



Kansas Real Estate Appraisal Board 2003

BOARD ISSUES DISCUSSION DRAFT ON PROPOSED REGULATION CHANGES

The Board released for public comment a discussion draft on proposed amendments to K.A.R. 117-2-2, 117-3-2 and 117-4-2. The purpose of these amendments is to clarify the estimated hours that can be used for experience credit when a record of actual hours is not maintained.

As they read now, 117-2-2(b)(2), 117-3-2(c)(2) and 117-4-2(b)(2) set out the number of hours allowed for different types of appraisals. The categories used are very general and these breakdowns cause frequent confusion when an appraiser is preparing to submit their experience to the Board. The calculations shown below are being considered by the Board as an alternative to the current guidelines.

RESIDENTIAL APPRAISALS

The base of each hour calculation is the approaches taken, with 2 hours being given to each approach.

To that base would be added additional hours for the type of report generated:

- Self-Contained 6 hours
- Summary 3 hours
- Restricted Use 0 hours

# OF APPROACHES	SELF-CONTAINED	SUMMARY	RESTRICTED USE
3	12 hours	10 hours	6 hours
2	10 hours	8 hours	4 hours
1	8 hours	6 hours	2 hours

COMMERCIAL/AGRICULTURAL

The base of each hour calculation is the approaches taken, with 8 hours given to each approach.

To that base would be added additional hours for the type of report generated:

- Self-Contained 16 hours
- Summary 8 hours
- Restricted Use 0 hours

# OF APPROACHES	SELF-CONTAINED	SUMMARY	RESTRICTED USE
3	40 hours	32 hours	24 hours
2	32 hours	24 hours	16 hours
1	24 hours	16 hours	8 hours

In addition, it is proposed that “drive-by appraisals” be added to 117-2-2(e), 117-3-2(f) and 117-4-2(e), as an appraisal type that may make up an aggregate of 25% of the total experience hours submitted.

The deadline for written comments is **October 31, 2003**. Comments should be sent to the Kansas Real Estate Appraisal Board, 1100 S.W. Wanamaker Rd., Ste. 104, Topeka, KS 66604.



Visit the Board’s website at www.accesskansas.org/kreab regularly for updates on regulation changes in progress, continuing education providers and to verify your own and other appraiser’s license data.

GAO ISSUES REPORT ON APPRAISER REGULATORY SYSTEM

The General Accounting Office (GAO), the investigative arm of the U.S. Congress, has released a report on enhancing the oversight of the real estate appraisal industry.

“While we are certainly not surprised, we are pleased to report that the GAO found no significant deficiencies with The Appraisal Foundation’s boards or programs. This is particularly noteworthy, given the breadth and scope of several recent Board initiatives,” said David S. Brunton, Executive Vice President of The Appraisal Foundation. *“keeping the findings of this report in mind, we will continue to carry out the responsibilities bestowed upon us by Congress,”* he added.

The GAO's final report, formally titled, *Regulatory Problems: Opportunities to Enhance Oversight of the Real Estate Appraisal Industry (GAO-03-404)*, recommends that the Appraisal Subcommittee:

- Develop and apply consistent criteria for determining and reporting states' compliance with Title XI;
- Explore potential options for assisting states in carrying out their Title XI activities, particularly for investigating appraiser complaints; and
- Explore alternatives for providing future Title XI grant funding to The Appraisal Foundation and its two boards.

Additional information and copies of the GAO-03-404 are available on the web at www.gao.gov, and a link is available through the Foundation's website at www.appraisalfoundation.org.

Source: *Foundation News*, 19 June 2003



2004 RENEWAL Q & A

Another renewal cycle has passed and it's time to begin preparing for 2004. Beginning on July 1, 2003, the new education cycle and USPAP requirement went into effect. All appraisers are still required to meet the 14-hour continuing education requirement at each renewal; however, the education cycle is now 2 years in length and the USPAP requirement is for the 7-hour update course. Listed below are some of the most frequently asked questions addressed by the Board regarding renewal and continuing education.

Q If I take the 15-hour, tested USPAP course, can I use that instead of taking the 7-hour update course?

A No. K.A.R. 117-6-1(a)(3) and (4) specifically call for the 7-hour update course. While the 15-hour, tested USPAP course may be taken and used to meet your continuing education requirement, **it will not** meet the 7-hour USPAP requirement. According to the Appraisal Subcommittee, if the 15-hour USPAP course is taken as continuing education, **the appraiser must take and pass the examination** to receive credit.

Q Can I still carry hours from one renewal period over into another?

A Yes, provided both renewal periods are within the same education cycle. Using the 2004/2005 education cycle as an example, you could take all 28 hours needed for the 2004 and 2005 renewals in

2004. Those hours would meet both renewal requirements (keeping in mind that 7 of those hours must be in the USPAP update course). However, if 36 hours were completed, only 28 could be used, as you cannot carry hours outside of an education cycle.

The easiest way to remember this is that on July 1 of each odd year (2005, 2007, 2009, etc.) you return to a zero education balance and you must again plan to complete the 7-hour USPAP update course as part of your 28 hours of approved continuing education for the next 2-year cycle.

Q If I'm not actively working as an appraiser, can I place my license/certificate on "inactive" or "hold" and bypass the renewal and continuing education requirement?

A No. To maintain your appraiser's license/certificate, the appraiser must renew annually. To renew your license, you must have met the continuing education requirements.

Q If my license/certificate doesn't expire until June 30, why is my education and renewal due by May 31?

A K.S.A. 58-4112(a) states, in part: "*To obtain renewal of a certificate or license, the holder...shall make application for renewal...not earlier than 120 days nor later than 30 days prior to the expiration date...*" This statute allows the Board adequate time so that all "on-time" renewals are processed and the renewed license/certificate is in the hands of the appraiser on or prior to the July 1 effective date. As the continuing education is required to renew, the education must be completed prior to the appraiser submitted the renewal application.

Q I live in Missouri. Can I use my Missouri continuing education to meet Kansas requirements?

A Yes; however, the hours must have been completed within the Kansas education cycle beginning and end dates. At this time, only hours taken **after** July 1, 2003, may be used.



YOU ARE RESPONSIBLE FOR YOUR OWN RECORD KEEPING

This statement was demonstrated in a 2001 Washington Department of Licensing case, ***Eidson v. Dept. of Licensing***. The revocation of a real estate appraiser's license was upheld. The fact that the appraiser hired an archive company to keep his records and the archive company temporarily misplaced the records was no defense to the Department's charge that the appraiser failed to produce documents and records related to the complaint filed against him. *"There is nothing in the language of [the retention statute] to suggest that, in order to be sanctioned under it, the appraiser must have acted knowingly or intentionally in failing to produce documents and records in his or her possession."*

Source: AARO Presentation, Camille Nohe, Kansas Asst. Attorney General



USPAP Q & A

Q I recently received a request for an appraisal assignment. The potential client has indicated that there will be other intended users, but has not identified the intended users specifically. Is it acceptable to identify the intended users by type?

A Yes. STATEMENT No. 9 states:
Neither the client nor the appraiser is obligated to identify an intended user by name. If identification by name is not appropriate or practical, an appraiser's client and the appraiser may identify an intended user by type. (Bold added for emphasis)

Therefore, in this situation the appraiser should identify the type of intended users applicable to the assignment (e.g. wholesale loan purchasers).

Q In the 2002 edition of USPAP, STATEMENT 7 contained a "Clarification of Nomenclature" section that was very helpful. This is no longer in SMT-7. Was this text removed from the USPAP document?

A The "Clarification of Nomenclature" section was relocated to Advisory Opinion 3, which deals directly with updating an appraisal.

Q My state appraisal board is asking me to send a copy of the workfile for an appraisal I performed eight years ago. Since no testimony was given in the assignment, I was only required to maintain access to the workfile for five years. Given that

this time period has expired, can the state board still take action in this case?

A Yes. The time frames referenced in the Record Keeping section of the ETHICS RULE are only minimums. Nothing in USPAP would prevent an enforcement proceeding from taking place after the applicable time period had expired.

Q The terms "recertification of value" and "appraisal update" are often used interchangeably. Do they have the same meaning?

A No, these terms do not have the same meaning. The terms "Update" and "Recertification of Value" are discussed in Advisory Opinion 3 (AO-3).

An "Update" is a new appraisal assignment involving a property that was previously appraised. An Update is subject to the same USPAP requirements as any other appraisal assignment.

A "Recertification of Value" is performed to confirm whether or not the conditions of a prior assignment have been met. One example of a "Recertification of Value" is a "Final Inspection." When an appraiser is asked to complete a "Final Inspection," the appraiser is confirming that conditions established in an assignment have, or have not, been met. "Final inspections" are commonly used in the case of proposed construction where an appraisal is completed subject to completion per plans and specifications.

See AO-3 for further advice on updates of a prior assignment.

Q In performing an appraisal to provide market value, must the appraiser analyze **past** listings and agreements of sale that existed for the subject property?

A Standards Rule 1-5(a) states, in part:
*In developing a real property appraisal, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business: analyze all agreements of sale, options, or listings of the subject property **current as of the effective date of the appraisal.*** (Bold added for emphasis)

However, Standards Rule 1-1(b), a binding requirement, states;
...an appraiser must not commit a substantial error of omission of commission that significantly affects an appraisal...

The Comment goes on to state;
In performing appraisal services, an appraiser must be certain that the gathering of factual information is conducted in a manner that is sufficiently diligent, given the scope of work as identified according to

Standards Rule 1-2(f), to ensure that the data that would have a material or significant effect on the resulting opinions or conclusions are identified and, where necessary, analyzed. Further, an appraiser must use sufficient care in analyzing such data to avoid errors that would significantly affect his or her opinions and conclusions.

Therefore, while SR 1-5 does not require that all prior listings of the subject property or agreements of sale be analyzed, appraisers should take sufficient care to ensure they are not omitting information that would significantly affect the appraisal.

Appraisers should also be aware that some entities have established Supplemental Standards requiring the analysis of prior listings in some appraisal assignments.

Q In addition to my job as an appraiser, I spend a significant amount of my professional time as an instructor of appraisal courses and seminars. One of the prerequisites for my teaching position is that I must also be a practicing appraiser. Am I subject to USPAP when I am teaching appraisal courses?

A Yes you are. Since you are acting in the role of an appraiser in these teaching assignments, you are engaged in "Appraisal Practice" which is defined in USPAP as;

*Valuation services performed by an individual acting as an appraiser, including, **but not limited to**, appraisal, appraisal review, or appraisal consulting.* (Bold added for emphasis)

While UPSAP does not include Standards Rules for teaching assignments, you must observe applicable requirements in the PREAMBLE, ETHICS RULE, COMPETENCY RULE, SUPPLEMENTAL STANDARDS RULE and JURISDICTIONAL EXCEPTION RULE.

See Advisory Opinion 21 (AO-21) for discussion of the application of USPAP in Valuation Services.

Q I recently received an assignment for an update of an appraisal. The original appraisal was reported on a commonly used single-family residential report form. Must I use this same form to report the results of the update assignment?

A No. Using the same form as the original report is not required. The update is a new appraisal assignment, and it may be reported in any format that is acceptable for the intended use and complies with the applicable reporting Standard (STANDARD 2 for a real property assignment). The report must contain sufficient information to be meaningful and not misleading to the intended users, but it is not required to have the same level of detail as the original report.

For additional information, refer to Advisory Opinion 3, *Update of a Prior Assignment*.

Q I was recently asked to complete a retrospective market value appraisal where the effective date of the appraisal is two years prior to the date of the report. In researching this assignment I discovered several comparable sales that were listed, placed under contract, and sold well after the effective date of the appraisal. Would it be appropriate to use **only** these sales in my sales comparison approach to value?

A No. In a retrospective appraisal, the analysis should reflect the market conditions that existed on the effective date of the appraisal. Only using comparable sale information that was **not** available to the market place, or did not exist as of the effective date of the appraisal would be misleading because it would not reflect information available to the market-place during that time period.

Consult SMT-3 for further discussion of retrospective appraisals.

Q I am currently working in an appraisal firm as a trainee. As part of my training I contribute significant real property appraisal assistance in appraisal assignments performed by other appraisers in the firm but I do not sign the appraisal report or the certification. I understand that my name must be stated in the certification. Must the certification include a description of my assistance?

A A description of your assistance or contribution to the assignment is not required in the certification. However, in accordance with Standards Rule 2-2(a), (b), and (c)(vii), the extent of the assistance must be described, summarized or stated (depending on the reporting option used) within the report. This required disclosure could be included within the certification, but it could also be included in some other section of the report.

Q A client has requested that I perform a limited appraisal with the only departure being omission of the cost approach. I have determined that while the cost approach is applicable, it is not necessary to develop a credible appraisal. Although I am not reporting it, must I develop and retain a copy of the cost approach in my workfile?

A No. USPAP does not require appraisers to develop or retain a cost approach in this situation. The Record Keeping section of the ETHICS RULE states, in part:

...the content of a workfile for a Limited Appraisal need only reflect consideration of the USPAP requirements from which there have been no departure and that are required by the specific Limited Appraisal assignment.

Q I delivered an appraisal report to my client. A week later, an entity other than one of the identified intended users contacted me and asked that I provide a "reliance letter," enabling them to rely on the appraisal report for their investment purposes. My client says they have no problem with my doing that. Can I provide this entity with such a letter, even though I had not originally identified them as an intended user?

A No. You cannot add what is in effect a new "intended user" after the completion of an assignment, no matter what terminology you use.

USPAP defines Intended User as:

The client and any other party as identified, by name or type, as users of the appraisal, appraisal review, or appraisal consulting report by the appraiser on the basis of communication with the client at the time of the assignment. (Bold added for emphasis)

The proper way to handle this is to initiate a new assignment with this entity as the client and provide them an appraisal, being careful to develop an appropriate scope of work consistent with their own intended use.

This new assignment could be based on virtually the same data and analysis, and the value conclusion might be the same. However, in the new assignment you must consider the assignment parameters most appropriate to the scope of work for that client and the assignment, which could well be different from those of your prior client.

This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. The ASB USPAP Q&A is issued to inform appraisers, regulators and users of appraisal services of the ASB responses to questions raised by regulators and individuals; to illustrate the applicability of the Uniform Standards of Professional Appraisal Practice (USPAP) in specific situations; and to offer advice from the ASB for the resolution of appraisal issues and problems. This question and answer section does not constitute a legal opinion of the ASB.



**JEREMY ALAN PLAGMAN
(P-1768) COMPLAINT #312**

VIOLATIONS: K.S.A. 58-4121, K.S.A. 58-4118 (a) (6), 58-4118(a)(7) and K.S.A. 58-4118(a)(8).
Action: A Consent Agreement and Order was entered into on April 26, 2003, with the following terms and conditions: That Plagman take and pass the examination of a 15-hour Uniform Standards of Professional Appraisal Practice Course on or prior to June 30, 2004. That Plagman take and pass the examination of a minimum 20-hour sales comparison approach course on or prior to June 30, 2004. That Plagman pay \$120 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement.

**RODNEY ALAN PLAGMAN
(G-1718) COMPLAINT #311**

VIOLATIONS: K.S.A. 58-4121, K.S.A. 58-4118 (a) (6), 58-4118(a)(7) and K.S.A. 58-4118(a)(8).
ACTION: A Consent Agreement and Order was entered into on April 26, 2003, with the following terms and conditions: That Plagman take and pass the examination of a 15-hour Uniform Standards of Professional Appraisal Practice Course on or prior to June 30, 2004. That Plagman take and pass the examination of a minimum 20-hour sales comparison approach course on or prior to June 30, 2004. That Plagman's general certification will be placed on probation for a period of 12 months, to commence the date of the Agreement. That Plagman pay \$120 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement.

**STEPHEN DEARL DRENNAN
(L-1089) COMPLAINT #298**

VIOLATIONS: K.S.A. 58-4121, K.S.A. 58-4118(a)(6), 58-4118(a)(7) and K.S.A. 58-4118(a)(8).
ACTION: A Consent Agreement and Order was entered into on May 9, 2003, with the following terms and conditions: That Drennan take and pass the examination of a minimum 20-hour sales comparison

**LICENSED/CERTIFIED APPRAISERS
AS OF SEPTEMBER 10, 2003**

General Certified.....	416
Residential Certified.....	327
State Licensed.....	281
Provisional (Trainee).....	133
Total.....	1,157

approach course on or prior to June 30, 2004. That Drennan pay \$200 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement. That Drennan pay a fine of \$500 within 30 days from the date of the Agreement.

**DAVID L. HARTLINE
(R-615) COMPLAINT #263**

VIOLATIONS: K.S.A. 58-4121; K.S.A. 58-4118(a)(6); K.S.A. 58-4118(a)(7) and K.S.A. 58-4118(a)(8).
ACTION: A Consent Agreement and Order was entered into on June 20, 2003, with the following terms and conditions: That Hartline's residential certification be suspended for a period of 12 months, said suspension to be stayed upon the following terms and conditions: (a) That Hartline pay \$320 to cover the cost of the review associated with this complaint within 30 days of the effective date of the Agreement; (b) that Hartline pay a fine of \$750 within 30 days of the effective date of the Agreement; and (c) that Hartline take and pass a minimum 24-hour report writing course. That Hartline maintain a log of all appraisals for a period of six (6) months following the date the suspension is stayed. That the logs be submitted monthly, to be received by the Board immediately following the 1st working date of each month. That the Board will select a minimum of 3, but not more than 6 appraisals for additional review. That upon notification from the Board, Hartline will submit copies of the subject appraisals and complete workfiles within 10 days. That Hartline pays the costs of all subsequent reviews within 30 days of notice from the Board.

**ROBERT C. MILLIKEN
(L-1515) COMPLAINT #289**

VIOLATIONS: K.S.A. 58-5141, K.S.A. 48-4118 (a)(6), K.S.A. 58-4118(a)(7), K.S.A. 58-4118(a)(8).
ACTION: A Consent Agreement and Order was entered into on July 3, 2003, with the following terms and conditions: That Milliken take and pass the examination of a 15-hour Uniform Standards of Professional Appraisal Practice course on or prior to June 30, 2004; and that Milliken pay \$240 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement.

**SAMUEL L. LEVOTA
(L-1309) COMPLAINT #246**

VIOLATIONS: K.S.A. 58-4121; 58-4118(a)(6); 58-4118(a)(7); and 58-4118(a)(8).
ACTION: A Consent Agreement and Order was entered into on July 25, 2003, with the following terms and conditions: LeVota's is restricted from supervising for a period of 6 months. That LeVota take and pass the examination of a minimum 24-hour report-writing course on or prior to October 1, 2003. That LeVota pay \$560 to cover the cost of the review associated with this complaint within 30 days from the date of the Agreement.

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