



NATIONAL ASSOCIATION
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The Voice for Real Estate®



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Dockets Management Facility
Room PL-401
400 Seventh Street, S.W.
Washington, DC 20590

To Whom It May Concern:

On behalf of the nearly 40,000 members of the Appraisal Institute, American Society of Appraisers, American Society of Farm Managers and Rural Appraisers and the National Association of REALTORS®, thank you for the opportunity to comment on the Notice of Proposed Rule Making regarding proposed modifications to the regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act).

The Uniform Act helps set the requirements for appraisal and appraisal review in support of federal and federally assisted acquisition of real property for government projects. The scope of the Uniform Act is widespread, governing the relocation and land acquisition programs of nearly all federal departments and agencies, including the Departments of Transportation, Agriculture, Commerce, Defense, Education, Energy and the Environmental Protection Agency, Federal Emergency Management Agency, General Services Administration, Department of Health and Human Services, Department of Housing and Urban Development, Department of Justice, Department of Labor, National Aeronautics and Space Administration, Tennessee Valley Authority, and the Veterans Administration.

Our organizations have reviewed the proposal, and our comments are as follows:

Appraisal Independence

Federal agencies such as the Department of Interior and the federal financial institution regulators have recently observed that appraisal independence is vital to protecting the integrity of the real estate valuation process. These agencies, understanding the critical need to foster public trust, appropriately recognized and integrated the Uniform Standards of Professional Appraisal Practice (USPAP) as part of their appraiser independence and competency requirements. Excellent examples are illustrated in the recent revision to the Uniform Standards for Federal Land Acquisitions (USFLA) and the Department of Interior's references to USPAP in its recently established appraisal services unit.

Attempting to address instances of inappropriate appraiser pressure, the Federal Highway Administration (FHWA) has proposed adding all persons making waiver valuations to the Conflict of Interest section and equalize the conflict of interest standards to all individuals valuing real property, whether their work is in waiver valuations, appraisal or appraisal review. Our organizations support such efforts.

The agency also proposes to add a new provision that any person functioning as a negotiator shall not supervise or formally evaluate the appraiser, review appraiser or person making waiver valuations. The FHWA says this provision would enhance appraiser independence and further support the Uniform Act concept that the acquisition process includes not only appraisal and appraisal review, but also the

Agency responsibility and authority to establish a just compensation amount, based on an approved (reviewed) appraisal, offer that amount to the property owner, and be prepared to consider updating the offer of just compensation. Our organizations agree and applaud the Federal Highway Administration for this move.

However, we note that the FHwA proposes to allow the appraiser independence provisions to be waived in "unworkable" situations. The agency attests that small agencies should be given the ability to bypass this provision. Our organizations believe this is the wrong approach to take. No agencies should be exempt from this provision, as the entire acquisition process is meant to protect the constitutional rights of property owners while preserving the public's trust in how agencies fulfill their public service and protection obligations.

Suggestion 1: Our organizations suggest that small agencies abide by the appraisal independence provisions but be allowed to use streamlined appraisals and reports to meet the needs of their budgets. Appraisal professionals currently offer a number of valuation services to suit the needs of a varied real estate clientele. By implementing this suggestion, the FHwA will assist small agencies in dealing with financial concerns without compromising appraisal independence.

Appraisal Review

Our organizations support the concept of adding "review appraisers" under the section that governs appraiser qualifications. We also support the agency emphasizing the need for appraisers and review appraisers to be qualified and competent. The FHwA also states that state licensing or certification can help provide an indication of an appraiser's abilities.

However, the FHwA should take note that state licensing and certification requirements are merely minimum requirements. Although carrying a license or certificate may be an indication of appraiser's abilities, the FHwA should also be aware that professional appraisal organizations confer designations that exceed minimum state licensing and certification requirements. This is particularly true for organizations such as ours that are sponsors of The Appraisal Foundation.

Suggestion 2: The FHwA should recognize that appraisal professional organizations confer designations to real estate appraisers and that these designations provide an indication of an appraiser's abilities. We suggest Section 24.103(d) be amended to read:

*"We propose to specifically add "appraisal reviewers" to clarify that they are included in this section that addresses appraiser qualifications. We also propose to add a discussion to appendix A to emphasize the need for appraisers and review appraisers to be qualified and competent, and that State licensing or **certification or membership in a professional appraisal organization** can help provide an indication of an appraiser's abilities."*

Our organizations have a concern regarding the qualifications requirement set by the FHwA of appraisal reviewers. This regulation seems to create a double-standard for minimum appraiser qualifications by first allowing Agencies to determine the minimum qualifications of their own staff appraisers and appraisal reviewers (i.e., there is no State certification mandate), but then State certification is mandated as the minimum requirement for independent contract appraisers engaged by the same Agency. The regulation simply leaves it up to Agency discretion to determine minimum qualifications for its staff.

Logic dictates that if mandated State certification for non-Agency appraisers is a reasonable way to “help provide an indication of an appraiser’s abilities,” then a State certification mandate for Agency employees would do the same. The magnitude of this deficiency is amplified because the definition for “Agency” (FR page 70360) is very broad and includes governmental entities, but also any entity that receives Federal financial assistance to purchase property (e.g., a non-profit organization).

Suggestion 3: The proposal should be revised to require Agency staff appraisers and appraisal reviewers to meet the same minimum qualifications of non-Agency appraisers.

Applicability of Uniform Standards of Professional Appraisal Practice

The Section-By-Section Discussion of the Proposed Changes discussing *Section 24-103(a) Appraisal Requirements* states:

“We propose to add a sentence indicating that these regulations set forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs. This would make it clear that other performance standards, such as USPAP and those issued by professional appraisal societies do not govern programs covered by the Uniform Act.”

Our organizations are concerned that this reference will confuse appraisers performing assignments for Federal and federally-assisted programs, particularly in states that have adopted “mandatory” appraisal licensing. Appraisals prepared for federal land acquisitions in mandatory states or by members of one of our organizations must comply with the organization’s standards and USPAP *in addition to* federal requirements.

As the passage currently reads, it suggests to appraisers that compliance with USPAP or organizational standards is not necessary in a Uniform Act assignment. This could lead appraisers to inadvertently violate applicable state law, which would not be in the best interest of the agency, the affected parties, the appraiser or the public trust in general.

Suggestion 4: A sentence should be added to the proposed Section 24-103(a) to properly address the applicability of USPAP to make clear that the Uniform Act requirements and USPAP are complimentary. It Section would read as follows:

*“These regulations set forth the requirements for real property acquisition appraisals on Federal and federally-assisted programs. **The application of these regulations is consistent with the Uniform Standards of Professional Appraisal Practice.**”*

Exceptions

Section 24.101: Applicability of Acquisition Requirements allows recipients of Federal financial assistance who buy property to ignore the regulation and bypass the entire appraisal and appraisal review process when making an offer to purchase. This can be done if the acquisition meets “voluntary transaction” (non-condemnation) criteria and the owner is informed that their “property will not be acquired unless an amicable agreement can be reached” (FR page 70346). The actual regulation is said to apply “except” in the case where several different criteria are met (FR pages 70364-70365); these conditions basically reflect the so-called voluntary transactions.

This "exception" to the appraisal process might be palatable to private property owners because it allows purchasers who use Federal financial assistance to pay whatever it takes to get property. However, it should be noted that this exception clause does little to protect taxpayers interests because it allows Federal-aid recipients (which include non-profit organizations) to offer prices for property which are well in excess of market value. The regulation lays out several different "conditions" which must be met to do this, and statements on FR page 70346 claim Appendix A for this section will provide additional guidance. However, the proposal fails to offer any specific alternatives to performing an appraisal, other than stating "an Agency may still decide to use some form of an appraisal" (FR page 70346).

We believe the Uniform Act should treat all property owners uniformly and that the appraisal serves a valuable function, whether the transaction is voluntary or involuntary. We suggest this provision be struck from a proposed rule.

Technical Suggestions:

1. The FHWA uses the term "Review appraiser" throughout much of the notice. This is an outmoded term. USPAP uses "reviewer" to mean an appraiser who reviews.
2. "Scope of work for the appraisal review" is a better label than "criteria for review".

We appreciate the opportunity to comment on this important rule. If our organizations can be of assistance, please contact Don Kelly, Vice President of Public Affairs, Appraisal Institute at 202-298-5583, dkelly@appraisalinstitute.org; Ted Baker, Executive Vice President, American Society of Appraisers at 703-733-2019, tbaker@appraisers.org; Peter Morgan, Senior Regulatory and Industry Relations Liaison, National Association of REALTORS® at 202-383-1233, pmorgan@realtors.org; or Steve Runyan, Government Relations Chair, American Society of Farm Managers and Rural Appraisers at 661-747-6458, srunyan@bak.rr.com.

Sincerely,

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