

## **AppraiseReport**

*INFORMING APPRAISERS OF DEVELOPMENTS THAT INFLUENCE THEIR PROFESSION*

**October 2009**

### **RISE IN WV HOME FORECLOSURES**

The West Virginia Department of Banking Commissioner, Sally Cline, announced results from the agency's survey on mortgage foreclosures in West Virginia. According to the data collected, mortgage foreclosures in West Virginia during 2008 were 12% higher than the state's total for 2007.



According to the Division of Banking survey, a total of 2,296 foreclosures occurred in 2007 and 2,577 in 2008. Significant increases in counties such as Berkeley and Jefferson more than offset decreases in other populous counties such as Cabell and Kanawha in the years examined.

Ms. Cline noted that West Virginia state-chartered banks and the national banks headquartered in West Virginia accounted for less than 11% of the two-year total foreclosures. "That is a tribute to the sound lending practices of our community banks. They understand both their markets and the needs of our citizens."

The Division of Banking conducted a county by county survey of foreclosures to obtain accurate data for years 2007 and 2008. The survey was undertaken in early 2009 after statistics, which are widely publicized nationally, were alleged to be undercounting totals for rural states such as West Virginia. The Division of Banking survey results support this allegation. In addition, national data sources do not count foreclosures from all types of residential mortgage lenders. However, the Division of Banking survey does include such data.

Legislation, sponsored by Delegates Moore, Webster, Shook, Caputo, Barker, Fleischauer, Fragale, Miley, Marshall and Perry, was passed by the 2009 West Virginia Legislature which requires trustees conducting residential mortgage foreclosure sales to report data to the county clerks. The county clerks are then required to submit periodic reports to the Division of Banking for compilation. "We are hopeful that this new law, House Bill 3082, and the cooperation of the county clerks and the trustees, will allow us to provide accurate statewide data going forward," stated Ms. Cline.

To view the complete report, visit [www.wvdob.org](http://www.wvdob.org).

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## NEW EDITION OF USPAP EFFECTIVE JANUARY 1, 2010

The Appraisal Foundation announced that the Appraisal Standards Board (ASB) adopted revisions for the 2010-2011 edition of the *Uniform Standards of Professional Appraisal Practice (USPAP)* at a public meeting in New Orleans. USPAP are the generally accepted performance and ethical standards for the appraisal profession in the United States.

The 2010-2011 edition of USPAP will be valid for two years, effective January 1, 2010 through December 31, 2011. As with the current edition of USPAP, the new edition will include guidance from the ASB in the form of the *USPAP Advisory Opinions and the USPAP Frequently Asked Questions (FAQs)*. The *Summary of Actions* is available by visiting the following link to The Appraisal Foundation's website: [http://www.appraisalfoundation.org/Summary\\_of\\_Actions\\_2010-11\\_USPAP](http://www.appraisalfoundation.org/Summary_of_Actions_2010-11_USPAP).

Most of the revisions that will become effective on January 1, 2010 involved improving the clarity, understandability and enforceability of the ETHICS RULE, the COMPETENCY RULE and STANDARD 3: *Appraisal Review, Development and Reporting*.

There were also two significant changes:

**A requirement was added to the Conduct section of the ETHICS RULE, stating that, prior to accepting an assignment (and if discovered at any time during the assignment), an appraiser must disclose to the client and in the report certification any services regarding the subject property performed by the appraiser within the prior three years, as an appraiser or in any other capacity. The appraiser's obligation to allow a client access to his or her workfile when providing a Restricted Use Appraisal Report was removed.**

"The change to the Conduct section of the ETHICS RULE is significant," said Sandra Guilfoil, Chair of the ASB, the Foundation Board that promulgates USPAP. "It creates a new requirement for appraisers to disclose, up front to prospective clients, any involvement the appraiser might have had with the property within the past three years."

The ASB believed this new requirement was necessary for public trust. "In a current climate with a focus on things like transparency in financial transactions, the ASB did not believe that USPAP was adequately serving public trust by allowing an appraiser to complete an assignment without initially notifying the client of any recent involvement with the property. The ASB believes the client has a right to know about an appraiser's involvement and make the decision whether or not to engage the appraiser in that particular assignment," said Guilfoil.

In fact, the ASB believed this particular revision was so important that it issued a series of Q&A's on this topic in April 2009, providing guidance to appraisers almost eight months before the change takes effect. "We understand this new obligation may be unpopular with some appraisers and are doing our best to provide them with guidance," Guilfoil stated.

Finally, Guilfoil added, "We encourage appraisers and users of appraisal services to read through the Summary of Actions now, and thoroughly familiarize themselves with the requirements well in advance of the January 2, 2010, effective date."

## AN FYI TO ALL FHA ROSTER APPRAISERS

Congress raised the bar on eligibility requirements for retention and placement on the FHA Appraiser Roster. As detailed in Mortgagee Letter 2008-39, available from [www.hud.gov/hudclips](http://www.hud.gov/hudclips), all appraisers currently applying for placement on the FHA Appraiser Roster must be either a state certified residential or state certified general appraiser.

As of October 1, 2009, any appraiser on the FHA Appraiser Roster who has **not** become state certified will be removed from the Roster in compliance with the Housing and Economic Recovery Act of 2008.

This is a statutory requirement that does not provide for grandfathering and cannot be waived by FHA. However, appraisers that subsequently meet certification requirements may apply for reinstatement to the FHA appraiser roster.

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## NEW IRS LAWS MAY SUBJECT APPRAISERS TO CIVIL OR CRIMINAL PENALTIES!

Do you prepare appraisals for gift or estate tax returns? If so, you could be impacted by new tax laws. Appraisers are now covered under the definition of “tax return preparers.” A tax return preparer can be subject to civil or criminal sanctions if their actions are an understatement of a taxpayer’s liability to the IRS.

For example, a client asks you to prepare an appraisal for an estate. You undervalue the property, which leads to a low estate tax bill. In another example, you overvalue a piece of property donated to charity or for a conservation easement; this would lead to a lower income tax bill.

If the IRS can show that you willfully or recklessly gave an erroneous value for the property, or if you had no basis for the valuation, you could be subject to a substantial fine. Also, your firm or employer is subject to penalties if it knows, or reasonably knows, about your misleading conduct. You also could face criminal sanctions.

If you do this, you could be referred to the IRS’s Office of Professional Responsibility for further sanctions, which might include disqualification of your ability to perform any appraisals to be used for tax purposes. You would, of course, also face disciplinary action by the WV Appraiser Board.

You are encouraged to keep up-to-date with changes to tax laws which might impact your work.



## FHFA RELEASES HVCC UPDATE, ADDRESSES MISINFORMATION

In a recent three-page notice, the Federal Housing Finance Agency recently reasserted its belief that the Home Valuation Code of Conduct does not favor the use of appraisal management companies over independent or in-house appraisers. The FHFA also reinforced its opinion that the HVCC has not been responsible for lower valuations, which it stated are more reflective of current market conditions than the introduction of new conduct regulations. The assertions came in a July 22 notice titled “Strengthening Appraiser Independence and Improving the Valuation Process.”

The document recaps the creation of the HVCC and then transitions into a section titled “Addressing Misinformation,” which covers key points the FHFA believes the public should know. Topics include:

- Communications with appraisers
- Low appraisals
- Appraisal management company (AMC) role
- Unqualified or out-of-area appraisers
- Increased costs at closing
- Turnaround times for appraisals
- Transferring an appraisal

To view the FHFA notice in its entirety, visit [www.fhfa.gov/webfiles](http://www.fhfa.gov/webfiles).

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## VA ESTABLISHES PREVAILING FEE FOR MARKET CONDITIONS ADDENDUM

The Department of Veterans Administration is increasing to \$50 the amount that it will pay appraisers for the completion of the Fannie Mae Market Conditions Addendum (Form 1004MC) for all property types. The fee is effective for all appraisal assignments dated August 1, 2009, or later, and the VA has stated that it would monitor the impact of this new industry requirement on appraisal fees and make further adjustments as appropriate.

The VA conducted a nationwide survey of appraisers to determine the prevailing fee charged for preparation of the market conditions addendum on conventional appraisals. Therefore, the VA is authorizing an increase in fees to match the conventional market.

“We applaud the VA for using a statistically valid survey in establishing the prevailing rate for new appraisal mandates,” said Bill Garber, director of government and external relations of the Appraisal Institute. “Using an objective survey mechanism is a best practice that should be employed by all clients in the marketplace.”

In Circular 26-09-4 dated March 27, 2009, the VA required that all VA appraisals include the Fannie Mae Market Conditions Addendum.

For a copy of Circular 26-09-11, visit [www.homeloans.va.gov](http://www.homeloans.va.gov).

## WORK SAMPLES FOR LICENSING

Work samples are required when an applicant is applying for license levels of LR, CR and CG. The work samples should demonstrate the applicant's ability to appraise at the license level applied for. Work samples for the certified levels should demonstrate the applicant's ability to perform complex assignments.

The work samples are reviewed by members of the Upgrade Committee. The following is a list of the most common deficiencies noted in the work samples reviewed:

- Inadequate recognition of 'significant professional assistance' provided in the preparation of the appraisal report.
- Inappropriate use and/or abuse of 'boilerplate' commentary (often in the neighborhood description and reconciliation of the Sales Comparison Approach).
- Failure to recognize, analyze and report changing market trends and to report those trends in a manner that is consistent throughout the appraisal.
- 'Backing into' the predominant price and age of the neighborhood to 'fit' the subject property.
- Inadequate zoning description and analysis related to highest and best use of the subject property.
- Inadequate description of the subject property's amenities and condition (particularly remodeling and/or deferred maintenance).
- Failure to disclose and analyze additions, studios, secondary units and garage conversions. Failure to verify whether additions and conversions were completed with the appropriate permits and if they conform to the zoning. Inappropriate assumptions that additions and conversions were completed with permits due to the inclusion of the additional square footage in data sources (assessor/county records).
- Insufficient justification supporting the subject property's estimated effective age, particularly when it is substantially less than the chronological age.
- Replace cost figures that are not supported by the stated data source.
- Failure to use an appropriate method to estimate depreciation in the Cost Approach.
- Failure to appropriately adjust for functional obsolescence in the Cost Approach when the depreciated value of the subject property improvements is not fully recognized by the market.
- Failure to adjust for external obsolescence, and to appropriately allocate this loss in value between the land and improvements.
- Rate per square foot adjustments for differences in site area without discussion or consideration of the site utility and support for adjustments applied in the Sales Comparison Approach (particularly when the adjustments were made across-the-board).
- Insufficient analysis and support for the Gross Rent Multiplier in the Income Approach.
- Inadequate commentary on actual versus economic rents of the comparable sale properties.
- Inadequate analysis of the subject property's prior sale(s).
- Inadequate analysis of a current sales agreement for the subject property (or alternatively, disclosure of the steps taken to obtain a copy of the sales agreement).
- Inadequate reconciliation of the quality and quantity of data available and analyzed within the approaches to value used, as well as, the applicability or suitability of the approaches used.

***All appraisers, not just those submitting work samples for upgrade, should take the time to review their work product to ensure that these types of errors are avoided.***

## WHEN AN ERROR IS DISCOVERED IN AN APPRAISAL REPORT

The Board receives complaints which are the result of typographical and clerical errors in appraisal reports. A majority of errors occur simply because reports are not being proofread before they are signed. Often, an appraiser will write over an old report, forgetting to make changes as necessary. The result may be a misleading report that confuses the intended users and other readers of the report.

USPAP addresses this issue in Standards Rule 1-1 (c). That rule states that “As appraiser must not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.”

Appraisers should **carefully proofread** their reports before sending them to clients. If a mistake is discovered in a report after it has been transmitted, the appraiser should let the client know about the error and ask the client to send the original report back to the appraiser for corrections. It obviously is more difficult to obtain the original if the report was transmitted electronically. The appraiser should then make the appropriate corrections and issue a new report **with a new signature date**. The second report should **clearly** state that it is a revision of a report signed on an earlier date, and that the prior report should be discarded. Copies of **both** the original report and the revised report should be kept in the workfile.



## COMPARABLE SALES — YOU MUST LOOK AT THEM!

Most of the new Fannie Mae forms contain language in the certification that the appraiser has inspected the comparable sales at least from the street. Also, many lenders now require that the appraiser take photographs of the comparable sales, and may not rely on MLS or other sources for photos of the subject and comparable sales.

Be sure to check the ‘boilerplate’ language in the Scope of Work section and in the certification preprinted on the appraisal form you are using to report your appraisal. Also, check the appraisal order form for the assignment to see if you must personally view the comparable sales and include your own photos in the report. If the appraisal form states that you have viewed the comparables and you have not done so, you must explain this in the report. If you use photographs of comparables which you did not take yourself, you must note the source of the photographs on the appraisal report and explain why you did not include your own photos. Failure to do so results in a misleading appraisal report, since it appears to the reader that you took the photographs in the report.

## **FHA SUSPENDS WHOLESALE LENDER FOR POSSIBLE FRAUD LARGE-SCALE FALLOUT POSSIBLE**

Citing possible fraud, the Federal Housing Administration suspended wholesale mortgage lender Taylor, Bean & Whitaker Mortgage Corp. from making loans insured by the agency. Effectively immediately, the closure also shuts down Taylor Bean's wholly owned appraisal management company, which could leave appraisers having done work for them in the lurch.

With more than \$40 billion in originations and purchases last year, the lender is the largest to be suspended by the FHA. It was the 12th largest U.S. mortgage lender in the first six months of 2009, and the third largest lender of FHA loans in June. FHA agents raided its office along with the Florida offices of Colonial BancGroup Inc., for which Taylor Bean had depended on for short-term 'warehouse' loans. Federal agents executed the raids after negotiations of a proposed deal that would have given Taylor Bean control over Colonial—which would then qualify the struggling bank for \$536 million in federal bailout funds—collapsed.

“Regrettably, TBW will not be able to close or fund any mortgage loans currently pending in its pipeline. TBW is cooperating with each of the agencies with respect to its servicing operations and expects to continue to service mortgage loans as it restructures its business in the wake of these events,” Taylor Bean said in a statement.

The Department of Housing and Urban Development took action against Taylor Bean after the lender failed to provide the federal agency a required annual report as well as disclose information on previous transactions that pointed to potential fraud. “Today, we suspend one company but there is a very clear message that should be heard throughout the FHA lending world: Operate within our standards, or we won't do business with you,” HUD Secretary Shaun Donovan said.

HUD is seeking to prohibit Taylor Bean's chief executive officer, Paul Allen, and president, Ray Bowman, from conducting any business with the government for 18 months. HUD alleges that Allen provided Ginnie Mae false or misleading information regarding a delayed financial report and that Bowman filed two false certificates on its annual report to the agency. Sanctions against the companies and individuals are effective immediately; however, all have 30 days to appeal.

David Olsen, president of mortgage research firm Wholesale Access, noted that the action against Taylor Bean will be a big blow to lenders that depend on the company for financing. “The market is extremely tight, and now more business will go to the guys at the top,” Olson told Bloomberg News. “It's another disaster for wholesale lending.”

## **“ACROSS THE FENCE VALUATION” A Public Agency Perspective**

Few appraisal issues generate as much confusion as the concept of “across the fence” valuation in real estate appraisal. From highest and best use analysis to valuation methodology and reconciliation, this issue can present a myriad of challenges for an appraiser. Hopefully, this article will clarify some of the issues and questions in an attempt to provide some insight from the public agency’s position.

Across the fence valuation, or ATF, usually comes into play when an appraiser is confronted with placing a value on a piece of real estate that typically has very little, if any, stand-alone utility in the market at large as part of a corridor or special-use property. These types of property may have significant value-in-use to one particular owner, usually those who utilize the assembled property for some type of specialized use such as for public utilities, roadways, etc.

The most common examples are probably areas of highway right-of-way or utility/railroad corridors which are no longer needed to provide continuous ownership to the public agency or special use owner. It is important to note at this point that until an assembled corridor or right-of-way is no longer of any value to the owner, the concept of ATF typically does not apply. As long as the corridor, or specialized assemblage, is viable and of use to the owner, then it is considered to have a value in use to that specific owner. Typical owners of these type properties are municipalities or state agencies such as highway departments; railroads; pipelines and/or public utilities that need the property, as assembled, to serve a specific, specialized use.

Assembled, intact corridors do sell on occasion but are usually between special-use entities, such as utilities or public agencies, for continued usage as an assembled unit that is not typically suited, from a functional standpoint, for use by the real estate market at large. Many times sales such as these are valued on a per-mile basis (if the corridor is of fairly uniform width) or valued on a replacement cost of having to purchase the necessary rights to reestablish the corridor in today’s dollars. One weak point in utilizing the per-mile unit valuation based upon such transactions is the limited number of users who typically need corridors or atypical assemblages of real estate. Issues such as these will many times restrict the reconciliation of a truly supportable market value for these property types due to their “captive” or limited marketability.

However, once these unique properties transition from their specialized usage, their value-in-use is likely to change to a highest and best use of assemblage, or reattachment, to the abutting properties, many of which were the parcels from which the property comprising the corridor or special-use assemblage were originally purchased. This is where ATF valuation can provide an appraiser with a supportable and logical estimate of value for these types of property.

If we take a step back to the point where the corridor or special assemblage was created, the inverse of this methodology can be the basis upon which, as noted, a supportable estimate of value can be reconciled.

Assume the existence of a 10-acre rectangular-shaped tract of agricultural land owned by a single individual that fronts along a public highway. Market data indicates that similar properties, with the same highest and best use, sell for approximately \$5,000/acre. Simple math indicates that the 10-acre parcel would have a market value of \$50,000, as long as it sets there undisturbed.

A local public agency has developed plans to upgrade the existing roadway that abuts the subject 10 acres and the project will necessitate the acquisition of a 1-acre rectangular strip across the front of the subject property to facilitate the upgrade. Standard, accepted appraisal methodology indicated that the value of the

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## **“ACROSS THE FENCE VALUATION” A Public Agency Perspective**

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1-acre portion to be acquired would be valued as part of the whole 10 acres and valued at \$5,000. This leaves the owner with 9 acres valued at \$45,000.

Assuming no diminution in value to the remaining 9 acres due to loss of access, change in functional utility, etc., the guarantee of just compensation to owners for property acquired for public purposes requires that the property acquired to be valued as part of the whole, or larger parcel with a common highest and best use. Otherwise, the acquiring agency could make the assertion that the narrow strip of land being acquired from the front of the subject property has no stand-alone utility and, therefore, no market value as typical market participants would not pay market value for a parcel of such restricted utility. This assertion and basis for compensation is obviously grossly unfair to the property owner and inconsistent with the constitutional mandate regarding just compensation.

Assume that shortly after this 1-acre parcel is acquired by the local agency, plans for the project are cancelled. The agency can declare the property acquired for this project as excess and dispose of it accordingly. This is where ATF valuation can provide the basis for valuing the 1-acre now owned by the agency.

Market demand for narrow, limited utility 1-acre parcels is non-existent. Therefore, the direct sales comparison approach utilizing transfers of atypical properties will not provide a supportable estimate of fair market value, as typically defined, for the 1-acre parcel. Just as the owner from which the property was acquired was entitled to just compensation for the sale of the property, the taxpayers are entitled to their version of just compensation when the subject 1-acre is reassembled to the original parcel. Logic, and utilization of ATF valuation methodology, would indicate that the agency should receive \$5,000 from the abutting owner for the assemblage of the 1-acre tract to the abutting 9 acres. This scenario makes the owner whole again by having a 10-acre parcel worth \$50,000 and the taxpayers having recovered their \$5,000 acquisition price.

However, assume that the ATF methodology was not utilized and, because of the 1-acre's limited utility as a stand-alone parcel, the agency sells this area back to the owner for a nominal value based upon other non-arm's-length transactions. Any subsequent sale of the subject parcel by the owner for \$5,000 per acre, or more, would result in a windfall to the owner by virtue of double compensation for the 1-acre reassembled and a loss to the taxpayers due to the failure in recouping their fair market value investment in the property by selling at a sub-market price. As noted previously, this seems grossly unfair to the taxpayers.

Logic and common sense seem to support the use of ATF methodology in scenarios such as this in that “what's fair for the goose is fair for the gander.”

*Submitted by Mr. William F. Henrichs, III, a Certified General Appraiser since 1991. Bill graduated from Marshall University in 1986 with a Bachelor of Arts Degree in Geology. He has been employed with the West Virginia Department of Transportation since 1991 and currently serves as Chief Appraiser. Bill has successfully completed professional training in real estate and mineral property appraisal, acquisition, management, law, and engineering principles.*

## APPRAISER QUALIFICATIONS BOARD Q & A

### Additional Education and Experience When Changing a Credential

**Question:** I hold a Licensed Residential credential and need to upgrade to a Certified Residential credential to remain on the FHA roster. What courses do I need to take?

**Response:** The additional *Required Core Curriculum* coursework required of those appraisers holding a valid Licensed Residential credential are as follows:

- Statistics, Modeling & Finance (15 hours)
- Advanced Residential Applications and Case Studies (15 hours)
- Appraisal Subject Matter Electives (20 hours)

In addition to the *Required Core Curriculum* requirements, candidates must also meet the college-level education (see below), experience and examination requirements for the Certified Residential credential.

Applicants for the Certified Residential credential must hold an Associate degree from an accredited college, junior college, community college or university **OR** have obtained 21 semester hours (or their equivalent) as demonstrated by passing the following courses at an accredited, degree-granting institution: English Composition; Principles of Economics (Micro or Macro), Finance; Algebra, Geometry or higher mathematics; Statistics; Computer Science; and Business or Real Estate Law.

The minimum experience requirement is 2,500 hours obtained during not less than twenty-four (24) months.

The AQB Approved Certified Residential Real Appraiser Examination must also be successfully completed.

### Preparation for the Licensed Residential, Certified Residential and Certified General National Examinations

**Question:** Is there a study guide for the Licensed Residential, Certified Residential or Certified General examinations:

**Response:** The Appraisal Foundation does not publish a study guide for the National Uniform Licensing and Certification Examinations. The questions on the examinations are based upon the body of knowledge covered in the *Required Core Curriculum* as noted in Guide Note 1 (GN-1) of the *Real Property Qualification Criteria*. Sample questions are available on The Appraisal Foundation website at [www.appraisalfoundationl.org](http://www.appraisalfoundationl.org).