

ADVISORY OPINION 25

1 **ADVISORY OPINION 25 (AO-25)**

2 *This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret*
3 *existing standards. Advisory Opinions are issued to illustrate the applicability of appraisal standards in specific*
4 *situations and to offer advice from the ASB for the resolution of appraisal issues and problems.*

5 **SUBJECT: Clarification of the Client in a Federally Related Transaction**

6 **APPLICATION: Real Property**

7 **THE ISSUE:**

8 The appraisal rules adopted by the Federal Financial Institutions Regulatory Agencies in August 1990 to
9 comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)
10 impose a requirement on regulated institutions that “if an appraisal is prepared by a fee appraiser, the appraiser
11 shall be directly engaged by the regulated institution or its agent.....”¹

12 In some cases, however, a property owner might directly engage the services of an appraiser for one intended
13 use, but later desire to use the appraisal report in a federally related loan transaction. This and other similar
14 scenarios lead to the question: “Does an appraiser have an obligation to ensure that his or her services are
15 directly engaged by a federally regulated financial institution?”

16 **ADVICE FROM THE ASB ON THE ISSUE:**

17 **Relevant USPAP & Advisory References**

- 18 • DEFINITIONS, specifically those of “client,” “intended user,” and “intended use.”
- 19 • The Confidentiality, Conduct, and Management sections of the ETHICS RULE.
- 20 • SCOPE OF WORK RULE, which requires an appraiser to determine an appropriate scope of work
21 to produce credible assignment results including all assignment conditions.
- 22 • Standards Rules 1-2(a) and 1-2(b), which require an appraiser to identify the client, intended user,
23 and intended use.
- 24 • Standards Rule 2-1(a), which requires an appraiser to clearly and accurately set forth the appraisal
25 in a manner that is not misleading.
- 26 • Statement on Appraisal Standards No. 9, which addresses intended use and intended users in an
27 assignment.
- 28 • Advisory Opinion 26 which covers readdressing (transferring) a report to another party.
- 29 • Advisory Opinion 27 which addresses appraising the same property for a new client.
- 30 • Advisory Opinion 30, *Appraisals for Use by a Federally Regulated Financial Institution*

31 **Comments**

32 USPAP requires an appraiser to identify the intended use and intended users in an appraisal assignment. USPAP
33 also requires that an appraiser not be misleading in the marketing of their services (see Management section of
34 the ETHICS RULE). Advisory Opinion 30 provides guidance on the applicability of federal regulations and
35 USPAP obligations when performing appraisals for use by a federally regulated financial institution.

¹ National Credit Union Administration – 2 CFR 722.5(b)
Federal Reserve System – 12 CFR 225.65(b)
Federal Deposit Insurance Corporation – 12 CFR 323.5(b)
Office of the Comptroller of the Currency – 12 CFR 34.45(b)
Office of Thrift Supervision – 12 CFR 564.5(b)

36 In order to not be misleading when contacted by a prospective client the appraiser's obligation is one of proper
37 disclosure. Before an appraiser accepts an assignment knowing the intended use of the appraisal is, or may be,
38 for a federally related transaction by a federally regulated financial institution, it is that appraiser's
39 responsibility to disclose to the prospective client that the lender or its agent is required to directly engage the
40 appraiser. **The appraiser should also disclose to the prospective client that it is unethical for the appraiser to later**
41 **"readdress" or otherwise change the report to indicate a federally regulated financial institution was the client**
42 **when the appraisal was performed for another party (see AO-26 titled *Readdressing [Transferring] a Report to***
43 ***Another Party* and AO-27, titled *Appraising the Same Property for Another Client* for related advice on this**
44 **issue).**

45 If the client still wishes to proceed with the appraisal after the appraiser has properly fulfilled these disclosure
46 obligations, the appraiser can accept the assignment. It would be prudent to recite disclosures in the
47 engagement letter and in the report. (Also refer to SMT-9 for additional information relating to intended use and
48 intended users).

49 **Illustrations:**

50 1. Homeowner Susan Daly contacts appraiser John Hunt to perform an appraisal of her residence. She is
51 considering refinancing and wants to determine the amount of equity in the residence before completing a
52 loan application. Assuming the refinancing would be a federally related transaction at a federally regulated
53 financial institution, what is John's responsibility to this potential client?

54 Answer: Before John accepts this assignment, it is his responsibility to disclose to Susan that a lender
55 or its agent is required to directly engage the services of an appraiser in a federally related transaction
56 and should not accept his appraisal report. If Susan still wants to engage John, his disclosure allows
57 him to accept the assignment.

58 2. A buyer of a commercial building contacts appraiser Jane Johnson about appraising the property for
59 financing. The buyer explains that he will likely be providing the report to an insurance company that is
60 interested in financing the property. The insurance company has no problem with the buyer being the
61 client, as long as the insurance company is identified as an intended user in this assignment. However, the
62 buyer says that he may also make application to his local bank, a federally regulated financial institution.
63 Can Jane accept this assignment? If so, does she have any disclosure obligations?

64 Answer: Jane has an obligation to disclose to the buyer that the federally regulated financial institution
65 should not accept her appraisal report because a lender or its agent is required to directly engage the
66 services of an appraiser in a federally related transaction. If the buyer still wants to engage Jane, her
67 disclosure allows her to accept the assignment.