



2009



# Winter Newsletter

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No. 1

## COLLATERAL RISK NETWORK MEETING SUMMARY

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On February 27, 2009, nine (9) individuals convened as a part of the Collateral Risk Network meeting at the Crown Plaza, Hamilton Hotel in Washington, DC for the purpose of discussing legislation, regulation, and enforcement of the real property appraisers and the appraisal profession:

- |                            |               |
|----------------------------|---------------|
| Larry Disney – Team Leader | Dennis Badger |
| Jeff Dickstein             | Fred McDonald |
| Owen Buckley               | Jim Park      |
| Mirella Meyers             | Walter Morgan |
| Crispin Bennett            |               |

### 1. State appraiser regulatory enforcement, is it working?

There was consensus of the group that parts of the enforcement of appraisers apparently works well, but other parts that are non-existent or ineffective. It was agreed that there is no consistency in the sanctioning of appraisers from one state enforcement agency to another, although the alleged violations may be almost identical.

The working group did not present any specific alternative for the existing state appraiser regulatory enforcement process; however, it was suggested that the creation of model legislation would be an ideal beginning, and further that a requirement be made that each state appraiser enforcement agency must adopt and enforce that model legislation, including a consistent disciplinary matrix for similar violations.

### 2. What would be the suggested changes in the following appraiser regulatory process?

Investigations of complaints -There is no consistency of investigations and no recognized standard for investigations of real property appraiser complaints. The group unanimously recommended that real property appraiser investigators have familiarity, knowledge of, and experience in real property appraising. The investigators should be required to have received regulatory investigative training, have received USPAP training and regular USPAP update courses.

Each real property appraiser complaint should be investigated and settled with effective and fair action in no less than 12-months. In the absence of timely settlement of complaint cases, appraisers who may be the cause of deficient appraisal assignments will continue to

practice without interpretation, all the while creating more potential for problems.

Appraiser regulatory agencies should be staffed with either real property appraisers or individuals who are knowledgeable of the appraisal of real property and with the intent of USPAP.

All money collected by the appraiser regulatory agencies in fees and penalty fines should be used only for the agency enforcement program. The funds should never be comingled within a general fund and allocated for any use other than appraiser enforcement.

### 3. Should Title XI be amended?

The consensus was yes, Title XI should be amended, including the following:

The Appraisal Subcommittee (ASC) should be given greater oversight authority over State appraiser regulation, including the ability to levy fines for continued deficiencies of the policy statements, and other possible actions that go beyond the only current action available to the ASC, the decertification of a State enforcement agency. That action has never happened and there is no high probably that it will ever happen.

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The Appraiser Qualifications Board (AQB) should be recognized in Title XI as the authority for setting the minimum criteria for real property appraiser trainees.

The AQB should be recognized as the authority for establishing mandatory supervisor training, education, and experience requirements. There should also be a mandate that each state appraiser regulatory agency must develop and regularly provide a supervisor/trainee course.

The AQB should be given the authority to set the number of unsuccessful attempts, no more than 3 to 5, an individual may have to take the national examination without some type of remedial assistance. That assistance could be the requirement to complete all current qualifying education for the examination type he or she is seeking.

Title XI should be amended to require all Board members, regulatory compliance officials, investigators, attorneys, and staff responsible for reviewing complaint hearings and cases to complete the 15-hour national USPAP course, and to complete the 7-hour USPAP update course every two years.

States should be required to establish regulatory agencies that are dedicated to the regulation of real property appraisers, and not be under the authority or control of an agency that is dedicated to other agencies or regulated groups.

The Licensed Real Property appraiser classification should be removed and not recognized in Title XI. However, if the credential is not removed, the AQB should be given the authority to establish criteria similar to that of the Certified Residential appraiser criteria.

The group was of the opinion that the threshold, noted in Title XI with no specific amount, should be set within Title XI as \$25,000 instead of permitting the federal financial institutions examination council agencies to set the minimum that will be required before an appraisal, by a certified appraiser, is required.

The group was divided in response to the question of whether Broker Price Opinions (BPO), prepared by individuals other than certified appraisers, should be permitted for mortgage lending purposes. Some believed the acceptance of a BPO is not a good business practice, and others believed that the BPO delivers a purpose that does not require the services of a professional appraiser.

Title XI should be amended to require that all state appraiser regulatory agencies must recognize another State's certified appraisers if the appraiser is in good standing with the state in which he/she is certified, and if that state has adopted laws and regulations to comply with the minimum AQB criteria at the time of reciprocal application.

#### **4. What group or agency is considered the voice of the professional real property appraiser, today?**

The working group could not identify any one group or agency considered to be the voice of the professional appraisers today. It was noted that approximately two-thirds of the licensed and certified appraisers claim membership in a professional organization. This is concerning because no one knows how the appraisers learn about

emerging trends within the appraisal profession or how they find answers to questions about the appraisal process, etc.

It was pointed out that for whatever reason few licensed and certified appraisers have chosen to join professional organizations or to become affiliated with other appraisers in the past three years.

#### **5. Should Appraisal Management Companies (AMC) be regulated?**

The group was divided on this question. The key issue appears to be the perception of the professional AMC companies, some believe there is currently sufficient regulation of the groups and no additional controls are needed. However, there were others who believe there is no way to identify AMC companies, there is no regulatory expectation for controlling them, and at the very minimum they should be required to register with the state(s) in which they operate. There was concern about the cost of doing business, especially if the AMC operates in more than one state, and the regulations are not uniform from one state to another.

Some participants believe there are numerous problems with some of the AMC companies, but it is impossible to determine the identities of the so called good or bad companies. If one listens to the appraisers, the AMC groups are not serving the good of the public or the professional appraisers. However, if one listens to the AMC companies, it is alleged that they serve the clients as an independent ordering department, collection agent for fees, payments to the appraisers, and for keeping track of the time in completing and returning appraisal reports.

There was no consensus of what agency or group should regulate the AMC groups. There was little enthusiasm or belief that state agencies could effectively provide regulation for this purpose due to a lack of funding, and the current abysmal state financing.

#### **6. Should state certification of real property appraisers be mandatory?**

There was consensus that all appraisers throughout the United States and the territories should be certified prior to being approved to complete real property assignments for any lending purpose.

The following is a summary of the discussion pertaining to unlicensed activity:

The United States is currently experiencing one of the most challenging problems ever encountered in mortgage lending. It is incredulous to imagine that so many people, including lenders, lender regulatory agencies, government officials, and others continue to promote real property appraisal services be completed by individuals who lack any specific education, experience, or examination, or any expectation to demonstrate a knowledge of real property appraising. It is believed that the continued acceptance of products labeled as BPO, CMA, or evaluation developed by individuals who lack knowledge and competency will contribute to an already declining real property sales market, and the collapse of trust in mortgage lending.

Although the above concern was discussed, some members expressed an opinion that the BPO product serves a vital service and tool that can be used for developing a marketing strategy for properties and for loans that are less of a risk than the higher ratio loans.



### BOARD INTRODUCES REGULATION CHANGES TO THE EDUCATION REQUIREMENTS RELATING TO UPGRADE TO CERTIFIED

The Board has introduced changes to K.A.R. 117-3-1, *General classification, education requirements*, and 117-4-1, *Residential classification; education requirements*, relating to the education requirements required to upgrade from an existing license/certification.

State licensed appraisers wishing to upgrade to the certified residential classification would be required to meet the college level educational requirement of an associates degree, or its equivalent [as set forth in 117-4-1(a)(1)], as well as completing an additional 50 education hours in the following subjects: 15 hours of statistics, modeling, and finance; 15 hours of advanced residential applications and case studies; and 20 hours of appraisal subject matter electives.

State licensed appraisers wishing to upgrade to the certified general classification would be required to meet the college level educational requirement of a bachelor's degree, or its equivalent [as set forth in 117-3-1(a)(1)], as well as completing an additional 150 education hours in the following subjects: 15 hours of general appraiser market analysis and highest and best use; 15 hours of statistics, modeling and finance; 15 hours of general appraiser sales comparison approach; 15 hours of general appraiser site valuation and cost approach; 45 hours of general appraiser income approach; 15 hours of general appraiser report writing and case studies; and 30 hours of appraisal subject matter electives.

Certified residential appraisers wishing to upgrade to the certified general classification would be required to meet the college level educational requirement of a bachelor's degree, or its equivalent [as set forth in 117-3-1(a)(1)], as well as completing an additional 100 education hours in the following subjects: 15 hours of general appraiser market analysis and highest and best use; 15 hours of general appraiser sales comparison approach; 15 hours of general appraiser site valuation and cost approach; 45 hours of general appraiser income approach; and 10 hours of general appraiser report writing and case studies.



### USPAP Q & A

**Q.** In the course of preparing my appraisals, I often research Multiple Listing Service (MLS) and other data sources. I use this information to develop conclusions regarding neighborhood value ranges and market trends. Is it necessary for me to include

copies of this information in my workfile? Alternatively, can I simply reference the data sources in my workfile?

**A.** References in the workfile to the location of documentation used to support an appraiser's analyses, opinions, and conclusions can be adequate. It is not always necessary for the appraisal workfile to include all the documentation provided the referenced material is retrievable by the appraiser throughout the workfile retention period. Care should be exercised in the selection of the format and location of documentation.

The Record Keeping section of the ETHICS RULE states that the workfile must include:

*...all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation.* (Bold added for emphasis.)

**Q.** I am an appraiser in a firm that performs valuations of business interests and assets (both tangible and intangible) for financial reporting purposes in accordance with Financial Accounting Standards Board (FASB) standards. Does USPAP apply to valuations for financial reporting purposes?

**A.** Yes, USPAP is applicable to appraisers performing assignments for financial reporting purposes. You have identified yourself as an appraiser. Regardless of the intended use of the work you perform, when you represent yourself as an appraiser you should comply with USPAP. Further, there may be laws or regulations that require compliance with USPAP.

It is possible that others in your firm, such as accountants or business and/or financial analysts, may also perform valuations for financial reporting purposes. In these cases, because USPAP applies only to appraisers, there is no obligation for non-appraisers to comply with USPAP (unless there is law or regulation that requires compliance).

Refer to Advisory Opinion 21, *USPAP Compliance* for further guidance.

**Q.** An investment firm hired an appraiser to abstract leases, input the data into a lease-by-lease analysis software program, estimate market rents and expenses, estimate the discount rate, run ten discounted cash flows, and provide a value using the Income Capitalization Approach. The appraiser completed the assignment, including providing a conclusion of market value, and delivered the electronic lease-by-lease analysis file to the client. Should this service comply with USPAP?

**A.** Yes. This service is an appraisal. In order to be in compliance with USPAP, the appraiser must observe the development and reporting requirements applicable to a real property appraisal (STANDARDS 1 and 2). It is not possible to determine from the information provided whether the appraiser properly developed his or her assignment results. However, it does appear that the reporting of the assignment results fail to comply with STANDARD 2. USPAP prescribes the minimum content requirements for three real

property appraisal reporting options: Self-Contained Appraisal Report, Summary Appraisal Report, and Restricted Use Appraisal Report. The communication of the appraisal results solely through the delivery of an electronic lease-by-lease analysis file does not satisfy the reporting requirements of USPAP.

**Q.** Does registration of a copyright on an appraisal report with the U.S. Copyright Office violate the confidentiality provisions of USPAP?

**A.** The ASB is taking no position as to whether an appraisal report is copyrightable, nor does this response constitute a legal opinion of the ASB.

If, however, an appraisal were copyrightable, and if the process of registration with the U.S. Copyright Office includes public disclosure of the appraisal report, such registration would disclose assignment results and would therefore result in a breach of the Confidentiality section of the ETHICS RULE of USPAP, unless the appraiser/registrant had the prior approval of the client for such registration.

**Q.** I often perform real property appraisal assignments that include not only real property but also personal property and/or intangible items (examples include property types such as hotels and restaurants). Often times, my clients will request that I separate or "allocate" a portion of the defined value opinion to these non-real property components. These requests raise the following questions:

- What exactly is the appraiser's USPAP obligation in performing this separation of value?
- May this "allocation" be accomplished without the appraiser developing an opinion of value in compliance with STANDARD 7 or 9?
- Is an allocation considered to be synonymous with an opinion of value or is it the result of a mathematical calculation?
- There are also occasions when the client does not specifically request separate valuations of non-real property assets, even though they may be present. Is the appraiser still required to value those assets separately?

**A.** Standards Rule 1-2(e) requires an appraiser to:  
• *Identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including:*  
...*(iii) any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal;...*

Standards Rule 1-4(g) states:

*When personal property, trade fixtures, or intangible items are included in the appraisal, the appraiser must analyze the effect on value of such non-real property items.*

And the Comment to SR 1-4(g) further states:

*When the scope of work includes an appraisal of personal property, trade fixtures or intangible items, competency in personal property appraisal (see STANDARD 7) or business appraisal (see STANDARD 9) is required.*

Given this background, each of the questions can be answered as follows:

- What exactly is the appraiser's USPAP obligation in performing this separation of value?

Whether this is labeled a "separation" or an "allocation," it is an appraisal as defined in USPAP.

- May this "allocation" be accomplished without the appraiser developing an opinion of value in compliance with STANDARD 7 or 9?

No. Once it is understood that "performing this separation of value" is synonymous with "performing this appraisal," compliance with the applicable Standards Rules is required, as is appropriate competency.

Is an allocation considered to be synonymous with an opinion of value or is it the result of a mathematical calculation?

As stated in the response to Question #1, an "allocation" is synonymous with an "appraisal."

- There are also occasions when the client does not specifically request separate valuations of non-real property assets, even though they may be present. Is the appraiser still required to value those assets separately?

No. This is a scope of work decision to be made by the appraiser; Standards Rule 1-4(g) does not require separate appraisals of these different types of assets. SR 1-4 (g) states:

*When personal property, trade fixtures, or intangible items are included in the appraisal, the appraiser must analyze the effect on value of such non-real property items.*

Comment: *When the scope of work includes an appraisal of personal property, trade fixtures or intangible items, competency in personal property appraisal (see STANDARD 7) or business appraisal (see STANDARD 9) is required.*

Some appraisers and users of appraisals believe the requirement that "the appraiser must analyze the effect on value of such non-real property items" is a requirement for the separate appraisal of those items in all assignments. That is incorrect. "Analyzing the effect on value" might be appropriately made through the selection of comparable properties used in the sales comparison approach or the deduction of certain line items of expense for management fees, maintenance or replacements in the income approach, for example.

**Q.** I am an appraiser with several bank clients that do not provide a copy of the current sales contract as a part of their standard appraisal ordering procedures. In addition, the parties to the transaction have been requested by the client not to provide either the contract or information contained in the sales contract to the appraiser. If the client withholds the current pending sale contract, can I still perform the assignment in compliance with USPAP?

**A.** Yes. Standards Rules 1-5 and 7-5 require real and personal property appraisers to analyze all agreements of sale that

are current at the effective date of the appraisal “if such information is available to the appraiser in the normal course of business.” Since these contracts are not available to you, you can complete the assignment and still be in compliance with USPAP.

However, the Comment to Standards Rules 1-5 and 7-5 reference the related reporting Standards Rules which require the appraiser to include a “statement on the efforts of the appraiser to obtain the information” in the report. Therefore, if you have attempted to obtain the current contract and could not, you must disclose how you attempted to obtain the contract in your report.

For more information regarding the meaning of “normal course of business,” see Advisory Opinion 24, *Normal Course of Business*, which is applicable to both real and personal property.

**Q.** I am an appraiser who is still confused about the use of the various labels used in USPAP. For example, I am not certain how many approaches to value must be developed when performing a Summary Appraisal. Can you help resolve my confusion?

**A.** To resolve this confusion, you must first understand that USPAP separates the process of *developing* your assignment conclusions from the process of *communicating* your results to the client and other intended users. The “summary” label is used in the **reporting** process, and is one means of communicating your assignment results. The actual label used in STANDARD 2 (for real property) and STANDARD 8 (for personal property) is “Summary Appraisal Report.” Standards Rules 2-2(b) and 8-2(b) describe the minimum requirements for preparing a Summary Appraisal Report, which have to do with the level of detail and amount of information communicated for that reporting option.

The number of valuation approaches you develop is part of the scope of work decision made in the **development** process. USPAP does not specify the number of approaches required, but leaves that decision to the appraiser. The SCOPE OF WORK RULE requires that the development process (including the number of approaches used) is sufficient to produce credible assignment results. The scope of work that you determine appropriate for an assignment is the same regardless which option you use for writing your report, Self-Contained, Summary or Restricted Use Appraisal Report.

For additional information on the appraisal reporting options, see Advisory Opinion 11, *Content of the Appraisal Report Options of Standards Rules 2-2 and 8-2*.

For more information regarding how to make the decision of how many valuation approaches to develop in an assignment, see the SCOPE OF WORK RULE, Advisory Opinion 28, *Scope of Work Decision, Performance, and Disclosure*, and Advisory Opinion 29, *An Acceptable Scope of Work*.

**Q.** If a review appraiser concludes that an appraisal report is unacceptable, does the reviewer need to cite specific requirements in USPAP that were not fulfilled appropriately?

**A.** No, but the review appraisal report must include the reasons for the reviewer’s conclusion. When the scope of work re-

quires the review appraiser to “evaluate compliance with relevant USPAP requirements,” it is appropriate to analyze compliance or non-compliance with USPAP. However, USPAP does not require a reviewer to determine that the subject of an appraisal review complies with USPAP.

**Q.** I was contacted by a sworn peace officer who simply requested the workfile of an assignment I had previously completed. The officer made this request **without** a subpoena or any form of court order. If the workfile contains confidential information, does USPAP allow me to comply with the officer’s request?

**A.** The answer to the question depends on whether or not the officer’s request qualifies as “due process of law.”

The Confidentiality section of the ETHICS RULE states, in part:

*An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies **and such third parties as may be authorized by due process of law...*** (Bold added for emphasis)

It is likely that this determination would need to be made by a court or other legal body, since USPAP does not define what “due process of law” constitutes. You may want to seek legal advice to determine an appropriate response. It is also important to note that if the officer made the request on behalf of a state enforcement agency, the portion of the Confidentiality section of the ETHICS RULE quoted above allows the appraiser to communicate confidential information.

**Q.** Does USPAP require an appraiser to sign the letter of transmittal?

**A.** No. USPAP does not require that any report include a letter of transmittal. However, USPAP does require that an appraiser who signs a letter of transmittal must also sign the certification required in Standards Rules 2-3, 3-3, 5-3, 6-9, 8-3, and 10-3.

For example, the Comment to Standards Rule 2-3 states, in part:

*A signed certification is an integral part of the appraisal report. **An appraiser who signs any part of the appraisal report, including a letter of transmittal, must also sign this certification.*** (Bold added for emphasis)

**Q.** I’ve been engaged for a real property appraisal review assignment and have a question about the appraisal report under review. Does USPAP require the date of value to be cited each time the opinion of value is stated in the appraisal report?

**A.** No. USPAP does not require the appraiser to state the effective date of the appraisal with each statement of the value opinion. In a real property appraisal report, the requirements that apply to reporting the effective date can be found in Standards Rules 2-2(a)(vi) for a Self-Contained Appraisal Report, 2-2(b)(vi) for a Summary Appraisal Report, and 2-2(c)(vi) for a Restricted Use Appraisal Report. Each of these appraisal reporting options simply requires the appraisal report to “state the effective date of the appraisal and the date of the report.”

However, you should take care to assure that intended users are not misled, such as by stating the effective date of value in a manner which does not clearly establish the context for the value opinion. In most instances, reporting the value opinion with the effective date of the appraisal, especially when the effective date is significantly different (retrospective or prospective) from the date of the report, assists intended users to clearly understand the context for the value opinion.

*The Appraisal Standards Board (ASB) of The Appraisal Foundation develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. The USPAP Q&A is a form of guidance issued by the ASB to respond to questions raised by appraisers, enforcement officials, users of appraisal services and the public to illustrate the applicability of USPAP in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems. The USPAP Q&A may not represent the only possible solution to the issues discussed nor may the advice provided be applied equally to seemingly similar situations. USPAP Q&A does not establish new standards or interpret existing standards. USPAP Q&A is not part of USPAP and is approved by the ASB without public exposure and comment.*



## FHA GUIDANCE ON LICENSED APPRAISERS OCTOBER 2009

Per the Director of the Home Valuation Policy Division, FHA Single Family Housing, all state appraisal regulatory agencies received notice that guidance was issued Friday, December 19, 2008, regarding licensed, but not state-certified, appraisers on the FHA Appraiser Roster.

FHA issues Mortgagee Letter 2008-39, Revised Eligibility Requirements for FHA Roster Appraisers, setting the timeline for implementation of the Eligibility requirements set forth in Section 1404 of the Housing and Economic Recovery Act of 2008 (Public Law 110-289.) Please note Item 2 of the letter states:

**No Later than October 1, 2009, all** FHA Appraiser Roster appraisers in **all** states and territories must be state certified in order to be eligible to conduct appraisals for FHA-insured mortgages and remain on the FHA Appraiser Roster.

### Mortgagee Letter 2008-39

SUBJECT: Revised Eligibility Requirements for FHA Roster Appraisers

Section 1404 of the Housing and Economic Recovery Act of 2008 (HERA) (Public Law 110-289, approved July 30, 2008) amended Section 202 of the National Housing Act to revise qualification standards for Federal Housing Administration (FHA) approved appraisers. This mortgagee letter sets forth the revised eligibility requirements for appraisers to qualify for placement and retention on the FHA Appraiser Roster and provides the timeline for implementation of those requirements.

Section 202(f) of the National Housing Act mandates that all appraisers chosen or approved to conduct appraisals of properties that will be security for FHA-insured mortgages must: (1) be "certified" by the State in which the property to be appraised is located; or by a nationally recognized professional appraisal organization, and (2) have demonstrated verifiable education in the appraisal requirements established by FHA. (Note that the term "state" as used throughout this Mortgagee Letter includes U.S. Territories.)

### IMPLEMENTATION DATES

Although Section 202(f) of the National Housing Act was made effective upon enactment, FHA has determined that the loss of available FHA Roster appraisers in certain locations will impede its ability to support affordable mortgage financing in those areas, which would contravene the goals of the HOPE for Homeowners Program and hinder use of other FHA single family programs at a time when use of those programs has increased significantly. Therefore, in order to implement this change in appraiser eligibility requirements in a manner that is not disruptive to the FHA mortgage lending process, the requirement will be phased in as follows:

**Effective October 1, 2008**, FHA stopped accepting applications to the FHA Appraiser Roster from licensed but uncertified appraisers. All applicants for the FHA Appraiser Roster must be state certified (certified residential or certified general) appraisers who meet the minimum certification criteria issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. The requirements that applicants not be listed on the General Service Administration (GSA) Excluded Parties List System (EPLS), HUD's Limited Denial of Participation List (LDP), or HUD's Credit Alert Interactive Voice Response System (CAIVRS) remain unchanged.

**No Later than October 1, 2009, all** FHA Appraiser Roster appraisers in **all** states and territories must be state certified in order to be eligible to conduct appraisals for FHA-insured mortgages and remain on the FHA Appraiser Roster.

### FHA MORTGAGEE INSTRUCTIONS:

**Commencing October 1, 2009**, all FHA-approved lenders must use state certified appraisers for FHA-insured mortgages. The appraiser assignment field within the Case Number Assignment screen in FHA Connection must be input with an appraiser who is listed as either certified residential or certified general on the FHA Roster for the state in which the property is located. If, on or after October 1, 2009, an FHA-approved lender enters an appraisal assignment into FHA Connection for a property from a FHA Roster Appraiser who is licensed but not certified in accordance with this Mortgagee Letter, the appraisal will be unacceptable for FHA-insured financing and a second appraisal, performed by a state certified appraiser, must be completed at the lender's expense.

When appraisal assignments (case # assignments) are given to licensed appraisers prior to October 1, 2009, but the appraisal is not completed until after that date, the appraisal will be acceptable. However, the lender must assure that the appraisal assignment date is entered accurately into FHA Connection which must be a date

prior to October 1, 2009. In these cases, the appraisal assignment must be submitted to the lender no later than October 30, 2009.

Appraisals that were completed by licensed appraisers prior to the deadline, which are transferred to a new lender, may be used as long as the original assignment date occurred prior to October 1, 2009.

#### **ADDITIONAL INFORMATION –CERTIFICATION AND EDUCATION OF APPRAISERS**

Currently, FHA allows both licensed and certified appraisers to conduct appraisals for FHA-insured mortgages as long as they qualify under the minimum criteria issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation as authorized under the provisions of Title XI of the Financial Institutions, Reform, Recovery and Enforcement Act of 1989 (FIRREA). (See the FHA Appraiser Roster regulations at 24 CFR 200.202.) Under FIRREA, the AQB establishes the minimum education, experience and examination requirements for real property appraisers to obtain a state certification. In addition, the AQB performs a number of ancillary duties related to real property and personal property appraiser qualifications.

To meet the new eligibility requirement, FHA appraisers must be certified by the state in which the property to be appraised is located, or by a nationally recognized professional organization. Under new section 202(f) of the National Housing Act, licensed appraisers would no longer be authorized to conduct appraisals of properties securing an FHA-insured mortgage.

Through FIRREA, Congress authorized the Appraisal Foundation to establish minimum qualification requirements for state certification of appraisers as well as promote minimum uniform appraisal standards. The Appraisal Foundation serves as the parent organization to AQB and the Appraisal Standards Board (ASB) to accomplish this mission. The AQB promulgates and maintains appraiser qualification criteria and the ASB promulgates and maintains the Uniform Standards of Professional Appraisal Practice (USPAP). The FHA Appraiser Roster regulations acknowledge this national role by requiring that appraisers applying for placement on the roster meet the minimum AQB education, examination, and training criteria. Given these unique responsibilities, FHA has determined that the Appraisal Foundation is a “nationally recognized professional appraisal organization” within the meaning of new section 202(f) of the National Housing Act. Moreover, FHA has determined that appraisers meeting the AQB criteria, as required by the FHA Appraiser Roster regulations, have “demonstrated verifiable education in the appraisal requirements established by FHA” under the new law.

FHA recognizes that there may be other national professional organizations that satisfy the requirements of section 202(f), and that there may be additional means of demonstrating verifiable education in FHA appraisal requirements. HUD will publish a notice in the Federal Register inviting the public to comment on nationally recognized professional appraisal organizations that FHA should consider as meeting the new statutory requirements.

#### **Procedures to Obtain Placement on the FHA Appraiser Roster**

Applicants who meet all eligibility criteria may apply on-line at <http://www.hud.gov/appraisers>

If you have any questions concerning this Mortgagee Letter, please call 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).



### **2009 RENEWAL CONTINUING EDUCATION REQUIREMENTS**

During a recent review of the Kansas Real Estate Appraisal Board's statutes and regulations, it was noted that the KREAB does not have the statutory authority to exempt any appraiser from continuing education. As a result, the Board has adopted the following continuing education requirements:

Appraisers originally licensed/certified prior to July 1, 2008, must meet the full 28 hours of approved continuing education for their 2009 renewal. Of the 28 hours, 7 must be in USPAP Update. All of the 28 hours must have been completed on or after July 1, 2007 **OR** on or after the appraiser's original license/ certification date (this date will appear on the face of the renewal application immediately below the appraiser name/address), whichever is latest, i.e. an appraiser originally licensed on February 5, 2008 must meet all 28 hours, completed on or after February 5, 2008, but prior to the 2009 renewal.

Appraisers originally licensed/certified on or after July 1, 2008, but prior to December 29, 2008, must meet 14 hours of approved continuing education for their 2009 renewal. Of the 14 hours, 7 must be in USPAP Update. All of the 14 hours must have been completed on or after the appraiser's original license/certification date (this date will appear on the face of the renewal application immediately below the appraiser name/address).

Appraisers originally licensed/certified on or after December 29, 2008, must meet two (2) hours of approved continuing education for their 2009 renewal. These hours must have been completed on or after their original license/certification date



### **CONFIDENTIALITY AND PEER REVIEW COMMITTEES**

The Board does not maintain information on an appraiser's affiliation with specific organizations. If an appraiser who has been disciplined, belongs to an organization, the Board occasionally receives inquiries of whether or not the information was forwarded to that specific organization. The Board does not distribute this information to the organization. It is the organizations responsibility to verify the good standing of the appraiser within the state. The State Board reports all disciplinary actions to the Appraisal Subcommittee and these are on file with the National Registry. You can access revocations and suspensions at [www.asc.gov](http://www.asc.gov) and disciplinary actions within the State of Kansas at [www.accesskansas.org/kreab](http://www.accesskansas.org/kreab).

**117-8-2. Confidentiality provisions.** An appraiser shall not be considered to violate the provision of the uniform standards of profes-

sional appraisal practice that requires an appraiser to protect the confidential nature of the appraiser-client relationship, if the appraiser discloses confidential factual data obtained from a client or the results of an assignment prepared for the client to any of the following:

- (a) The client and persons specifically authorized by the client;
- (b) any third parties that may be authorized by due process of law;
- (c) a duly authorized professional peer review committee; or
- (d) the board in relation to a complaint made against another appraiser. (Authorized by and implementing K.S.A. 58-4105; effective Nov. 30, 1998.)

#### Except from USPAP Q & A, #43:

**Question:** Is it ethical to disclose confidential information to a duly authorized professional peer review committee?

**Answer:** Yes. However, the appraiser must be aware of and comply with applicable laws or regulations that would pertain to such disclosure. The Confidentiality section of the ETHICS RULE states, in part:

*An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.*

*An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; **and duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation.** It is unethical for a member of a duly authorized professional peer review committee to disclose confidential information presented to the committee. (Bold added for emphasis)*



### DISCLOSURE OF INFORMATION FROM APPRAISAL RESULTS

The following question was recently submitted to John Brenan, Director of Research and Technical Issues, The Appraisal Foundation:

**QUESTION:** I belong to a local realtor's multi-list organization and they require disclosure of information from my appraisal results. The information is only available from an on-site inspection and therefore they require me to disclose the information. They could get the information from the realtor. Information such as AGLA, room count, finished basement room count and such. If we don't disclose the information, even if our client asks us not to disclose the information, they fine us and if we don't pay the fines and disclose the information, they terminate our membership.

I feel disclosure is a violation of USPAP. Do you agree? I would appreciate your reply.

**ANSWER:** USPAP prohibits an appraiser from communicating *confidential information* or *assignment results* (both, as defined in USPAP) to anyone other than the client and parties specifically authorized by the client. These terms are defined in USPAP as follows:

**CONFIDENTIAL INFORMATION:** information that is either:

- identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or
- classified as confidential or private by applicable law or regulation.

**ASSIGNMENT RESULTS:** an appraiser's opinions and conclusions developed specific to an assignment.

Comment: Assignment results include an appraiser's:

- opinions or conclusions developed in an appraisal assignment, such as value;
- opinions of adequacy, relevancy, or reasonableness developed in an appraisal review assignment; or
- opinions, conclusions, or recommendations developed in an appraisal consulting assignment.



### AARO EXPRESSES CONCERNS REGARDING BPOs

In a letter to Timothy Geithner, Secretary of the Treasury, Washington, DC, dated February 24, 2009, Neva Conway, President of AARO, addressed some concerns of the AARO Executive Committee.

Dear Mr. Secretary:

The Association of Appraiser Regulatory Officials (AARO) is an organization whose members are real estate appraiser licensing agencies of U.S. States and Territories; it was created after Congress passed the Financial Institution Reform Recovery and Enforcement Act (FIRREA) of 1989. AARO membership includes forty-eight of the fifty-six jurisdictions mandated by FIRREA to create appraiser licensing agencies. These agencies issue appraiser licenses and certifications to those individuals who possess the education and experience requirements promulgated by The Appraisal Foundation; and, they oversee compliance, by appraisers, with the Uniform Standards of Professional Appraisal Practice (USPAP) and other standards of professional conduct.

The AARO Executive Committee wishes to express concerns to you about federal regulations and policies that would allow Broker Price Opinions (BPOs) to be used in establishing real property collateral values for mortgage modifications. Our concerns are as follows:

1. BPOs are unreliable and real estate appraisals are far more likely than BPOs or AVMs (Automated Valuation Models) to produce accurate opinions of the fair market values of single family collateral properties;



2. Individuals performing BPOs lack meaningful (or sometimes, any) valuation qualifications, may not be objective and unbiased or even independent of the transaction for which they're opining a value, and are not properly accountable to anyone for their BPO work;

3. Permitting real estate agents and/or brokers to provide valuations for the millions of loan modifications predicted, would severely weaken the Congressionally established system of state appraiser certification and licensing which – while not perfect – is operating effectively throughout the country to oversee appraisal practice, to protect the safety and soundness of mortgage loans and provide consumers who buy homes with an important, independent source of information on the actual market values of their properties;

4. There is an ample supply of appraisers (the Appraisal Subcommittee's Registry of appraisers indicates almost 120,000) who can perform appraisals quickly and reliably; and

5. Appraiser licensing agencies are consumer protection agencies and have responsibility to protect the public and to protect the integrity of appraisals used by the financial market.

To reiterate, we are very concerned that using valuation products (such as BPOs) prepared by unqualified individuals who are not accountable to any valuation oversight entity, and who are not held to any valuation standards of professional practice, is dangerous to the mortgage bailout program, to the financial and banking industry, and to the consumer.

Copies of Ms. Conway's letter were also sent to Chris Dodd, Chairman, Senate Committee on Banking, Housing and Urban Affairs, Richard Shelby, Ranking Republican, Senate Committee on Banking, Housing and Urban Affairs; Barney Frank, Chairman, House Committee on Financial Services; Spencer Bachus, Ranking Republican, House Committee on Financial Services; and James Lockhart, III, Director, Federal Housing Finance Agency.



## APPRAISAL FOUNDATION ISSUES WHITE PAPER ON APPRAISER REGULATORY REFORM

On February 12, 2009, The Appraisal Foundation issued a white paper on appraiser regulatory reform with recommendations on the following issues:

1. Broader enforcement powers for the Appraisal Subcommittee (ASC).
  - Provide the ASC with more regulatory options by giving it the authority to fine, suspend, etc.
  - Explore the idea of giving the ASC grant making authority to the states, with a corresponding increase in the registry fee.
2. Require greater due diligence from federal financial institutions.
  - Lower the de minimus amount from the existing level of \$250,000 to \$50,000. Many of the problem subprime loans

were below the current de minimus level and were therefore outside of the appraisal requirements.

- Require the use of state certified appraisers for all transactions involving federal or state funds of \$50,000 or more for all complex transactions. Complex transactions should be clearly defined.
  - Place restrictions on the use of Automated Valuation Models (AVMs) and Broker Price Opinions (BPOs).
  - Define and establish minimum standards for evaluations (BPOs, AVMs, etc).
  - Require the federal regulatory agencies to report to Congress (through the ASC or individually) the result of their appraisal audits and their recommendations for improvement.
  - Require every federal banking agency to establish a "Chief Appraiser" position that has independent reporting authority.
3. Improve enforcement among the states.
    - Allow state appraiser regulatory agencies to make better use of their licensure fees by prohibiting states from "sweeping" appraiser fees into the general fund.
    - All fines collected by the state appraiser regulators should be earmarked for use by the enforcement division.
    - Provide funding to states, possibly through the ASC, by requiring lenders to pay a small amount (i.e., \$0.50) for each lending transaction involving federal or state funds.
    - Require state board members and investigators to meet some level of minimum qualification criteria.
    - Require states to immediately report adjudications to the ASC.
  4. Implement national licensing or registration requirements for Appraisal Management Companies (AMCs).
    - To ensure accountability, AMCs should be regulated by existing state appraiser regulatory agencies.
    - Licensing/registration fees could serve as an additional source of revenue for the states.
  5. Make AQB licensed, trainee, and supervising guidance mandatory for the states.
  6. Make federally related transaction sales data available to appraisers.
    - Some states prohibit disclosure of sales data, making it difficult, if not impossible, to provide accurate opinions of value due to the lack of comparable sales information.
  7. Improve Temporary Practice and Reciprocity between the states.
    - Title XI currently includes provisions for temporary practice; however, reciprocity is simply "encouraged." Therefore, consider expanding the ASC's authority over reciprocity between the states.
  8. Explore the need for a more defined set of best practices for appraisers performing federally related transactions.
    - Identify, to the extent possible, the body of knowledge that currently exists and then codify it in some manner.
    - Develop a mechanism for issuing timely guidance on current and emerging valuation issues for all real property appraisers.



## SELLER CONCESSIONS

USPAP does not address how seller concessions should be handled, because this is an area of appraisal methodology, not standards. USPAP simply requires appraisers to be aware of, understand, and correctly employ recognized methods and techniques necessary to produce credible assignment results.

If an assignment is subject to *assignment conditions* (i.e. Fannie Mae, FHA, VA guidelines, etc.) dictating how this issue must be addressed, then appraisers are required to comply with those assignment conditions in order to comply with USPAP.

## SCOPE OF PRACTICE AND THE COMPETENCY RULE

All appraisers must follow the COMPETENCY RULE for all assignments. This means that simply because you are a Certified General appraiser, you may not be competent to do all assignments. While State Licensed and Certified appraisers do have guidelines of what type of work may be performed in their scope of practice, this does not limit them to only this type of work. For example, a licensed appraiser can complete an agricultural appraisal if they are competent. However, when performing any type of assignment, **ALL APPRAISERS MUST BE COMPETENT TO COMPLETE THE ASSIGNMENT.** When in doubt, please review the COMPETENCY RULE.

**117-2-4. Licensed classification; scope of practice.** (a) (1) The licensed classification shall apply to the appraisal of the following:

(A) Non-complex one- to four-family residential units having a transaction value of less than \$1,000,000; and (B) complex one- to four-family residential units having a transaction value of \$250,000 or less.

(2) For the purposes for this regulation, the following definitions shall apply:

(A) A complex one- to four-family residential property appraisal shall mean an appraisal in which the property to be appraised, the form of ownership, or the market conditions are atypical.

(B) For non-federally related transaction appraisals, transaction value shall mean market value.

**(b) The licensed classification shall include the appraisal of vacant or unimproved land that is utilized for one- to four-family purposes and where the highest and best use is for one- to four-family purposes. The licensed classification shall not include the appraisal of subdivisions in which a development analysis or appraisal is necessary and utilized.**

(c) The licensed classification may also apply to the appraisal of any other property permitted by the regulations of the applicable federal financial institution's regulatory agency, other agency, or regulatory body.

(d) Each licensed appraiser shall comply with the competency rule of the uniform standards of professional appraisal practice (USPAP), as adopted in K.A.R. 117-8-1.

(e) Each licensed appraiser shall perform and practice in compliance with the USPAP, as adopted in K.A.R. 117-8-1.

This regulation shall be effective on and after January 1, 2008. (Authorized by and implementing K.S.A. 58-4109; effective, T-117-6-10-91, June 10, 1991; effective Aug. 5, 1991; amended May 24, 1993; amended Jan. 1, 2008.) (bold added for emphasis)

**117-3-4. General classification; scope of practice.** (a) The general classification shall apply to the appraisal of all types of real property.

(b) Each certified general appraiser shall comply with the competency rule of the uniform standards of professional appraisal practice (USPAP), as adopted in K.A.R. 117-8-1.

(c) Each certified general appraiser shall perform and practice in compliance with the USPAP, as adopted in K.A.R. 117-8-1.

This regulation shall be effective on and after January 1, 2008. (Authorized by and implementing K.S.A. 58-4109; effective, T-117-6-10-91, June 10, 1991; effective Aug. 5, 1991; amended Jan. 1, 2008.)

**117-4-4. Residential classification; scope of practice.** (a) The residential classification shall apply to the appraisal of residential units for one to four families without regard to transaction value or complexity.

(b) The residential classification shall include the appraisal of vacant or unimproved land that is utilized for one-family to four-family purposes and where the highest and best use is for one-family to four-family purposes. The residential classification shall not include the appraisal of subdivisions in which a development analysis or appraisal is necessary and utilized.

(c) The residential classification may also apply to the appraisal of any other property permitted by the regulations of the applicable federal financial institution's regulatory agency, other agency, or regulatory body.

(d) Each certified residential appraiser shall comply with the competency rule of the uniform standards of professional appraisal practice (USPAP), as adopted in K.A.R. 117-8-1.

(e) Each certified residential appraiser shall perform and practice in compliance with the USPAP, as adopted in K.A.R. 117-8-1.

This regulation shall be effective on and after January 1, 2008. (Authorized by and implementing K.S.A. 58-4109; effective, T-117-6-10-91, June 10, 1991; effective Aug. 5, 1991; amended May 24, 1993; amended Jan. 1, 2008.)



## PRACTICUM COURSE NOW AVAILABLE

When the 2008 criteria changes were adopted, K.A.R. 117-2-2, 3-2, and 4-2 included language allowing for the use of a practicum course to meet a portion of the "non-traditional client" experience (limited to 50% of the total experience required). Such a program has been developed by the Trans-American Institute of Professional Studies, Inc. out of Kearney, Nebraska and is now available. The amount of experience credit received is based on the complexity of the assignment. For more information on the packages available, contact the Trans-American Institute of Professional Studies, Inc., PO Box 97, Kearney, NE 68848-0097, (308) 237-4160 (phone), (308) 236-6717 (fax), [Lynne@TransAmStudies.com](mailto:Lynne@TransAmStudies.com) (e-mail).



## DISCIPLINARY ACTIONS

TANA L. PARRY (R-2503), MANHATTAN  
COMPLAINT #564

A Consent Order was entered into on November 26, 2008 with the following terms and conditions: That Parry take and pass the examination of Qualifying Education Module #5, Residential Appraiser Site Valuation & Cost Approach on or prior to June 30, 2009; that Parry pay \$850 to cover the cost of the review associated with this complaint within 30 days from the date of the Order; and that Parry maintain a log of all appraisals performed or in which she participates for a period of six (6) months from the date of the Order. The Board may select up to three (3) reports for additional review.

KARRI MEYERRING (L-2568), OVERLAND PARK  
COMPLAINT #598

A Consent Order was entered into on January 6, 2009, with the following terms and conditions: That Meyerring take and pass the exam of Qualifying Education Module #3 (USPAP) on or prior to June 30, 2009; that Meyerring take and pass the exam of Qualifying Education Module #5 (Residential Appraiser Site Valuation & Cost Approach) on or prior to June 30, 2009; that Meyerring take and pass the exam on Qualifying Education Module #6 (Residential Sales Comparison & Income Approaches) on or prior to June 30, 2009; and that Meyerring pay \$600 to cover the cost of the review associated with this complaint within 30 days from the date of the Order.

MARVIN FLICKINGER (L-775), WICHITA  
COMPLAINT #585

A Consent Order was entered into on January 7, 2009, with the following terms and conditions: That Flickinger take and pass the exam of Qualifying Education Module #3 (USPAP) on or prior to June 30, 2009; that Flickinger take and pass the exam of Qualifying Education Module #5 (Residential Appraiser Site Valuation & Cost Approach) on or prior to June 30, 2009; that Flickinger take and pass the exam on Qualifying Education Modules #6 (Residential Sales Comparison & Income Approaches) on or prior to June 30, 2009; that Flickinger take and pass the exam of Qualifying Education Module #7 (Residential Report Writing and Case Studies) on or prior to June 30, 2009; and that Flickinger pay \$350 to cover the cost of the review associated with this complaint within 30 days from the date of the Order.

JOHN GOLDEN (R-1736), GRANDVIEW, MO  
COMPLAINT #582

A Consent Order was entered into on January 15, 2009, with the following terms and conditions: That Golden take and pass the examination of Qualifying Education (QE) Module #1 (Basic Appraisal Principles) on or prior to June 30, 2009; that Golden take and pass the examination of QE Module #2 (Basic Appraisal Procedures) on or prior to June 30, 2009; that Golden take and pass the examination of

QE Module #3 (USPAP) on or prior to June 30, 2009; that Golden take and pass the examination of QE Module #7 (Residential Report Writing and Case Studies) on or prior to June 30, 2009; that Golden cease and desist from the supervision of all appraisers/trainees for a period of 12 months following completion of the above noted education; that Golden pay \$300 to cover the cost of the review associated with this complaint within 30 days from the date of the Order; that Golden maintain a log of all appraisals he performs or in which he participates, commencing the date of the Order, for a period of 12 months. The log is to be submitted to the Board office on or immediately following the first working day of each month. The Board may select up to three (3) reports from said logs for additional review. Should any review(s) show substantial non-compliance with USPAP, Golden will pay the cost of the review(s) within 30 days from notice by the Board and a new complaint will be filed.

DONALD L. STEWART (R-942), FT. SCOTT  
COMPLAINT #584

A Consent Order was entered into on January 16, 2009, with the following terms and conditions: That Stewart take and pass the examination of Qualifying Education Module #4, Residential Market Analysis and Highest and Best Use, on or prior to June 30, 2009; that Stewart take and pass the examination of Qualifying Education Module #5, Residential Appraiser Site Valuation and Cost Approach, on or prior to June 30, 2009; that Stewart take and pass the examination of Qualifying Education Module #6, Residential Sales Comparison and Income Approaches, on or prior to June 30, 2009; that Stewart take and pass the examination of Qualifying Education Module #9, Advanced Residential Applications and Case Studies, on or prior to June 30, 2009; that immediately upon completion of the education specified in paragraphs 1, 2, 3 and 4, Stewart will submit a copy of the Certificate of Completion to the Board office; that Stewart pay \$400 to cover the cost of the review associated with this complaint within 30 days from the date of this Order; and that Stewart pay a fine of \$750 within 30 days from the date of this Order.

JEFFREY L. MANTZ (R-2538), WINFIELD  
COMPLAINTS 589 & 591

A Consent Order was entered into on February 10, 2009, with the following terms and conditions: That Mantz take and pass the examination of Qualifying Education Module #3, USPAP; Qualifying Education Module 4, Residential Market Analysis and Highest and Best Use; Qualifying Education Module #5, Residential Appraisal Site Valuation and Cost Approach; and Qualifying Education Module #6, Residential Sales Comparison and Income Approaches, by December 31, 2009; and that Mantz pay \$1,000 to cover the cost of the review associated with this complaint within 30 days from the date of the Order.

CRAIG A. GILSTRAP (R-31), WICHITA  
COMPLAINT 602

A Consent Order was entered into on February 10, 2009, with the following terms and conditions: That Gilstrap take and pass the examination of Qualifying Education Module #3 (USPAP) on or prior to

December 31, 2009; that Gilstrap take and pass the examination of Qualifying Education Module #4 (Residential Market Analysis and Highest and Best Use) on or prior to December 31, 2009; and that Gilstrap take and pass the examination of Qualifying Education Module #6 (Residential Sales Comparison & Income Approaches) by December 31, 2009.

EVAN T. GOLDSMITH (R-2567), OLATHE  
COMPLAINT 600

A Consent Order was entered into on February 12, 2009, with the following terms and conditions: That Goldsmith take and pass the examination of Qualifying Education Module #3, USPAP, on or prior to December 31, 2009; that Goldsmith take and pass the examination of Qualifying Education Module #5, Residential Appraiser Site Valuation and Cost Approach, on or prior to December 31, 2009; that Goldsmith take and pass the examination of Qualifying Education Module #6, Residential Sales Comparison and Income Approaches, on or prior to December 31, 2009; that Goldsmith pay \$750 to cover the cost of the review associated with this complaint within 30 days from the date of the Order.



### KANSAS APPRAISERS

CERTIFIED GENERAL .....	468
CERTIFIED RESIDENTIAL .....	429
STATE LICENSED.....	316
PROVISIONAL (TRAINEE).....	38
TOTAL .....	1,251

KANSAS REAL ESTATE APPRAISAL BOARD  
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