



What/Who Determines that an Appraiser is “Qualified” in our Program?

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AMERICAN ASSOCIATION OF
STATE HIGHWAY AND
TRANSPORTATION OFFICIALS

AASHTO
THE VOICE OF TRANSPORTATION

Is it becoming tougher for you to find “Qualified Appraisers”?



-20%

As of December 31, 2014, the number of active real estate appraisers in the U.S. stood at 78,800.

The average annual rate of decrease is nearly 3.0 percent – ***a cumulative decline of 20 % since 2007.***

Source: U.S. VALUATION PROFESSION FACT SHEET (Dec 2014)



A broader analysis suggests the rate of decrease could rise sharply over the next 5-to-10 years due to retirements, reduced numbers of new people entering the appraisal profession, economic factors, and greater use of data analysis technologies.

Source: U.S. VALUATION PROFESSION FACT SHEET (Dec 2014)

2/3



2/3 of the licensed/certified appraisers in the country are above the age of 50.

Age Range	>66	51 – 65	36-50	26-35	<25
% of Appraisers	11%	51%	24%	12%	1%

Source: Appraisal Institute: “U.S. VALUATION PROFESSION FACT SHEET” (Dec 2014)

One possible source for your appraisers?

FOR SALE - heavy duty money safe, 3'
x 3' x 3', LN, \$600. CALL 787-██████████

FOR SALE - collection of old people.
CALL 253-██████████

FOR SALE - pair of black cowboy boots
size 10 1/2D, VGC, \$5. CALL 934-██████████

FOR SALE - 3/4 HP Sears electric

“QUALIFIED” Defined

**“having the necessary skill, experience, or ;
knowledge to do a particular job or activity:
having the qualifications to do something.”**

**“having complied with the specific requirements
or precedent conditions (as for an office or
employment)”**

Source: Merriam Webster on-line

What are some of the factors in deciding if an Appraiser is “Qualified” to work for your Agency?

- 1. Federal law/regulations/policy & guidance**
- 2. Uniform Standards of Professional Appraisal Practice (USPAP)**
(re: State licensed/certified appraisers)
- 3. State law/regulations/policy & guidance**
(including STA’s Realty or Appraisal Manual)

“Words are Important !” . . .

(especially the words in law and regulation)



“Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended” (UA)

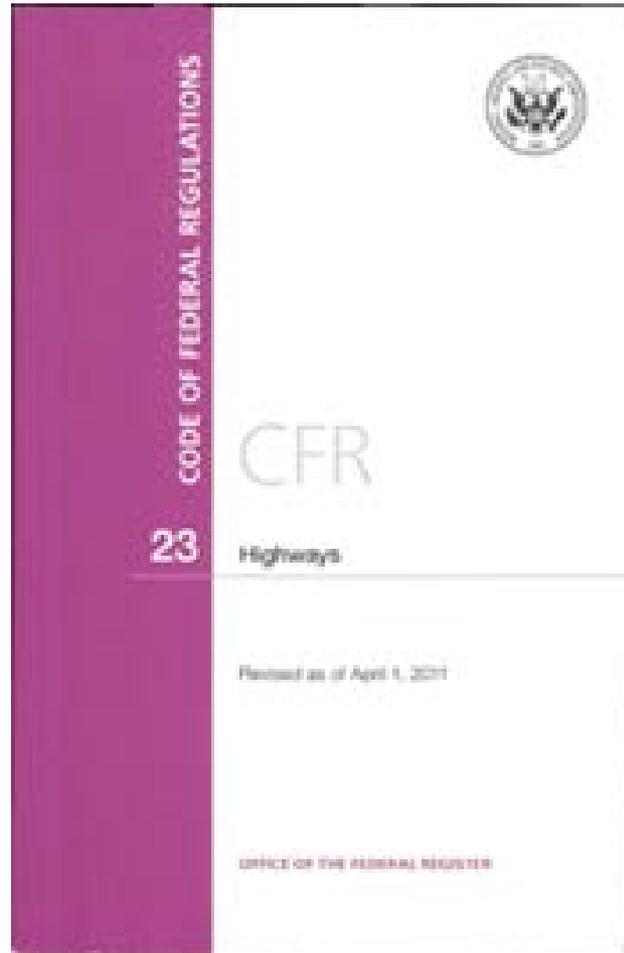
· SUBCHAPTER I—GENERAL PROVISIONS

· §4601. Definitions

(13) 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.

Federal Regulations

23 CFR Part 710



Federal Regulations

23 CFR § 710.201 State responsibilities.

(c) *Right-of-way (ROW) operations manual.* Each STD which receives funding from the highway trust fund **shall** maintain a manual describing its right-of-way organization, policies, and procedures.



Federal Regulations

23 CFR § 710.201 State responsibilities.

The manual **shall** describe functions and procedures for all phases of the real estate program, **including appraisal and appraisal review** . . .

(c) The manual shall be in sufficient detail and depth to guide State employees and others involved in acquiring and managing real property.



Federal Regulations

23 CFR § 710.201 State responsibilities.

Does your manual describe the appraisal and appraisal review requirements of the real estate program?

Is the manual written “in sufficient detail and depth to guide State employees and others” involved in the Appraisal and Appraisal Review processes?

Federal Regulations

23 CFR § 710.201 State responsibilities.

How often does your Agency conduct training for staff and contract fee appraisers, with respect to the appraisal and appraisal review requirements as contained in your manual?

Is the successful completion of such training a requirement appraisers who are performing valuation assignments for your agency?

Federal Regulations

23 CFR § 710.201 State responsibilities.

(h) Use of other public land acquisition organizations or private consultants.

The STD may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities under paragraph (b) of this section.



Federal Regulations

23 CFR § 710.201 State responsibilities.

(h) . . . Such organizations, firms, or individuals **must** comply with the policies and practices of the STD.

The STD **shall** monitor any such real property acquisition activities to **assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.**

Source: 23 CFR § 710.201 (h)



Federal Regulations

23 CFR § 710.201 State responsibilities.

Do all the LPAs in your State follow your ROW or Appraisal Manual?

Are you sure about that? Are you REALLY sure?

How do you ensure that all LPAs are carrying out the Appraisal/Appraisal Review activities in compliance with all Federal and State laws, regulations, policies and procedures?

Federal Regulations

23 CFR § 710.201 State responsibilities.

In the last 3-5 years, how many (or what percentage) of LPA projects has your Agency monitored to assure the compliance of appraisal and appraisal review activities with State and Federal law and requirements?

During that period, were there any instances in which your Agency “imposed sanctions in cases of material non-compliance” with your STA’s appraisal or appraisal review requirements?



Federal Regulations

49 CFR Part 24



Federal Regulations 49 CFR Part 24



§ 24.2 Definitions and acronyms.

(3) 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.

Federal Regulations 49 CFR Part 24



24.103(d) Qualifications of appraisers and review appraisers

(d) Qualifications of appraisers and review appraisers. (1) The Agency **shall** establish criteria for determining the minimum **qualifications and competency** of appraisers and review appraisers.

Qualifications **shall** be consistent with the scope of work for the assignment. . . .

Federal Regulations

49 CFR § 24.103(d)

How rigorous are your Agency's established criteria for determining the minimum qualifications and competency of appraisers and review appraisers?

What is your process for ensuring that the appraisers' qualifications are consistent with the scope of work for the project?

Federal Regulations

49 CFR Part 24



24.103(d) Qualifications of appraisers and review appraisers

(d) *Qualifications of appraisers **and review appraisers.***

(1) (continued) . . . The Agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the Agency to be qualified.

(See appendix A, § 24.103(d)(1.) *seq.*).

Federal Regulations

49 CFR § 24.103(d)

- 1. How does your Agency select its appraisers on each project? Do you have an “Approved Appraiser List”?**
- 2. Do you require the LPAs to only use Appraisers from your STA’s Approved List?**
- 3. If not, how does your STA ensure that LPAs use only “Qualified” Appraisers?**



Federal Regulations 49 CFR Part 24



24.103(d) Qualifications of appraisers and review appraisers (Appendix A, § 24.103(d)(1)).

Section 24.103(d)(1). The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively.

Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser's abilities.

Federal Regulations

49 CFR § 24.103(d)

- 1. How does your Agency assign its Review Appraiser(s) on each project?**
- 2. How does your Agency evaluate the qualifications and competency of its Review Appraisers (staff and fee reviewers)?**
- 3. How often do your review appraisers meet as a group to discuss issues and possible improvements to the process/program?**



Federal Regulations

49 CFR Part 24



24.103(d) Qualifications of appraisers and review appraisers

(2) If the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser **shall** be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 *et seq.*).

WHY?



Why does the regulation require only “contract or fee appraisers” to be licensed or certified?

(Why not Agency staff appraisers)?

1971

1989

Why didn't the UA or 49 CFR clearly define "Qualified Appraiser"?



Agriculture

Commerce

Defense

Education

Energy

EPA

FEMA

GSA

HHS

HUD

Interior

Justice

Labor

NASA

TVA

USDOT

VA

U.S.P.S.*

Plus 50 States, Washington D.C and Puerto Rico all have multiple agencies that acquire Real Property Interests in connection with Federal and Federally-assisted Programs and Projects.

“Uniform Standards of Professional Appraisal Practice” (USPAP)



APPRAISER: one who is expected to perform valuation services **competently** and in a manner that is independent, impartial, and objective.

Comment: Such expectation occurs when individuals, either by choice or by requirement placed upon them or upon the service they provide **by law, regulation, or agreement with the client or intended users**, represent that they comply.

Source: USPAP 2014-2015 Edition; PREAMBLE and Advisory Opinion 21, *USPAP Compliance*

“USPAP - Competency Rule”



Being Competent

“The appraiser must determine, prior to accepting an assignment, that he or she can perform the assignment competently. . . .”

Source: USPAP 2014-2015 Edition; Competency Rule

“USPAP - Competency Rule”



Being Competent

“Comment: Competency may apply to factors such as, but not limited to, an appraiser’s familiarity with a specific type of property or asset, a market, a geographic area, an intended use, **specific laws and regulations**, or an analytical method.”

Source: USPAP 2014-2015 Edition; Ibid.

“USPAP – Scope of Work Rule”



“For each appraisal and appraisal review assignment, an appraiser must:

1. identify the problem to be solved;
2. determine and perform the scope of work necessary to develop credible assignment results; and
3. disclose the scope of work in the report.”

Source: USPAP 2014-2015 Edition; Scope of Work Rule.

Appendix: 49 CFR § 103(a) Appraisal requirements

“The term "scope of work" defines the general parameters of the appraisal. It reflects the needs of the Agency and the requirements of Federal and federally-assisted program appraisal practice. ***It should be developed cooperatively by the assigned appraiser and an Agency official who is competent to both represent the Agency's needs and respect valid appraisal practice.***

Source: Appendix; 49 CFR § 24.103(a) Appraisal requirements.

Appendix: 49 CFR § 103(a) Appraisal requirements

How does your Agency “cooperatively develop” the scope of work with the assigned appraiser?

How does your Agency insure that LPAs “cooperatively develop” the scope of work with the assigned appraiser on their projects?

“USPAP – Scope of Work Rule”



“Problem Identification

“An appraiser must gather and analyze information about those assignment elements that are necessary to properly identify the appraisal or appraisal review problem to be solved.”

Source: USPAP 2014-2015 Edition; Scope of Work Rule.

“USPAP – Scope of Work Rule”



“Communication with the client is required to establish most of the information necessary for problem identification. However, the identification of relevant characteristics is a judgment made by the appraiser that requires competency in that type of assignment.”

Source: USPAP 2014-2015 Edition; Scope of Work Rule.

“USPAP – Scope of Work Rule”



“**Assignment conditions** include assumptions, extraordinary assumptions, hypothetical conditions, laws and regulations, jurisdictional exceptions, and other conditions that affect the scope of work.”

Laws include constitutions, legislative and court-made law, administrative rules, and ordinances.

Regulations include rules or orders, having legal force, issued by an administrative agency.

Source: USPAP 2014-2015 Edition; Scope of Work Rule.

“USPAP – Jurisdictional Exception Rule”



“In an assignment involving a jurisdictional exception, an appraiser must:

1. identify the law or regulation that precludes compliance with USPAP;
2. comply with that law or regulation;
3. clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation; and
4. cite in the report the law or regulation requiring this exception to USPAP compliance.

Source: USPAP 2014-2015 Edition; Jurisdictional Exception Rule.

USPAP Q&A

Vol. 10, No. 6; June 2008

Special Note: The following questions and responses address issues related to assignments subject to the jurisdiction of "The Uniform Relocation Assistance and Real Property Acquisitions Act" (aka "Uniform Act").

USPAP Q&A

Vol. 10, No. 6; June 2008

The ASB has been engaged in a series of communications with appraisers who perform work under the Uniform Act. The following questions are typical of the questions that have arisen over the years. Since the issues have broader application, the ASB has elected to publish these specific questions and answers to assist other users of USPAP in similar work or to assist in the general understanding of the JURISDICTIONAL EXCEPTION RULE.

USPAP Q&A

Vol. 10, No. 6; June 2008

As with all USPAP Q&A, the advice presented is based on the specific circumstances presented and may not be applied equally to seemingly similar situations. Appraisers are cautioned not to rely on the USPAP Q&A as a substitute for developing a thorough understanding of the provisions of the "Uniform Act".

UNIFORM ACT AND SCOPE OF WORK

Question:

I'm doing an appraisal assignment for a government agency that is subject to the jurisdiction of "The Uniform Relocation Assistance and Real Property Acquisitions Act of 1970, as Amended" (aka "Uniform Act"), and its implementing regulation, 49 CFR Part 24. The regulation requires the acquiring agency to develop the scope of work and define the appraisal problem "cooperatively" with the appraiser.

This is somewhat different from USPAP's SCOPE OF WORK RULE which places that responsibility primarily on the appraiser.

UNIFORM ACT AND SCOPE OF WORK

Question: The agency is providing a draft scope of work and asking me to comply with that as a minimum assignment condition. This raises two possible scenarios:

(A) If the agency scope of work seems appropriate, do I need to state somewhere in my report that the scope of work was developed by the agency with my concurrence?

(B) Assume that I believe the agency scope of work is inappropriate or inadequate. I discuss this with the agency and they insist that the scope of work they have developed is appropriate for their program needs. Can I complete the assignment and be in USPAP compliance?

Response:

The answer to both questions is the same. It is the appraiser's responsibility to determine and perform the appropriate scope of work.

The scope of work performed in the assignment must be disclosed in the report. However, USPAP does not address disclosure of the client's role in determining the scope of work.

Direction from the client on the scope of work is acceptable if the appraiser is able to develop credible assignment results. If the scope of work specified by the client does not allow the development of credible assignment results, the appraiser needs to discuss changing the scope of work or withdraw from the assignment.

USPAP FAQ: “Uniform Act and Scope of Work”

- 1. Does your contract fee appraisers understand that your Agency is required to participate in the development of the Appraisal Scope of Work and that the ASB has issued an FAQ on that issue?**

"BEFORE ACQUISITION VALUE" AND STANDARD RULE I-4(f)

Question:

I'm doing an appraisal assignment for a government agency that is subject to the provisions of the "Uniform Act" and its implementing regulation (49 CFR Part 24). In the "Before acquisition value" appraisal, the regulation requires appraisers to disregard any decrease or increase in the market value of the property that has been caused directly by the project. This regulation appears to conflict with USPAP, Standard Rule I-4(f), which addresses the analysis of the effect on value of anticipated public or private improvements.

"BEFORE ACQUISITION VALUE"
AND STANDARD RULE I-4(f)

Question: (continued)

Obviously, I must comply with the Federal law and regulations, but I am unsure how to reconcile this with the requirements of USPAP, Standard Rule I-4(f).

Does this situation create a USPAP "Jurisdictional Exception" or is this simply an assignment condition?

Response:

49 CFR Part 24 is an assignment condition where it applies.

The 49 CFR Part 24 regulation that requires appraisers to disregard any decrease or increase in the market value of the property that has been caused directly by the project in the "Before acquisition value" appraisal is not a Jurisdictional Exception because the regulation does not conflict with the requirements of USPAP. A Jurisdictional Exception is only created where USPAP is contrary to a requirement of law or public policy.

Response: (continued)

USPAP SR I-4(f) becomes applicable in an assignment only when the scope of work includes the analysis of anticipated improvements.

When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions. (bold added for emphasis)

Response: (continued)

The intended use of the assignment drives the appraiser's decisions in identifying relevant property characteristics and assignment conditions. The decision to analyze the effect on value of an anticipated off-site improvement is part of the scope of work decision. The scope of work in "Before acquisition value" assignments prepared under the Uniform Act is based on a condition that anticipated project improvement will not be recognized; therefore SR 1-4(h) does not apply.

Response: (continued)

In an appraisal with an assumed condition that is contrary to known fact, the assumed condition is a hypothetical condition. A "Before acquisition value" appraisal assignment that does not include recognition of the project would require the use of a hypothetical condition because this is contrary to a known fact.

Response: (continued)

The Comment to Standards Rule I-2(g) states:

A hypothetical condition may be used in an assignment only if:

- *use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison;*
- *use of the hypothetical condition results in a credible analysis; and*
- *the appraiser complies with the disclosure requirements set forth in USPAP for hypothetical conditions. (bold added for emphasis)*

Response: (continued)

In the reporting of a real property appraisal report, USPAP Standards Rule 2- I (c) states that the real property appraisal report must:

clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment. (bold added for emphasis)

clearly and conspicuously.

• state all extraordinary assumptions and hypothetical conditions; and

• state that their use might have affected the assignment results; (bold

USPAP Q&A: Vol. 10, No. 6; June 2008

added for emphasis)



Response: (continued)

This requirement creates an obligation to disclose all hypothetical conditions used in the assignment. USPAP real property appraisal report requirements state that the report must, at a minimum:

clearly and conspicuously:

- *state all extraordinary assumptions and hypothetical conditions; and*
- *state that their use might have affected the assignment results; (bold added for emphasis).*

clearly and conspicuously.

- state all extraordinary assumptions and hypothetical conditions; and
- state that their use might have affected the assignment results; (bold added for emphasis)

USPAP Q&A: Vol. 10, No. 6; June 2008



Response: (continued)

This requirement directs the appraiser to provide a clear and conspicuous statement of the hypothetical conditions. The form and location of the statement is left to the discretion of the appraiser, but it must be clear and conspicuous to intended users.

USPAP FAQ: “Before Acquisition Value” and Standard Rule I-4(f)

1. Do your staff and contract fee appraisers understand that the “Project Influence Requirement” in 49 CFR § 24.103(b) is an “Assignment Condition” (not a “Jurisdictional Exception”) and that the ASB has issued an FAQ on that issue?

(b) *Influence of the project on just compensation.* The appraiser **shall** disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

USPAP FAQ: “Before Acquisition Value” and Standard Rule I-4(f)

- 1. Do your appraisers understand that compliance with 49 CFR § 24.103(b) creates a “Hypothetical Condition”?**
- 2. Do they understand that in the case of a “partial acquisition”, the valuation of the subject property in the “After” situation (as if the project is complete) is also (in most cases) a “Hypothetical Condition”?**

USPAP - “Advisory Opinion 22” “Scope of Work in Market Value Appraisal Assignments for Real Property”



AO 22 Scope of Work in a Market Value Appraisal

Competently determining the scope of work is an essential step in all assignments performed under USPAP.

Source: USPAP 2014-2015 Edition; AO-22).

USPAP - “Advisory Opinion 22”



Importance of Identifying the Specific Definition of Market Value—

“... There are many definitions of value, some of which are market value definitions. Other definitions of value appear to be related to market value but are not called market value.”

(Source: USPAP 2014-2015 Edition; AO-22).

USPAP - “Advisory Opinion 22”



Importance of Identifying the Source of a Market Value Definition—

“ . . . Definitions of market value from different sources contain different conditions . . . Each definition is unique, with authority only in a specific jurisdiction or to a specific client group. Therefore, identification of the source for the definition of value to be applied in an assignment is essential.”

(Source: USPAP 2014-2015 Edition; AO-22).

State laws/regulations

(“All Over the Map”)



There is more differentiation among the States with respect to the valuation of real property, than any other area of the Realty Program,

State Laws:

Some States must appraise under the Federal Rule

Some must appraiser under the State Rule.

State laws/regs

(“All Over the Map”)



A number of STAs must comply with appellate court rulings pertaining to certain aspects of the valuation of real property rights in connection with eminent domain in a given State.

Some States have laws or regulations exempting State employees from any requirement to be State Licensed or Certified in the performance of valuation assignments on behalf of their agency.

State policy & guidance



Some State DOTs will pay for the training and licensing fees to encourage staff to pursue an appraisal license or certification.

Some States will outsource appraisal assignments but have a policy of having staff perform all appraisal review assignments.

State policy & guidance



Some State DOTs have a policy whereby they will frequently outsource both appraisal and appraisal review assignments.

Every State is different.....

Re-cap:

WHAT determines that an appraiser is
“qualified”?

1. Federal law/regulations/policy & guidance
2. Uniform Standards of Professional Appraisal Practice (USPAP)
(re: State licensed/certified appraisers)
3. State law/regulations/policy & guidance
(including STA’s Realty or Appraisal Manual)

Re-cap:

WHO determines that an appraiser is “Qualified”?

YOU.....

The STA is responsible for determining that all appraisers/review appraisers who perform assignments for your Agency are qualified and competent.

Ultimately, the STA also has that responsibility for all appraisers who perform assignments for:

“ . . . other State, county, municipal, or local public land acquisition organizations or with private consultants . . . ”

So...

What direction can your Agency go in, to insure your appraisers are qualified & competent?



State ROW Manual (Example)

(SDOT Provisions about “Qualifications”)

- 1) Appraiser Pre-qualification Committee**
(Determines minimum requirements necessary to make acceptable appraisals)
- 2) Appraisal Questionnaire**
- 3) Appraiser Exam**
(Comprehensive appraisal exam developed for use in the pre-qualification of fee appraisers)
- 4) Pre-qualifying Specialty Appraisers**
- 5) Revocation of pre-qualification status**

Some actions your Agency can take . . .

- **Make sure you are actively doing succession planning among your staff**
- **Beat the bushes – actively seek out new appraisers at professional appraiser meetings.**
- **Support your staff's professional development by allowing them to access quality appraisal training**

Some actions your Agency can take . . .

- **Develop and present your Agency's own Appraisal/Appraisal Review workshops**
- **Include a discussion of key appraisal requirements in 1 or more LPA .workshops**
- **Develop and present a short (1-2 day) conference on appraisal requirements in your program – invite all the independent appraisers and get the material approved for re-certification by your State Board.**

Bringing Appraisers together for customized technical training and interaction will yield great returns for your program



**“FHWA doesn’t always come to your Agency
and do a review of your Appraisal Program,
(or your LPA Program oversight) –
but when we do . . .**

