



February 4, 2013



Jim Park, Executive Director
Appraisal Subcommittee, FFIEC
1401 H Street NW, Suite 760
Washington DC 20005

Re: Urgent Request that Representatives of ASA & NAIFA be Permitted to Appear and Speak
At the ASC's February 13th Scheduled Meeting

Dear Mr. Park:

The American Society of Appraisers (ASA) and the National Association of Independent Fee Appraisers (NAIFA) are writing to request an opportunity to appear and speak before the Subcommittee at its February 13th meeting for the purpose of urging a brief delay in the rollout of the appraisal complaint hotline, now scheduled to become operational on March 29th. Given the potential deleterious impact to a large number of stakeholders, it is imperative that there be a delay to allow for stakeholders to understand, analyze, and comment on the key components of the hotline system.¹

I. Executive Summary

ASA and NAIFA respectfully urge the Appraisal Subcommittee to delay the rollout of the appraisal complaint hotline system – scheduled to become operational on March 29th – for the following reasons:

- **The ASC Designed The Appraisal Complaint Hotline System Behind Closed Doors, And Has Failed To Allow Stakeholders To Comment On It Prior To Final Implementation:** The Appraisal Subcommittee failed to expose the central features of its appraisal complaint hotline system to stakeholders for their comments, as federal agencies typically are required to do – or voluntarily agree to do – prior to final implementation of new, Congressionally mandated programs that will significantly impact the private sector and/or state agencies. Unless the ASC pauses to give stakeholders a reasonable opportunity to provide their comments, the hotline system (which is unique and cutting-edge for a federal agency to administer), will become operational without the benefit of the views of appraisers and other stakeholders who are active in the residential mortgage markets on a daily basis and who are in the best position to understand how the hotline will impact those markets;

¹Stakeholders include tens of thousands of residential real estate appraisers; state and territorial appraiser licensing agencies; multiple consumer organizations; mortgage lenders, numerous appraisal management companies; many thousands of realtors and mortgage brokers; secondary mortgage market entities; and a variety of federal agencies whose regulatory or administrative responsibilities include federally-related transactions which rely on real estate appraisals.

- The ASC’s Hotline System, As Proposed, Violates Congressional Intent And The Clear Language of the Dodd-Frank Provision Authorizing It:** The design and reach of the appraisal complaint hotline system² violates the authorized purpose and Congressional intent of the hotline established by Section 1473 of the Dodd-Frank law. The Appraisal Subcommittee appears not to have recognized that the hotline is much more than a benign conduit or a neutral cipher through which appraisal complaints pass. The rules governing the operation of the hotline system (e.g. rules that could include which types of appraisal complaints will or will not be processed; whether anonymous complaints or those unaccompanied by a description or citation of the standards or authorities allegedly violated, are acceptable; what obligations state appraisal licensing agencies have to review complaints referred through the hotline, how expeditiously they must be reviewed and whether they have the financial resources necessary to act on the complaints) will have a concrete and, we believe, very deleterious impact on appraisers and on their state regulators. We also are concerned that because of the ASC’s open-ended construct, the hotline will generate complaints in such large numbers that the residential mortgage lending process could be slowed and the mortgage markets negatively impacted;
- Congress Intended The Hotline To Provide Appraisers With an Ability To Report Efforts To Undermine Their Independence, Not As a Catch-All Mechanism To Be Used Against Appraisers By Persons Disgruntled Because the Appraised Value Did Not Meet Their Needs Or For Other Non-Specific or Non-Serious Reasons:** The complaint hotline program approved by the ASC exceeds the agency’s statutory authority under Section 1473 by permitting complaints to be filed against appraisers that are completely unrelated to attempts to undermine their independence – the exclusive reason for enactment, by Congress, of the hotline authority. As evidence for this conclusion (in addition to the clear language of the section itself and the unmistakable intent of its author), we cite the Home Valuation Code of Conduct (HVCC) which served as the precise model for Section 1473 and whose entire purpose was to prevent interference with the independent valuation conclusions of appraisers;
- The Hotline’s Open-Ended And Unfiltered Complaint System Will Impose Enormous Financial Burdens On Appraisers and On State Appraiser Licensing Agencies. Additionally and Ironically, Its Current Design Will Greatly Increase Incidents Of Pressure On Appraisers Rather Than Prevent Them:** We are convinced that as a consequence of this overreach, publicity about the hotline system and its website, will generate a huge volume of complaints against appraisers (likely in the thousands annually), very few of which will have anything to do with appraiser independence issues. As a result, thousands of appraisers named by complainants (as well as their AMCs if the appraisal was ordered through one), dozens of state appraiser licensing boards and many federal agencies will have to review and respond to each complaint – an enormous financial and resource burden on all those affected.

Ironically, the open-ended nature of the ASC’s complaint system will result in an increase in the very behavior that Section 1473 and other Dodd-Frank appraisal provisions were designed to prevent – opportunities for improper pressure to be brought against appraisers by those seeking to influence their valuation conclusions.

² As briefly described in the public portion of the ASC’s January 23rd meeting.

How many non-substantive complaints will have to be filed against an appraiser before he or she gets the message that in order to avoid complaints, future appraisals will have to be more accommodating to parties with a financial stake in completion of the transaction? Adding “insult to injury” is the fact that individuals filing self-serving or frivolous complaints against appraisers will be immune from accountability because the hotline system will operate as a kind of “safe harbor” for them;

- **The ASC Has Violated the Paperwork Reduction Act of 1995 By Failing To Take Care To Design A Complaint Hotline System That Minimizes Burdens On Tens of Thousands Of Residential Real Estate Appraisers, On Small Valuation Firms and On the Appraiser Licensing Agencies of Fifty States, Four Territories and the District of Columbia:** A principal purpose of the Paperwork Reduction Act (PRA), which gives the Office of Management and Budget (OMB) authority to disapprove an agency’s collection of information, is to minimize paperwork burdens for individuals, small businesses and State and local governments. The ASC’s proposed hotline complaint system does precisely the opposite of what the PRA requires – it maximizes the likely burdens on appraisers, small business appraisal firms and state agencies.

II. The ASC’s Failure to Publicly Expose the Hotline Program For Stakeholder Comment

We are confounded that the ASC would embark on a program of this importance, complexity and uniqueness without first doing what federal agencies – including those comprising the Subcommittee’s membership – almost always do when Congress mandates the establishment of new and far-reaching programs or policies: Specifically, publish a complete description of the program or policy so that stakeholders can carefully scrutinize and comment prior to final implementation. Federal agencies do this for two important reasons: First, out of a sense of fundamental fairness to those affected; and, second, because they understand that stakeholder comments allow them to learn things they otherwise would not know – things that frequently lead to important changes that improve the effectiveness and reduce the burdens and needless complexities of the new program or policy. The operational components and other important features of the appraisal complaint hotline system have never been made public. Our limited knowledge of how the system will operate exists only because a representative of ASA and NAIFA attended the public portion of the ASC’s last meeting on January 23rd and heard a three or four minute explanation of the hotline program that was principally intended for the ears of the Subcommittee’s members. This dearth of detail, coupled with an absence of opportunity for stakeholders to provide substantive comments, is flatly unacceptable.

We understand that the ASC intends to monitor how the hotline system is functioning and, presumably, make adjustments as necessary in the future. This approach overlooks the fact that even with course corrections, the hotline (as conceived in a closed process) will start out as a far inferior product than it would have been had stakeholders been involved during its conception. Fixing a flawed or broken program after-the-fact is not as cost-effective as, and is not a substitute for, doing everything reasonably possible to perfect the program before it is rolled out. “Everything” necessarily includes exposing the key components of the complaint hotline system to the public and allowing interested parties to comment on them. We find it extremely disappointing that the ASC has failed to do what federal agencies typically do prior to rolling out new programs or policies. Our organizations fail to understand why the central features of the hotline system were designed in secrecy behind closed doors; and we wonder

what motivated Subcommittee members to conclude that they did not need to consult with the community of professional appraisers, state appraiser licensing agencies, and other major mortgage market stakeholders regarding the purpose and specific operational design of the hotline system. We appreciate the fact that a January 29th *Federal Register* Notice (and a previous Notice) invited stakeholders to comment on “the Interagency Appraisal Complaint Form” as part of the information collection that will result from establishment of the hotline program. However, the complaint form (which, apparently, is only for the internal use of the affected federal agencies) is only one element – and, for outside stakeholders, a relatively insignificant one – of a multi-faceted and complex hotline system. In a letter we sent to the Subcommittee last December 18th we observed that:

“If the appraisal complaint hotline system operates in a regulatory framework which contemplates and fosters a limitless array of complaints against appraisers by users of their services and by third parties whose financial transactions are dependent on the appraised fair market value, a non-complex complaint form will not save the system from exceeding its intended public policy purpose and from breaking down.” (Emphasis added)

We continue to hold this view.

III. The ASC’s Proposed Appraisal Complaint Hotline System Violates the Clear Intent of Congress and the Plain Language of the Statutory Provision Authorizing It

Our organizations believe that the current design and reach of the appraisal complaint hotline system violates the clear intent of Congress and, if implemented in its current form, could create chaos in the residential mortgage application process, imposing enormous and costly burdens on appraisers, state appraiser licensing agencies, and on other stakeholders for no justifiable public policy purpose that we can discern. In this regard, our principal criticism of the system contemplated by the Subcommittee is that it would permit complaints against appraisers that are unrelated in any way to the central concern of Congress when it enacted Section 1473 of Dodd-Frank – the tendency of far too many players in the mortgage markets to improperly interfere with the independent judgment of the appraiser. We believe it is evident from the clear language of Section 1473(p) and from the intent of that section’s author that its exclusive purpose is to provide those close to the appraisal process with a mechanism to file complaints against anyone attempting to improperly influence an appraiser’s independent judgment. It was not intended to be a catch-all opportunity for complaints against appraisers for any and all alleged infractions of the Uniform Standards of Professional Appraisal Practice (USPAP).

The origin of the appraisal complaint hotline concept, incorporated into Dodd-Frank, was the Home Valuation Code of Conduct (HVCC) which was negotiated and agreed to first by Fannie Mae, Freddie Mac and the New York Attorney General; and subsequently adopted by what is now called the Federal Housing Finance Agency, the conservator of the GSEs. The entire purpose of the HVCC was to prevent any party to a real estate related financial transaction that relied on an appraisal from interfering with the independence of that process. The HVCC was all about safeguarding appraiser independence and preventing improper influences on the appraiser. It had **nothing** to do with whether the appraiser adhered to all of USPAP’s provisions (other than USPAP’s appraiser independence requirements).

In the December 18, 2012 letter our organizations sent to the agencies comprising the ASC in response to the Paperwork Reduction Act notice involving the hotline, we agreed that complaints against appraisers for incompetence or for violations of any other USPAP provision were entirely appropriate for investigation by the appropriate state or federal agencies based on information they developed internally or received from outside sources³; but, that Congress, in Dodd-Frank, authorized the hotline only to address appraiser independence abuses which had become epidemic in the years immediately preceding the new law and a significant contributor to losses sustained by mortgage lenders and the GSEs when the residential real estate markets collapsed.

There should no doubt that Congress enacted Section 1473 for the specific purpose of providing appraisers and others close to the appraisal process with a mechanism to report attempts, by parties involved in a mortgage financing transaction, to impede their independence and pressure them to value residential property in an amount sufficient to make the loan appear to be adequately collateralized. Prior to enactment of Section 1473, there was no straightforward conduit for such complaints and, as a consequence, appraisers lacked the ability to sort out which federal or state regulatory agencies had the authority to investigate and sanction the behavior of individuals or parties responsible for exerting pressure on appraisers. Importantly, Dodd-Frank's appraisal reform provisions memorialized and strengthened regulatory sanctions that the Federal Reserve Board and other federal banking agencies had established against individuals who attempt to improperly influence appraisers.

The inclusion of such sanctions authority in Dodd-Frank, as an accompaniment to Section 1473, is further evidence of Congressional purpose in authorizing the hotline. That exclusive purpose was to establish a process that would facilitate an appraiser's ability to file complaints against those who attempt to exert improper pressure and have them referred expeditiously to the appropriate federal or state agency with jurisdiction over the transaction and the parties alleged to be applying that pressure. The inevitability of this conclusion is obvious from the clear language of Section 1473(p), which states in pertinent part:

“If, 6 months after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of noncompliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline...”

Although the 1473(p) language includes the words, “Uniform Standards of Professional Appraisal Practice,” the USPAP reference specifically and exclusively relates to appraiser independence issues. If the words in the subsection identifying possible complainant parties (i.e., “...from appraisers, individuals, or other entities...”) are eliminated from the subsection, it reads as follows:

“If, 6 months after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of noncompliance with appraisal independence standards **and Uniform Standards of Professional Appraisal Practice...concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process,** the

³ Indeed, complaints against appraisers for USPAP violations have been investigated by state licensing agencies and federal agencies since the enactment and pursuant to the provisions of Title XI of FIRREA in 1989 – some 20 years before Dodd-Frank became law.

Appraisal Subcommittee shall establish and operate such a national hotline...”.

Eliminating the several words describing the sources of potential complaints does not alter the meaning of the provision but does clarify without any ambiguity that the reference to USPAP relates to its appraiser independence provisions – and not to USPAP in its entirety.

The exclusive purpose of section 1473 is also evident from related provisions in Dodd-Frank.⁴

IV. The ASC’s Open-Ended Hotline System Will Result In an Increase of Pressure On Appraisers – The Precise Opposite of What Is Intended

Ironically, establishment of a hotline website (with the attendant public attention it will receive) that allows complaints to be made against appraisers by anyone for virtually any reason, will produce an outcome that is precisely the opposite of what Section 1473 and many other Dodd-Frank provisions intended to prevent – pressure against appraisers. The open-ended complaint system proposed by the ASC will allow any individual, who believes that a sale of property or the financing of that sale was scuttled because the appraised value was wrong, to file a complaint against the appraiser – not because of a USPAP violation, not because the appraiser did anything improper, but only because the determined market value was insufficient to close the deal. As constructed by the ASC, the hotline will actually result in an increase in incidents of pressure on appraisers by providing disgruntled or disappointed individuals with an ability to file a complaint against – and thereby punish – an appraiser without being accountable for abusing the hotline system. How many frivolous complaints against an appraiser will it take to convince the appraiser that he or she better come up with a market value that the parties to a real-estate-related financial transaction want...or else!

Individuals filing self-serving or non-substantive complaints against appraisers through the hotline will not be discouraged from doing so because the hotline system will serve as a safe harbor, thereby inoculating the complainant from accountability.

V. USPAP Is An Inappropriate Benchmark For Public Complaints Against Appraisers

Our strong objections to the hotline system, as proposed by the ASC, relate to a lack of appropriate process and what we believe is a fundamental misreading of the purpose and limits of Section 1473. In addition to overwhelming evidence that the Section authorizes a complaint system that is limited to appraiser independence issues, we believe it is important to recognize that while professional real estate appraisers are required to adhere to USPAP and while violations of USPAP form the basis of most sanctions imposed on them by their state licensing agencies (and, less frequently, by federal agencies which have jurisdiction over federally-related transactions which involve appraisals), USPAP is a highly inappropriate benchmark on which to base a public complaint system. USPAP is a complex, dynamic, and technical set of requirements that only appraisers, their regulators and a handful of other specialists are able to effectively interpret. Indeed, just as disputes often arise among accountants over the meaning of generally accepted accounting standards, there is frequently disagreement over what a particular provision of USPAP means or requires appraisers to do or to avoid. These disagreements often

⁴ For example, subsection “(g)” of section 1473 (“Appraiser Independence Monitoring”) states that “The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency’s policies, practices and procedures are consistent with the purpose of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintain appraiser independence.”

are resolved only after members of the Appraisal Standards Board of The Appraisal Foundation (TAF) are asked for an interpretation.

It is very difficult to conceive of any realistic scenarios in which members of the public would be able to interpret most USPAP provisions, apply those interpretations to an appraisal report or engagement, and have the basis for a knowledgeable complaint against the appraiser for a USPAP violation. For example, is it realistic to believe that a typical user of a real estate appraisal, or an individual involved in a residential mortgage loan application which is dependent on an appraisal, could understand the appraiser's obligations under the Record Keeping Rule; the Scope of Work Rule; or the Jurisdictional Exception Rule? Would a typical member of the public be able to grasp the meaning of or an appraiser's obligations under Standard 1 ("Real Property Appraisal Development"); Standard 2 ("Real Property Appraisal, Reporting"); Standard 4 ("Real Property Consulting, Development"); or Standard 5 ("Real Property Consulting, Reporting")?

How would a typical user or beneficiary of an appraisal interpret Standards Rule 1-1 which states, in part, "In developing a real property appraisal, an appraiser must...(b) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal"; and, apply that interpretation to determine whether the appraisal report met this requirement?

Would a member of the public be able to grasp the meaning of terms such as "Hypothetical Condition"; "Jurisdictional Exception"; "Market Analysis"; or "Exposure Time" and apply that understanding in a way that justifies a credible complaint against the appraiser? We do not believe so.

What is almost certain to happen – if the hotline website and system permit complaints involving alleged violations of any and all USPAP provisions – is an influx of large numbers of complaints that are spurious or fundamentally mistaken – complaints which will, nevertheless, raise questions about the professionalism of the appraiser complained against, occupy his or her time and attention and force state or federal agencies to review them. These are likely, but very unwelcome, outcomes that the ASC should want to avoid.

Conclusion

While our organizations strongly support the hotline system for the purpose intended by Congress, we **do not support** a complaint system that permits individuals to trigger an investigative process that is unrelated to appraiser independence matters. We also do not support a process which excludes stakeholders from having a say in the implementation of a unique federal program, like the hotline program, which impacts our members in vital ways. Congress unambiguously intended the hotline to concern itself solely with appraiser independence issues; and the complaint system designed by the agencies should clearly reflect that fact.

We do not believe there are any Congressionally mandated deadlines that would preclude the Appraisal Subcommittee from briefly delaying the start date of the hotline beyond March 29th. Accordingly, we respectfully urge a brief pause in the rollout process so that appraisers and other stakeholders have an opportunity to review the hotline proposal and advocate changes to it that our organizations and others believe necessary or desirable.

Please advise us at the earliest opportunity whether our request to appear before the Subcommittee will be granted and notify our representatives in Washington DC of your decision (Peter Barash, at 202-466-2221 or peter@barashassociates.com; or John D. Russell, ASA's Director of Government Relations, at 703-733-2103 or jrussell@appraisers.org).

Sincerely,
The American Society of Appraisers and the
National Association of Independent Fee Appraisers

Cc: Peter Gillispie, ASC Chairman, HUD
Darrin Benhart, ASC Vice Chairman, OCC
Meg Burns, ASC Member, FHFA
Doreen Eberley, ASC Member, FDIC
Arthur Lindo, ASC Member, Federal Reserve Board
Joy Lee, Member, ASC Member, NCUA
Mira Marshall, ASC Member, CFPB
Office of Management and Budget