 13, 2015.⁴⁶ The ASCAC's recommendation report stated that most members believed the ASC "must" codify the ASC Policy Statements through rulemaking.⁴⁷

Given the ASC's intent to promote effective and consistent oversight, the ASC is now prepared to implement its statutory authority to address the effectiveness of Appraiser and AMC Programs through rulemaking. The ASCAC recommendation report covers matters beyond enforcement actions against State Appraiser Regulatory Agencies and discusses the desirability of codifying all the Policy Statements. For this proposed rulemaking, the ASC is responding to only the ASCAC's recommendations that apply to its enforcement authority regarding the effectiveness of Appraiser and AMC Programs administered by State Appraiser Regulatory Agencies and is proposing to codify only portions of such Policy Statements pertaining to such enforcement authorities. The ASC considers the ASCAC's recommendation report regarding these enforcement authorities to be relevant. Some recommendations address ongoing issues and problems that the ASC has continued to face since the report was issued. Many of the report's underlying observations are concerns in the appraiser regulatory framework today. Thus, the ASC has considered the ASCAC's recommendations in developing this proposed rule.

1. ASCAC's Sanction Matrices

The ASCAC developed and recommended three sanction matrices to

⁴⁴ See April 16–17, 2014 ASCAC Meeting Minutes, available at <https://asc.gov/sites/default/files/documents/GeneralCorrespondence/April%202014%20ASCAC%20Meeting%20Minutes.pdf>; July 22–23, 2014 ASCAC Meeting Minutes, available at <https://asc.gov/sites/default/files/documents/GeneralCorrespondence/Meeting%20Minutes%20-%20July%202014.pdf>; October 15–16, 2014 ASCAC Meeting Minutes, available at <https://asc.gov/sites/default/files/documents/GeneralCorrespondence/October%202014%20ASCAC%20Meeting%20Minutes.pdf>; and February 12–13, 2015 ASCAC Meeting Minutes, available at <https://asc.gov/sites/default/files/documents/OtherCorrespondence/February%202015%20Advisory%20Committee%20Minutes.pdf>.

⁴⁵ See ASCAC Final Recommendation Report, available at <https://www.asc.gov/sites/default/files/2023-03/2015.04.30%20-%20ASCAC%20Recommendations%20-%20Final.pdf>.

⁴⁶ See May 13, 2015 ASC Meeting Minutes, available at <https://asc.gov/sites/default/files/documents/MeetingMinutes/05.13.15%20-%20Open%20Minutes.pdf>.

⁴⁷ See ASCAC Final Recommendation Report, *supra* note 45 at 3.

be used by the ASC in sanctioning State Appraiser Regulatory Agencies.⁴⁸ The three sanction matrices covered temporary practice, Appraiser and AMC Registries, and enforcement, and proposed twelve potential types of enforcement actions.⁴⁹ However, the ASC proposes not to adopt the three sanction matrices recommended by the ASCAC for the following reasons.

Section 1118(a) of Title XI authorizes the ASC to impose enforcement actions against a State Appraiser Regulatory Agency that fails to have an effective regulatory program and includes six program functions relevant to making this determination.⁵⁰ The six applicable program functions include (1) the licensing and certification of appraisers, (2) the registration of AMCs, (3) the issuance of temporary licenses and certifications for appraisers, (4) the receiving and tracking of submitted complaints against appraisers and AMCs, (5) the investigation of complaints, and (6) enforcement actions against appraisers and AMCs.⁵¹ The ASC believes that the ASCAC-recommended sanction matrices do not incorporate all six applicable program functions, such as the licensing and certification of appraisers and the registration of AMCs, in determining whether an Appraiser or AMC Program is effective in accordance with section 1118(a) of Title XI.⁵² Therefore, the ASC views the matrices as partially incomplete and not effective in implementing all the program functions in section 1118(a).⁵³

2. ASCAC's Method of Addressing Deficiencies

The ASCAC recommended that enforcement actions be brought per individual deficiency against State Appraiser Regulatory Agencies using sanction matrices.⁵⁴ Under this ASCAC recommendation, an enforcement action would be imposed for each deficiency of a State Appraiser Regulatory Agency. For example, under the ASCAC-recommended temporary practice sanction matrix, a State Appraiser Regulatory Agency could receive a warning letter for not issuing temporary licenses or certifications on an assignment basis and could receive a separate suspension for not issuing

⁴⁸ *Id.* at 24 and 26–30. The sanction matrices start on page 26.

⁴⁹ *Id.*

⁵⁰ 12 U.S.C. 3347(a).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See ASCAC Final Recommendation Report, *supra* note 45 at 26–30.

temporary licenses or certifications within five business days.

This enforcement approach recommended by the ASCAC would not permit the ASC to deviate from the matrices to consider the appropriate enforcement action based on the underlying facts of each compliance review. The ASC, however, believes that deficiencies should be addressed collectively rather than individually to allow for the ASC to consider significant variations in the underlying facts of each compliance review.

Therefore, under the proposal, the ASC would bring an enforcement action based on the aggregation of deficiencies identified during a compliance review. For example, under the proposed rule, the ASC would impose only one enforcement action against a State Appraiser Regulatory Agency for all deficiencies identified during a compliance review. The number of deficiencies, the State Appraiser Regulatory Agency's response to the preliminary report, and the presence of any relevant mitigating and aggravating factors would guide the ASC's consideration of the appropriate enforcement action.

3. ASCAC's Proposed Enforcement Actions

The ASCAC also recommended twelve potential types of enforcement actions to be incorporated into the three sanction matrices.⁵⁵ The twelve potential types of enforcement actions included: (1) a warning letter, (2) training for State Appraiser Regulatory Agency staff, (3) training for State Appraiser Regulatory Agency board members, (4) consultation with other State authorities, (5) meeting with affected parties, (6) a requirement for a State Appraiser Regulatory Agency to use a disciplinary sanction matrix for complaints, (7) expedited or follow-up reviews, (8) continuous monitoring, (9) interim removal of appraiser(s) from the Appraiser Registry or AMC(s) from the AMC Registry, (10) other removal of appraiser(s) from the Appraiser Registry or AMC(s) from the AMC Registry, (11) interim derecognition, and (12) derecognition.⁵⁶ The proposed rule would directly address three of the ASCAC's recommended enforcement actions: warning letters, suspension (interim derecognition), and non-recognition. The proposed rule would introduce and define a fourth enforcement action: a negotiated agreement.

⁵⁵ *Id.* at 24.

⁵⁶ *Id.*

For the reasons stated below, the ASC is not planning to explicitly include the other nine enforcement actions recommended by the ASCAC. The ASC believes some potential enforcement actions suggested by the ASCAC, such as training requirements for State Appraiser Regulatory Agency staff and board members and the use of a disciplinary sanction matrix for appraiser and AMC complaints,⁵⁷ would be implemented more effectively through a negotiated agreement, as appropriate, rather than as individual enforcement actions. For example, a negotiated agreement could specify terms and conditions for training State Appraiser Regulatory Agency staff and board members based on the deficiencies identified by the ASC.

Additionally, the ASC does not believe there is a need to include other potential enforcement actions recommended by the ASCAC, such as expedited reviews or follow-up reviews, continuous monitoring, and consultation with State officials or other stakeholders,⁵⁸ as explicit enforcement actions in the proposed rule. The ASC plans to codify its existing compliance review process consistent with its current practices and processes for conducting compliance reviews, such as accelerated reviews, follow-up reviews, and additional monitoring. Under the proposed rule, the ASC may conduct accelerated reviews, follow-up reviews within 6–12 months of the previous review, and additional monitoring as part of the compliance review process.⁵⁹ The ASC also currently informally consults with State officials and other stakeholders, when appropriate, to monitor Appraiser and AMC Programs.

With respect to the ASCAC's recommended enforcement actions of interim or other removal of an appraiser from the Appraiser Registry or an AMC from the AMC Registry, section 1118(a) of Title XI provides that the ASC has the authority to remove a State licensed or certified appraiser from the Appraiser Registry or a registered AMC from the AMC Registry on an interim basis, not to exceed 90 days pending State agency action on licensing, certification, registration, and disciplinary proceedings.⁶⁰ After careful

consideration, the ASC is not including in this proposed rulemaking the interim removal of an appraiser from the Appraiser Registry or an AMC from the AMC Registry as a potential enforcement action as suggested by the ASCAC.⁶¹

The scope of this proposed rulemaking is limited to the ASCAC's recommended potential enforcement actions that the ASC may take against a State Appraiser Regulatory Agency after a compliance review rather than actions against individual appraisers or AMCs. Therefore, this proposed rule does not address the ASC's authority under section 1118(a) of Title XI to remove a State licensed or certified appraiser from the Appraiser Registry or a registered AMC from the AMC Registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, and disciplinary proceedings.⁶²

4. Policy Statements 7 and 10 Recommendations

The ASCAC also included specific recommendations related to the Policy Statements. Policy Statements 7 (State Agency Enforcement for Appraiser Programs) and 10 (State Agency Enforcement for AMC Programs) state that, absent special documented circumstances, final administrative decisions by a State Appraiser Regulatory Agency regarding complaints must occur within one year (twelve months) of the complaint filing date.⁶³ The ASCAC recommended clarifying the definition of "complaint filing date"⁶⁴ because States have different interpretations of this term. The ASCAC noted that some States consider the "complaint filing date" to be when the State Appraiser Regulatory Agency receives the original complaint, while others consider it to be when the complaint has been screened and approved for investigation.⁶⁵ To address this confusion, the ASCAC recommended that the term "complaint filing date" be defined as the date the State Appraiser Regulatory Agency receives the original complaint.⁶⁶ The proposed rule avoids using the term "complaint filing date" to prevent

removal on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, and disciplinary proceedings.

⁶¹ See ASCAC Final Recommendation Report, *supra* note 45 at 24.

⁶² 12 U.S.C. 3347(a).

⁶³ See Policy Statements, *supra* note 38 at 9155 and 9158.

⁶⁴ See ASCAC Final Recommendation Report, *supra* note 45 at 8 and 14.

⁶⁵ *Id.* at 14.

⁶⁶ *Id.* at 8 and 14.

confusion. Instead, to implement the ASCAC's recommendation, this proposed rule would specify that State Appraiser Regulatory Agencies must begin the time period for resolving complaints based on the date the complaint was received.

The ASCAC also recommended that "special documented circumstances," as used in Policy Statement 7, should be more specifically defined.⁶⁷ Under this proposal, "special documented circumstances" would mean well-documented and monitored extenuating circumstances, evaluated by the ASC, that are beyond the control of the State Appraiser Regulatory Agency and result in a complaint processing delay. The ASC proposes not to implement a more specific definition of "special documented circumstances" as recommended by the ASCAC because a broad definition is more appropriate considering the variations in complaint processing among State Appraiser Regulatory Agencies. For example, some State Appraiser Regulatory Agencies may involve the State's Office of Attorney General in investigating complaints, while others may use staff investigators, contractors, or advisory committees. Therefore, the ASC proposes a definition of "special documented circumstances" similar to the one in Policy Statement 7.⁶⁸ The ASCAC recommended providing more examples of what constitutes "special documented circumstances" for resolving complaints within one year (12 months).⁶⁹ Specifically, the ASCAC recommended clarifying the example in Policy Statement 7 that describes those periods when State rules require referral of a complaint to another State entity for review, and the State Appraiser Regulatory Agency is precluded from further processing of the complaint until it is returned.⁷⁰ The ASCAC recommended that the example should be clarified to refer to a period of time when a case is referred to a separate State entity such as the State's Office of Attorney General for prosecution, or to an administrative law judge for a hearing.⁷¹ Another example recommended by the ASCAC was the time gap between the date the complaint was initially received and the receipt of

⁶⁷ *Id.* Policy Statement 7 defines "special documented circumstances" as extenuating circumstances (fully documented) beyond the control of the State Appraiser Regulatory Agency that delays normal processing of a complaint. See Policy Statements, *supra* note 38 at 9155.

⁶⁸ See Policy Statements, *supra* note 38 at 9155 and 9158.

⁶⁹ See ASCAC Final Recommendation Report, *supra* note 45 at 8 and 14.

⁷⁰ *Id.* at 14.

⁷¹ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Policy Statements, *supra* note 38 at 9161. The ASC may conduct accelerated reviews, follow-up reviews, and additional monitoring. A follow-up review focuses on specific areas identified during a previous review and typically occurs within 6–12 months of the previous review.

⁶⁰ 12 U.S.C. 3347(a). Note, as reflected by the statutory text found in section 1118(a) of Title XI, 12 U.S.C. 3347(a), the ASC's authority is limited to

all the necessary information to begin processing it.⁷²

The ASC does not plan to incorporate the examples recommended by the ASCAC in this proposal or in any revisions to the Policy Statements, nor to provide any further examples. The ASC holds the view that there must be a legitimate practical challenge limiting the State Appraiser Regulatory Agency's ability to resolve complaints within one year (12 months) from when the complaint was received, which will be evaluated on a case-by-case basis, and that further examples are, therefore, not necessary.

The ASCAC's last recommendation was to clarify what qualifies as an "investigation" of the merits of a complaint.⁷³ The ASCAC gave two examples from Policy Statement 7 that provide guidance on what qualifies as an "investigation" of the merits of a complaint. Consistent with the ASCAC's first referenced example from Policy Statement 7,⁷⁴ the proposed rule would require State Appraiser Regulatory Agencies to ensure that individuals analyzing complaints are knowledgeable about Title XI, the Uniform Standards of Professional Appraisal Practice (USPAP), and appraisal practices. Under the proposed rule, these individuals must be qualified and their qualifications must be documented, which will be evaluated by the ASC. The proposed rule would have a similar requirement for AMC Programs, where individuals who analyze complaints against AMCs are required to be knowledgeable about Title XI, the AMC Rule,⁷⁵ USPAP, and appraisal practices and their qualifications must be documented, which will be evaluated by the ASC.

The proposed rule would also make some modifications to the ASCAC's second referenced example from Policy Statement 7.⁷⁶ According to Policy Statement 7, State Appraiser Regulatory Agencies must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the

complaint.⁷⁷ The proposed rule would require State Appraiser Regulatory Agencies to consider whether any potential violations of USPAP should be investigated when examining an appraisal report in connection with a complaint, including complaints based solely on value.⁷⁸

Although the ASCAC interpreted "additional violations" to include violations of Federal and State law,⁷⁹ the proposed rule would only require State Appraiser Regulatory Agencies to consider whether any potential violations of USPAP should be investigated. This is because the ASC is responsible for ensuring that real estate appraisals used in federally related transactions are performed according to USPAP by State licensed and certified appraisers.⁸⁰ However, the ASC encourages State Appraiser Regulatory Agencies to consider whether to investigate any violations of Federal and State law not explicitly alleged in the complaint in accordance with State law or regulations.

The ASCAC also provided examples of how State Appraiser Regulatory Agencies have different definitions of what constitutes an "investigation." For some State Appraiser Regulatory Agencies, the "investigation" may consist simply of the screening of a complaint by a staff member.⁸¹ If the staff member decides that the complaint has no merit or that it needs only a telephone call or letter to the appraiser, it is either not opened or opened and closed immediately.⁸² For other State Appraiser Regulatory Agencies, a full field investigation is conducted on all complaints.⁸³ As a result of these different definitions, it is challenging to establish a standard definition of an investigation because the investigatory process is typically governed by State law or regulation. Additionally, each

investigation is contingent upon the specific facts of the complaint. During a compliance review, the ASC examines a sample of complaint files to assess whether the State Appraiser Regulatory Agency is following the investigatory process governed by State law to ensure timely and effective supervision of appraisers. Therefore, the ASC does not plan to further clarify what qualifies as an "investigation" of the merits of a complaint.

5. ASCAC's Mitigating and Aggravating Factors

The ASCAC also produced a list of mitigating and aggravating factors for the sanction matrices.⁸⁴ The ASCAC defined "a mitigating factor" as any information or evidence regarding the deficiency that might result in a decreased sanction.⁸⁵ The ASCAC defined "an aggravating factor" as any information or evidence regarding the deficiency that might result in an increased sanction.⁸⁶ Except as discussed below, the ASC has separately included, with some modifications, all of the mitigating and aggravating factors recommended by the ASCAC in this proposed rule.

The ASC proposes not to separately include the recommended mitigating and aggravating factors relating to a State Appraiser Regulatory Agency board member involved in a disciplinary decision who had a conflict of interest or bias because the ASC believes such circumstance would be

⁷² *Id.* at 25.

⁷³ *Id.* The mitigating factors recommended by the ASCAC include no prior deficiencies of any type; prior deficiencies of another type that were minor and have been corrected; understanding and acknowledging the deficiency; immediate steps taken to correct the issue; personnel issues such as illness or loss of a key staff member; change in leadership; the State Appraiser Regulatory Agency otherwise has an effective and efficient regulatory program; the occurrence of a natural disaster; and a State Appraiser Regulatory Agency board member who had a conflict of interest was cleared by a State ethics agency before participating in a matter (unless the ASC finds the conflict created a bias that affected the outcome).

⁷⁴ *Id.* The aggravating factors recommended by the ASCAC include a pattern of prior deficiencies of another type that have not been corrected; a pattern of prior deficiencies of the same type; numerous deficiencies of various types; refusal to acknowledge the deficiency; lack of cooperation with the ASC staff; a lack of willingness or lack of efforts to correct deficiencies; deficiencies are material and, if not corrected in a timely manner, will pose a potential risk to the program, licensees, financial institutions or agencies or to the public; submission of false statements or documents, or other deceptive practices; a State Appraiser Regulatory Agency board member involved in a decision who had a conflict of interest or bias that affected the outcome of a matter; other deficiencies in the program that might indicate systemic issues; risk of program failure; and systemic failure to exercise reasonable care toward equitable enforcement.

⁷⁷ See Policy Statements, *supra* note 38 at 9155.

⁷⁸ The ASCAC also recommended that complaints that only relate to value should not be dismissed solely on that basis, and State Appraiser Regulatory Agencies should be obligated to analyze all complaints for USPAP compliance, even if a USPAP violation is not explicitly alleged. See ASCAC Final Recommendation Report, *supra* note 45 at 14. The ASC believes that this proposal would address the ASCAC's recommendations described above. The proposed rule would require State Appraiser Regulatory Agencies to consider whether any potential violations of USPAP should be investigated when examining an appraisal report in connection with a complaint, including complaints based solely on value.

⁷⁹ See ASCAC Final Recommendation Report, *supra* note 45 at 14.

⁸⁰ See, e.g., 12 U.S.C. 3331 and 12 U.S.C. 3332(a)(1)(A).

⁸¹ See ASCAC Final Recommendation Report, *supra* note 45 at 14.

⁸² *Id.*

⁸³ *Id.*

⁷² *Id.*

⁷³ *Id.* at 8 and 14–15.

⁷⁴ *Id.* at 14.

⁷⁵ Under the proposed rule, "AMC Rule" means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Federal Housing Finance Agency regarding the minimum requirements for AMCs under section 1124 of Title XI (12 U.S.C. 3353). (12 CFR 34.210 through 34.216; 12 CFR 225.190 through 225.196; 12 CFR 323.8 through 323.14; 12 CFR 1222.20 through 1222.26).

⁷⁶ See ASCAC Final Recommendation Report, *supra* note 45 at 14.

covered under the proposed mitigating or aggravating factor of whether the State Appraiser Regulatory Agency failed to exercise reasonable care in equitable, consistent, and timely enforcement. The ASC also proposes to include other mitigating and aggravating factors, such as the number of State licensed and certified appraisers or registered AMCs under the jurisdiction of a State Appraiser Regulatory Agency and human-made disasters or emergencies or other government-declared orders.

The ASC believes these factors accurately capture the considerations that would allow the ASC to increase or decrease its initial assessment of an Appraiser or AMC Program's level of effectiveness. These factors would give State Appraiser Regulatory Agencies incentives to cooperate with the ASC and timely address any deficiencies while still recognizing that certain situations, outside of a State Appraiser Regulatory Agency's control, such as a natural disaster, can sometimes affect the effectiveness of an Appraiser or AMC Program.

II. Proposed Rule

The ASC is issuing this proposal to implement a framework to govern the ASC's enforcement authority regarding the effectiveness of Appraiser and AMC Programs overseen by State Appraiser Regulatory Agencies. The Dodd-Frank Act strengthened the ASC's oversight of State Appraiser Regulatory Agencies and authorized the ASC to impose interim enforcement actions against State Appraiser Regulatory Agencies before having to impose "non-recognition."

Under this proposal, the ASC would conduct an analysis of the applicable program functions, as required by section 1118(a) of Title XI,⁸⁷ to assess the effectiveness of an Appraiser or AMC Program. The proposed rule would outline the specified requirements for each program function that the ASC will examine for program effectiveness.⁸⁸ Additionally, the proposed rule would require State Appraiser Regulatory Agencies to demonstrate to the ASC's reasonable satisfaction that their Appraiser and AMC Programs are operating consistently with the specified requirements of each program function. If any deficiencies are identified, the ASC would be required to document

them in both the preliminary and final reports.

Under the proposal, the ASC would assess the initial effectiveness of an Appraiser or AMC Program based on the number of deficiencies per program function as identified in the preliminary report. The ASC proposes using the number of deficiencies for the initial assessment of effectiveness because this approach would provide transparency into the ASC's decision-making and help to provide consistent and fair treatment between similarly situated State Appraiser Regulatory Agencies.

The proposed rule would establish four levels of effectiveness: effective, moderately effective, slightly effective, and ineffective, each specifying the allowable number of deficiencies per program function. The effectiveness of Appraiser and AMC Programs would be assessed through the four levels mentioned above, which the ASC plans to incorporate into the ASC's overall rating criteria to emphasize further that a State Appraiser Regulatory Agency is maintaining an effective Appraiser or AMC Program.⁸⁹

Under the proposed rule, the ASC would consider whether the State Appraiser Regulatory Agency's response to the preliminary report and any relevant mitigating and aggravating factors justify an increase or decrease in the level of the regulatory program's effectiveness identified in the preliminary report for the final report.

If a State Appraiser Regulatory Agency fails to have an effective Appraiser or AMC Program, the ASC would have the authority, under the proposed rule, to impose an enforcement action. This approach would enable the ASC to evaluate the underlying facts of each compliance review and take appropriate enforcement action against the State Appraiser Regulatory Agency for not maintaining an effective Appraiser or AMC Program. The proposed rule would set forth four enforcement actions: warning letters, negotiated agreements, suspensions, and non-recognition. This section provides a section-by-section analysis of the proposed rule.

A. Key Definitions

This proposal would define several terms consistent with their use in Title

XI, Federal regulations promulgated thereunder, or the Policy Statements. For example, the proposed rule would include definitions from the AMC Rule in their entirety for the following terms: AMC, appraisal management services, appraiser panel, consumer credit, covered transaction, dwelling, federally regulated AMC, person, and USPAP. Therefore, this section highlights key definitions included in the proposal. *AQB Criteria.* Pursuant to section 1116 of Title XI,⁹⁰ the AQB establishes the minimum requirements for real estate appraisers to obtain a State license or certification as well as "Trainee Appraiser" and "Supervisory Appraiser" requirements. The proposed rule would define "AQB Criteria" as the minimum requirements for the licensure and certification of real estate appraisers and the minimum requirements for trainee and supervisory appraisers established by the AQB. The proposed definition is consistent with section 1116 of Title XI,⁹¹ as well as substantively similar to the AQB's Real Property Appraiser Qualification Criteria, which set forth the minimum education, experience, and examination requirements for real property appraisers.⁹²

Assignment. Section 1106 of Title XI confers rulemaking authority to the ASC in the area of temporary practice.⁹³ For purposes of issuing a temporary license or certification,⁹⁴ the proposal would define "assignment" as one or more real estate appraisals and written appraisal report(s) covered by a single contract. The proposed definition here is intended to be consistent with the use of the term "assignment" in the statutory definition of "AMC" but solely in the context of temporary practice.⁹⁵

⁹⁰ 12 U.S.C. 3345.

⁹¹ *Id.*

⁹² See AQB Criteria, *supra* note 20.

⁹³ 12 U.S.C. 3335.

⁹⁴ The term "license" as defined under the Administrative Procedure Act, 5 U.S.C. 551(8), encompasses a wide range of forms of permission, including agency permits, certificates, approvals, registrations, charters, memberships, statutory exemptions, and others. This definition under the Administrative Procedure Act, 5 U.S.C. 551(8), is consistent with many State Administrative Procedure Acts, such as the State Administrative Procedure Acts of Arizona (Ariz. Rev. Stat. Ann. § 41-1001(13) (2024)), Arkansas (Ark. Code Ann. § 25-15-202(4) (2024)), Colorado (Colo. Rev. Stat. § 24-4-102(7) (2024)), Delaware (Del. Code Ann. 29 § 10102(5) (2023)), District of Columbia (D.C. Code § 2-502(12) (2024)), Indiana (Ind. Code § 4-21.5-1-8 (2024)), Iowa (Iowa Code. § 17A.2(6) (2024)), Kansas (Kan. Stat. Ann. § 77-502(c) (2024)), Maine (Me. Rev. Stat. 5 § 8002(5) (2023)), and Massachusetts (Mass. Gen. Laws. 30A § 13) (2024)). Furthermore, most State Appraiser Regulatory Agencies issue temporary practice permits.

⁹⁵ 12 U.S.C. 3350(11)(B) (defining AMC as any "external third party . . . [that, in part,] contract[s]

⁸⁷ 12 U.S.C. 3347(a).

⁸⁸ These requirements are currently outlined in the Policy Statements. See Policy Statements, *supra* note 45.

⁸⁹ See Policy Statements, *supra* note 38 at 9160-9161. Currently, the ASC evaluates overall Title XI compliance of a State Appraiser Regulatory Agency's Appraiser or AMC Program by assigning one of five ASC Findings at the end of the compliance review process. ⁸⁹ The ratings, known as ASC Findings, are classified as follows: Excellent, Good, Needs Improvement, Not Satisfactory, or Poor.

Deficiency. A State Appraiser Regulatory Agency would be deemed to have a deficiency if the State Appraiser Regulatory Agency's Appraiser or AMC Program is not in compliance with any specified requirements of the applicable program functions required by section 1118(a) of Title XI.⁹⁶ The ASC would analyze and consider the initial effectiveness of Appraiser or AMC Programs based on the number of deficiencies per program function as identified in the preliminary report to provide for a consistent and transparent enforcement approach. The ASC then would have the option to impose an enforcement action, such as a warning letter that describes the deficiency or deficiencies, or enter into a negotiated agreement with a State Appraiser Regulatory Agency if the agency fails to address the deficiency or deficiencies identified in a previously issued warning letter or the final report indicates that the regulatory program is slightly effective or ineffective.

Final order. The proposed rule would require the ASC to issue a final order to suspend a State Appraiser Regulatory Agency. The proposed definition of "final order" would include findings of fact, conclusions of law, and, if applicable, the terms of the enforcement action imposed against a State Appraiser Regulatory Agency for failing to have an effective Appraiser or AMC Program. A "final order" is one type of document that the ASC is required to make public via computer telecommunications.⁹⁷

Final report. After the State Appraiser Regulatory Agency has had an opportunity to respond to the preliminary report, it is current practice that the ASC prepares and issues a final report on its monitoring findings. The "final report" would, under the proposed rule, include the ASC's final analysis of the regulatory program's effectiveness, identifying any deficiencies. In preparing the final report, the ASC would consider whether the State Appraiser Regulatory Agency's response to the preliminary report and any relevant mitigating or aggravating factors support a change to the level of the regulatory program's effectiveness. A "final report" is considered one type

of record⁹⁸ that must be made publicly available.⁹⁹

Negotiated agreement. The proposal defines "negotiated agreement" to mean a written agreement signed between the ASC and a State Appraiser Regulatory Agency to correct deficiencies that negatively impact the regulatory program's effectiveness. The proposed definition would specify that the agreement may provide that the State Appraiser Regulatory Agency commits to taking a certain action or actions or refraining from a certain action or actions by a specified time. For example, these agreements could require mandatory training of State Appraiser Regulatory Agency staff and/or board members to address certain findings, weaknesses, and deficiencies or submission of a commitment letter or board resolution to take corrective action in response to the State Appraiser Regulatory Agency's deficiencies. A "negotiated agreement" is considered one type of record¹⁰⁰ that must be made publicly available.¹⁰¹

Non-recognition. Section 1118 of Title XI authorizes the ASC to impose non-recognition on a State Appraiser Regulatory Agency.¹⁰² Subpart B of 12 CFR part 1102 prescribes rules of practice and procedure governing non-recognition proceedings under section 1118 of Title XI.¹⁰³ The proposed definition of "non-recognition" reflects the statutory text of section 1118 of Title XI,¹⁰⁴ which states that the ASC and all agencies, instrumentalities, and federally recognized entities under Title XI shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with Title XI. The proposed rule would define "non-recognition" as the ASC and all agencies, instrumentalities, and federally recognized entities under Title XI shall not recognize or accept appraiser licenses and certifications

issued by a State Appraiser Regulatory Agency whose policies, practices, funding, staffing, or procedures are found to be inconsistent with Title XI and Federal regulations promulgated thereunder. "Non-recognition" is synonymous with "derecognition," which is referenced in section 1118 of Title XI.¹⁰⁵ Under the proposed rule, "non-recognition" would be used instead of "derecognition" to be consistent with the language of subpart B of 12 CFR part 1102.

*Preliminary report.*¹⁰⁶ After the examination of records and interviews with State Appraiser Regulatory Agency representatives, it is the current practice that the ASC provides a staff report or preliminary report to the State Appraiser Regulatory Agency detailing the initial monitoring findings. Under the proposed definition, the preliminary report would also include an initial analysis of the regulatory program's effectiveness, identifying any deficiencies, and the ASC's initial assessment of the level of effectiveness of the regulatory program.

Program functions. As previously discussed, section 1118(a) of Title XI specifies a list of criteria that the ASC must include in its analysis of a regulatory program's effectiveness.¹⁰⁷ The proposal would define "program functions" as those responsibilities of a State Appraiser Regulatory Agency that the ASC will examine and include in its analysis of the effectiveness of a State Appraiser Regulatory Agency's regulatory program consistent with section 1118(a) of Title XI (12 U.S.C. 3347(a)). The proposed rule would outline five program functions for Appraiser Programs that will be considered in the ASC's analysis: (1) licensing and certification of appraisers, (2) issuance of temporary licenses and certifications for appraisers, (3) receiving and tracking of submitted complaints against appraisers, (4) investigation of complaints against appraisers, and (5) enforcement actions against appraisers. For AMC Programs, the proposed rule would outline four program functions that will be considered in the ASC's analysis: (1) registration of AMCs, (2) receiving and tracking of submitted complaints against AMCs, (3) investigation of complaints against AMCs, and (4) enforcement actions against AMCs.

Special documented circumstances. The proposed rule would define

¹⁰⁵ *Id.*

¹⁰⁶ Note, section 1104(b) of Title XI, 12 U.S.C. 3333(b), refers to "preliminary State audit reports," which is synonymous with the term "preliminary report" under this proposal.

¹⁰⁷ 12 U.S.C. 3347(a).

⁹⁸ 12 CFR 1102.301(i). A "record" includes "records, files, documents . . . or any portion thereof, in any form the ASC regularly maintains them."

⁹⁹ 12 CFR 1102.305(a)(2)(i)(D). One type of document that must be made publicly available is a copy of "all records (regardless of form or format), such as correspondence relating to field reviews or other regulatory subjects, released to any person under § 1102.306 [("Procedures for requesting records")] that, because of the nature of their subject matter, the ASC has determined are likely to be subject of subsequent requests." Under this proposal, field reviews are referred to as "compliance reviews."

¹⁰⁰ See *supra* note 98.

¹⁰¹ See *supra* note 99.

¹⁰² 12 U.S.C. 3347.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

with licensed and certified appraisers to perform appraisal assignments").

⁹⁶ 12 U.S.C. 3347(a).

⁹⁷ 12 CFR 1102.305(a)(2)(i)(A).

“special documented circumstances” as well-documented and monitored extenuating circumstances, evaluated by the ASC, that are beyond the control of the State Appraiser Regulatory Agency and result in a complaint processing delay. Special documented circumstances are relevant when considering the effectiveness of State Appraiser Regulatory Agencies’ supervision in resolving complaints filed against trainee appraisers, State licensed appraisers, State certified appraisers, and AMCs within one year from the date the complaint was received.

State Appraiser Regulatory Agency. Section 1103(a)(5) of Title XI uses the term “State Appraiser Regulatory Agencies.”¹⁰⁸ The proposed rule would define “State Appraiser Regulatory Agency” as a State agency that certifies and licenses real estate appraisers and registers and supervises AMCs or otherwise regulates real estate appraisers and AMCs who operate in that State, consistent with section 1121(1) of Title XI (12 U.S.C. 3350(1)). “State Appraiser Regulatory Agency” is synonymous with “State appraiser certifying and licensing agency” as defined in section 1121(1) of Title XI.¹⁰⁹ To the extent that the registration and supervision of AMCs is carried out by a separate and distinct agency or agencies within a State, each such agency is also a State Appraiser Regulatory Agency. For example, the District of Columbia has two separate and distinct agencies that administer the Appraiser and AMC Programs. The Department of Licensing and Consumer Protection administers the Appraiser Program, and the Department of Insurance, Securities and Banking administers the AMC Program. The Department of Licensing and Consumer Protection and the Department of Insurance, Securities and Banking in the District of Columbia would each be considered a State Appraiser Regulatory Agency under the proposed rule, and the ASC would monitor each of their respective regulatory programs.

Suspension. The proposed definition of “suspension” is that the State Appraiser Regulatory Agency would be prohibited from performing certain task(s) as part of the State Appraiser Regulatory Agency’s responsibilities under Title XI for a specified period of time. This definition is consistent with section 1118(a) of Title XI, which authorizes the ASC to impose “interim actions and suspensions,” against a State Appraiser Regulatory Agency as an

alternative to, or in advance of, the non-recognition of a State Appraiser Regulatory Agency.¹¹⁰ Some examples of possible prohibited tasks include adding appraisers to the Appraiser Registry or AMCs to the AMC Registry, renewing licenses or certifications, and issuing temporary licenses or certifications to appraisers. The proposed rule would provide that a suspension would be effective until the ASC lifts the suspension.

Warning letter. Section 1118(a)(4) of Title XI requires the ASC to monitor State Appraiser Regulatory Agencies to determine whether each State Appraiser Regulatory Agency maintains an effective regulatory program.¹¹¹ If a State Appraiser Regulatory Agency fails to have an effective appraiser regulatory program, section 1118(a) authorizes the ASC to impose enforcement actions.¹¹² One example of an enforcement action is a “warning letter,” which the proposed rule would define as a letter issued by the ASC informing a State Appraiser Regulatory Agency of a deficiency or deficiencies relating to its regulatory program. The proposed definition also provides that if the deficiency is not addressed, it could negatively impact the effectiveness of the State Appraiser Regulatory Agency’s regulatory program.

B. Compliance Reviews

One of the ASC’s functions is to monitor State Appraiser Regulatory Agencies’ Appraiser and AMC Programs for compliance with Title XI.¹¹³ Monitoring these programs is accomplished through periodic or accelerated compliance reviews of each State Appraiser Regulatory Agency’s Appraiser and AMC Programs.¹¹⁴ Proposed § 1102.602 would codify the existing compliance review process consistent with the ASC’s current practices and processes for conducting compliance reviews but would propose a few changes that are discussed below.

The ASC is proposing this approach because the ASC has generally found in its supervisory experience that these practices for conducting compliance

reviews are effective and efficient. Currently, the compliance review process is outlined in the Policy Statements.¹¹⁵ The ASC intends to revise the Policy Statements before the proposed implementation period, discussed in section III below, ends. These revisions would address any potential inconsistencies between the Policy Statements and any final rule based on this proposal.

1. Compliance Review Cycles

The proposal would provide that the ASC has two primary review cycles: two-year and one-year. This is the same standard frequency as the ASC’s current practice outlined in the Policy Statements.¹¹⁶ Most State Appraiser Regulatory Agencies are scheduled on a two-year review cycle, but some may be moved to a one-year review cycle if the ASC determines more frequent reviews are needed to ensure that the State Appraiser Regulatory Agency maintains an effective Appraiser or AMC Program. The ASC is proposing this frequency for compliance reviews because, based on its supervisory experience, the ASC has generally found that these two primary review cycles provide sufficient monitoring. The two review cycles would allow for early identification of deficiencies to prevent or minimize their impact on the effectiveness of Appraiser and AMC Programs. Additionally, the ASC has generally found that the two review cycles are not burdensome and do not strain the resources of the ASC or State Appraiser Regulatory Agencies. The proposed rule would also allow the ASC to use alternate compliance review cycles at its sole discretion. This discretion would allow the ASC to monitor the performance and effectiveness of the frequency of compliance reviews. After evaluation, the ASC could, for example, modify the standard frequency of the primary two review cycles to three years and two years.

In addition to the two primary review cycles, the proposal would provide that the ASC may conduct follow-up reviews and additional monitoring. Consistent with the ASC’s current practice, a follow-up review would focus only on specific areas identified during the previous review and would occur within 6 to 12 months of the previous review. Under the proposed rule, the ASC may also conduct accelerated compliance reviews when there are indications that an Appraiser or AMC Program might not be operating

¹¹⁰ 12 U.S.C. 3347(a).

¹¹¹ 12 U.S.C. 3347(a)(4).

¹¹² 12 U.S.C. 3347(a).

¹¹³ 12 U.S.C. 3332(a)(1) and 3347(a)(1)–(5).

¹¹⁴ Compliance reviews are conducted by the ASC, on a periodic or accelerated basis, to determine whether an Appraiser or AMC Program administered by a State Appraiser Regulatory Agency is operating in a manner consistent with Title XI and Federal regulations promulgated thereunder. The proposed rule does not specify that compliance reviews must occur on-site. Instead, the proposed rule would provide flexibility to the ASC to determine the most appropriate means of conducting a compliance review.

¹¹⁵ See Policy Statements, *supra* note 38 at 9160–9161.

¹¹⁶ *Id.*

¹⁰⁸ 12 U.S.C. 3332(a)(5).

¹⁰⁹ 12 U.S.C. 3350(1).

consistently with Title XI or Federal regulations promulgated thereunder. For example, an accelerated compliance review could be warranted when the ASC receives multiple complaints alleging inadequate enforcement by a State Appraiser Regulatory Agency. This is consistent with the ASC's current practice which is to identify potential Title XI compliance concerns before they occur and take appropriate action to prevent the occurrence or minimize the impact on the effectiveness of an Appraiser or AMC Program. The proposed rule would also provide that if a single State Appraiser Regulatory Agency oversees both Appraiser and AMC Programs, the compliance reviews for each regulatory program may have the same or different review cycles. This is also consistent with current practice, which has been proven to be effective based on the ASC's supervisory experience.

2. Compliance Review Process

Paragraph (c) of proposed § 1102.602 would set forth the general process of a compliance review. Similar to current practice, compliance reviews would consist of an examination of records and interviews with State Appraiser Regulatory Agency representatives. After completing the examination, the ASC would prepare a preliminary report that includes the initial monitoring findings, which is consistent with current practice.

However, the preliminary report would, under the proposed rule, include an initial analysis of the effectiveness of the regulatory program, as required in proposed § 1102.603, identifying any deficiencies. The preliminary report would also, under the proposed rule, include the ASC's initial assessment of the level of effectiveness of the regulatory program. This would be a modification of the ASC's current practice; under Policy Statement 12, this analysis of the regulatory program's effectiveness occurs after the ASC concludes the compliance review and issues an overall ASC Finding of Poor.¹¹⁷ The ASC believes that analyzing the effectiveness of the regulatory program earlier during the compliance review process would improve efficiency and streamline the process, so the ASC proposes to utilize this approach instead. Additionally, the proposed rule would include new interim enforcement actions that can be used if the ASC makes the assessment that an Appraiser or AMC Program is not effective. These interim enforcement actions are an additional tool that can be

used in conjunction with more frequent compliance reviews or additional monitoring.

Under the proposed rule, a State Appraiser Regulatory Agency may respond within 60 business days from the date of the preliminary report. This is consistent with the current practice, which has been proven to be effective, based on the ASC's supervisory experience, to give State Appraiser Regulatory Agencies adequate time to consider and respond with any relevant information showing the State Appraiser Regulatory Agency's efforts to remedy any deficiencies. After considering the State Appraiser Regulatory Agency's response along with any mitigating and aggravating factors, the final report would, under the proposed rule, include the final analysis of the effectiveness of the regulatory program, as required in proposed § 1102.603, identifying any deficiencies. The final report would also, under the proposed rule, include the ASC's final assessment of the level of effectiveness of the regulatory program in accordance with paragraph (b)(2) of proposed § 1102.603.

Similar to the current compliance review process, under the proposed rule, State Appraiser Regulatory Agencies would be required to maintain sufficient documentation to demonstrate that their Appraiser and AMC Programs operate consistently with Title XI. ASC staff reviews a representative sampling of documentation in each of the compliance areas to assess the efficiency of the State Appraiser Regulatory Agency's Appraiser or AMC Program. The proposed rule would further provide that documentation must be made available for inspection, as requested by the ASC, including access to the information stored in any electronic system or providing access to the electronic system itself. The electronic access requirement is not included in the Policy Statements, but it is consistent with current ASC practice.

C. Analysis of the Effectiveness of Appraiser and AMC Programs

To determine whether an Appraiser or AMC Program is effective, the amendments to section 1118(a) of Title XI by the Dodd-Frank Act require the ASC to perform an analysis of previously specified key program functions.¹¹⁸ The proposed rule would incorporate the analysis, as required by section 1118(a) of Title XI,¹¹⁹ earlier in the compliance review process and

provide the analysis in the preliminary and final reports. Under paragraph (a) of proposed § 1102.603, the ASC would examine whether the State Appraiser Regulatory Agency is complying with all specified requirements of each program function and, if not, document any identified deficiencies in the preliminary and final reports.

1. Assessment of Program Effectiveness

The deficiencies identified in the preliminary report would serve as the starting point for the ASC's initial assessment of the regulatory program's effectiveness. Under paragraph (b)(1) of proposed § 1102.603, the ASC would assess the regulatory program's initial effectiveness based on the corresponding number of deficiencies per program function identified in the preliminary report. The ASC proposes using the number of deficiencies for the initial assessment of effectiveness because this approach would provide transparency into the ASC's decision-making and help to provide consistent and fair treatment between similarly situated State Appraiser Regulatory Agencies.

Paragraph (b)(1) of proposed § 1102.603 would establish four levels of effectiveness: effective, moderately effective, slightly effective, and ineffective, each specifying the allowable number of deficiencies per program function. The effectiveness of Appraiser and AMC Programs will be assessed through the four levels mentioned above. Currently, the ASC evaluates overall Title XI compliance of a State Appraiser Regulatory Agency's Appraiser or AMC Program by assigning one of five ASC Findings at the end of the compliance review process.¹²⁰ The ratings, known as ASC Findings, are classified as follows: Excellent, Good, Needs Improvement, Not Satisfactory, or Poor.¹²¹ The ASC plans to incorporate the four levels of program effectiveness into the ASC's overall rating criteria of the ASC Findings to emphasize further that a State Appraiser Regulatory Agency is maintaining an effective Appraiser or AMC Program.

The following example illustrates how this approach would work. The ASC might identify three deficiencies under the same program function of licensing and certification of appraisers. The first deficiency could be that the licensing and certification requirements do not meet the minimum requirements in Title XI. The second deficiency could be that the State Appraiser Regulatory

¹²⁰ See Policy Statements, *supra* note 38 at 9160–9161.

¹²¹ *Id.*

¹¹⁸ 12 U.S.C. 3347(a).

¹¹⁹ *Id.*

¹¹⁷ *Id.* at 9159. See also *supra* note 89.

Agency does not have a reciprocity policy. The third deficiency could be that the State Appraiser Regulatory Agency fails to ensure that approved applicants meet the applicable minimum requirements of the AQB Criteria. The initial assessment of the Appraiser Program's level of effectiveness would be deemed "slightly effective" in the preliminary report under proposed § 1102.603(b)(1)(iii)(A) because the ASC found three deficiencies in one program function.

Due to the difference in the number of program functions between Appraiser and AMC Programs, the allowable number of deficiencies per program function for each level of effectiveness would be different for the Appraiser and AMC Programs under the proposed rule. However, this initial assessment would be performed in an equivalent manner for both program types.

Under paragraph (b)(2) of proposed § 1102.603, the ASC would consider whether the State Appraiser Regulatory Agency's response to the preliminary report and any relevant mitigating and aggravating factors in proposed § 1102.604 justify an increase or decrease in the level of the regulatory program's effectiveness for the final report. This analysis would allow the ASC to consider the totality of the circumstances for its final assessment of the regulatory program's level of effectiveness. The ASC has generally found from its supervisory experience that mitigating and aggravating factors could arise in each compliance review because there can be significant variations in the underlying facts of each compliance review. The ASC is proposing this approach because it would allow the ASC flexibility to ensure that the level of effectiveness is truly representative of the State Appraiser Regulatory Agency's regulatory program. If the ASC considers the regulatory program's level of effectiveness to be appropriately mitigated or aggravated, the relevant factors, including a description of how the factors were applied, will be documented in the final report.

2. Program Functions for Appraiser and AMC Programs

Paragraphs (c)(1) and (2) of proposed § 1102.603 would outline the specified requirements for each program function that the ASC will examine to assess the effectiveness of an Appraiser or AMC Program. The ASC proposes these requirements under paragraphs (c)(1) and (2) of proposed § 1102.603 because they are currently included in the Policy Statements and provide guidance to State Appraiser Regulatory Agencies in

complying with Title XI and the rules promulgated thereunder.¹²² The ASC believes that these requirements are fair and manageable because State Appraiser Regulatory Agencies are familiar with these requirements already and have been implementing them. Additionally, the ASC believes this approach should reduce any challenges that State Appraiser Regulatory Agencies may face in implementing any final rule based on this proposal. These requirements under paragraphs (c)(1) and (2) of proposed § 1102.603 are listed below, starting with the Appraiser Program under paragraph (c)(1) of proposed § 1102.603.

3. Specified Requirements for an Appraiser Program

Under paragraph (c)(1) of proposed § 1102.603, a State Appraiser Regulatory Agency must demonstrate to the ASC's reasonable satisfaction that its Appraiser Program is operating consistently with the specified requirements of each program function as listed below.

Paragraph (c)(1)(i) of proposed § 1102.603 would specify eleven requirements for the program function of licensing and certification of appraisers. These eleven requirements are:

(1) the State Appraiser Regulatory Agency's licensing and certification requirements must meet the minimum requirements set forth in section 1116 of Title XI (12 U.S.C. 3345);¹²³

(2) the State Appraiser Regulatory Agency's trainee and supervisory appraiser requirements, if applicable, must meet the minimum requirements set forth in section 1116 of Title XI (12 U.S.C. 3345);¹²⁴

(3) the State Appraiser Regulatory Agency must use the designations for trainee appraisers, State licensed appraisers, and State certified appraisers in accordance with section 1116 of Title XI (12 U.S.C. 3345);¹²⁵

(4) the State Appraiser Regulatory Agency must use permitted scopes of practice for State licensed and certified appraisers in accordance with sections 1113 and 1114 of Title XI (12 U.S.C. 3342 and 3343);¹²⁶

(5) the State Appraiser Regulatory Agency must process applications in a timely, consistent, equitable, and well-documented manner in accordance with Title XI;¹²⁷

¹²² See Policy Statements, *supra* note 38.

¹²³ See Policy Statement 1, *supra* note 38 at 9147–9149.

¹²⁴ *Id.* at 9148–9149.

¹²⁵ *Id.* at 9147–9149.

¹²⁶ *Id.*

¹²⁷ See Policy Statement 4, *supra* note 38 at 9151 and 9153.

(6) the State Appraiser Regulatory Agency must ensure that individuals who process applications are knowledgeable about section 1116 of Title XI (12 U.S.C. 3345) as evaluated by the ASC;¹²⁸

(7) the State Appraiser Regulatory Agency must have a reciprocity policy for issuing a reciprocal license or certification for an individual from another State in accordance with section 1122(b) of Title XI (12 U.S.C. 3351(b));¹²⁹

(8) the State Appraiser Regulatory Agency must ensure that all approved applicants meet the applicable minimum requirements of the AQB Criteria;¹³⁰

(9) the State Appraiser Regulatory Agency must ensure that appraiser education courses are consistent with the AQB Criteria;¹³¹

(10) the State Appraiser Regulatory Agency must obtain and maintain sufficient documentation pertaining to all applications, including initial licenses or certifications, upgrades, renewals, reinstatements, and supervisory approvals, to create a record of facts and determinations and the reasons for those determinations made by the State Appraiser Regulatory Agency;¹³² and

(11) the State Appraiser Regulatory Agency must report appraiser data on the issuance and renewal of licenses and certifications on a timely basis to the Appraiser Registry in accordance with section 1109(a)(2) of Title XI (12 U.S.C. 3338(a)(2)).¹³³

Paragraph (c)(1)(ii) of proposed § 1102.603 would specify nine requirements for the issuance of temporary licenses and certifications for appraisers. These nine requirements are:

(1) the State Appraiser Regulatory Agency must recognize the license or certification of an appraiser issued by another State Appraiser Regulatory Agency on a temporary basis in accordance with section 1122(a)(1) of Title XI (12 U.S.C. 3351(a)(1));¹³⁴

(2) the State Appraiser Regulatory Agency must not impose excessive fees for a temporary license or certification in accordance with section 1122(a)(2) of Title XI (12 U.S.C. 3351(a)(2));¹³⁵

¹²⁸ *Id.* at 9152–9153.

¹²⁹ See Policy Statement 5, *supra* note 38 at 9153–9154.

¹³⁰ See Policy Statements 4 and 6, *supra* note 38 at 9151–9153 and 9154.

¹³¹ See Policy Statement 6, *supra* note 38 at 9154.

¹³² See Policy Statements 4, 5 and 6, *supra* note 38 at 9151–9154.

¹³³ See Policy Statement 3, *supra* note 38 at 9150–9151.

¹³⁴ See Policy Statement 2, *supra* note 38 at 9149.

¹³⁵ *Id.*

(3) the State Appraiser Regulatory Agency must not impose burdensome requirements, as determined by the ASC, for temporary practice in accordance with section 1122(a)(2) of Title XI (12 U.S.C. 3351(a)(2));¹³⁶

(4) the State Appraiser Regulatory Agency must issue temporary licenses or certifications within five business days after receiving a complete application for such issuance in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a));¹³⁷

(5) the State Appraiser Regulatory Agency must issue temporary licenses or certifications on an assignment basis and must allow for at least one extension through a streamlined process in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a));¹³⁸

(6) the State Appraiser Regulatory Agency must issue temporary licenses or certifications designating the effective date in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a));¹³⁹

(7) the State Appraiser Regulatory Agency must track all temporary licenses or certifications using a permit log or system;¹⁴⁰

(8) the State Appraiser Regulatory Agency must supervise all individuals to whom the State Appraiser Regulatory Agency issues a temporary license or certification while performing

assignments in its State, must discipline such individuals, when appropriate, for misconduct or wrongdoing, and must report each disciplinary action to the ASC and other appropriate State Appraiser Regulatory Agencies to ensure effective supervision in accordance with sections 1117, 1118, and 1122(a) of Title XI (12 U.S.C. 3346, 3347, and 3351(a));¹⁴¹ and

(9) the State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the basis for the determinations made by the State Appraiser Regulatory Agency in processing and issuing temporary licenses or certifications.¹⁴²

Paragraph (c)(1)(iii) of proposed § 1102.603 would specify two requirements for the program function of receiving and tracking of submitted complaints against appraisers as follows:

(1) the State Appraiser Regulatory Agency must have a system for processing and investigating complaints and sanctioning trainee appraisers, State licensed appraisers, and State certified appraisers in a timely, effective, consistent, equitable, and well-documented manner;¹⁴³ and

(2) the State Appraiser Regulatory Agency must track and monitor all complaints using a complaint log or system.¹⁴⁴

Paragraph (c)(1)(iv) of proposed § 1102.603 would specify five requirements for the program function of investigations of complaints against appraisers. These five requirements are:

(1) the State Appraiser Regulatory Agency must require appraisals to be performed in accordance with the latest version of USPAP in accordance with sections 1101 and 1103(a)(1)(A) of Title XI (12 U.S.C. 3331 and 3332(a)(1)(A));¹⁴⁵

(2) when examining an appraisal report in connection with a complaint, including complaints based solely on value, the State Appraiser Regulatory Agency must consider whether any potential violations of USPAP should be investigated;¹⁴⁶

(3) to ensure effective supervision, the State Appraiser Regulatory Agency must resolve all complaints filed against trainee appraisers, State licensed appraisers, and State certified appraisers within one year (12 months) from the date the complaint was received except

in special documented circumstances;¹⁴⁷

(4) the State Appraiser Regulatory Agency must ensure that individuals who analyze complaints are knowledgeable about Title XI, USPAP, and appraisal practices and must document how such individuals are qualified, which will be evaluated by the ASC;¹⁴⁸ and

(5) the State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the facts and determinations made by the State Appraiser Regulatory Agency in processing and investigating a complaint and the reasons for its final disposition.¹⁴⁹

Paragraph (c)(1)(v) of proposed § 1102.603 would specify two requirements for the program function of enforcement actions against appraisers as follows:

(1) the State Appraiser Regulatory Agency must supervise trainee appraisers, State licensed appraisers, and State certified appraisers and must discipline such individuals, when appropriate, for misconduct and wrongdoing;¹⁵⁰ and

(2) the State Appraiser Regulatory Agency must report all disciplinary actions against State licensed and certified appraisers to the ASC within five business days after the disciplinary action is final as determined by State law.¹⁵¹

4. Specified Requirements for an AMC Program

Under paragraph (c)(2) of proposed § 1102.603, a State Appraiser Regulatory Agency must demonstrate to the ASC's reasonable satisfaction that its AMC Program is operating consistently with the specified requirements of each program function as listed below.

Paragraph (c)(2)(i) of proposed § 1102.603 would specify seven requirements for the program function of registration of AMCs. These seven requirements are:

(1) the State Appraiser Regulatory Agency must establish and maintain an

¹⁴⁷ *Id.* The requirement that all complaints be resolved within 12 months was determined based on the ASC's supervisory experience. This timeframe has been in place under Policy Statement 7. The ASC has generally found that the 12-month limit has provided adequate time for State Appraiser Regulatory Agencies to investigate and adjudicate complaints while still ensuring that appraisers are timely disciplined for misconduct or wrongdoing. Maintaining this 12-month requirement would help reduce the burden on State Appraiser Regulatory Agencies.

¹⁴⁸ *Id.* at 9155–9156.

¹⁴⁹ *Id.* at 9155.

¹⁵⁰ *Id.* at 9155–9156.

¹⁵¹ See Policy Statement 3, *supra* note 38 at 9150–9151.

¹³⁶ *Id.*

¹³⁷ *Id.* The requirement for temporary licenses or certifications to be issued within five business days was determined based on the ASC's supervisory experience. This timeframe has been in place under Policy Statement 2, and the ASC has generally found the requirement to be a fair balance. The requirement allows appraisers to quickly obtain temporary licenses or certifications for temporary assignments related to federally related transactions while also giving the State Appraiser Regulatory Agency sufficient time to review and process these temporary practice applications.

¹³⁸ *Id.* Title XI prohibits State Appraiser Regulatory Agencies from imposing excessive fees or burdensome requirements for temporary practice, as determined by the ASC. 12 U.S.C. 3351(a)(2). These practices for issuing temporary licenses or certifications are based on the ASC's supervisory experience and have been in place under Policy Statement 2. The ASC has generally found that when State Appraiser Regulatory Agencies adhere to these practices, it helps to avoid placing burdensome requirements on applicants for temporary practice.

¹³⁹ *Id.* Title XI requires that appraisers obtain a temporary license or certification from the State Appraiser Regulatory Agency in the State where they will temporarily conduct appraisal assignments related to federally related transactions. This requirement for issuing temporary licenses or certifications with an effective date was established based on the ASC's supervisory experience and has been in place under Policy Statement 2. The ASC considers this requirement to be a fair balance between the need for public protection from unauthorized appraisal practices and the necessity for appraisers to be aware of the validity period of their temporary licenses or certifications.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ See Policy Statement 7, *supra* note 38 at 9155.

¹⁴⁴ *Id.*

¹⁴⁵ See Policy Statement 1, *supra* note 38 at 9148.

¹⁴⁶ See Policy Statement 7, *supra* note 38 at 9155.

AMC regulatory program with legal authority and mechanisms consistent with Title XI, the AMC Rule, and the AMC Registry Fee Rule;¹⁵²

(2) the State Appraiser Regulatory Agency must impose requirements on AMCs that are consistent with Title XI and the AMC Rule;¹⁵³

(3) the State Appraiser Regulatory Agency must enforce and document ownership limitations for AMCs in a manner consistent with Title XI and the AMC Rule;¹⁵⁴

(4) the State Appraiser Regulatory Agency must process AMC applications in a timely, consistent, equitable, and well-documented manner in accordance with Title XI, the AMC Rule, and the AMC Registry Fee Rule;

(5) the State Appraiser Regulatory Agency must ensure that individuals who process applications are knowledgeable about Title XI and the AMC Rule as evaluated by the ASC;

(6) the State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the basis for its determinations for AMC eligibility for the AMC Registry, including the appraiser panel requirements, ownership limitations, and AMC Registry fee collection and submission to the ASC; and

(7) the State Appraiser Regulatory Agency must report AMCs eligible for the AMC Registry on a timely basis in accordance with section 1109(a)(3) of Title XI (12 U.S.C. 3338(a)(3)) and the AMC Registry Fee Rule.¹⁵⁵

Paragraph (c)(2)(ii) of proposed § 1102.603 would specify two requirements for the program function of receiving and tracking of submitted complaints against AMCs as follows:

(1) the State Appraiser Regulatory Agency must have a system for processing and investigating complaints and sanctioning AMCs (other than federally regulated AMCs) in a timely, effective, consistent, equitable, and well-documented manner;¹⁵⁶ and

(2) the State Appraiser Regulatory Agency must track and monitor all complaints against AMCs using a complaint log or system.¹⁵⁷

Paragraph (c)(2)(iii) of proposed § 1102.603 would specify three

requirements for the program function of investigation of complaints against AMCs. These three requirements are:

(1) to ensure effective supervision, the State Appraiser Regulatory Agency must resolve all complaints filed against AMCs (other than federally regulated AMCs) within one year (12 months) from the date the complaint was received except in special documented circumstances;¹⁵⁸

(2) the State Appraiser Regulatory Agency must ensure that individuals who analyze complaints are knowledgeable about Title XI, the AMC Rule, USPAP, and appraisal practices and must document how such individuals are qualified, which will be evaluated by the ASC; and

(3) the State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the facts and determinations made by the State Appraiser Regulatory Agency in processing and investigating a complaint and the reasons for its final disposition.¹⁵⁹

Paragraph (c)(2)(iv) of proposed § 1102.603 would specify two requirements for the program function of enforcement actions against AMCs as follows:

(1) the State Appraiser Regulatory Agency must supervise AMCs (other than federally regulated AMCs) and must discipline such entities, when appropriate, for misconduct and wrongdoing;¹⁶⁰ and

(2) the State Appraiser Regulatory Agency must report all disciplinary actions against AMCs (other than federally regulated AMCs) to the ASC within five business days after the disciplinary action is final as determined by State law.¹⁶¹

D. Mitigating and Aggravating Factors

Under proposed § 1102.604, the ASC would consider mitigating and aggravating factors as appropriate in adjusting the ASC's initial assessment of the regulatory program's level of effectiveness identified in the preliminary report for a State Appraiser Regulatory Agency. Proposed § 1102.604

¹⁵⁸ *Id.* The requirement that all complaints be resolved within 12 months was determined based on the ASC's supervisory experience. This timeframe has been in place under Policy Statement 10. The ASC has generally found that the 12-month limit has provided adequate time for State Appraiser Regulatory Agencies to investigate and adjudicate complaints while still ensuring that AMCs are timely disciplined for misconduct or wrongdoing. Maintaining this 12-month requirement would help reduce the burden on State Appraiser Regulatory Agencies.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See Policy Statement 9, *supra* note 38 at 9157–9158.

would allow the ASC to increase or decrease its initial assessment of the level of effectiveness depending upon the presence of these individualized factors in this section.

As previously mentioned, the ASC believes it is not feasible to predetermine all the mitigating and aggravating factors that could arise in each compliance review because there can be significant variations in the underlying facts of each compliance review. Therefore, proposed § 1102.604 would include common factors to be considered when adjusting a regulatory program's level of effectiveness. The ASCAC recommended categorizing the factors as either solely mitigating or aggravating. The ASC believes from its supervisory experience that these factors should be classified into categories because they could have different effects depending on the specific circumstances, either mitigating or aggravating. Under proposed § 1102.604, the mitigating and aggravating factors would be classified together into four categories: (1) the nature and extent of the deficiency; (2) prior compliance history by the State Appraiser Regulatory Agency; (3) the structure, stability, and responsiveness of the State Appraiser Regulatory Agency; and (4) other situations or circumstances such as natural or human-made disasters or emergencies or other government-declared orders. The ASC has found in conducting compliance reviews, based on its supervisory experience, that most mitigating and aggravating factors could fit into one of the four categories under proposed § 1102.604.

Except as discussed below, the four categories would encompass almost all of the ASCAC's recommendations regarding mitigating and aggravating factors.¹⁶² Some changes would be made to the wording of certain mitigating and aggravating factors to enhance clarity and style and to avoid duplication. Further, the ASC proposes not to include the recommended mitigating and aggravating factors relating to a State Appraiser Regulatory Agency board member involved in a disciplinary decision who had a conflict of interest or bias because the ASC believes such circumstance would be covered under the proposed mitigating or aggravating factor of whether the State Appraiser Regulatory Agency failed to exercise reasonable care toward equitable, consistent, and timely enforcement.¹⁶³

¹⁶² See ASCAC Final Recommendation Report, *supra* note 45 at 25.

¹⁶³ *Id.*

¹⁵² See Policy Statement 8, *supra* note 38 at 9156–9157. Under the proposed rule, “AMC Registry Fee Rule” means the ASC's regulations on the collection and transmission of AMC Registry fees as codified in subpart E of this part.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ See Policy Statement 9, *supra* note 38 at 9157–9158.

¹⁵⁶ See Policy Statement 10, *supra* note 38 at 9158.

¹⁵⁷ *Id.*

Given the complexity of some events and significant variations in the underlying facts of each compliance review, it is not feasible to predetermine the outcome or the relative weights of potential mitigating and aggravating factors for every compliance review. The presence of mitigating or aggravating factors does not automatically lead to the conclusion that a departure from the ASC's initial assessment of the regulatory program's level of effectiveness identified in the preliminary report is justified. The factors must be weighed against each other and the facts and circumstances of the deficiency itself. The presence of one or more mitigating circumstances, along with one or more aggravating circumstances, may or may not offset each other. Where mitigating factors predominate, the ASC may consider increasing the regulatory program's level of effectiveness. Conversely, where aggravating factors predominate, the ASC may consider decreasing the regulatory program's level of effectiveness.

If the ASC considers the regulatory program's level of effectiveness to be appropriately mitigated or aggravated, the relevant factors, including a description of how the factors were applied, would be documented in the final report.

E. Enforcement Actions

As stated earlier, section 1118(a) of Title XI authorizes the ASC to impose certain specified enforcement actions against a State Appraiser Regulatory Agency that fails to have an effective appraiser regulatory program.¹⁶⁴ Proposed § 1102.605 would specify the enforcement actions that could be taken against State Appraiser Regulatory Agencies to establish an effective and consistent enforcement approach.

1. Interim Enforcement Actions

Section 1118(a) of Title XI specifically authorizes the ASC to impose interim actions and suspensions against a State Appraiser Regulatory Agency as an alternative to, or in advance of, the non-recognition of a State Appraiser Regulatory Agency.¹⁶⁵ Under paragraph (a) of proposed § 1102.605, the ASC would include three types of potential interim enforcement actions against State Appraiser Regulatory Agencies when the final report indicates that the level of the regulatory program is less than effective: warning letters, negotiated agreements, and suspensions.

Paragraph (a)(1) of proposed § 1102.605 would include a warning letter as a potential interim enforcement action against State Appraiser Regulatory Agencies. A warning letter would be the least severe form of an interim enforcement action and would communicate to a State Appraiser Regulatory Agency any deficiencies in its regulatory program. If the deficiencies are not addressed, the regulatory program's effectiveness could be negatively impacted. Under paragraph (a)(1) of proposed § 1102.605, the ASC could consider issuing a warning letter to a State Appraiser Regulatory Agency when the final report indicates that the level of the regulatory program's effectiveness is moderately effective or slightly effective.

The ASC would also include a negotiated agreement, under paragraph (a)(2) of proposed § 1102.605, as a potential interim enforcement action. A negotiated agreement would involve a State Appraiser Regulatory Agency agreeing to address deficiencies that hinder the effectiveness of the regulatory program by taking certain actions or refraining from certain actions within a specified timeframe. For example, a negotiated agreement could involve the State Appraiser Regulatory Agency preparing and submitting compliance plans, approved by the ASC, outlining the corrective actions to be taken, specifying the individuals responsible for the actions, and setting a timeframe for completion. Under paragraph (a)(2) of proposed § 1102.605, a negotiated agreement could be employed when the final report indicates that the regulatory program is slightly effective or ineffective. A negotiated agreement could also be employed, under paragraph (a)(2) of proposed § 1102.605, when the State Appraiser Regulatory Agency fails to rectify the identified deficiencies outlined in a previously issued warning letter. The ASC believes a negotiated agreement would provide the ASC with the flexibility to address and correct deficiencies while working cooperatively with the State Appraiser Regulatory Agency to rectify any deficiencies.

The last potential interim enforcement action included under paragraph (a)(3) of proposed § 1102.605 would be suspension, which would be the most severe form of an interim enforcement action. Under paragraph (a)(3) of proposed § 1102.605, the ASC could potentially prohibit a State Appraiser Regulatory Agency from performing certain task(s) as part of its responsibilities under Title XI for a specified time period. The tasks may

involve, but are not limited to: (1) the addition of State licensed or certified appraisers to the Appraiser Registry or AMC's to the AMC Registry; (2) the issuance of upgrades of individuals' level of licensure or certification to perform appraisals in connection with federally related transactions; (3) renewal of licenses or certifications of State licensed or certified appraisers for the performance of appraisals in connection with federally related transactions; or (4) the issuance of temporary licenses or certifications to individuals who are licensed or certified in another State to perform appraisals in connection with federally related transactions in the suspended State Appraiser Regulatory Agency's State, as set forth in section 1122(a) of Title XI (12 U.S.C. 3351(a)). Under paragraph (a)(3) of proposed § 1102.605, the ASC could apply a suspension when the final report indicates that the regulatory program is ineffective. The ASC could also apply a suspension, under proposed § 1102.605(a)(3), when a State Appraiser Regulatory Agency refuses to enter into a negotiated agreement or a State Appraiser Regulatory Agency fails to meet its obligations under the negotiated agreement. This interim enforcement action is supported by the statutory text found in section 1118(a) of Title XI that the ASC has the authority to impose suspensions of a State Appraiser Regulatory Agency as an alternative to, or in advance of, the non-recognition of a State Appraiser Regulatory Agency.¹⁶⁶ The proposed rule would also provide a cross-reference to the procedures governing suspension proceedings found at proposed § 1102.606.

2. Non-Recognition

As referenced above, prior to the Dodd-Frank Act, Title XI authorized the ASC to take only one enforcement action—non-recognition—against a State Appraiser Regulatory Agency not operating its Appraiser Program in a manner consistent with Title XI.¹⁶⁷ Non-recognition is the most severe enforcement action that the ASC could impose against a State Appraiser Regulatory Agency. As noted in the ASCAC meeting minutes dated April 17, 2014, the ASC should carefully consider the economic impact of non-recognition before imposing such action.¹⁶⁸ To date, the ASC has not imposed non-recognition against a State Appraiser Regulatory Agency.

¹⁶⁶ *Id.*

¹⁶⁷ See *supra* note 39.

¹⁶⁸ See *supra* note 44.

¹⁶⁴ 12 U.S.C. 3347(a).

¹⁶⁵ *Id.*

Under paragraph (b) of proposed § 1102.605, the ASC could impose non-recognition when the ASC issues a written finding under section 1118(b) of Title XI (12 U.S.C. 3347(b)) and a State Appraiser Regulatory Agency fails to comply with the final order of suspension. The ASC could also impose non-recognition under paragraph (b) of proposed § 1102.605 when the ASC issues a written finding pursuant to section 1118(b) of Title XI (12 U.S.C. 3347(b)) and the final report indicates that the regulatory program is ineffective.

F. Procedures Governing Suspension Proceedings

Proposed § 1102.606 would codify, with some modifications and minor non-substantive corrections, the procedures found in Policy Statement 12 for the procedures governing suspension proceedings.¹⁶⁹ Policy Statement 12 states the due process procedures that the ASC must follow to exercise its authority to impose interim sanctions on State Appraiser Regulatory Agencies.¹⁷⁰ Consistent with the ASC's current procedures in Policy Statement 12, the proposal would provide a written notice of intention to suspend that is published in the **Federal Register** and give the State Appraiser Regulatory Agency the opportunity to respond to the notice.¹⁷¹ Under paragraph (a) of proposed § 1102.606, the ASC would issue a written notice of intention (Notice) to suspend the State Appraiser Regulatory Agency, which would be published in the **Federal Register**. Policy Statement 12 states that the ASC would verify the State Appraiser Regulatory Agency's date of receipt of the Notice and publish the Notice in the **Federal Register** along with the State Appraiser Regulatory Agency's date of receipt of the Notice.¹⁷² The ASC recognizes that verifying a State Appraiser Regulatory Agency's date of receipt of the Notice could be problematic if a State Appraiser Regulatory Agency refuses to acknowledge receipt of the Notice. Therefore, paragraph (a)(2) of proposed § 1102.606 would alleviate this potential problem by requiring the ASC to serve notice upon the State Appraiser Regulatory Agency by sending a copy of the Notice to either the last known email or mailing address of the State Appraiser Regulatory Agency's office

and deeming the service complete upon sending.

To ensure timely enforcement decisions, proposed § 1102.606 would modify the procedural timeframes and deadlines applicable to a State Appraiser Regulatory Agency or the ASC in Policy Statement 12¹⁷³ for a suspension proceeding. The ASC believes the procedural timeframes and deadlines in proposed § 1102.606 are reasonable for several reasons. The proposal would permit the State Appraiser Regulatory Agency to receive advance notice of the deficiencies through the issuance of both preliminary and final reports. The proposed timeframes would also allow the State Appraiser Regulatory Agency to have approximately one month for each information-gathering phase of a suspension proceeding, based on an estimated 20 business days in a month. Finally, the proposed rule would authorize the ASC to grant a waiver extending any time limit in connection with a suspension proceeding on its own or for good cause shown.

Furthermore, the ASC believes that timely enforcement decisions will help build and maintain public confidence in the appraiser regulatory framework while promoting transparency and accountability. This approach would also enhance the ASC's reputation by fostering trust and credibility among State Appraiser Regulatory Agencies, appraisers, AMCs, financial institutions, and the public.

Under paragraph (b) of proposed § 1102.606, the State Appraiser Regulatory Agency would have the opportunity to respond to the Notice by submitting a response or a notice not to contest within 20 business days after publication of the Notice in the **Federal Register**. Currently, Policy Statement 12 states the State Appraiser Regulatory Agency may submit a response within 15 business days of receipt of the Notice.¹⁷⁴ The ASC is proposing to extend the response timeframe by an additional five business days, so the State Appraiser Regulatory Agency would effectively have a month to reply to the Notice. Consistent with the ASC's current procedures in Policy Statement 12, the ASC may consider the facts presented in the Notice to be true and issue a final order if a State Appraiser Regulatory Agency does not submit a response or a notice not to contest.¹⁷⁵

Under paragraph (c) of proposed § 1102.606, the State Appraiser Regulatory Agency may file a written

brief, memorandum, or other statement presenting factual data, as well as policy and legal arguments related to the matters outlined in the Notice. This submission, under the proposed rule, must occur within 40 business days following the publication of the Notice in the **Federal Register**. According to Policy Statement 12, the State Appraiser Regulatory Agency may file this documentation within 45 days after the date of receipt by the State Appraiser Regulatory Agency of the Notice as published in the **Federal Register**.¹⁷⁶ The ASC is proposing to shorten the timeframe for the reasons stated above.

The State Appraiser Regulatory Agency could also, under paragraph (d) of proposed § 1102.606, request an oral presentation to further present, emphasize, and clarify the facts, policies, and laws regarding the issues outlined in the Notice. Such a request must be made within 40 business days after publication of the Notice in the **Federal Register**. Policy Statement 12 states that a State Appraiser Regulatory Agency may request an oral presentation 45 business days after the date of receipt by the State Appraiser Regulatory Agency of the Notice as published in the **Federal Register**.¹⁷⁷ The ASC is proposing to shorten the timeframe for the reasons stated above.

Under paragraph (d) of proposed § 1102.606, if a State Appraiser Regulatory Agency requests an oral presentation, the ASC must hear the matter within 20 business days of receiving the request. Policy Statement 12 states the ASC must hear the matter within 45 business days of receiving the request.¹⁷⁸ However, the ASC believes that enforcement decisions should be made expeditiously to ensure the soundness and effectiveness of the appraiser regulatory framework, so the ASC is proposing a shorter 20-day timeframe to hear the oral presentation.

Under paragraph (f) of proposed § 1102.606, the ASC must make a final decision on the matter by issuing a final order, within 80 business days after publication of the Notice in the **Federal Register** or within 100 business days after publication of the Notice in the **Federal Register** if the ASC receives a timely request for an oral presentation. Policy Statement 12 states that the ASC must issue a final order within 90 business days after the date of receipt by the State Appraiser Regulatory Agency of the Notice as published in the **Federal Register** or in the case of oral presentation having been granted,

¹⁶⁹ See Policy Statement 12, *supra* note 38 at 9159–9160.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 9159.

¹⁷² *Id.*

¹⁷³ *Id.* at 9159–9160.

¹⁷⁴ *Id.* at 9159.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

within 30 days after presentation.¹⁷⁹ However, the ASC believes that enforcement decisions should be made expeditiously to ensure the soundness and effectiveness of the appraiser regulatory framework, so the ASC is proposing a shorter general 80-day timeframe. The ASC also believes a 100-day timeframe in the event of a timely submitted request for an oral presentation is reasonable because the timeframe would allow the ASC additional time to consider the State Appraiser Regulatory Agency's oral presentation in its deliberations.

Finally, paragraph (e)(3) of proposed § 1102.606 would authorize the ASC to grant a waiver extending any time limit in connection with a suspension proceeding if the ASC deems such a waiver to be appropriate. According to Policy Statement 12, the ASC may allow the filing of a response by the State Appraiser Regulatory Agency after the designated deadline for good cause shown.¹⁸⁰ The ASC believes that extending the timeframe for any part of a suspension proceeding—beyond just the State Appraiser Regulatory Agency's response timeframe—is fair and reasonable. The ASC would consider extensions justified in cases that are unanticipated, unforeseeable, and beyond the control of the State Appraiser Regulatory Agency or the ASC.

G. Procedures Governing Non-Recognition Proceedings

Proposed § 1102.607 would cross-reference the existing procedures governing non-recognition proceedings as set forth in subpart B of 12 CFR part 1102 to impose the enforcement action of non-recognition against a State Appraiser Regulatory Agency.

III. Proposed Implementation Period

The ASC proposes a 12-month implementation period from the effective date of any final rule based on this proposal. The ASC understands that, if finalized, the proposed rule would impact the Policy Statements. Accordingly, the ASC plans to revise the Policy Statements to be consistent with any final rule based on this proposal before the expiration of the proposed implementation period. However, during the proposed implementation period, the existing Policy Statements would continue to apply until revised. This compliance period would also give

State Appraiser Regulatory Agencies time to comply with the rule.

IV. Request for Comment

The ASC is requesting comments on all aspects of this proposal. In addition, the ASC requests comments on the following questions:

Question 1. What are the advantages and disadvantages of the ASC's plan to extend the review cycle for Appraiser or AMC Programs overseen by State Appraiser Regulatory Agencies from a two-year cycle to a three-year cycle, particularly for those State Appraiser Regulatory Agencies with an overall ASC Finding of Good or Excellent? What factors should the ASC consider when deciding whether to extend the review cycle to three years for Appraiser or AMC Programs overseen by State Appraiser Regulatory Agencies, particularly when there is an overall ASC Finding of Good or Excellent?

Question 2. Section 1118(a)(2) of Title XI¹⁸¹ requires the ASC to monitor State Appraiser Regulatory Agencies to ensure that the processing of complaints and completing investigations occurs in a reasonable time period. The proposed rule would require that State Appraiser Regulatory Agencies resolve all complaints against appraisers and AMCs within one year (12 months) from the date the complaint is received, except in special documented circumstances. What are the benefits and challenges of the ASC's plan to reduce the complaint resolution timeframe for State Appraiser Regulatory Agencies to a period of time between 8 and 11 months? What factors should the ASC consider when deciding whether to implement this reduction in the complaint resolution timeframe?

Question 3. Are there other mitigating or aggravating factors, such as a legitimate threat to the integrity of the appraiser regulatory framework, intentionally-caused unreasonable delays, or reasonable reliance on competent legal advice, that the ASC should consider when deciding whether to adjust the initial level of effectiveness of Appraiser and AMC Programs as determined by the number of deficiencies identified in the preliminary report?

Question 4. What barriers, if any, might prevent a State Appraiser Regulatory Agency from responding to a written notice of intention to suspend within 20 business days after its

publication in the **Federal Register**? If such barriers exist, what benefits or challenges could arise from extending the response timeframe to a period of time between 30 and 60 business days?

Question 5. What barriers, if any, might prevent a State Appraiser Regulatory Agency from submitting a written brief, memorandum, or other statement within 40 business days after the written notice of intention to suspend is published in the **Federal Register**? If such barriers exist, what benefits or challenges could result from extending the timeframe for filing a written brief, memorandum, or other statement to a period of time between 50 and 100 business days?

Question 6. What barriers, if any, might prevent a State Appraiser Regulatory Agency from requesting an oral presentation within 40 business days after the written notice of intention to suspend is published in the **Federal Register**? If such barriers exist, what benefits or challenges could result from extending the timeframe to a period of time between 50 and 100 business days?

Question 7. What factors should the ASC consider when deciding whether to extend the timeframe for issuing the final order from within 80 business days after the written notice of intention to suspend is published in the **Federal Register**? Additionally, what are the advantages and disadvantages of the ASC's plan to extend this timeframe to a period of time between 90 and 180 business days?

Question 8. What factors should the ASC consider when deciding whether to extend the timeframe for issuing the final order in response to a request for an oral presentation within 100 business days after the written notice of intention to suspend is published in the **Federal Register**? Additionally, what are the advantages and disadvantages of extending this timeframe to a period of time between 120 and 200 business days?

Question 9. What aspects of the proposed rule, if any, will be challenging for State Appraiser Regulatory Agencies to implement within 12 months? To the extent such challenges exist, what benefits or obstacles could result from extending the implementation period to a period of time between 15 and 18 months? What factors should the ASC consider when deciding whether to extend the implementation period to a period of time greater than 12 months?

¹⁷⁹ *Id.* at 9160.

¹⁸⁰ *Id.* at 9159.

¹⁸¹ 12 U.S.C. 3347(a)(2).

Question 10. In addition to providing time for implementation, in what other ways should the ASC facilitate implementation for State Appraiser Regulatory Agencies?

IV. Regulatory Requirements

A. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023¹⁸² requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002¹⁸³ (commonly known as *regulations.gov*).

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council invites comment on a proposed rule to implement a framework to govern the ASC's enforcement authority regarding the effectiveness of Appraiser and Appraisal Management Company (AMC) Programs overseen by State Appraiser Regulatory Agencies. The proposed rule would codify the existing compliance review process with modifications. The proposed rule would require an analysis to assess program effectiveness, outline requirements for maintaining effective programs, and authorize the ASC to bring enforcement actions against such agencies that fail to maintain effective programs. The proposed rule and summary are available at <https://www.regulations.gov>.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA),¹⁸⁴ and its implementing regulations,¹⁸⁵ the ASC has reviewed this proposed rule and has determined that the information collection required by this proposed rule is exempt from the coverage of the PRA. Each compliance review is an audit dependent on the specific facts involved because each State Appraiser Regulatory Agency has the flexibility to design its Appraiser or AMC Programs to meet its Title XI responsibilities. Each State Appraiser Regulatory Agency may face different legal, fiscal, regulatory, or other factors that can influence its governance structure. Under the proposed rule, the collection of information would occur during the

performance of an audit involving the ASC against specific entities.¹⁸⁶

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.¹⁸⁷ However, the regulatory flexibility analysis is not required if an agency certifies that the proposed rule would not, if adopted, have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** with the proposed rule.¹⁸⁸ For the reasons stated below, the ASC believes that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Title XI requires the ASC to monitor the requirements established by States that (1) license, certify, and supervise appraisers qualified to perform appraisals in connection with federally related transactions and (2) register and supervise the operations and activities of AMCs.¹⁸⁹ The ASC monitors States that have established Appraiser and AMC Programs through periodic or accelerated compliance reviews. Under the proposal, the ASC would conduct an analysis as part of its compliance review process to assess the effectiveness of Appraiser and AMC Programs administered by State Appraiser Regulatory Agencies. The ASC would be authorized to bring an enforcement action against a State Appraiser Regulatory Agency if the agency fails to have an effective Appraiser or AMC Program.

This proposed rule would apply to all States that have established Appraiser and AMC Programs under Title XI. All 50 States and the District of Columbia have Appraiser and AMC Programs.¹⁹⁰ The District of Columbia has two separate and distinct agencies—the Department of Licensing and Consumer Protection and the Department of Insurance, Securities and Banking—that administer the Appraiser and AMC Programs. The Commonwealth of Puerto

Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands only have Appraiser Programs and not AMC Programs. American Samoa does not have a regulatory oversight structure for appraisers because real estate can only be inherited.¹⁹¹ As a result, 56 State Appraiser Regulatory Agencies would be subject to this proposed rule.

Given the definition of “small entities” under the RFA,¹⁹² the ASC analyzed the population data from the U.S. Census Bureau¹⁹³ for all 50 States, the District of Columbia, and the Commonwealth of Puerto Rico to determine whether any State Appraiser Regulatory Agencies could be considered “small governmental jurisdictions.” Wyoming was the least populated.¹⁹⁴ Wyoming's population was estimated to be 576,850 on April 1, 2020, and has increased to 584,057 on July 1, 2023.¹⁹⁵ The ASC also analyzed the population data from the Central Intelligence Agency's (CIA) World Factbook website¹⁹⁶ for the U.S. territories of American Samoa,¹⁹⁷ Guam,¹⁹⁸ the Commonwealth of the Northern Mariana Islands,¹⁹⁹ and the U.S. Virgin Islands.²⁰⁰ American Samoa and the Commonwealth of the Northern Mariana Islands were the least populated. According to the CIA's World Factbook website, American Samoa's total population was 43,895, and the Commonwealth of the Northern

¹⁹¹ Government Accountability Office, GAO-03-404, *Regulatory Programs: Opportunities to Enhance Oversight of the Real Estate Appraisal Industry*, at 2 (2003).

¹⁹² The RFA defines “small entities” as small businesses, small not-for-profit organizations, and small government jurisdictions. See 5 U.S.C. 601(6). A “small business” is determined by applying Small Business Administration regulations and referencing the North American Industry Classification System (NAICS) classifications and size standards. See 5 U.S.C. 601(3). A “small organization” is any “not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” See 5 U.S.C. 601(4). A “small governmental jurisdiction” means “governments of a city, county, town, township, village, school district, or special district with a population of less than 50,000.” See 5 U.S.C. 601(5).

¹⁹³ U.S. Census Bureau, Population Division, *Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico: Apr. 1, 2020, to July 1, 2023 (NST-EST2023-POP)* (December 2023).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Central Intelligence Agency, *The World Factbook*, available at <https://www.cia.gov/the-world-factbook> (visited on Nov. 4, 2024).

¹⁹⁷ *Id.* American Samoa's total population was 43,895.

¹⁹⁸ *Id.* Guam's total population was 169,532.

¹⁹⁹ *Id.* The Commonwealth of the Northern Mariana Islands' total population was 51,118.

²⁰⁰ *Id.* The U.S. Virgin Island's total population was 104,377.

¹⁸⁶ 5 CFR 1320.4(a)(2).

¹⁸⁷ 5 U.S.C. 601 *et seq.*

¹⁸⁸ *Id.*

¹⁸⁹ See, e.g., 12 U.S.C. 3331, 3332(a)(1), 3346 and 3347(a).

¹⁹⁰ Hawaii's AMC Program sunset on June 30, 2023. However, House Bill 2641 was signed into law on June 21, 2024, to reenact the version of the AMC Program that was originally part of the Hawaii Department of Commerce and Consumer Affairs. The AMC Program established pursuant to House Bill 2641 commenced September 1, 2024.

¹⁸² 5 U.S.C. 553(b)(4).

¹⁸³ 44 U.S.C. 3501 note.

¹⁸⁴ 44 U.S.C. 3501 *et seq.*

¹⁸⁵ 5 CFR part 1320.

Mariana Islands' total population was 51,118.²⁰¹ Only American Samoa meets the definition of a "small governmental jurisdiction" under the RFA, with a population of less than 50,000.²⁰² However, American Samoa is not subject to the proposed rule because American Samoa has not established Appraiser and AMC Programs for the reasons stated above.²⁰³ Therefore, an analysis under the RFA is not required because the 56 State Appraiser Regulatory Agencies are not considered small entities²⁰⁴ under RFA.

Any economic impact of the proposed rule, if adopted, on State licensed and certified appraisers and registered AMCs would be indirect because real estate appraisers and AMCs are not subject to the proposed rule. The ASC does not also directly oversee or regulate the 91,670 State licensed and certified real estate appraisers listed on the Appraiser Registry²⁰⁵ reporting from 55 State Appraiser Regulatory Agencies, or 4,943 AMCs listed on the AMC Registry²⁰⁶ reporting from 50 State Appraiser Regulatory Agencies.²⁰⁷ California issues the most licenses and certifications for real estate appraisers (7,803), and the Commonwealth of the Northern Mariana Islands issues the fewest (5).²⁰⁸ As for AMC registrations, Florida registers the most (198), and Kentucky registers the fewest (28).²⁰⁹

Additionally, this proposed rule would not create additional recordkeeping, reporting, and compliance requirements on State licensed and certified appraisers and registered AMCs. Any recordkeeping, reporting, and compliance requirements are imposed by State law, not this proposed rule. The ASC regulates State licensed and certified appraisers and registered AMCs only indirectly by monitoring and enforcing the

requirements and practices of State Appraiser Regulatory Agencies.²¹⁰ In *American Trucking Associations, Inc., v. the United States Environmental Protection Agency*, the United States Court of Appeals stated, "[w]e have consistently interpreted the RFA, [. . .], to impose no obligation upon an agency [']to conduct a small entity impact analysis of effects on entities which it does not regulate.[']"²¹¹ The United States Court of Appeals further stated, "an agency may justify its certification under the RFA upon the [']factual basis['] that the rule does not directly regulate any small entities."²¹²

Based on this analysis, the ASC believes that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, the ASC certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required. The ASC requests comment on all aspects of this analysis.

D. The Unfunded Mandates Reform Act of 1995 Determination

Although the Unfunded Mandates Reform Act of 1995 (UMRA)²¹³ does not apply to independent agencies, the ASC voluntarily analyzed the proposed rule under the factors in the UMRA. Under this analysis, the ASC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation). For the following reason, the ASC finds that the proposed rule does not trigger the \$100 million UMRA thresholds. First, the costs specifically related to requirements set forth in law are excluded from expenditures under the UMRA. Given that the proposed rule reflects requirements arising from section 1118 of Title XI,²¹⁴ the UMRA cost estimate for the proposal, if implemented, is zero. Second, such

costs to State, local, and Tribal governments may be paid with Federal financial assistance. Section 1109(b)(5) of Title XI²¹⁵ allows the ASC to make grants to State Appraiser Regulatory Agencies to support the efforts of such agencies to comply with Title XI, such as the complaint process, complaint investigations, appraiser enforcement activities, and the submission of data on State licensed and certified appraisers to the Appraiser Registry or AMCs to the AMC Registry. For these reasons, the ASC has determined that this proposed rule will not result in expenditures by State, local, and Tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, this proposal is not subject to section 202 of the UMRA.

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisal management companies, Appraisal management company registry fees, Appraisers, Banks, banking, Enforcement actions, Freedom of information, Investigations, Licensing and registration, Mortgages, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, and State and local governments.

Authority and Issuance

For the reasons set forth in the preamble, the Federal Financial Institutions Examination Council proposes to amend 12 CFR part 1102 as follows:

PART 1102—APPRAISER REGULATION

- 1. The authority citation for part 1102 is revised to read as follows:

Authority: 12 U.S.C. 3332, 3335, 3338(a)(4)(B), 3347, 3348(a), 3348(b), 3348(c), 5 U.S.C. 552a, 553(e); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

- 2. Subpart F to part 1102 is added to read as follows:

Subpart F—Appraisal Subcommittee Enforcement Authority Regarding the Effectiveness of State Appraiser and Appraisal Management Company Regulatory Programs

Sec.	Authority, purpose, and scope.
1102.600	Authority, purpose, and scope.
1102.601	Definitions.
1102.602	Compliance reviews.
1102.603	Analysis of a regulatory program's effectiveness.
1102.604	Mitigating and aggravating factors.
1102.605	Enforcement actions.

²¹⁵ 12 U.S.C. 3338(b)(5).

²⁰¹ *Id.*

²⁰² See *supra* note 192.

²⁰³ See *supra* note 191.

²⁰⁴ See *supra* note 192.

²⁰⁵ The actual number of State licensed or certified real appraisers is probably less because it is not uncommon for the same appraiser to hold multiple licenses or certifications from the same State or different States. The total number of State licensed and certified appraisers was current as of November 1, 2024.

²⁰⁶ The actual number of AMCs is probably significantly less because most AMCs are registered in multiple States. The total number of registered AMCs was current as of November 1, 2024.

²⁰⁷ Since Hawaii's AMC Program sunset on June 30, 2023, Hawaii has not submitted data to the AMC Registry. The ASC anticipates that Hawaii will begin collecting registry fees and submitting data to the AMC Registry once Hawaii has completed its implementation phase to re-establish the process for collecting AMC registry fees and submitting data to the AMC Registry.

²⁰⁸ This data was current as of November 1, 2024.

²⁰⁹ *Id.*

²¹⁰ The ASC's authority under 12 U.S.C. 3347(a) regarding the interim removal of an appraiser or AMC from their respective registry is distinguishable because the ASC is only authorized to do so pending State agency action and State Appraiser Regulatory Agencies directly oversee and regulate such appraisers and AMCs. In addition, that authority is outside of the scope of this rulemaking.

²¹¹ *American Trucking Associations, Inc. v. U.S. E.P.A.*, 175 F.3d 1027, 1044 (1999) (quoting *Motor & Equipment Manufacturers Association v. Nichols*, 142 F.3d 449, 467 & n. 18 (1998)).

²¹² *Id.* at 1045.

²¹³ 2 U.S.C. 1532.

²¹⁴ 12 U.S.C. 3347.

1102.606 Procedures governing suspension proceedings.

1102.607 Procedures governing non-recognition proceedings.

§ 1102.600 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Appraisal Subcommittee (ASC) under sections 1103, 1106, and 1118 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. 101–73, 103 Stat. 183 (1989)), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376 (2010)), 12 U.S.C. 3332, 3335, and 3347 (Title XI).

(b) *Purpose and scope.* The purpose of this subpart is to implement the ASC’s monitoring and enforcement authority pursuant to section 1118 of Title XI (12 U.S.C. 3347) regarding the effectiveness of appraiser and appraisal management company regulatory programs administered by State Appraiser Regulatory Agencies. This subpart applies to all State Appraiser Regulatory Agencies.

§ 1102.601 Definitions.

For the purposes of this subpart:

AMC Registry means the national registry maintained by the ASC of entities that meet the Federal definition of an AMC, as defined in 12 U.S.C. 3350(11), are either registered by a State or are federally regulated AMCs and have paid the annual AMC registry fee.

AMC Registry Fee Rule means the ASC’s regulations on the collection and transmission of AMC Registry fees as codified in subpart E of this part.

AMC Rule means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Federal Housing Finance Agency regarding the minimum requirements for AMCs under section 1124 of Title XI (12 U.S.C. 3353). (12 CFR 34.210 through 34.216; 12 CFR 225.190 through 225.196; 12 CFR 323.8 through 323.14; 12 CFR 1222.20 through 1222.26).

Appraisal management company (AMC) means:

(1) A person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates as defined in 12 U.S.C. 1841;

(ii) Provides such services in connection with valuing a consumer’s principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given 12-month period, oversees an appraiser panel of more

than 15 State certified or State licensed appraisers in a State or 25 or more State certified or State licensed appraisers in two or more States.

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

Appraisal management services mean one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State certified or State licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

Appraiser panel means a network, list or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC. Appraisers on an AMC’s “appraiser panel” under this subpart include both appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions and appraisers engaged by the AMC to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor for purposes of this subpart if the appraiser is treated as an independent contractor by the AMC for purposes of Federal income taxation.

Appraisal Subcommittee (ASC) means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 *et seq.*) as amended by section 1102 of Title XI (12 U.S.C. 3310).

Appraiser Registry means the national registry maintained by the ASC of State licensed and certified appraisers, as defined in 12 U.S.C. 3345, who are eligible to perform appraisals in federally related transactions and have paid the annual appraiser registry fee.

AQB Criteria means the minimum requirements for the licensure and certification of real estate appraisers and

the minimum requirements for trainee and supervisory appraisers established by the Appraiser Qualifications Board of the Appraisal Foundation as contemplated by 12 U.S.C. 3345.

Assignment means, for purposes of this subpart with respect to temporary practice, one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement.

Consumer credit means credit offered or extended to a consumer primarily for personal, family, or household purposes.

Covered transaction means any consumer credit transaction secured by the consumer’s principal dwelling.

Days means business days. The date of the act, event, or default from which the designated period begins to run is omitted, and the last day is included.

Deficiency means the ASC’s determination that a State Appraiser Regulatory Agency has not demonstrated to the ASC’s reasonable satisfaction that its regulatory program is operating consistently with the specified requirements of a program function as set forth in § 1102.603(c).

Dwelling means:

(1) A residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(2) A consumer can have only one “principal” dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer’s principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this subpart.

Federally regulated AMC means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813 and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

Federally related transaction means any real estate-related financial transaction which:

(1) A Federal financial institutions regulatory agency engages in, contracts for, or regulates; and

(2) Requires the services of an appraiser under the appraisal rules (Title XI, section 1121(4), 12 U.S.C. 3350(4)), implemented by the Office of the Comptroller of the Currency: 12 CFR part 34; Federal Reserve Board: 12 CFR

part 225; Federal Deposit Insurance Corporation: 12 CFR part 323; and National Credit Union Administration: 12 CFR part 722).

Final order means an order issued by the ASC that includes findings of fact, conclusions of law, and, if applicable, the terms of a related enforcement action imposed against a State Appraiser Regulatory Agency for failing to have an effective regulatory program.

Final report means a document that records the ASC's final monitoring findings and analysis of the regulatory program's effectiveness, as required in § 1102.603, identifying any deficiencies. The final report also includes the ASC's final assessment of the regulatory program's level of effectiveness, adjusted for the State Appraiser Regulatory Agency's response to the preliminary report and relevant mitigating and aggravating factors in § 1102.604.

Financial institution means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or an insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

Negotiated agreement means a written agreement signed between the ASC and a State Appraiser Regulatory Agency to correct deficiencies that negatively impact the regulatory program's effectiveness. The agreement may provide that the State Appraiser Regulatory Agency commits to taking a certain action or actions or to refraining from a certain action or actions by a specified time.

Non-recognition means the ASC and all agencies, instrumentalities, and federally recognized entities under Title XI shall not recognize or accept appraiser licenses and certifications issued by a State Appraiser Regulatory Agency whose policies, practices, funding, staffing, or procedures are found to be inconsistent with Title XI and Federal regulations promulgated thereunder. "Non-recognition" is synonymous with "derecognition," which is referenced in section 1118 of Title XI (12 U.S.C. 3347).

Person means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

Preliminary report means a document that records the initial monitoring findings and analysis of the regulatory program's effectiveness, as required in § 1102.603, identifying any deficiencies. The preliminary report also includes the ASC's initial assessment of the program's level of effectiveness.

Program functions mean those responsibilities of a State Appraiser Regulatory Agency that the ASC will examine and include in its analysis of the effectiveness of a State Appraiser Regulatory Agency's regulatory program, consistent with section 1118(a) of Title XI (12 U.S.C. 3347(a)).

(1) There are five program functions for State appraiser regulatory programs:

- (i) Licensing and certification of appraisers;
- (ii) Issuance of temporary licenses and certifications for appraisers;
- (iii) Receiving and tracking of submitted complaints against appraisers;
- (iv) Investigation of complaints against appraisers; and
- (v) Enforcement actions against appraisers.

(2) There are four program functions for State AMC regulatory programs:

- (i) Registration of AMCs;
- (ii) Receiving and tracking of submitted complaints against AMCs;
- (iii) Investigation of complaints against AMCs; and
- (iv) Enforcement actions against AMCs.

Secretary means the Secretary of the ASC under its Rules of Operation.

Special documented circumstances mean well-documented and monitored extenuating circumstances, evaluated by the ASC, that are beyond the control of the State Appraiser Regulatory Agency and result in a complaint processing delay.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and American Samoa.

State Appraiser Regulatory Agency means a State agency that certifies and licenses real estate appraisers and registers and supervises AMCs or otherwise regulates real estate appraisers and AMCs who operate in that State consistent with section 1121(1) of Title XI (12 U.S.C. 3350(1)). "State Appraiser Regulatory Agency" is synonymous with "State appraiser certifying and licensing agency" as defined in section 1121(1) of Title XI (12 U.S.C. 3350(1)). To the extent that the registration and supervision of AMCs is carried out by a separate and distinct agency or agencies within a State, each such agency is also a State Appraiser Regulatory Agency.

State certified appraiser means an individual who has satisfied the requirements for certification in a State whose criteria for certification as a real estate appraiser meet or exceed the applicable minimum AQB Criteria as

prescribed in section 1116(a) and (b) of Title XI (12 U.S.C. 3345(a) and (b)).

State licensed appraiser means an individual who has satisfied the requirements for licensing in a State whose criteria for the licensing of a real estate appraiser meet or exceed the applicable minimum AQB Criteria as prescribed in section 1116(c) of Title XI (12 U.S.C. 3345(c)).

Supervisory appraiser means an individual who has satisfied the requirements in a State whose applicable requirements for supervision of a trainee appraiser meet or exceed the applicable minimum AQB Criteria as prescribed in section 1116(e) of Title XI (12 U.S.C. 3345(e)).

Suspension means the State Appraiser Regulatory Agency is prohibited from performing a certain task or certain tasks as part of the State Appraiser Regulatory Agency's responsibilities under Title XI for a specified period of time as stated in the final order. The suspension remains in effect until the suspension is lifted by the ASC. The ASC may lift the suspension on the finding that the terms and conditions of the final order are satisfied.

Trainee appraiser means an individual who has satisfied the requirements in a State whose applicable requirements meet or exceed the applicable minimum AQB Criteria as prescribed in section 1116(e) of Title XI (12 U.S.C. 3345(e)).

Uniform Standards of Professional Appraisal Practice (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Warning letter means a letter issued by the ASC informing a State Appraiser Regulatory Agency of a deficiency or deficiencies relating to its regulatory program that, if not addressed, could negatively impact the regulatory program's effectiveness.

§ 1102.602 Compliance reviews.

(a) *Monitoring of State appraiser and AMC regulatory programs.* The ASC shall monitor appraiser and AMC regulatory programs administered by State Appraiser Regulatory Agencies in accordance with sections 1103(a)(1) and 1118(a) of Title XI (12 U.S.C. 3332(a)(1) and 3347(a)).

(b) *Frequency of compliance reviews.* (1) The ASC will conduct compliance reviews on either a two-year cycle or one-year cycle as part of its routine monitoring but may use an alternate review schedule at its sole discretion.

(2) The ASC may conduct follow-up reviews and additional monitoring on specific areas identified during a compliance review. The ASC may

schedule a follow-up review within 6 to 12 months after the previous compliance review or at a time deemed appropriate by the ASC.

(3) The ASC may conduct accelerated compliance reviews when there are indications that a regulatory program might not be operating consistently with Title XI or Federal regulations promulgated thereunder.

(4) When a State Appraiser Regulatory Agency oversees both appraiser and AMC regulatory programs, the ASC may assign each regulatory program the same or different review cycles.

(c) *Performance of compliance reviews.* (1) During compliance reviews, the ASC will examine records and may conduct interviews with State Appraiser Regulatory Agency representatives.

(2) After completing the examination of records and interviews, the ASC will prepare the preliminary report that includes the ASC's initial determination of the level of effectiveness of the regulatory program as outlined in § 1102.603(b).

(3) A State Appraiser Regulatory Agency may respond within 60 days from the date of the preliminary report. The response may include additional documentation showing the State Appraiser Regulatory Agency's efforts to remedy any findings or deficiencies identified in the preliminary report. The ASC may, on its own initiative or for good cause shown, issue a waiver extending the 60-day time limit in connection with a State Appraiser Regulatory Agency's response to the preliminary report under this section.

(4) After receiving the State Appraiser Regulatory Agency's response to the preliminary report, the ASC will prepare a final report that includes the ASC's final determination of the level of effectiveness of the regulatory program as outlined in § 1102.603(b).

(d) *Responsibilities of State Appraiser Regulatory Agencies.* State Appraiser Regulatory Agencies must maintain sufficient documentation to demonstrate that their appraiser and AMC regulatory programs operate consistently with Title XI and Federal regulations promulgated thereunder. Documentation must be made available for inspection, as requested by the ASC, including access to the information stored in any electronic system or providing access to the electronic system itself.

§ 1102.603 Analysis of a regulatory program's effectiveness.

(a) *Analysis of the regulatory program's effectiveness.* The ASC will assess the effectiveness of a regulatory program, as required by section 1118 of Title XI (12 U.S.C. 3347), by conducting

an analysis of the applicable program functions. The ASC will examine whether the State Appraiser Regulatory Agency's regulatory program is operating consistently with the specified requirements of each program function in paragraph (c) of this section. If any deficiencies are found, the ASC will document the deficiencies in both the preliminary and final reports consistent with this subpart.

(b) *Assessment of the regulatory program's effectiveness—(1) Initial assessment of the regulatory program's effectiveness.* The ASC will assess the initial effectiveness of a State appraiser or AMC regulatory program on the basis of the number of deficiencies per program function as identified in the preliminary report as follows:

(i) *Effective regulatory program.* (A) A State appraiser regulatory program is considered "effective" if there is no more than one deficiency in each of not more than two separate program functions.

(B) A State AMC regulatory program is considered "effective" if there is no more than one deficiency in any single program function.

(ii) *Moderately effective regulatory program.* (A) A State appraiser regulatory program is considered "moderately effective" if there is no more than one deficiency in each of not more than three separate program functions or no more than two deficiencies in one program function.

(B) A State AMC regulatory program is considered "moderately effective" if there is no more than one deficiency in each of not more than two separate program functions.

(iii) *Slightly effective regulatory program.* (A) A State appraiser regulatory program is considered "slightly effective" if there is no more than one deficiency in each of not more than four separate program functions, no more than two deficiencies in each of two separate program functions, or no more than three deficiencies in one program function.

(B) A State AMC regulatory program is considered "slightly effective" if there is no more than one deficiency in each of not more than three separate program functions or no more than two deficiencies in one program function.

(iv) *Ineffective regulatory program.* (A) A State appraiser regulatory program is considered "ineffective" if there are one or more deficiencies in each of five separate program functions, two or more deficiencies in each of three or more separate program functions, or four or more deficiencies in one or more program functions.

(B) A State AMC regulatory program is considered "ineffective" if there are one or more deficiencies in each of four separate program functions, two or more deficiencies in each of two or more separate program functions, or three or more deficiencies in one or more program functions.

(2) *Final assessment of the regulatory program's effectiveness.* The ASC will consider whether the State Appraiser Regulatory Agency's response to the preliminary report and any relevant mitigating and aggravating factors in § 1102.604 justify an increase or decrease in the level of the regulatory program's effectiveness for the final report.

(c) *Specified requirements of the applicable program functions for State appraiser and AMC regulatory programs—(1) State appraiser regulatory program.* A State Appraiser Regulatory Agency must demonstrate to the ASC's reasonable satisfaction that its appraiser regulatory program is operating consistently with the specified requirements of each program function:

(i) *Licensing and certification of appraisers.* (A) The State Appraiser Regulatory Agency's licensing and certification requirements must meet the minimum requirements set forth in section 1116 of Title XI (12 U.S.C. 3345).

(B) The State Appraiser Regulatory Agency's trainee and supervisory appraiser requirements, if applicable, must meet the minimum requirements set forth in section 1116 of Title XI (12 U.S.C. 3345).

(C) The State Appraiser Regulatory Agency must use the designations for trainee appraisers, State licensed appraisers, and State certified appraisers in accordance with section 1116 of Title XI (12 U.S.C. 3345).

(D) The State Appraiser Regulatory Agency must use permitted scopes of practice for State licensed and certified appraisers in accordance with sections 1113 and 1114 of Title XI (12 U.S.C. 3342 and 3343).

(E) The State Appraiser Regulatory Agency must process applications in a timely, consistent, equitable, and well-documented manner in accordance with Title XI.

(F) The State Appraiser Regulatory Agency must ensure that individuals who process applications are knowledgeable about section 1116 of Title XI (12 U.S.C. 3345) as evaluated by the ASC.

(G) The State Appraiser Regulatory Agency must have a reciprocity policy for issuing a reciprocal license or certification for an individual from

another State in accordance with section 1122(b) of Title XI (12 U.S.C. 3351(b)).

(H) The State Appraiser Regulatory Agency must ensure that all approved applicants meet the applicable minimum requirements of the AQB Criteria.

(I) The State Appraiser Regulatory Agency must ensure that appraiser education courses are consistent with the AQB Criteria.

(J) The State Appraiser Regulatory Agency must obtain and maintain sufficient documentation pertaining to all applications, including initial licenses or certifications, upgrades, renewals, reinstatements, and supervisory approvals, to create a record of facts and determinations and the reasons for those determinations made by the State Appraiser Regulatory Agency.

(K) The State Appraiser Regulatory Agency must report appraiser data on the issuance and renewal of licenses and certifications on a timely basis to the Appraiser Registry in accordance with section 1109(a)(2) of Title XI (12 U.S.C. 3338(a)(2)).

(ii) *Issuance of temporary licenses and certifications for appraisers.* (A) The State Appraiser Regulatory Agency must recognize the license or certification of an appraiser issued by another State Appraiser Regulatory Agency on a temporary basis in accordance with section 1122(a)(1) of Title XI (12 U.S.C. 3351(a)(1)).

(B) The State Appraiser Regulatory Agency must not impose excessive fees for a temporary license or certification in accordance with section 1122(a)(2) of Title XI (12 U.S.C. 3351(a)(2)).

(C) The State Appraiser Regulatory Agency must not impose burdensome requirements, as determined by the ASC, for temporary practice in accordance with section 1122(a)(2) of Title XI (12 U.S.C. 3351(a)(2)).

(D) The State Appraiser Regulatory Agency must issue temporary licenses or certifications within five days after receiving a complete application for such issuance in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a)).

(E) The State Appraiser Regulatory Agency must issue temporary licenses or certifications on an assignment basis and must allow for at least one extension through a streamlined process in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a)).

(F) The State Appraiser Regulatory Agency must issue temporary licenses or certifications designating the effective date in accordance with section 1122(a) of Title XI (12 U.S.C. 3351(a)).

(G) The State Appraiser Regulatory Agency must track all temporary licenses or certifications using a permit log or system.

(H) The State Appraiser Regulatory Agency must supervise all individuals to whom the State Appraiser Regulatory Agency issues a temporary license or certification while performing assignments in its State, must discipline such individuals, when appropriate, for misconduct or wrongdoing, and must report each disciplinary action to the ASC and other appropriate State Appraiser Regulatory Agencies to ensure effective supervision in accordance with sections 1117, 1118, and 1122(a) of Title XI (12 U.S.C. 3346, 3347, and 3351(a)).

(I) The State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the basis for the determinations made by the State Appraiser Regulatory Agency in processing and issuing temporary licenses or certifications.

(iii) *Receiving and tracking of submitted complaints against appraisers.* (A) The State Appraiser Regulatory Agency must have a system for processing and investigating complaints and sanctioning trainee appraisers, State licensed appraisers, and State certified appraisers in a timely, effective, consistent, equitable, and well-documented manner.

(B) The State Appraiser Regulatory Agency must track and monitor all complaints using a complaint log or system.

(iv) *Investigation of complaints against appraisers.* (A) The State Appraiser Regulatory Agency must require appraisals to be performed in accordance with the latest version of USPAP in accordance with sections 1101 and 1103(a)(1)(A) of Title XI (12 U.S.C. 3331 and 3332(a)(1)(A)).

(B) When examining an appraisal report in connection with a complaint, including complaints based solely on value, the State Appraiser Regulatory Agency must consider whether any potential violations of USPAP should be investigated.

(C) To ensure effective supervision, the State Appraiser Regulatory Agency must resolve all complaints filed against trainee appraisers, State licensed appraisers, and State certified appraisers within one year (12 months) from the date the complaint was received except in special documented circumstances.

(D) The State Appraiser Regulatory Agency must ensure that individuals who analyze complaints are knowledgeable about Title XI, USPAP, and appraisal practices and must

document how such individuals are qualified, which will be evaluated by the ASC.

(E) The State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the facts and determinations made by the State Appraiser Regulatory Agency in processing and investigating a complaint and the reasons for its final disposition.

(v) *Enforcement actions against appraisers.* (A) The State Appraiser Regulatory Agency must supervise trainee appraisers, State licensed appraisers, and State certified appraisers and must discipline such individuals, when appropriate, for misconduct and wrongdoing.

(B) The State Appraiser Regulatory Agency must report all disciplinary actions against State licensed and certified appraisers to the ASC within five days after the disciplinary action is final as determined by State law.

(2) *State AMC regulatory program.* A State Appraiser Regulatory Agency must demonstrate to the ASC's reasonable satisfaction that its AMC regulatory program is operating consistently with the stated requirements of each program function:

(i) *Registration of AMCs.* (A) The State Appraiser Regulatory Agency must establish and maintain an AMC regulatory program with legal authority and mechanisms consistent with Title XI, the AMC Rule, and the AMC Registry Fee Rule.

(B) The State Appraiser Regulatory Agency must impose requirements on AMCs that are consistent with Title XI and the AMC Rule.

(C) The State Appraiser Regulatory Agency must enforce and document ownership limitations for AMCs in a manner consistent with Title XI and the AMC Rule.

(D) The State Appraiser Regulatory Agency must process AMC applications in a timely, consistent, equitable, and well-documented manner in accordance with Title XI, the AMC Rule, and the AMC Registry Fee Rule.

(E) The State Appraiser Regulatory Agency must ensure that individuals who process applications are knowledgeable about Title XI and the AMC Rule as evaluated by the ASC.

(F) The State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the basis for its determinations for AMC eligibility for the AMC Registry, including the appraiser panel requirements, ownership limitations, and AMC Registry fee collection and submission to the ASC.

(G) The State Appraiser Regulatory Agency must report AMCs eligible for the AMC Registry on a timely basis to the ASC in accordance with section 1109(a)(3) of Title XI (12 U.S.C. 3338(a)(3)) and the AMC Registry Fee Rule.

(ii) *Receiving and tracking of submitted complaints against AMCs.* (A) The State Appraiser Regulatory Agency must have a system for processing and investigating complaints and sanctioning AMCs (other than federally regulated AMCs) in a timely, effective, consistent, equitable, and well-documented manner.

(B) The State Appraiser Regulatory Agency must track and monitor all complaints against AMCs using a complaint log or system.

(iii) *Investigation of complaints against AMCs.* (A) To ensure effective supervision, the State Appraiser Regulatory Agency must resolve all complaints filed against AMCs (other than federally regulated AMCs) within one year (12 months) from the date the complaint was received except in special documented circumstances.

(B) The State Appraiser Regulatory Agency must ensure that individuals who analyze complaints are knowledgeable about Title XI, the AMC Rule, USPAP, and appraisal practices and must document how such individuals are qualified, which will be evaluated by the ASC.

(C) The State Appraiser Regulatory Agency must obtain and maintain documentation sufficient to create a record of the facts and determinations made by the State Appraiser Regulatory Agency in processing and investigating a complaint and the reasons for its final disposition.

(iv) *Enforcement actions against AMCs.* (A) The State Appraiser Regulatory Agency must supervise AMCs (other than federally regulated AMCs) and must discipline such entities, when appropriate, for misconduct and wrongdoing.

(B) The State Appraiser Regulatory Agency must report all disciplinary actions against AMCs (other than federally regulated AMCs) to the ASC within five days after the disciplinary action is final as determined by State law.

§ 1102.604 Mitigating and aggravating factors.

The ASC will consider the following factors, which may be mitigating or aggravating as appropriate, in adjusting the ASC's initial assessment of the level of effectiveness of the regulatory program identified in the preliminary

report. The mitigating or aggravating factors include:

(a) The nature and extent of the deficiency, which includes:

(1) The type of deficiency;
(2) Whether any deficiencies indicate systemic issues in the regulatory program; and

(3) The severity of the deficiency, and the extent to which the deficiency can be corrected or, if not corrected in a timely manner, whether the deficiency poses a potential risk to the regulatory program, appraisers, AMCs, financial institutions, or the public.

(b) Prior compliance history by the State Appraiser Regulatory Agency, which includes:

(1) Whether the regulatory program has had any prior deficiencies;

(2) Whether the deficiency is the same as or similar to prior deficiencies;

(3) Whether the State Appraiser Regulatory Agency's practices or actions indicate a pattern of similar prior deficiencies or a fundamental failure to understand the risks and controls that underlie a program function; and

(4) Whether, and to what extent, the State Appraiser Regulatory Agency attempted to correct prior deficiencies.

(c) The structure, stability, and responsiveness of the State Appraiser Regulatory Agency, which include:

(1) The level of cooperation with the ASC staff during a compliance review;

(2) The extent of understanding and acknowledgment of the deficiency;

(3) The level of responsiveness and willingness to correct the deficiency;

(4) Whether the regulatory program has undergone significant staffing or leadership changes;

(5) Any submission of false statements or documents, or deceptive practices by the State Appraiser Regulatory Agency;

(6) Whether the State Appraiser Regulatory Agency failed to exercise reasonable care toward equitable, consistent, and timely enforcement; and

(7) The number of State licensed and certified appraisers or registered AMCs under the jurisdiction of the State Appraiser Regulatory Agency; and

(8) The risk of program failure.

(d) Other situations or circumstances may include natural or human-made disasters or emergencies or other government-declared orders.

§ 1102.605 Enforcement actions.

(a) *Interim enforcement actions.* The ASC may undertake an interim enforcement action against a State Appraiser Regulatory Agency that fails to have an effective regulatory program as determined by the ASC as set forth in § 1102.603(b). Interim enforcement actions may consist of the following actions:

(1) *Warning letter.* The ASC may issue a warning letter to a State Appraiser Regulatory Agency when the final report indicates that the regulatory program is moderately effective or slightly effective.

(2) *Negotiated agreement.* The ASC may enter into a negotiated agreement with a State Appraiser Regulatory Agency if the State Appraiser Regulatory Agency fails to address the deficiency or deficiencies identified in a previously issued warning letter, or the final report indicates that the regulatory program is slightly effective or ineffective.

(3) *Suspension.* The ASC may suspend a State Appraiser Regulatory Agency for an interim period, as outlined in the procedures within § 1102.606, if the State Appraiser Regulatory Agency refuses to enter into a negotiated agreement, the State Appraiser Regulatory Agency fails to comply with the terms and conditions of a negotiated agreement, or the final report indicates that the regulatory program is ineffective. The suspension may involve, but is not limited to, the State Appraiser Regulatory Agency's ability to perform one or more of the following tasks:

(i) Addition of State licensed or certified appraisers to the Appraiser Registry or AMCs to the AMC Registry;

(ii) Issuance of upgrades of individuals' level of licensure or certification to perform appraisals in connection with federally related transactions;

(iii) Renewal of licenses or certifications of State licensed or certified appraisers for the performance of appraisals in connection with federally related transactions; or

(iv) Issuance of temporary licenses or certifications to individuals who are licensed or certified in another State to perform appraisals in connection with federally related transactions in the suspended State Appraiser Regulatory Agency's State, as set forth in section 1122(a) of Title XI (12 U.S.C. 3351(a)).

(b) *Non-recognition.* The ASC may undertake non-recognition, as prescribed in the procedures within subpart B of this part, if the ASC issues a written finding pursuant to section 1118(b) of Title XI (12 U.S.C. 3347(b)) that the State Appraiser Regulatory Agency's policies, practices, funding, staffing, or procedures are inconsistent with Title XI and Federal regulations promulgated thereunder and:

(1) a State Appraiser Regulatory Agency fails to comply with a final order of suspension; or

(2) the final report indicates the regulatory program is ineffective.

§ 1102.606 Procedures governing suspension proceedings.

The ASC must adhere to the following procedures to suspend a State Appraiser Regulatory Agency.

(a) *Notice.* (1) The ASC must provide the State Appraiser Regulatory Agency with a written notice of intention to suspend the State Appraiser Regulatory Agency from a task or tasks as provided in § 1102.605(a)(3). The notice must contain the ASC's final report.

(2) The Secretary must publish the notice in the **Federal Register** and must provide notice to the State Appraiser Regulatory Agency by sending a copy to the State Appraiser Regulatory Agency's last known email or mailing address. Service is complete upon sending.

(b) *State Appraiser Regulatory Agency's response.* (1) Within 20 days after publication of the notice in the **Federal Register**, the State Appraiser Regulatory Agency may submit a response or a notice not to contest to the Secretary.

(2) If a State Appraiser Regulatory Agency submits a notice not to contest, the ASC must issue the final order within 80 days after publication of the notice in the **Federal Register** as set forth in paragraph (f) of this section.

(3) If a State Appraiser Regulatory Agency does not submit a response or a notice not to contest within 20 days after publication of the notice in the **Federal Register**, the ASC may consider the facts presented in the notice to be true. The ASC must then issue the final order within 80 days after publication of the notice in the **Federal Register** as set forth in paragraph (f) of this section.

(c) *Briefs, memoranda, and statements.* After (or contemporaneously with) the State Appraiser Regulatory Agency's filing of its response, but in no event more than 40 days after publication of the notice in the **Federal Register**, the State Appraiser Regulatory Agency may file with the Secretary a written brief, memorandum, or other statement

providing factual data and policy and legal arguments regarding the matters set out in the notice.

(d) *Oral presentations to the ASC.* After (or contemporaneously with) the State Appraiser Regulatory Agency's filing of its response, but in no event more than 40 days after publication of the notice in the **Federal Register**, a State Appraiser Regulatory Agency may also request to make an oral presentation to the ASC. If a State Appraiser Regulatory Agency files a request for an oral presentation, the ASC must hear the matter within 20 days after the date the ASC received the request for an oral presentation. An oral presentation is an opportunity for the State Appraiser Regulatory Agency to offer, emphasize, and clarify the facts, policies, and laws concerning the matters set forth in the notice. The State Appraiser Regulatory Agency will make its oral presentation to the ASC on the date and time designated by the ASC. The ASC may ask questions relating to the contents of the notice, the response, the oral presentation, or any written briefs, memoranda, or statements submitted.

(e) *Conduct of suspension proceedings—(1) Written submissions.* All aspects of suspension proceedings will be conducted by written submissions, except for oral presentations allowed under paragraph (d) of this section.

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

(3) *Extensions of time.* The ASC may, on its own initiative or for good cause shown, issue a waiver extending any time limit in connection with a suspension proceeding under this section.

(f) *Decision of the ASC.* Within 80 days after publication of the notice in the **Federal Register**, or, in the case of the ASC's receipt of a timely request for an oral presentation within 100 days after publication of the notice in the **Federal Register**, the ASC must make a final decision on the matter by issuing a final order. The final order will be final and effective upon signature of the ASC Chairperson or their designee. The Secretary must promptly disseminate the final order to the State Appraiser Regulatory Agency and publish the final order in the **Federal Register**.

(g) *Documents and exhibits.* Unless otherwise provided by law, the Secretary must place all documents, papers, and exhibits submitted in connection with the suspension proceeding in the proceeding's file and make them available for public inspection, except those that may be withheld from disclosure under applicable law.

(h) *Opportunity for informal settlement.* The State Appraiser Regulatory Agency may submit written offers or proposals for settlement of the proceeding to the Secretary at any time for consideration by the ASC. This paragraph (h) shall not preclude settlement of any suspension proceeding by the filing of a notice not to contest as provided in paragraph (b)(1) of this section.

§ 1102.607 Procedures governing non-recognition proceedings.

To impose non-recognition against a State Appraiser Regulatory Agency, the ASC must adhere to the procedures governing a non-recognition proceeding, as set forth in subpart B of this part.

By the Appraisal Subcommittee.

Dated: November 21, 2024.

Zixta Martinez,
Chairperson.

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