

§ 24.103

of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner. (See appendix A, § 24.102(j).)

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(a)(27).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term, or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy. (See appendix A, § 24.102(m).)

(n) *Conflict of interest.*

(1) The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the Agency.

Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

(2) No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial as-

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sistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the Agency.

(3) An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less. (See appendix A, § 24.102(n).)

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

§ 24.103 Criteria for appraisals.

(a) *Appraisal requirements.* This section sets forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).¹ (See appendix A, § 24.103(a).) The Agency may have appraisal requirements that supplement these requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).²

(1) The Agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements

¹Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation at the following URL: <http://www.appraisalfoundation.org/html/USPAP2004/toc.htm>.

²The "Uniform Appraisal Standards for Federal Land Acquisitions" is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices. It is available at <http://www.usdoj.gov/enrd/landack/toc.htm> or in soft cover format from the Appraisal Institute at <http://www.appraisalinstitute.org/econom/publications/Default.asp> and select "Legal/Regulatory" or call 888-570-4545.

depends on the complexity of the appraisal problem.

(2) The Agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal in §24.2(a)(3) and the five following requirements: (*See* appendix A, §§24.103 and 24.103(a).)

(i) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. (*See* appendix A, §24.103(a)(1).)

(ii) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. (*See* appendix A, §24.103(a).)

(iii) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(iv) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(v) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* The appraiser shall disregard any decrease or increase in the fair 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. (*See* appendix A, §24.103(b).)

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at §24.2(a)(24)) of the retained improvement.

(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. 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).)

(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.*).

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified review appraiser (*see* §24.103(d)(1) and appendix A, §24.104) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103 and other applicable requirements, including, to the extent appropriate, the UASFLA, and support the appraiser's opinion of value. The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance, seek necessary