



AGENDA ITEM 17

Discussion and possible action to adopt a new rule 22 TAC §155.3, Work Relating to Commercial Real Estate Transactions.

SUMMARY

The amendments implement changes in federal law raising the threshold under which an appraisal is not required in a commercial real estate transaction. Consistent with these changes in federal law, TALCB adopts this rule specifying the criteria under which persons license under the Texas Appraiser Licensing and Certification Act, Chapter 1103, Texas Occupations Code, may prepare evaluations in commercial real estate transactions with a transaction value of \$500,000 or less without violating the standards of conduct required for licensure.

The Enforcement Committee considered comments received and recommends that the Board withdraw the rule as published and re-propose the rule with changes based on the comments received.

COMMENTS

Five comments were received on the rule as proposed, including one from a trade association. Four commenters supported the amendments, and two of these commenters suggested additional language that would broaden the scope of the exemption created by the amendments.

One of the comments was received after the Enforcement Committee met, so the Committee did not have the benefit of reviewing this comment at their meeting. This commenter opposes the amendments on the grounds that the Appraisal Standards Board (ASB) has exposed suggested revisions to the next edition of Uniform Standards of Professional Appraisal Practice (USPAP) that, "if adopted, would accomplish the stated intent of proposed 22 TAC §155.3 and would apply to all appraisers in all assignments." This commenter requests the Board to refrain from adopting this rule at this time.



STAFF RECOMMENDATION

Withdraw the rule as published.

RECOMMENDED MOTION

MOVED, that staff is authorized, on behalf of this Board, to withdraw new rule 22 TAC §155.3, Work Relating to Commercial Real Estate Transactions, as published in the *Texas Register*.



**Adopted Rule Action from August 17, 2018 Meeting of
the Texas Appraiser Licensing and Certification Board**

Chapter 155. Rules Relating to Standards of Practice

**Rule 155.3. Work Relating to Commercial Real Estate
Transactions**

***§155.3. Work Relating to Commercial Real
Estate Transactions***

**APPRAISAL STANDARDS BOARD OF
THE APPRAISAL FOUNDATION.**

(a) For purposes of this section "commercial real estate transaction" means a federally-related transaction that is not secured by a single 1-to-4 family residential property.

(b) The preparation of an evaluation for a commercial real estate transaction with a transaction value of \$500,000 or less by a person who is licensed under the Texas Appraiser Licensing and Certification Act, Chapter 1103, Texas Occupations Code, is considered an appraisal or appraisal practice for the purposes of §155.1 of this chapter and must conform with Uniform Standards of Professional Appraisal Practice (USPAP), unless the person preparing the evaluation includes the disclaimer set out in subsection (c) of this section.

(c) The USPAP disclaimer required under this section must:

(1) be located directly above the preparer's signature;

(2) be in at least 10-point boldface type; and

(3) read as follows: USPAP DISCLAIMER:

I AM LICENSED OR CERTIFIED AS A REAL PROPERTY APPRAISER. THIS EVALUATION WAS NOT PREPARED IN MY CAPACITY AS A REAL PROPERTY APPRAISER AND MAY NOT COMPLY WITH THE REQUIREMENTS FOR DEVELOPMENT OF A REAL PROPERTY APPRAISAL CONTAINED IN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) OF THE



August 1, 2018

Jamie S. Wickliffe, Chair
Texas Appraiser Licensing and Certification Board
Stephen F. Austin Building
1700 N. Congress Ave., Suite 400
Austin, TX 78701
Email: jamie.wickliffe@talcb.texas.gov

Dear Chair Wickliffe:

We are contacting you regarding the proposed new rule 22 TAC §155.3, Work Relating to Commercial Real Estate Transactions. As proposed, Texas-licensed appraisers would be exempt from complying with the *Uniform Standards for Professional Appraisal Practice* (USPAP) for evaluation assignments on commercial real estate transactions with a transaction value of \$500,000 or less. We understand this proposed new rule may be discussed at the Texas Appraiser Licensing and Certification Board (TALCB) meeting on August 17, 2018.

The Appraisal Foundation (Foundation) is a neutral third party authorized by Congress to establish appraisal standards and appraiser qualifications. One of our independent boards, the Appraisal Standards Board (ASB), is the entity responsible for the development and promulgation of USPAP.

The Foundation is opposed to the proposed new rule. The draft regulation establishes a dangerous precedent by carving out exemptions to when professional, ethical standards should be adhered to by Texas appraisers. But perhaps most significantly, the provisions of this regulation are **unnecessary**. At this time, the ASB has already exposed potential revisions for the next edition of USPAP, which, if adopted, would accomplish the stated intent of proposed 22 TAC §155.3 and would apply to *all* appraisers in *all* assignments, not just those relatively few that would be impacted by the passage of this new regulation.

In addition, we believe the proposed "USPAP disclaimer"¹ may result in significant confusion in the marketplace as to what is exempted from USPAP and what is not. The proposed language reads:

USPAP DISCLAIMER: I AM LICENSED OR CERTIFIED AS A REAL PROPERTY APPRAISER. THIS EVALUATION WAS NOT PREPARED IN MY CAPACITY AS A REAL PROPERTY APPRAISER AND MAY NOT COMPLY WITH THE REQUIREMENTS FOR **DEVELOPMENT** OF A REAL PROPERTY APPRAISAL CONTAINED IN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) OF THE APPRAISAL STANDARDS BOARD OF THE APPRAISAL FOUNDATION. (Bold added for emphasis)

¹ §155.3(c)(3)

Because STANDARD 1 in USPAP applies to the *development* of a real property appraisal, and STANDARD 2 applies to *reporting* the results of the appraisal, one could easily interpret the disclaimer to mean that compliance is not required for STANDARD 1; however, since the proposed disclaimer does not address reporting, compliance with STANDARD 2 would still be required.

We ask that adoption of 22 TAC §155.3 be **put on hold** because keeping appraisal standards *uniform* throughout the country is of great importance to the profession, as envisioned by Congress when it authorized our organization to do just that. To that end, the ASB has proposed the next edition of USPAP to include one set of minimum requirements for the content of all real property appraisal reports. If adopted, the requirements for an evaluation report at issue with some appraisers and clients would no longer exist. Therefore, not only would the provisions of this regulation be unnecessary, Texas administrative law would now contain confusing disclaimer language. The result may be requirements that would leave Texas appraisers uncertain about how to comply with this specific provision and users of their services perplexed. For this reason alone, we believe holding 22 TAC §155.3 in abeyance is the only prudent action that can be taken at this time.

Should you wish to discuss these items in greater detail or need additional information, please contact me by telephone at 202-624-3040 or email at david@appraisalfoundation.org.

Sincerely,



David S. Bunton
President

cc: Martha Gayle Reid Lynch, Vice Chair, TALCB; marthagayle.reidlynch@talcb.texas.gov
Earl "Buster" Renfrow, Secretary, TALCB; buster.renfrow@talcb.texas.gov
Clayton Black, Member, TALCB; clayton.black@talcb.texas.gov
R. Chance Bolton, Member, TALCB; chance.bolton@talcb.texas.gov
James J. Jeffries, Member, TALCB; james.jeffries@talcb.texas.gov
Tony Pena, Member, TALCB; tony.pena@talcb.texas.gov
Alejandro Sostre-Odio, Member, TALCB; alejandro.sostre@talcb.texas.gov
Joyce Yannuzzi, Member, TALCB; joyce.yannuzzi@talcb.texas.gov
Douglas E. Oldmixon, Commissioner, TALCB; douglas.oldmixon@talcb.texas.gov

Robert L. Moorman, MAI, SRA, AI-GRS

6/7/2018

Ms Kristen Worman, Esq.
TALCB
P.O. Box 12188
Austin, Texas 78711-2188

RE: Proposed Rule 155.3

Dear Ms Worman:

I am writing in support of the proposed rule on evaluations for the State of Texas. This is proposed rule 155.3, Work Relating to Commercial Real Estate Transactions. Ever since 2010, when the Interagency Appraisal and Evaluation Guidelines were released, lenders have been getting subpar evaluation reports due to the prohibition on certified and licensed appraisers being able to do this type of work. As a former chief appraiser for Prosperity Bank, I know of which I speak. The mandatory compliance to USPAP the State of Texas has required was the reason for this. Instead of having these reports completed by valuation professionals, we had to rely on professional sales people to do them, resulting in a less than satisfactory result.

I believe the proposed rule change is a step forward and will benefit both appraisers and lenders. I strongly encourage the rule change.

Sincerely,

A handwritten signature in blue ink that reads "Robert L. Moorman". The signature is written in a cursive style with a large initial 'R'.

Robert L. Moorman

/s/

**2401 Airline Drive
Brenham, Texas 77833**

FIRST FINANCIAL BANKSHARES

June 6, 2018

Ms. Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
P.O. Box 12188
Austin, Texas 78711-2188

Via Email general.counsel@talcb.texas.gov

Dear Ms. Worman:

Thank you for the opportunity to comment on the proposed rule to allow appraisers to perform evaluations. I am a Certified General Real Estate Appraiser in the State of Texas (1330448-G), and I manage the real estate appraisal and evaluation function for First Financial Bank. We are a 128 year old organization with \$7.6 billion in assets, and our headquarters is in Abilene, Texas. We have 55 branches all located within the State of Texas.

I am excited about the possibility of appraisers performing our evaluations. Federal banking regulations have permitted banks to use evaluations on certain transactions, but our state regulations have precluded our most experienced and knowledgeable real estate professionals from performing evaluations. As a result, banks must use less reliable valuation providers, and appraisers are unable to utilize their experience and education to serve this need in the market.

The banking industry and appraisers will benefit from the new rule, but the primary beneficiaries will be businesses and residents in our state. The transaction costs for banking customers will decline, and loan approval times should decrease significantly. We have a shortage of appraisers in many of our markets in Texas, and we are currently dealing with prolonged delivery times for USPAP compliant appraisals.

I have two concerns with the proposed rule. First, the rule places a limitation based on transaction value, but the rule does not provide a definition of transaction value. Under our federal regulations the transaction value is equal to the loan amount for new loans.

Second, the rule appears to exclude loan categories that are eligible for evaluations under our federal regulations. Those categories include loan renewals, internal refinancings, and business loans secured by owner-occupied real estate with a transaction value of \$1,000,000 or less. I am concerned that an appraiser could be held responsible if a bank uses an evaluation for an unintended purpose. It is the responsibility of the bank to determine when usage of an evaluation is appropriate. That responsibility should not be shifted to the appraiser.

FIRST FINANCIAL BANKSHARES

These two concerns could easily be addressed by eliminating references to the \$500,000 threshold and to the transaction value. I recommend that appraisers be allowed to perform evaluations to support commercial real estate transactions that are eligible for evaluations under federal regulatory guidelines. Following is a suggested change to the rule:

(b) The preparation of an evaluation for a commercial real estate transaction ~~with a transaction value of \$500,000 or less~~ eligible for an evaluation under federal regulatory guidelines by a person who is licensed under the Texas Appraiser Licensing and Certification Act, Chapter 1103, Texas Occupations Code, is considered an appraisal or appraisal practice for the purposes of §155.1 of this chapter and must conform with Uniform Standards of Professional Appraisal Practice (USPAP), unless the person preparing the evaluation includes the disclaimer set out in subsection (c) of this section.

The proposed rule is an excellent start toward improving the appraisal industry in Texas, and it is an important effort that will benefit all Texas residents. I support the adoption of the proposed rule, and I would appreciate your consideration of the recommendations presented in this letter.

If I can provide any additional information, please let me know.

Respectfully yours,



Brandon Harris, MAI
TX-1330448-G

Brandon Harris, MAI
Senior Vice President – Appraisal Services
First Financial Bankshares, Inc.
1000 Forest Park Boulevard, Suite 210 | Fort Worth, Texas 76110
(o) 682-703-6461 | bharris@ffin.com



Austin Chapter
Central Texas Chapter
Houston Chapter
North Texas Chapter
Rio Grande Chapter
South Texas Chapter
Texas Plains Chapter

June 11, 2018

Ms. Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
P.O. Box 12188
Austin, Texas 78711-2188

Via Email to general.counsel@talcb.texas.gov

RE: Proposed New §155.3, “Work Relating to Commercial Real Estate Transactions”

Dear Ms. Worman:

The Appraisal Institute (AI) appreciates the opportunity to submit these comments in support of the adoption of the proposed new section of the Texas Administrative Code (TAC) s. 155.3, “Work Relating to Commercial Real Estate Transactions” that was published in the Texas Register (43 TexReg 2931) on May 11, 2018.

The AI is a global professional association of real estate appraisers. Its mission is to advance professionalism and ethics, global standards, methodologies, and practices through the professional development of property economics worldwide.

Federally regulated financial institutions are permitted to utilize evaluations that are not compliant with the Uniform Standards of Professional Appraisal Practice (USPAP) in lieu of fully USPAP compliant appraisals for four categories of real estate related financial transactions¹, including the commercial real estate transactions identified in this proposed rule. Pursuant to the Interagency Appraisal and Evaluation Guidelines (IAEG), an evaluation is required to contain “a reliable estimate of the collateral’s market value”. A person licensed pursuant to the Texas Appraiser Licensing and Certification Act (the “Act”) is engaged in appraisal or appraisal practice when providing an opinion of the value of real property. Under current law, a licensed appraiser must comply with USPAP when providing an evaluation. However, the same USPAP compliance requirements are not imposed upon persons and entities that are not subject to the Act, and who are providing similar services in accordance with the IAEG.

¹ 12 CFR §34.43, §225.63, §323.3, §722.3 (limited to #1 and #3): 1)The transaction value is \$250,000 or less; 2)2 The transaction is a business loan that has a transaction value of \$1 million or less and is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment; 3) The transaction involves an existing extension of credit at the lending institution, provided that there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution’s real estate collateral protection after the transaction, even with the advancement of new monies; or there is no advancement of new monies, other than funds necessary to cover reasonable closing costs; and 4) (13) The transaction is a commercial real estate transaction that has a transaction value of \$500,000 or less.

The adoption of proposed § 155.3 will “level the regulatory playing field” for appraisers that are subject to the Act. In addition, the adoption of proposed § 155.3 will enhance the public trust by permitting a competent and qualified appraiser licensed pursuant to the Act to be able to provide evaluation services to federally regulated financial institutions. While not every appraiser subject to the Act will want to take advantage of the opportunity to provide evaluations to financial institutions, some will. We do not believe that those appraisers who wish to include evaluations within their portfolio of valuation services should continue to be precluded by law from being able to do so.

The promulgation of this Proposed Rule is especially important as the federal bank regulatory agencies increased the threshold below which a USPAP-compliant appraisal is not required for commercial real estate transactions to \$500,000 on April 9, 2018. The number of CRE transactions that will qualify for the use of an evaluation in lieu of an appraisal increased significantly. Real estate appraisers are competent and qualified to perform evaluation services and should not be precluded by state law from providing the same services that are currently being provided by non-licensed service providers.

Recommended Changes to Proposed § 155.3

- 1) While we do not believe that the disclaimer proposed to be required in an evaluation performed by a person licensed pursuant to the Act is necessary, it is a reasonable accommodation to make it clear that a person licensed pursuant to the Act is not acting in the capacity of an appraiser, and is not subject to USPAP compliance requirements, when performing evaluations according to the IAEG. We also suggest the addition of language to the proposed rule that further clarifies that a person that is licensed pursuant to the Act is not subject to the jurisdiction of the TALCB when providing an evaluation that contains the appropriate disclaimer.
- 2) While we appreciate the Texas Appraiser Licensing and Certification Board’s (TALCB) decision to propose these rules for commercial real estate (CRE) transactions, we also support the adoption of similar rules that would permit persons licensed pursuant to the Act to perform evaluations for the other three categories of real estate related financial transactions where a USPAP compliant appraisal is not required under federal law.
- 3) We make the following suggestion for a change to the proposed definition of “commercial real estate transaction”:

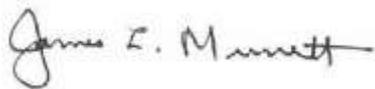
(a) For purposes of this section "commercial real estate transaction" means a ~~federally-related transaction~~ real estate related financial transaction, as that term is defined in § 1103.204, that is engaged in, contracted for, or regulated by a federal financial institution regulatory agency, as that term is defined in § 1103.003, and that is not secured by a single 1-to-4 family residential property.

According to both federal and state definitions, a real estate related financial transaction only rises to the level of being a “federally related transaction” if it requires the services of an appraiser.² As such, a transaction that qualifies for the use of an evaluation, in lieu of an appraisal, is not a federally related transaction because it does not require the services of an appraiser. Therefore, the CRE transactions for which a person licensed pursuant to the Act would be permitted by the proposed rule to provide evaluations are not federally-related transactions under either Texas or federal law.

We support the adoption of the proposed rule and would appreciate your consideration of our recommendations.

Thank you in advance for your consideration of the viewpoints of the AI on this important public policy matter.

Regards,

A handwritten signature in black ink that reads "James L. Murrett". The signature is written in a cursive style with a long horizontal stroke at the end.

James L. Murrett, MAI, SRA
2018 President

² 12 U.S.C. 3350 and V.T.C.A., Occupations Code § 1103.003 (6-a)(A)



June 11, 2018

Ms. Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
P.O. Box 12188
Austin, Texas 78711-2188

Via Email to general.counsel@talcb.texas.gov

RE: Proposed New §155.3

Dear Ms. Worman:

The Rio Grande Chapter of the Appraisal Institute (AI) would like to thank you for the opportunity to express our support of the adoption of the proposed new section to the Texas Administrative Code (TAC) s. 155.3 "Work Relating to Commercial Real Estate Transactions" that was published in the Texas Register (43 TexReg 2931) on May 11, 2018.

We believe the adoption of the proposed §155.3 will provide a more uniform platform for appraisers and will enhance public trust by allowing qualified licensed appraisers to provide evaluation services under the Texas Appraisers Licensing and Certification Act. We further support the recommended changes to the proposed §155.3 as suggested by AI and appreciate your consideration of such recommendations.

Thank you in advance for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads 'K Burmeister'. The signature is written in a cursive, flowing style.

Kathleen Burmeister, MAI, MBA
2018 President, Rio Grande Chapter