



**OKLAHOMA REAL ESTATE  
APPRAISER BOARD**  
OKLAHOMA INSURANCE DEPARTMENT

December 21, 2010

Board of Governors  
Federal Reserve System  
20th Street and Constitution Avenue, NW  
Attn: Jennifer J. Johnson, Secretary  
Washington, D.C. 20551

Comments Relating to 12 CFR Part 226, Regulation Z, **DOCKET # R-1394**

Dear Chairman Bernanke:

The purpose of this letter is to respond to selected portions of the request for comments published in the Federal Register. These comments are not those of the Oklahoma Real Estate Appraiser Board, but are those of the undersigned, individually.

Register page 66573: *"The Board requests comment on whether the final rule should expressly prohibit basing an appraiser's compensation on an appraiser's membership or lack of membership in a particular appraisal organization."*

In the discussion preceding the comment above, we are reminded that there is a prohibition extant regarding selection solely by virtue of such a membership. I believe that the agencies need to recognize that the Appraiser Qualification Criteria establish only a bare minimum standard for state certification; the least common denominator so to speak. The effect of this has been to effectively institutionalize mediocrity. There are both appraisers and users of appraisal services who believe that achievement of a professional designation signifies a greater standard of qualification. If a user of appraisal services makes a determination that this greater standard of qualification is necessary or desirable, and wishes to increase the professional fee for that reason, I believe that should be permissible. It is a business decision on their part, not a matter for regulators.

From the appraisers' standpoint, should individuals make the determination that it would be advantageous to achieve a higher standard of qualification, why would the FRB wish to discourage such achievement? An individual who desires to qualify under higher standards and to market his or her professional services as being of a higher quality and thus providing greater value to the user of these services should be encouraged to do so, not prevented from doing so.

Register page 66576: *"The Board requests comment on whether reporting should be required only if a material failure to comply causes the value assigned to a consumer's principal dwelling to differ from the value that would have been assigned had the material failure to comply not occurred by more than a certain tolerance, for example, by 10 percent or more."*

E-MAIL: [reab@oid.ok.gov](mailto:reab@oid.ok.gov) WEBSITE: [www.reab.oid.ok.gov](http://www.reab.oid.ok.gov)  
(405) 521-6636 - FAX: (405) 522-6909 - TOLL FREE (IN STATE) 1-800-522-0071  
5 CORPORATE PLAZA, 3625 NW 56TH ST, STE 100, OKLAHOMA CITY, OK 73112

Section XVIII of the newly revised Interagency Appraisal and Evaluation Guidelines (Guidelines) makes the following statement: *"An institution should file a complaint with the appropriate state appraiser regulatory officials when it suspects that a state certified or licensed appraiser failed to comply with USPAP, applicable state laws, or engaged in other unethical or unprofessional conduct."*

Section 10 E of the Policy Statements issued by the Appraisal Subcommittee (ASC) of the FFIEC make (*inter alia*) the following statements:

*"State agencies must analyze each complaint to determine whether additional violations, especially those relating to USPAP, should be added to the complaint."*

...

*"Dismissal of an alleged USPAP violation due to an "absence of harm to the public" is inconsistent with Title XI's purpose. That purpose 'is to provide that Federal financial and public policy interests in real estate transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed...in accordance with uniform standards, by individuals...whose professional conduct will be subject to effective supervision.' Financial loss or the lack thereof is not an element in determining whether there is a USPAP violation..."*

...

*"It is critical that state agencies investigate allegations of USPAP violations, and, if allegations are proven, take appropriate disciplinary or remedial action."*

I find the difference in the FRB's tone through the progression from its Interim Rule to the Guidelines to the Policy Statements both remarkable and inexplicable. The FRB is one of the sponsoring agencies of the Guidelines, and is a member agency of the ASC. The difference in mindset between "if the difference in value is 10%" and "determine whether additional violations, especially those relating to USPAP" and "financial loss or the lack thereof is not an element" is exceedingly tenuous and irreconcilable.

Decisions by appraiser regulators regarding appraiser complaints are not predicated on value. Agencies base these judgments on the USPAP and on state statutes in the manner required by the ASC Policy Statements.

In the discussion on page 66557 of 42(b)(1) "Covered Person", appraisers are set forth as one of the examples of covered persons. If an appraiser receives an engagement for a review assignment and discovers, during the performance of that assignment, that there are gross violations of the USPAP but that the appraiser got lucky with respect to value, is the reviewer then expected to ignore the violations?

For example, we have seen instances in which the final estimate of value is within reason, but the comparable sales are addresses that don't exist. We have seen instances in which a state licensed appraiser has appraised transactions for a bank that due to transaction values require a certified appraiser, violating our scope of practice restrictions. We consistently see violations of the Competency Rule of USPAP, particularly (but not limited to) geographic competence in which the estimate of value, while completely unsupported and baseless, was reasonably accurate. I would suggest that, regardless of the accuracy or lack thereof of the final opinion of value, these violations should be dealt with.

Finally, I would be curious to know exactly how the "value that would have been assigned had the material failure to comply not occurred" is to be determined. And, who is to make such a determination?

FRB

December 27, 2010

I have been in the appraiser regulatory business for nearly thirteen years. Throughout that period of time, there have always been mandatory reporting requirements memorialized in any number of laws, rules, and regulations. Throughout that period of time, this guidance has been routinely ignored. I don't have any method to quantify how much of a contribution this failure to take appropriate action may have made to the mortgage meltdown we have experienced, but I am certain that it is substantial. While real estate appraisers may not have written the script, faulty appraisals certainly played a starring role in the production – the gatekeepers failed to guard the gate.

It is the function of the state appraiser regulatory agencies to triage referrals from various sources, identify and prosecute actionable violations, and dismiss those that are not. As written, the Interim Rule displaces the triage function to those who are defined as "covered persons." I don't believe that this constitutes a recipe for success; instead, I would consider it a prescription for disaster.

If we continue to do what we've always done, we'll continue to have what we've always had. It is always easier to omit an action than to take one. It appears to me that the language in this particular Interim Rule simply provides "covered persons" an excuse to omit the action; accordingly, we'll continue to have what we've always had.

Thank you for the opportunity to provide comments.

Sincerely,



**GEORGE R. STIRMAN III**, Director  
Real Estate Appraiser Board