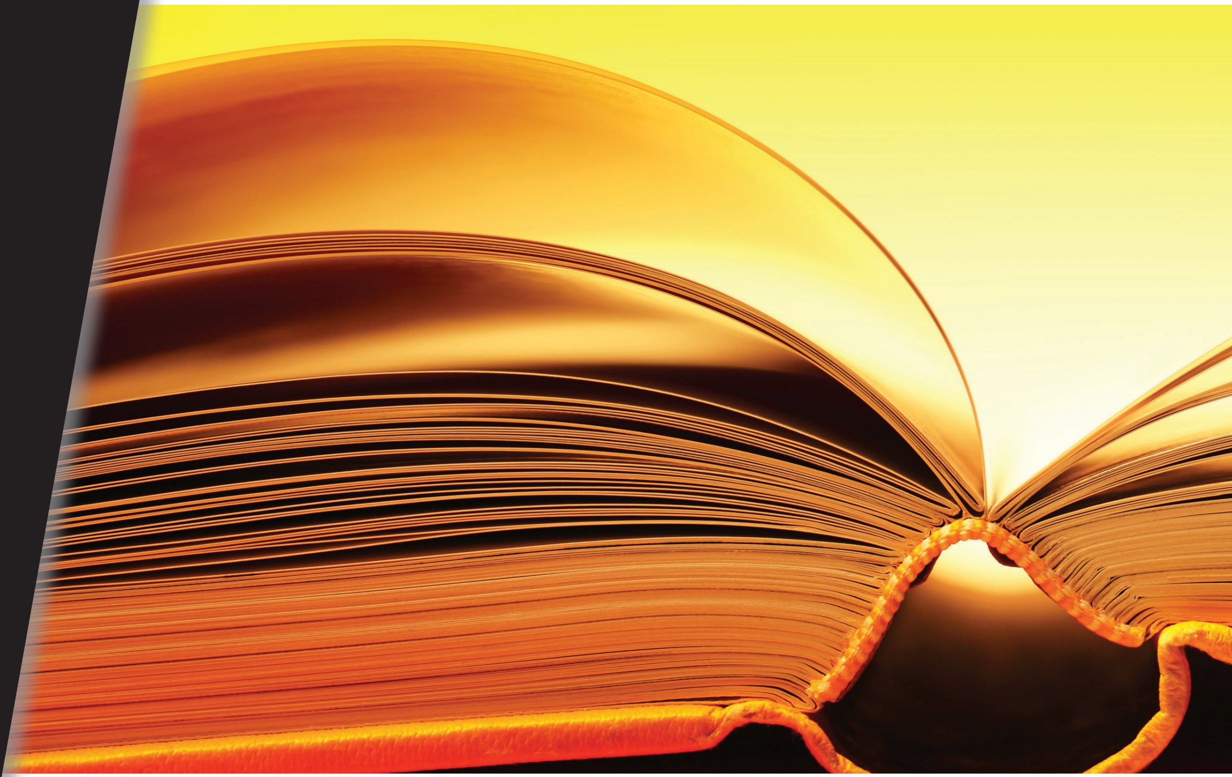
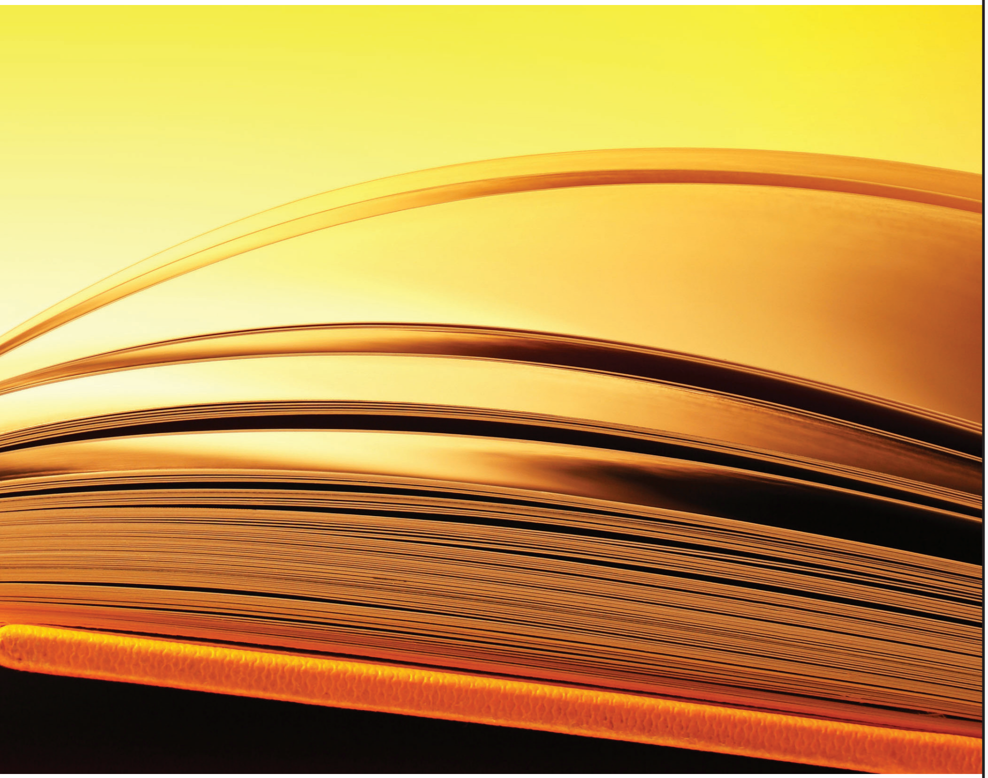


USPAP AND THE YELLOW BOOK

Understanding their relationship

BY DAVID LAYNE



The *Uniform Standards of Professional Appraisal Practice* (USPAP) and the *Uniform Appraisal Standards for Federal Land Acquisitions* (commonly referred to as UASFLA or the Yellow Book) are similar in philosophy. USPAP promotes and maintains a high level of public trust in appraisal practice, and the Yellow Book promotes fairness, uniformity and efficiency in the appraisal of real property in federal acquisitions. However, there are distinct differences. Under USPAP, all appraisal disciplines are included to establish one set of standards for the entire appraisal profession. Meanwhile, the Yellow Book addresses only real property with the intended use of assisting in the determination of the amount to be paid as just compensation for the rights acquired. In cases of litigation, the Yellow Book assists the court in determining market value for the purpose of just compensation.

In certain Yellow Book appraisal assignments, it is necessary to invoke USPAP's Jurisdictional Exception Rule. This article will discuss those instances that preclude an appraiser from complying with a part of USPAP.

USPAP

According to the Appraisal Standards Board, USPAP is the generally accepted and recognized standards of appraisal practice in the United States. Developed in the 1980s by an affiliation of nine appraisal organizations, USPAP establishes rules and standards applicable to the development and reporting of all appraisal and appraisal review disciplines (i.e. real property, mass appraisal, personal property and business appraisal).

Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 requires, as a minimum, "that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of The Appraisal Foundation" and that "appraisals shall be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice." In addition, state appraiser regulatory boards, professional appraisal organizations, users of appraisal services, as well as local, state and federal agencies all require USPAP compliance.

UASFLA

In 1971, the (Federal) Interagency Land Acquisition Conference published the first edition of the *Uniform Appraisal Standards for Federal Land Acquisitions*. According to the Interagency Land Acquisition Conference, the Yellow Book is the foremost authority on real estate valuation in federal eminent domain, and an indispensable resource for the appraisal of property for all types of federal acquisitions.

Ultimately, USPAP and the Yellow Book have the same objective:

USPAP Objective: "To promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers."

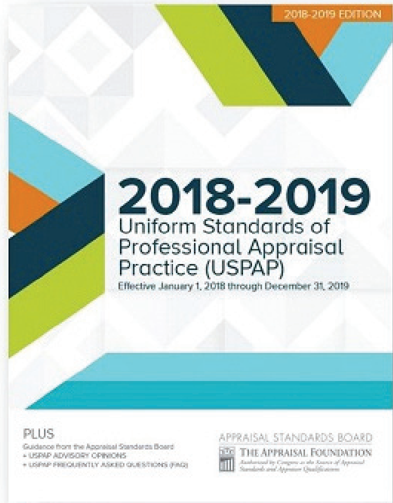
Yellow Book Objective: "To protect the public interest and ensure fair and equitable treatment of landowners whose property is affected by public projects."

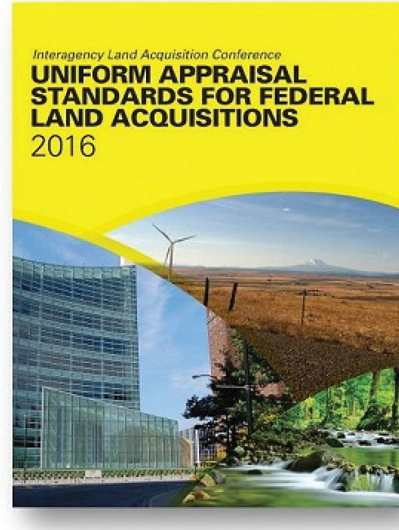
The process to achieve the mutual objective is substantially the same. The two standards have performance requirements that demand appraisers to be ethical and competent, and they both require record retention to support the appraiser's opinions and conclusions. The two standards also follow a common basis, the appraisal process, in the development and reporting of real property appraisals and appraisal reviews.

The Jurisdictional Exception Rule

There are occasions when the two standards diverge, and when this happens, USPAP's Jurisdictional Exception Rule may apply. The Rule states, "if any applicable law or regulation precludes compliance with any part of USPAP, only that part of USPAP becomes void for that assignment."

The differences between USPAP and the Yellow Book that require invocation of USPAP's Jurisdictional Exception Rule are limited and according to the Yellow Book, "the legal authority justifying these exceptions consists of these Standards and the federal case law, legislation, and federal regulations upon which these Standards are based." The four instances where





For more information, please visit http://www.appraisalfoundation.org/

USPAP's Jurisdictional Exception Rule applies in federal land acquisitions are:

- Exposure time.
- Existing and probable modifications to existing land use regulations.
- Anticipated public improvements, located on or off the site.
- Specific legislation and regulations.

Exposure Time

As stated in USPAP, exposure time is the estimated length of time that the property interest being appraised would have been offered on the market before the hypothetical consummation of a sale at market value on the effective date of the appraisal. Moreover, exposure time is a retrospective opinion based on an analysis of past events, which assume a competitive and open market.

The Appraisal Standards Board notes that when reasonable exposure time is a component of the definition for the value opinion being developed, then the appraiser must also develop an opinion of reasonable exposure time linked to that value opinion. As reasonable exposure time is a component of market value, the appraiser must develop a value opinion to comply with USPAP. On the other hand, UASFLA states that appraisers should not link opinions of value to a specific opinion of exposure time. The rationale for this jurisdictional exception is that the federal market value definition already presumes that the property was exposed on the open market for a *reasonable* length of time, given the character of the property and its market.

Existing and Probable Modifications to Land Use Regulations

USPAP's S.R. 1-3(a) states, "(w)hen necessary for credible assignment results in developing a market value opinion, an appraiser must identify and analyze the effect on use and value of existing land use regulations (and) reasonably probable modifications of such land use regulations."

This USPAP requirement is also a jurisdictional exception under the Yellow Book. The Yellow Book states, "If the probability of a rezoning, either positively or negatively, by the government project for which the subject property is being acquired, such impact must be disregarded under the scope of the project rule." The rationale for this exception is that the government cannot be charged for the value it created in constructing the project for which the property is being acquired. Similarly, an owner cannot be penalized for any diminution in value due to that government project. Once a property is within the scope of the project, all project influence on the property's before market value must be disregarded.

Anticipated Public Improvements

The third jurisdictional exception relates to anticipated public improvements, located on or off the site. USPAP [S.R. 1-4(f)] states, "When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions."

Contrary to this statement, the Yellow Book posits that "an increase or decrease in the market value of real property prior to the date of valuation caused by the government project must be disregarded in developing the appraisal." Under federal law, valuations for just compensation purposes must disregard any government project influence on a property's market value once it is within the scope of the government's project. The rationale for this determination is very much the same as the rationale for the probability of a rezoning; the application of this scope of the project rule ensures fair results for both landowners and the public.

Specific Legislation and Regulations

The fourth and final jurisdictional exception category is specific legislation and regulations. Each land acquisition agency has its own rules and regulations based on the Uniform Act and its implementing regulations. Specific agency program activities sometimes make it necessary to adopt rules and regulations that are contrary to USPAP. Also, it is not uncommon for Congress to enact specific legislation relating to the acquisition of a specific property or properties to be acquired for a specific public project. In some instances, adherence to the provisions of that specific legislation may require the appraiser to invoke USPAP's Jurisdictional Exception Rule.

"Ultimately, USPAP and the Yellow Book have the same objective..."

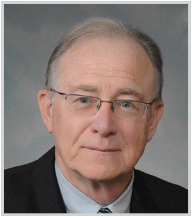
According to USPAP, if an appraiser invokes a jurisdictional exception, the appraiser must:

1. Identify the law or regulation that precludes compliance with USPAP.
2. Comply with that law or regulation.
3. Clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation.
4. Cite in the report the law or regulation requiring this exception to USPAP compliance.

Summary

The *Uniform Standards of Professional Appraisal Practice* and the *Uniform Appraisal Standards for Federal Land Acquisitions* are broadly consistent with each other, with USPAP representing the generally accepted and recognized standards of appraisal practice in the United States, while the Yellow Book stands as the foremost authority on real estate valuation in federal eminent domain, and an indispensable resource for the appraisal of property for all types of federal acquisitions.

However, there are occasions when appraisals prepared to Yellow Book standards require the invocation of USPAP's Jurisdictional Exception Rule. The Rule is a saving or severability clause, which is intended to preserve the balance of USPAP if compliance with a part is jurisdictionally precluded by law or regulation. A statement by a client, attorney, or appraiser does not constitute a jurisdictional exception. ✪



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