



Proposed Regulation Agency Background Document

Agency name	Real Estate Appraiser Board
Virginia Administrative Code (VAC) citation	18 VAC 130-20
Regulation title	Real Estate Appraiser Board Regulations
Action title	General Review 2012
Date this document prepared	October 18, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The proposed regulations are the result of a periodic review of the regulations conducted by the Real Estate Appraiser Board (Board). The last general review of the Board's regulations was completed with regulations effective September 1, 2008.

The proposed changes in the regulations will make clarifying changes, ensure consistency with state and federal law, ensure compliance with current industry standards, and make other necessary changes to better protect the public health, safety and welfare.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"Department" means the Department of Professional and Occupational Regulation.

"Board" means the Real Estate Appraiser Board.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The United States Congress passed the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) in 1989 as a result of the savings and loan crisis. The purpose of Title 11 of FIRREA is to:

provide that federal financial and public policy interests in real estate transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

Title 11 accomplished this by establishing the Appraisal Subcommittee (ASC) which monitors the appraisal licensing and regulatory requirements established by states and their state appraiser boards. The ASC also monitors the practices, procedures, and activities of The Appraisal Foundation (TAF). TAF consists of the Appraiser Qualifications Board (AQB), the Appraisal Standards Board (ASB), and the newly formed Appraisal Practices Board (APB).

The AQB sets minimum qualifications all states must meet in licensing appraisers. The ASB promulgates the Uniform Standards of Professional Appraisal Practice (USPAP) which are incorporated into the Board's regulations and must be followed by all Virginia licensed appraisers. The APB identifies and issues opinions on recognized valuation methods and techniques within the appraisal profession.

§ 54.1-201.A.5 of the *Code of Virginia* states that the Board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

§ 54.1-2013 of the *Code of Virginia* states, "The Board shall have all of the powers of a regulatory board under Chapter 2 (§ 54.1-200 et seq.) of this title. The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter and all things required or expected of a state appraiser certifying and licensing agency under Title 11 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3331 et seq.). The Board shall promulgate necessary regulations."

Executive Order 14 (2010), *Development and Review of Regulations Proposed by State Agencies*, states, in part, "Each existing regulation in the state shall be reviewed at least once every four years by the promulgating agency unless specifically exempted from periodic review by the Governor."

The Real Estate Appraiser Board is the promulgating entity.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The regulations need to be amended to make clarifying changes, and to ensure the regulations conform to the current statutes, standards of practice in the industry, and changes in the work environment to protect the public health, safety and welfare.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

The proposed changes in the regulations will make clarifying changes, ensure consistency with state and federal law, ensure compliance with current industry standards, and make other necessary changes to better protect the public health, safety and welfare.

18 VAC 130-20-10 - Definitions - Amend the definitions of "Certified Residential Appraiser" and "Licensed Residential Appraiser" to amplify the definition of "transaction value" to include "market value." This should help prevent licensees from appraising property outside the limit of their license class. Remove "licensed residential real estate appraiser" from the definition of "Supervising Appraiser" to comply with federal requirements.

18 VAC 130-20-20 - Requirement for Registration of Business Entity Providing Appraisal Services - Amend this section to ensure all business entities providing appraisal services in Virginia are registered with the Board and to require a Board licensee to serve as the contact person for a registered business entity providing appraisal services.

18 VAC 130-20-30 – General Qualification for Licensure – Amend this section to ensure Certified General Appraiser applicants demonstrate adequate experience in the use of the income approach and to ensure appraiser license applicants have recent experience in performing appraisal reports.

18 VAC 130-20-60 - Qualifications for Licensure as an Appraiser Trainee - Amend this section to include provisions that the applicant must be 18 years old and allow for a licensing hearing before the Board.

18 VAC 130-20-160 – Grounds for Disciplinary Action – Amend this section by updating the reference to the Administrative Process Act in the Code of Virginia.

18 VAC 130-20-180 – Standards of Professional Practice - Amend this section by changing the term "evaluation" to "valuation," by adding a Standard for each of the five USPAP Rules, and by replacing the term "Unworthiness" with "Prohibited Acts."

18 VAC 130-20-190 – Standards of Conduct for Certified Appraiser Education Instructors - Amend this section to more efficiently take disciplinary action against a Certified Appraisal Instructor who also holds an appraiser license which has been the subject of disciplinary action.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The Code of Virginia establishes the Board as the state agency that oversees the licensure and regulation of appraisers providing services in Virginia. The Board's primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations. The proposed changes provide clarification and guidance to licensees so they can better serve the public and comply with industry standards and changes in the work environment.

The proposed changes pose no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

No requirements exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities have been identified that will be particularly affected by the proposed changes.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Christine Martine, Executive Director,

Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA, 23233, reappraisers@dpor.virginia.gov, phone (804) 367-8552, fax (866) 350-7849. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

**Real Estate Appraiser Board
Financial Status and Projections
Current Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>
2010-12	347,169	395,347	503,340	239,176	47.5%
2012-14	239,176	423,059	612,031	50,204	8.2%
2014-16	50,204	423,059	626,574	-153,311	-24.5%
2016-18	-153,311	423,059	672,500	-402,752	-59.9%

Number of Regulants
4,243 as of 7/1/2012

Fee History \$

<u>Major Fee Type</u>	<u>1995</u>	<u>1999</u>
Individual Application Fee	120	120
Business Application Fee	100	100
Individual Renewal Fee	50	40
Business Renewal Fee	70	60

Individual fees exclude \$21 USPAP booklet fee and \$80 National Registry fee

**Real Estate Appraiser Board
Financial Status and Projections
Proposed Regulations**

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and \$80 National Registry fee

**Real Estate Appraiser Board
Fiscal Impact of Proposed Regulation**

Summary:

The current regulations of the Real Estate Appraiser Board are being updated based on a periodic general review conducted by the Board. Revisions have been made to some definitions, entry requirements, standards of conduct, and standards of professional practice. No new or additional financial or economic impact to applicants and regulants is expected as a result of these changes.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs

to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

Fiscal Impact:

	FY 2013	FY 2014	FY2015	FY2016
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	\$0	\$0	\$0	\$0
Ongoing Costs	\$0	\$0	\$0	\$0
Total Fiscal Impact	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: This regulation change will affect all real estate appraisers, real estate appraiser trainees, real estate appraisal businesses, and real estate appraisal instructors.

Estimated Number of Regulators: As of July 1, 2012, the Board regulates 4,243 appraisers and businesses.

Projected Cost to Regulators: There is no anticipated additional cost to the regulators.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No viable alternative has been identified.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum:

1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The agency considers the proposed changes as being the least burdensome to licensees with no adverse impact on small business.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

There was no public comment following the publication of the NOIRA.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed changes are not expected to have an impact on families.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18 VAC 130-20-10	N/A	Establishes definitions of terms used throughout the chapter.	Amend the definitions of “Certified Residential Appraiser” and “Licensed Residential Appraiser” to amplify the

			<p>definition of “transaction value” to include “market value.” This should help prevent licensees from appraising property outside the limit of their license class.</p> <p>Amend the definition of “Supervising Appraiser” by removing “licensed residential real estate appraiser” to comply with federal requirements.</p>
18 VAC 130-20-20	N/A	Establishes the process to obtain an appraisal services business registration.	Amend this section to ensure all business entities providing appraisal services in Virginia are registered with the Board and to require a Board individual appraiser licensee to serve as the contact person for a registered appraisal services business.
18 VAC 130-20-30	N/A	Establishes general entry requirements for individual appraiser licensure.	Amend this section to ensure Certified General Appraiser applicants demonstrate adequate experience in the use of the income approach and to ensure appraiser license applicants have recent experience in performing appraisal reports.
18 VAC 130-20-60	N/A	Establishes entry requirements for appraiser trainee licensure.	Amend this section to include provisions that the applicant must be 18 years old and to allow for a licensing hearing before the Board to comply with statutory requirements.
18 VAC 130-20-160	N/A	Describes grounds for disciplinary action.	Amend this section by updating the reference to the Administrative Process Act in the Code of Virginia.
18 VAC 130-20-180	N/A	Describes standards of professional practice.	Amend this section by changing the term “evaluation” to “valuation,” by adding a standard for each of the five USPAP Rules, and by replacing the term “Unworthiness” with “Prohibited Acts.”
18 VAC 130-20-190	N/A	Describes standards of conduct for certified appraiser education instructors	Amend this section to more efficiently take disciplinary action against a Certified Appraisal Instructor who also holds an appraiser license which has been the subject of disciplinary action.