

March 17, 2020

Document Management Facility  
Department of Transportation  
1200 New Jersey Ave SE  
W12-140  
Washington, D.C. 20590

FHWA Docket No. FHWA-2018-0039

To Whom It May Concern:

On behalf of more than 17,000 members of the largest professional association of real estate appraisers, thank you for the opportunity to offer the following comments in response to the Department of Transportation's ("DOT") Proposed Rule ("proposal") amending the Uniform Relocation Assistance and Real Property Acquisition Policy Act ("Uniform Act"), in order to streamline processes and eliminate duplicative and outdated regulations. The Appraisal Institute supports the intention of the proposed rule, but we are concerned with how the agency is attempting to use the Jurisdictional Exception Rule and the difficulties the proposal will create for appraisers and professional appraisal organizations working with state appraiser regulatory agencies. We respectfully offer the following comments on your proposal.

#### Jurisdictional Exception

The proposal attempts to establish in federal regulation a Jurisdictional Exception that would offer appraisers that wish to perform waiver valuations an avenue for accepting waiver valuation assignments while remaining compliant with state appraisal licensing law. Specifically, DOT is proposing to add language to the Uniform Act regulation that would preclude an appraiser from complying with standards rules 1, 2, 3, and 4 of the "Uniform Standards of Professional Appraisal Practice" (USPAP), as promulgated by the Appraisal Standards Board of The Appraisal Foundation.

This proposal intends to establish a jurisdictional exception within the regulation, and this appears consistent with interpretations of the Jurisdictional Exception Rule of USPAP that requires the appraiser be prohibited from complying with USPAP in order to satisfy the requirements for a Jurisdictional Exception.

We note similar language is found in state law, including the Ohio Administrative Code (Section 5501:2-5-06 (B)(3)(b)(ii)(a)). This law allows certified or licensed appraisers to cite regulation precluding compliance from certain parts of USPAP, thereby, allowing these appraisers to prepare and/or review waiver valuations or value analysis reports.

#### Concerns

- The FHWA's proposal appears to try to exempt appraisers from portions of USPAP when that is not the intent or purpose of the Jurisdictional Exemption Rule.

The proposed regulation from the FHWA appears to be an attempt to allow appraisers to circumvent USPAP for Waiver Valuations, or perhaps more specifically, to exempt them from state appraiser board regulation for these assignments. The proposal tries to accomplish this by prohibiting compliance with USPAP's Standards 1 and 2 (as well as 3 and 4.) Unfortunately, this creates a potentially unworkable situation for appraisers in restricting their ability to do *anything* required by Standards 1 and 2. How can an appraiser complete a Waiver Valuation if the appraiser MUST NOT do any of the things required within Standards 1 and 2 – e.g., employ

recognized methods and techniques; use the cost, income or sales comparison approach; etc.? We understand the agency's intent to position appraisers to complete Waiver Valuations, but it is a misfit to utilize the Jurisdictional Exception this way.

- **The FHWA is using a different definition of “appraisal” from the definition used by USPAP, the state boards, and appraisers.**

The USPAP definition of “appraisal” is “the act or process of developing an opinion of value; an opinion of value.” Under this definition, a Waiver Valuation is clearly an appraisal. The state boards require licensed/certified appraisers to comply with USPAP (unless there is a specific exemption), and that includes the Definitions section of USPAP which contains this definition of “appraisal.” So, the USPAP definition of appraisal is the one acknowledged by state boards and appraisers.

But the agency's regulation uses a very different definition:

*Appraisal. The term appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.*

The proposal also describes how an appraisal (per the FHWA definition) must be reviewed; the property owner must be allowed to accompany the appraiser on the property inspection; and so on.

## **Solutions**

The best solution is for the FHWA to acknowledge that Waiver Valuations are indeed appraisals, but to specify that they are not subject to the same agency requirements as the appraisals they need for other purposes – i.e., they don't have to be reviewed (or if they are, the review scope of work can be reduced); the property owner doesn't have to accompany the appraiser on the inspection; the scope of work under Standard 1 can be reduced; and the level of reporting under Standard 2 can be minimal.

Another option would be for FHWA to specify the specific areas of Standards 1-4 that would be precluded and accomplish a similar goal intended by the agency.

Still further, it is possible all the major stakeholders are searching for an exemption from USPAP for appraisers. This would likely need to be accomplished through a change in the statute that would provide an express preemption of state law accomplishing the goal of FHWA but without the entanglements of created by the conflicted use of the Jurisdictional Exception Rule. We would be happy to work with the agency and others in exploring a change along these lines.

We recognize FHWA appears to be comfortable with the approach it has taken in the proposal, however, we believe that its current form will make it difficult to gain acceptance with state appraiser regulatory agencies. Acceptance by state appraiser regulatory agencies is a critical assumption to the success of the approach taken by the agency. We urge FHFA to consider our suggested solutions above; we believe they would be much better received by state regulators and appraisers.

### **Appraisal Threshold Increase**

The Appraisal Institute understands a robust appraisal is not necessary in every circumstance, and a waiver valuation is a useful tool for state and local transportation departments to use, especially when the taking is uncomplicated and in light of current funding realities at all levels of government. However, we caution DOT against loosening policies so much to increase risk of inappropriate use of public funds. DOT must emphasize that waiver valuations are only for *uncomplicated* valuation assignments.

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Overall, with a few exceptions, we observe a widespread lack of competent staff to perform appraisal or valuation reviews and evaluating the complexity of assignments. Unfortunately, should individuals working for state and local departments of transportation have such competency, we think it is more likely they would already be assigned to completing appraisal assignments for the agencies.

It is common for transportation officials to have waivers from state appraiser licensure. This allows transportation officials to assign non-licensees to perform internal valuation work. However, as responsibilities shifts to non-appraisers - as they would under the proposal - care should be taken by DOT to ensure staff have basic training in appraisal principles to fulfill their obligations. We believe DOT must reinforce the importance of state and local transportation departments enhancing competencies in appraisal processes and procedures. Specifically, we recommend DOT require or encourage basic training in appraisal principles to help limit the knowledge gap.

Further, we believe DOT could encourage transportation officials to develop more definitive decision-making processes on waiver valuations. There are assignments that can be completed efficiently and fit squarely into the waiver valuation space. However, the market conditions may not be right to use that kind of valuation. Care should be taken to ensure that state and local agencies are using waiver valuations in the right place and with proper protocols. On this point, we encourage DOT to conduct more thorough audit processes of these agencies should the proposal be finalized unchanged in the Final Rule.

Thank you again for the opportunity to comment. Please call Bill Garber, Director of Government Relations for the Appraisal Institute, at 202-292-5586 or [bgarber@appraisalinstitute.org](mailto:bgarber@appraisalinstitute.org), or Brian Rodgers, Manager of Government Relations, at (202) 298-5597 or [brodgers@appraisalinstitute.org](mailto:brodgers@appraisalinstitute.org) should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Jefferson L. Sherman". The signature is written in a cursive style.

Jefferson L. Sherman, MAI, AI-GRS  
2020 President