

Department of Consumer Affairs
TITLE 10. PROFESSIONAL AND VOCATIONAL REGULATIONS
CHAPTER 6.5
BUREAU OF REAL ESTATE APPRAISERS

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Regulations: Align Appraisal Review Requirements with USPAP

Sections Affected: Amend Section 3705 of Chapter 6.5 of Title 10 of the California Code of Regulations (CCR)¹

1. Background and Statement of the Problem:

The Bureau of Real Estate Appraisers (Bureau) licenses, regulates, and disciplines real estate appraisers, trainees, and registers appraisal management companies (AMC). In 1989, Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA" 12 U.S.C. § 3331 et seq.) was adopted by Congress mandating states to license and certify real estate appraisers who appraise property for federally related transactions. The federal law was enacted as a result of the savings and loan disaster. In response to the federal mandate, the Real Estate Appraisers Licensing and Certification Law was enacted by the California Legislature in 1990 (AB 527, Chapter 491 of 1990) and the Bureau of Real Estate Appraisers ("Bureau") was later established within the Department of Consumer Affairs, a department within the Business, Consumer Services, and Housing Agency. The Bureau is charged with developing and implementing a real estate appraiser licensing and certification program compliant with the federal mandate. Section 4 of Stats.1990, c. 491 (A.B.527), provides:

"It is the intent of the Legislature in enacting this act to implement the policy of the Congress as expressed in the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law No. 101-73 (FIRREA), and to establish a state program to license and certify real estate appraisers." (see Bus. & Prof. Code, § 11300.)

The Appraisal Foundation's ASB is congressionally authorized under FIRREA to set the minimum standards for real estate appraisers, and as a result, the ASB establishes minimum standards for conduct and practice the Bureau must enforce. (Bus. and Prof. Code, § 11314; *"Requirements for each level of licensure shall, at a minimum, meet the*

¹ All CCR references are to Title 10 unless otherwise noted.

criteria established by the Appraiser Qualification Board of the Appraisal Foundation”; and, see also 12 U.S.C. § 323.4; and Cal. Code Regs., tit. 10, § 3500(b)(4)). All of FIRREA (Title XI) and the ASB criteria are incorporated by reference into the Business and Professions Code and California Code of Regulations, as follows:

“Notwithstanding any other provision of this code, except as provided in subdivision (b), the Uniform Standards of Professional Appraisal Practice constitute the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards. If a licensee also is certified by the Board of Equalization, he or she shall follow the standards established by the Board of Equalization when fulfilling his or her responsibilities for assessment purposes.” (Bus. & Prof. Code, § 11319(a).)

“Uniform Standards of Professional Appraisal Practice; (USPAP)” means those standards as adopted by the Appraisal Standards Board of the Appraisal Foundation.” (Cal. Code Regs., tit. 10, § 3500(24).)

“Every holder of a license under this part shall conform to and observe the Uniform Standards of Professional Appraisal Practice (USPAP) and any subsequent amendments thereto as promulgated by the Appraisal Standards Board of The Appraisal Foundation which standards are herein incorporated into these regulations by reference as if fully set forth herein.” (Cal. Code Regs., tit. 10, § 3701.)

The Bureau’s existing regulation is based upon a prior edition of the USPAP Standards from 2016-17 (see Underlying Data), which only cited to USPAP Standard 3 since that rule contained all appraisal development and reporting requirements and was entitled “STANDARD 3: APPRAISAL REVIEW, DEVELOPMENT AND REPORTING”.

However, as of January 1, 2018, the contents of USPAP Standard 3 were divided into both Standards 3 and 4 in the most recent edition of the USPAP (see Underlying Data) and re-titled as follows:

STANDARD 3: APPRAISAL REVIEW, DEVELOPMENT

STANDARD 4: APPRAISAL REVIEW, REPORTING

An appraisal review involves both development and reporting (as specified in USPAP Standard 3) and the signature represents that the review appraiser accepts responsibility for, and has complied with, both the development and reporting standards of USPAP (as specified in both USPAP Standards 3 and 4). As a result, the Bureau proposes to update its regulations consistent with USPAP review appraisal requirements by retaining USPAP Standard 3, while adding a reference to USPAP Standard 4 in CCR section 3705(b), as explained further below.

2. Anticipated Benefits from this Regulatory Action:

The objective of this proposal is to ensure that the Bureau's regulations accurately reflect the review appraisal requirements for real estate appraisers in compliance with federal law and that minimum standards in appraisal review are met for the overall protection of the public. This action also helps avoid licensee and staff confusion about whether the Bureau's review appraisal requirements are compliant with federal law. This helps ensure governmental transparency, legal compliance, accuracy in the Bureau's operations and a well-informed public.

Specific purpose of, and rationale for, each adoption, amendment or repeal: **3705. Responsibility for Appraisal Reports, Signatures.**

Amendments to subsection (a)

Purpose: This subsection would be amended to strike the word "Rules" from this subsection as follows: "Standards ~~Rules~~ 1 and 2 of USPAP."

Rationale: The Bureau's current CCR section 3705(a) uses the terminology of "Standard Rule" for each primary subject matter area. However, the 2024 edition of the USPAP standards refers to each primary rule as simply a "Standard", while reserving the term "Standard Rules" for each subrule within each section (see Underlying Data). To avoid confusion for the regulated community and to remain consistent with the terminology now used in the USPAP 2024 edition, the Bureau proposes to strike the word "Rules" from this subsection.

Amendments to subsection (b)

Purpose: CCR Section 3705(b) presently provides:

(b) Every review appraisal report upon final completion shall bear the signature and license number of the reviewer. The affixing of such signature and number shall constitute acceptance by the reviewer of responsibility for the review under Standard Rule 3 of USPAP.

As discussed more fully below, the Bureau is required by law to follow the Appraisal Qualification Board's standards (aka "Appraisal Standards Board" or "ASB"). Review appraisal development and reporting requirements, including signatures, pertaining to review appraisal reports have been changed by the ASB and are now covered under Uniform Standards of Professional Appraisal Practice (USPAP) Standards Rules 3 and 4. As a result, the Bureau proposes to amend section 3705(b) by adding Standards Rule 4 as an additional authority for review appraisal report identification as follows:

(b) Every review appraisal report upon final completion shall bear the signature and license number of the reviewer. The affixing of such signature and number shall constitute acceptance by the reviewer of responsibility for the review under Standards Rule 3 and 4 of USPAP.

Rationale: The Bureau proposes to add an "s" behind "Standard" and delete "Rule" in this existing section for accuracy and consistent with USPAP, which uses the word "Standards" when referring to these requirements and for grammatical reasons. The Bureau proposes to add the word "and" to connect the two rules' standards in this sentence for grammatical reasons. The Bureau proposes to add the Standards Rule "4" reference for the following reasons.

Original Signature Requirements were Listed in USPAP Standards Rule 3.

The Bureau's current CCR section 3705(b) signature requirement was based on content derived from USPAP Standard Rule 3 (Standard 3) in the 2016-17 edition, republished with permission from the Appraisal Foundation in the Underlying Data, and in part as follows:

Standards Rule 3-5

(j) include a signed certification in accordance with Standards Rule 3-6.

Standards Rule 3-6

Each written Appraisal Review Report must contain a signed certification that is similar in content to the following form:

...

Comment: A signed certification is an integral part of the Appraisal Review Report. A reviewer who signs any part of the appraisal review report, including a letter of transmittal, must also sign the certification.

Any reviewer who signs a certification accepts responsibility for all elements of the certification, for the assignment results, and for the contents of the Appraisal Review Report.

Signature Requirements are Now Listed in USPAP Standard 4

USPAP Standard 3 still contains the development requirements originally relied on by the Bureau to adopt this regulation and are still relevant as they contain the overall requirements for an appraiser to accept responsibility for their appraisal review. However, the related signature requirements in Standard 3 have been relocated to USPAP Standard 4 by the ASB. The Bureau's proposed change to add USPAP Standard 4 in CCR section 3705(b) would reflect that the signature requirements have been moved to USPAP Standard 4 and the USPAP change in terminology from "Standard Rule" to "Standard" (when citing to the primary rule) in accordance with changes made in the 2018-19 edition, republished with permission from the Appraisal Foundation in the Underlying Data, and in part as follows:

STANDARDS RULE 4-2

(j) include a signed certification in accordance with Standards Rule 4-3.

STANDARDS RULE 4-3

Each written Appraisal Review Report must contain a signed certification that is similar in content to the following form:

....

Comment: A signed certification is an integral part of the Appraisal Review Report. A reviewer who signs any part of the appraisal review report, including a letter of transmittal, must also sign the certification.

Any reviewer who signs a certification accepts responsibility for all elements of the certification, for the assignment results, and for the contents of the Appraisal Review Report.

Current USPAP Standards Rules 4-2(j) and 4-3 address the signature requirements of the appraiser(s) reviewing the work as of January 1, 2024 (see Underlying Data). Specifically, Standards Rule 4-3 states the requirements for a signed certification for each written appraisal review report. Standards Rule 4-2(j) states “*include a signed certification in accordance with Standards Rule 4-3.*”

CCR section 3705(b) sets forth the signature responsibility for review appraisal reports and, currently, only references Standard 3 as authority for the responsibility for development of the appraisal report (now contained in USPAP Standard 3), but not how the review appraiser would identify and acknowledge that responsibility and compliance (i.e., the signature and use of license number now contained in Standard 4). As noted above, USPAP Standards Rules 4-3, and 4-2(j) provide additional requirements for review appraisal report signatures (e.g., certifications) that were originally contained in USPAP Standard 3 when the Bureau adopted this regulation. Thus, without the addition of the reference to USPAP Standard 4, CCR section 3705(b) does not comply with the AQB criteria and, consequently, the Business and Professions Code.

Underlying Data

1. “2016-17 Uniform Standards of Professional Appraisal Practice (USPAP 2016-2017)”, Appraisal Foundation 2016-2017 edition.
2. “2018-2019 Uniform Standards of Professional Appraisal Practice (USPAP),” Effective January 1, 2018, through December 31, 2019, Appraisal Foundation, 2018-2019 edition.
3. “2024 Uniform Standards of Professional Appraisal Practice (USPAP) Standards 1-4,” Effective January 1, 2024, Appraisal Foundation.

Business Impact

The Bureau has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts:

The proposed regulatory changes are administrative in nature and ensure transparency, legal compliance, and accuracy in the Bureau’s operations. This proposal conforms the regulation regarding the USPAP appraisal review requirements to current law and

Bureau enforcement-related practices. As a result, the Bureau does not anticipate that any businesses, including any businesses employing real estate appraisers, would be impacted by what the Bureau considers to be “clean-up” changes to its current regulation.

Economic Impact Assessment

The Bureau has determined that this regulatory proposal will have the following effects:

It will not create or eliminate jobs within the State of California because the proposed changes are administrative and conform the regulation regarding review appraisal requirements to current law and Bureau enforcement-related practices.

It will not create new business or eliminate existing businesses within the State of California because the proposed changes relate only to administrative renumbering and clean-up of existing requirements.

It will not affect the expansion of businesses currently doing business within the State of California because the proposed changes are considered to be a “clean-up” of current regulation, ensuring governmental transparency, accuracy, and legal compliance with current law and Bureau operations.

This regulatory proposal benefits the health and welfare of California residents by ensuring that the Bureau’s regulations accurately reflect the review appraisal requirements for real estate appraisers in compliance with federal law and that minimum standards in appraisal review are met for the overall protection of the public. This action also helps avoid licensee and staff confusion about whether the Bureau’s review appraisal requirements are compliant with federal law. This helps ensure governmental transparency, legal compliance, accuracy in the Bureau’s operations and a well-informed public.

This regulatory proposal does not affect worker safety or the state’s environment because it does not involve worker safety or the state’s environment.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.