

**BPOS: UNDERSTANDING RULES AND LIMITATIONS
WHO, WHAT, WHERE, WHY & HOW
WE NEED TO GO BACK TO
THE FUTURE OF APPRAISING
Appraisal Institute
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OVERVIEW

Who

What

Where

Why

How

HOW

PART 1

????????????????????????????????????

**How THE HECK did we
get to 20 years after
FIRREA and we're
back at Square One?**

Appraisal Organizations Did Not Let A Crisis Go To Waste!

- Glommed on to the S&L Crisis of Late '80's
 - Appraisal Organizations Wanted to Block Feds from National Licensing
- Major Appraisal Organizations Created
 - USPAP
 - Ad Hoc Committee that evolved into The Appraisal Foundation

AND, THEN FIRREA WAS BORN

- Under Title IX
 - Congress Begat the Appraisal Subcommittee of the Financial Institutions Examining Council;
 - Congress Begat The Appraisal Foundation;
 - Congress Begat the ASB and AQB
 - And, the ASB Begat USPAP
- And, the States Were Called Upon Regulate Appraisers (or the will Feds do it themselves)

- Lenders got the Feds to Change CFRs in 1994
- As a result of that change, the CFRs allowed
 - “Appropriate Evaluations”, then a.k.a drive-bys, but now the Spiritual Predecessor of BPOs
- Lenders set up networks of Real Estate Licensees, i.e., non-appraisers, to perform BPOs.
 - See, Cartel v. Ocwen series of cases

How Did The States Respond to FIRREA?

- Appraisal Board members tried to get States to pay attention to regulatory issues, but were generally ignored.
- Licensing fees paid by appraisers went into the general fund, sometimes used for other purposes.
- State Government did not provide trained staff to enforce appraiser licensing laws

How Did Courts Respond to Title XI?

- Courts do not see themselves as the USPAP police.
- Most routinely ignore appraiser licensing laws:
 - My Favorite Example is Where the Appraisal Expert's Qualifications were accepted because she was the "Realtor of the Year";
 - Numerous examples of Courts using terms "BPO" and "Appraisal" interchangeably.

How Did the Federal Agencies Respond to Title XI and USPAP?

- 1993: Darman OMB Memo
- 1995: HUD Asst. Sec for Housing Memo
- 1999: USPAP not PC (not used in Polite Company)
- 2004 (circa): Appraiser Left an Agency under “Find New Job Rule” (Urban Myth?)
- 2009: Treasury wrote BPOs into the HAMP Guidelines
- 2010: Congress HAD TO REQUIRE ONE ASC Member to be an Appraiser

Meanwhile, Beyond the Beltway

- AIREA & SREA Merged into the Appraisal Institute (with AIREA pulling out of NAR)
- Lenders had to Perform Portfolio Appraisals
- Appraisers made lots of money
- The Financial System was made “Sound”

BOTTOM LINE FOR APPRAISERS

YOU CANNOT DEPEND
ON GOVERNMENT
RULES AND
REGULATIONS TO KEEP
FOOD ON THE TABLE!

WHAT is a BPO?

- A Broker Price Opinion is often used to determine the current market value of a property.
- Like an appraisal it typically uses the sales or market rents of comparable properties within the same market to determine market value, and is typically performed by a real estate broker or agent within that marketplace.
- These are typically done to help in pricing properties for sale and often used by; owners, banks and investors to determine the value of an asset
- **without going to the expense of an appraisal** (emphasis added).
- SOURCE: <http://en.wikipedia.org/wiki/BPO>

WHO USES BPOs TODAY?

- Program Description said:
 - Loan servicers
 - Appraisal management companies and
 - Others in loss mitigation and asset management activities
- Did you know that BPOs are also used in:
 - Bankruptcy: BPOs are the valuation SOP in BK Court
 - Equitable Distribution in Family Law matters
 - Investment Decisions on Secondary Market Paper
- IT Driven Users Who have created the “Mosaic” Approach
 - Web-based data mining
 - AVM
 - BPO
 - Site/Neighborhood Inspection for up-close info

WHERE IN THE WORLD ARE THE FIRREA POLICE?

➤ **Understand State Licensing Laws**

- Title XI is the legal authority for the FFIEC member Code of Federal Regulations (CFRs), which create exemptions from Appraiser Licensing Acts under the Supremacy Doctrine.
- By Statute or Federal Pre-emption State Appraiser Laws exempt “Federally-Related Transactions” Covered under the Di Minimis Exception

The Di Minimis Exemption

- 12 CFR 225.63 is the Federal Reserve's version of the Di Minimis Exemption and it is very similar to the CFRs for the other FFIEC entities:
- Appraisals required; transactions requiring a State certified or licensed appraiser.
 - (a) Appraisals required. An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:
 - (1) The transaction value is \$ 250,000 or less;

12 CFR 225.63 (Cont'd)

- (5) The transaction is a business loan that:
 - (i) Has a transaction value of \$ 1 million or less; and
 - (ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;
- (7) The transaction involves an existing extension of credit at the lending institution, provided that:
 - (i) 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
 - (ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

12 CFR 225.63 (Cont'd)

THE “APPROPRIATE EVALUATION”

(b) Evaluations required. For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5) or (a)(7) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

12 CFR 225.63 (Cont'd)

The HAMP & MBS Exemption

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met Board regulatory requirements for appraisals at the time of origination;

States Vary In Approach to Appraiser Regulation

- **BUT**, We do not know how they vary because the Appraisal Sub-Committee has opined that their collection of appraiser disciplinary actions is exempt from the Federal Freedom of Information Act (FOIA)
- **SO**, Let's look at the laws of New Jersey, BTW,
 - Where I was able to obtain Appraiser Disciplinary Actions; and
 - Where Board Members review appraisals that are the subject of complaints.

- Nothing shall be construed to preclude a person not licensed or certified pursuant to this act from giving or offering to give, for a fee or otherwise, counsel and advice on pricing, listing, selling and use of real property, directly to a property owner or prospective purchaser if the intended use of the counsel or advice is **solely for the individual knowledge of or use by the property owner or prospective purchaser** (emphasis added).

N.J.S. 45:1-18.2. Exercise Of Investigative Power

- a. The Director of the Division of Consumer Affairs or any board or committee within the division may exercise its investigative power pursuant to section 5 of P.L.1978, c.73 (*C.45:1-18*) whenever there is reason to believe that there has been a violation of any applicable law or regulation by a person who:
 - (1) is not licensed, certified, or otherwise permitted by law or regulation to practice a profession or occupation and who represents to the public by any means, that he is able to practice a profession or occupation regulated under Title 45 of the Revised Statutes; or
 - (2) has engaged or is engaging in the unauthorized practice of a profession or occupation regulated under Title 45 of the Revised Statutes in violation of any law or regulation administered by the director or a board or committee within the Division of Consumer Affairs.

N.J.S. 45:1-18.2. (Cont'd)

- b. Any person who, following notice and a hearing, has been found to have engaged in the conduct specified in paragraph (1) or (2) of subsection a. of this section shall:
- (1) immediately cease and desist from practicing that profession or occupation, as ordered by the director or a board or committee; and
 - (2) be liable to a penalty of not more than \$ 10,000 for the first offense, and not more than \$ 20,000 for each subsequent offense, to be recovered by the director or the board or committee within the Division of Consumer Affairs.

NJ Administrative Code Sec. 11:5-6.1

Real Estate Comm Advertising Rules

(m) 3. "Appraisal" as used herein is given its technical meaning as a study and analysis by an appraiser authorized by law to perform appraisals of New Jersey real estate to ascertain fair market value by using a process in which all factors that would fix price in the market place must be considered. **A comparative market analysis or study is not an appraisal as herein defined.** Any written comparative market study or analysis (CMA) provided by a licensee to a consumer shall include a statement indicating that the CMA is not an appraisal and should not be considered the equivalent of an appraisal.

WHY IS A BPO USED INSTEAD OF AN APPRAISAL?

The World Has Changed

“BPO” is also an Acronym for “Business Process Outsourcing”

Business process outsourcing (BPO) is a form of [outsourcing](#) that involves the [contracting](#) of the operations and responsibilities of specific business functions (or [processes](#)) to a third-party service provider. Given the proximity of BPO to the [information technology](#) industry, it is also categorized as an information technology enabled service or ITES. [Knowledge process outsourcing \(KPO\)](#) [is another] sub-segment.

http://en.wikipedia.org/wiki/Business_process_outsourcing

HOW (Part 2) DO APPRAISERS MAKE MONEY OUT OF THIS MESS AND OTHER CONTEMPORARY ISSUES?

How Can Appraisers Get Back Into the Future?

- ✓ AVMs appear poised to eclipse BPOs as the valuation instrument of choice.
- ✓ Anyone who thinks that they are going to make big money doing BPOs in the future is like a buyer of GM bonds in 2007.
- ✓ Plan Beyond BPOs & Even AVMs

What Can Appraisers Do?

- ✓ Stop asking “Who Stole my Cheese?”
 - The Cheese is Long Gone!
- ✓ Find the Cheese
 - Hint: It’s Not in Washington, DC
- ✓ Compete head-on with today’s BPO’rs; tomorrow’s AVM’rs, the next generation’s whatever’rs.
- ✓ GO BACK TO YOUR ROOTS!

Why Have Appraisers Gotten Behind The 8-ball

- ✓ Appraisers forgot that they are innovators, entrepreneurs and market savvy
- ✓ Relied on government regulations
- ✓ Became USPAP Bureaucrats
- ✓ Tried to win the “BPO Wars” by beating the Realtors at politics and spreading money around.

How Can Appraisers Get out From Behind the 8-Ball

Determine:

- 1) Does USPAP allow an Appraiser to create a valuation product that is competitive with a BPO on market needs?
- 2) If so, do it and take on BPO-type business, with USPAP compliance.
- 3) If not, write, e-mail, go to ASB & TAF BOT meetings, make some noise and get USPAP changed.

FINALLY, A SHOUT OUT TO NAR

- Be careful of what you hope for – watch out for:
 - ✓ Errors and Omissions Insurance Claims
 - ✓ Current litigation:
 - BPOs – class actions
 - AVMs – class actions recently consolidated in the Northern District of Illinois
- Today's BPO'r may be taking a Site Cell Phone Video for an ITES manager in China performing a Mosaic Valuation, tomorrow, for \$10 instead of a BPO for \$50.
- Work with AI and other Appraisal Orgs to create a USPAP-compliant BPO-type Instrument or get USPAP changed to meet market needs today and in the future.