



## Decision

**Matter of:** Appraisal Subcommittee of the Federal Financial Institutions Examination Council—Application of Purpose Statute and Antideficiency Act to Cooperative Agreement

**File:** B-335871

**Date:** August 28, 2024

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### DIGEST

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council violated the purpose statute when it awarded a cooperative agreement to a nonprofit entity. ASC's appropriation permitted it to award grants to states and to a particular nonprofit corporation. The cooperator in this case was neither, so it was not eligible to receive funding under the appropriation. Because ASC's appropriation is not legally available for such an assistance arrangement, ASC also violated the Antideficiency Act by entering into and expending funds toward the cooperative agreement.

In a separate transaction, ASC's appropriation was available to obtain the development of a census survey and a review of appraisal standards and appraiser qualification criteria. These expenditures logically relate both to ASC's statutory authority to temporarily waive requirements in a state with a scarcity of qualified appraisers and its responsibility to maintain a national registry of qualified and eligible appraisers.

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### DECISION

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC) requests our decision on the application of the purpose statute, 31 U.S.C. § 1301(a), and the Antideficiency Act, *id.* § 1341, to a cooperative agreement ASC awarded.<sup>1</sup>

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<sup>1</sup> Letter from Certifying Officer and Executive Director, ASC, to General Counsel, GAO (Dec. 21, 2023) (Request Letter).

Our practice when rendering decisions is to obtain the legal views of the relevant agencies and establish a factual record on the subject of the request.<sup>2</sup> ASC's request letter provided information and its views.

## BACKGROUND

Congress established ASC within FFIEC through Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.<sup>3</sup> ASC's responsibilities include monitoring the requirements that states establish for certifying and licensing real-estate appraisers; maintaining a national registry of state-certified and -licensed appraisers eligible to perform appraisals in federally related transactions; and maintaining a national registry of Appraisal Management Companies (AMCs).<sup>4</sup> 12 U.S.C. § 3332(a); B-279866.3, Feb. 28, 2000. ASC also monitors and reviews the Appraisal Foundation, which is a private, nonprofit corporation that sets criteria for appraisals and appraisers.<sup>5</sup>

ASC is funded by registry fees that appraisers and AMCs pay. 12 U.S.C. §§ 3337(a), 3338. ASC must use those amounts for, among other things, supporting its "activities" under Title XI, making grants to the Appraisal Foundation to defray some of its costs, and making grants to state agencies to support their Title XI activities. *Id.* § 3338(b)(2), (4)–(5).

In September 2020, ASC published a Notice of Funding Availability for a cooperative agreement.<sup>6</sup> Its purpose was to select an entity to work with ASC to support the "continued development and administration of training" for state appraiser and AMC

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<sup>2</sup> GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at [www.gao.gov/products/gao-24-107329](http://www.gao.gov/products/gao-24-107329).

<sup>3</sup> Pub. L. No. 101-73, title XI, 103 Stat. 183, 511–519 (Aug. 9, 1989); B-279866, Sept. 11, 1998.

<sup>4</sup> AMCs are third parties that, among other things, select appraisers for assignments on behalf of lenders. *Residential Appraisals: Regulators Should Take Actions to Strengthen Appraisal Oversight: Testimony Before the Subcommittee on Insurance, Housing and Community Opportunity, Committee on Financial Services, House of Representatives*, GAO-12-840T, at 9 (statement of William B. Shear, Director Financial Markets and Community Investment) (Washington, D.C.: June 28, 2012); see 12 U.S.C. § 3350(11).

<sup>5</sup> 12 U.S.C. §§ 3332(b), 3350(9); GAO-12-840T, at 'Highlights;' GAO, *Real Estate Appraisals: Most Residential Mortgages Received Appraisals, but Waiver Procedures Need to Be Better Defined*, GAO-22-104472 (Washington, D.C.: Nov. 24, 2021), at 4.

<sup>6</sup> Request Letter, at 1–2.

regulatory programs, and to provide training opportunities that states could access at their discretion.<sup>7</sup> In March 2021, ASC awarded the cooperative agreement to a nonprofit organization called the Council on Licensure, Enforcement and Regulation (CLEAR).<sup>8</sup> In July 2021, ASC amended the cooperative agreement to include (1) the development of a “census survey” of the appraisal industry and (2) a review of appraisal standards and appraiser qualification criteria to ensure neither encourages or systematizes bias.<sup>9</sup>

In September 2023, ASC determined CLEAR may have been ineligible for the award and directed it to stop work.<sup>10</sup> ASC now “acknowledges” CLEAR was an unauthorized recipient and is pursuing remediation.<sup>11</sup> Specifically, ASC is (1) “mutually terminating” the cooperative agreement and (2) awarding a sole-source contract to CLEAR for two items that CLEAR had not yet delivered under the cooperative agreement.<sup>12</sup> ASC is also revising its procedures to emphasize that only the Appraisal Foundation and state appraiser and AMC regulatory agencies may receive grants.<sup>13</sup>

## DISCUSSION

At issue is whether ASC violated the purpose statute or the Antideficiency Act when it awarded the cooperative agreement at issue.

### Purpose Statute

We first consider whether ASC used appropriated fee amounts for their provided purpose in awarding the cooperative agreement.<sup>14</sup>

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<sup>7</sup> Request Letter Exhibits (Exhibits), at 2.

<sup>8</sup> Request Letter, at 1, 3, 5.

<sup>9</sup> Exhibits, at 23; Request Letter, at 3.

<sup>10</sup> Request Letter, at 4.

<sup>11</sup> Request Letter, at 1, 5.

<sup>12</sup> Request Letter, at 4, 8.

<sup>13</sup> Request Letter, at 8.

<sup>14</sup> As a threshold matter, as we concluded in a 1998 decision, the language in 12 U.S.C. § 3338 constitutes an appropriation to ASC. B-279866, Sept. 11, 1998. We explained that statutes authorizing the collection and deposit of fees into a particular fund, and making the fund available for expenditure for a specified purpose, create a continuing or permanent appropriation. Congress authorized ASC  
(continued...)

Appropriations are available only for authorized purposes. 31 U.S.C. § 1301(a); B-331419, July 1, 2021. Each authorized expense need not be stated explicitly in an appropriation. B-336076, Apr. 18, 2024. So we apply a three-part “necessary expense” test to determine whether an appropriation is available for a particular purpose. B-333508, Sept. 7, 2023. An appropriation is available for an expense that (1) bears a reasonable, logical relationship to the purpose of the appropriation; (2) is not prohibited by law; and (3) is not otherwise provided for. B-334541, Aug. 9, 2023. Here, steps two and three are not at issue: we are unaware of any relevant statutory prohibition on the use of these funds, nor are we aware of another appropriation available for these expenses. So, our analysis will focus on step one.

There are two aspects that we will analyze separately: (1) the training, and (2) the review and survey.

### *Training*

ASC’s cooperative agreement with CLEAR supported the development and administration of training for nonfederal entities—namely, state entities that regulate appraisers and AMCs.<sup>15</sup> Agencies do not have authority to provide assistance—that is, to award a grant or a cooperative agreement—unless specifically permitted by statute.<sup>16</sup> See 65 Comp. Gen. 605 (1986). Here, ASC’s appropriation is available to make grants to the Appraisal Foundation, 12 U.S.C. § 3338(b)(4), and to state agencies, 12 U.S.C. § 3338(b)(5). “It is a general principle of statutory interpretation that the mention of one thing implies the exclusion of another under the maxim ‘*expressio unius est exclusio alterius*.’ Hence, a statute that mandates a thing to be done in a given manner normally implies that it shall not be done in any other manner.” B-190011, Dec. 30, 1977.

Therefore, the provision explicitly permitting ASC to assist the Appraisal Foundation and state agencies provided authority only to assist entities in those two categories. 12 U.S.C. § 3338(b). It did not vest ASC with authority to assist other types of entities, and ASC cites no other legal authority permitting it to award assistance of this nature to any other type of entity.

Despite this lack of authority, ASC awarded assistance to CLEAR, which is neither the Appraisal Foundation nor a state agency. By awarding a cooperative agreement

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to collect registry fees and use them for a specified purpose, without the need for further congressional action each fiscal year. And Congress did not define those fees as nonappropriated funds. Therefore, the fees ASC receives constitute appropriated funds.

<sup>15</sup> Exhibits, at 2.

<sup>16</sup> In contrast, agencies generally have inherent authority to enter into contracts to provide for their needs. 65 Comp. Gen. 605, at 607.

to a recipient not authorized by law, ASC failed to follow the conditions specifically referenced in its appropriation concerning grants to the Appraisal Foundation and states. Therefore, ASC violated the purpose statute when it awarded the cooperative agreement to CLEAR for training.<sup>17</sup>

### *Review and Survey*

Having determined that ASC was not authorized to award the cooperative agreement to CLEAR to develop training for nonfederal entities, there is a separate issue of the additional expenditures ASC incurred. ASC also used the cooperative agreement with CLEAR to obtain the development of a census survey and a review of appraisal standards and appraiser qualification criteria. These proposed expenditures are not related to the training purposes previously analyzed nor subject to the restriction that they be awarded to the Appraisal Foundation or a state agency. The proposed expenditures are not specifically provided for in the appropriation or authorizing statute for ASC. Therefore, we apply the necessary expense analysis beginning with step 1.

To determine whether a reasonable, logical relationship exists between the appropriation and the expense, the starting point is the appropriation's text. B-333508, Sept. 7, 2023. The appropriation at issue appropriates fees that ASC collects. 12 U.S.C. § 3338(b). It makes these amounts available to, among other things, maintain a national registry of qualified appraisers, support ASC's Title XI "activities," and make certain grants. *Id.*

Here, ASC's expenditures toward the criteria review and survey bear a reasonable, logical relationship to its appropriation's purpose of supporting ASC's "activities." *Id.* § 3338(b)(2). As noted, those activities include monitoring and reviewing the Appraisal Foundation, *id.* § 3332(b), and reviewing these criteria, which Appraisal Foundation-sponsored boards issue,<sup>18</sup> furthers this ASC responsibility. Moreover, a survey of the appraisal profession logically relates both to ASC's statutory authority to temporarily waive requirements in a state with a scarcity of qualified appraisers, *id.* § 3348(b), and its responsibility to maintain a national registry of qualified and eligible appraisers. *Id.* § 3338(b)(1). Therefore, the expenditures meet step 1 of the necessary expense analysis. Furthermore, there are no prohibitions relating to

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<sup>17</sup> We also note that while ASC is authorized by law to award a "grant," it instead awarded a cooperative agreement. There are similarities between grants and cooperative agreements, as both are assistance relationships through which an agency carries out public purposes as permitted by law. See 65 Comp. Gen. 605. Nevertheless, because ASC lacked authority to make an award to this recipient, we need not decide here whether ASC's authority to award a "grant" also permitted it to award a cooperative agreement.

<sup>18</sup> Request Letter, at 3 (criteria are from two Appraisal Foundation-sponsored boards: the Appraiser Qualifications Board and the Appraisal Standards Board).

these expenditures in accordance with step 2 nor other appropriations provided for with step 3. See, e.g., B-333691, Feb. 8, 2022, at 3 (addressing only step 1 because steps 2 and 3 were not at issue). Accordingly, ASC's appropriation was available for this purpose.<sup>19</sup>

### Antideficiency Act

We turn next to the Antideficiency Act's application. An agency violates this law if it incurs an obligation in excess of legally available amounts. 31 U.S.C. § 1341(a); B-329955, May 16, 2019. No amount is available for an unauthorized purpose. See B-326013, Aug. 21, 2014.

ASC's permanent indefinite appropriation is available for, among other things, making grants to the Appraisal Foundation and state agencies. 12 U.S.C. § 3338(b). Its appropriation, then, permits grants only to particular entities. Or, stated negatively, it is unavailable for providing funds to non-specified entities. This unauthorized purpose, moreover, is rooted directly in the text of ASC's appropriation.

ASC awarded a cooperative agreement to CLEAR for training. But CLEAR is neither the Appraisal Foundation nor a state agency. Because ASC's appropriation is not legally available for such an assistance arrangement, ASC violated the Antideficiency Act by entering into and expending funds toward an unauthorized agreement with an ineligible recipient. *But cf.* B-334541, Aug. 9, 2023 (finding no violation of the Antideficiency Act where the appropriation at issue did not condition the availability of funds on the manner in which the agency applied certain statutory provisions). See also B-290005, July 1, 2002 (agency violated the Antideficiency Act and purpose statute by entering into unauthorized legal services contracts and charging the expenditures to an appropriation unavailable for purchasing such services). ASC should report an Antideficiency Act violation as 31 U.S.C. § 1351 requires.

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<sup>19</sup> ASC should consider whether the review and survey should have been obtained via a contract rather than a cooperative agreement. It appears that ASC acquired these services for its direct benefit, which by law would make them the proper subject of a contract. 31 U.S.C. § 6303. Review of criteria issued by Appraisal Foundation-sponsored boards furthers ASC's statutory responsibility to oversee the Foundation. 12 U.S.C. § 3332(b). And ASC told us the survey relates to its authority to temporarily waive appraiser requirements in a state facing a scarcity of qualified appraisers. Request Letter, at 6–7. See 12 U.S.C. § 3348(b). The survey would be for ASC's direct benefit if its main purpose was to aid ASC in the performance of its statutory authority.

## CONCLUSION

ASC violated the purpose statute and the Antideficiency Act by providing assistance to an ineligible entity in a manner inconsistent with its appropriation. ASC should report an Antideficiency Act violation.

A handwritten signature in cursive script that reads "Edda Emmanuelle Perez".

Edda Emmanuelle Perez  
General Counsel