

ADVISORY OPINION 30

ADVISORY OPINION 30 (AO-30)

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

SUBJECT: Appraisals for Use by a Federally Regulated Financial Institution

APPLICATION: Real Property

THE ISSUE:

In order to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the federal financial institutions regulatory agencies (“agencies”)¹ of the United States have adopted appraisal regulations and guidelines. These laws, regulations and guidelines are established to protect federally insured depository institutions and include the requirement that appraisals be prepared in compliance with the *Uniform Standards of Professional Appraisal Practice (USPAP)*.

What are an appraiser’s obligations when performing a real property appraisal for use by a federally regulated financial institution?

ADVICE FROM THE ASB ON THE ISSUE

Recognition of Assignment Conditions

USPAP creates an obligation for appraisers to recognize and adhere to applicable assignment conditions. **The appraiser’s identification of the intended use and intended users drives the applicable assignment conditions. The relevant laws and agencies’ appraisal regulations and guidelines are assignment conditions for real property appraisals for use by a federally regulated financial institution.** These assignment conditions include, but are not limited to, the following:

- **Laws, principally Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA);**
- Regulations, primarily the following agency appraisal regulations:
 - Office of the Comptroller of the Currency (OCC) 12 CFR 34, Subpart C;
 - Federal Reserve Board (FRB) 12 CFR 225, Subpart G;
 - Federal Deposit Insurance Corporation (FDIC) 12 CFR 323;
 - Office of Thrift Supervision (OTS) 12 CFR 564; and
 - National Credit Union Administration (NCUA) 12 CFR 722.
- Guidelines provided in the agencies’ bulletins and issuances, including documents such as:
 - *Interagency Appraisal and Evaluation Guidelines;*
 - *Independent Appraisal And Evaluation Function;*
 - *Frequently Asked Questions on Residential Tract Development Lending;*
 - *The 2006 Revisions to Uniform Standards of Professional Appraisal Practice;* and
 - *Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions.*

¹ Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA)

37 The guidelines identified in this Advisory Opinion are subject to change. Appraisers are cautioned to
38 communicate with their client on the current guidance that is applicable in a given assignment. Reference can be
39 made to the website of the applicable federal financial institutions regulatory agency for these documents and
40 more information on current bulletins and applicable issuances. The website of The Appraisal Foundation
41 (www.appraisalfoundation.org) also contains links to the agencies' documents.

42 **USPAP Applicability**

43 A client that is a federally regulated financial institution expects compliance with the applicable regulations and
44 guidelines. An appraiser's obligations are established in the course of considering and accepting an assignment.

45 Appraisers must recognize and adhere to assignment conditions that apply in an assignment to satisfy the
46 following USPAP requirements:

- 47 1. The PREAMBLE requires that appraisers develop and communicate assignment results in a manner that is
48 meaningful and not misleading.
- 49 2. The ETHICS RULE requires that appraisers perform assignments ethically and competently.
- 50 3. The COMPETENCY RULE requires appraisers to provide competent service, including the specific
51 requirement to recognize and comply with applicable laws and regulations.
- 52 4. In developing assignment results, the SCOPE OF WORK RULE requires appraisers to determine, perform,
53 and disclose the scope of work necessary to produce credible assignment results. Determining the
54 appropriate scope of work requires identification of the problem to be solved, which includes identification
55 of assignment conditions.

56 The scope of work is acceptable when it meets or exceeds the expectations of parties who are regularly
57 intended users for similar assignments. Upon accepting an assignment, an appraiser is obligated to
58 competently satisfy the applicable assignment conditions.

- 59 5. Standards Rule 1-1(a) is an extension of the COMPETENCY RULE that specifically requires that *the*
60 *appraiser be aware of, understand, and correctly employ those recognized methods and techniques that are*
61 *necessary to produce a credible appraisal.*
- 62 6. Standards Rules 2-1(a) and 2-1(b) require that each written appraisal report (a) *clearly and accurately set*
63 *forth the appraisal in a manner that will not be misleading;* and (b) *contain sufficient information to enable*
64 *intended users of the appraisal to understand the report properly.*
- 65 7. STANDARD 2 also requires that report content be consistent with the intended use of the appraisal.

66 Use of the JURISDICTIONAL EXCEPTION RULE is not appropriate because none of the requirements in the
67 agencies' appraisal laws and regulations are contrary to USPAP.

68 Appraisers must identify and consider the intended use and intended users in an assignment to understand their
69 USPAP development and reporting obligations. The agencies' appraisal regulations and guidelines contain
70 assignment conditions that are part of competent performance when they apply in an assignment. Therefore,
71 compliance with USPAP requirements for proper development and reporting require adherence to those
72 assignment conditions that apply in an assignment.

73 **Failure to Adhere to Assignment Conditions**

74 Failure to recognize and adhere to applicable assignment conditions violates one or more of the USPAP
75 requirements previously identified.

ADVISORY OPINION 30

- 76 • An appraiser who represents that an assignment is or will be completed in compliance with applicable
77 assignment conditions and who then knowingly fails to comply with those assignment conditions
78 violates the ETHICS RULE.
- 79 • An appraiser who unintentionally fails to comply with or fails to recognize those assignment
80 conditions violates the COMPETENCY RULE.
- 81 • An appraiser who fails to develop assignment results in accordance with the assignment conditions
82 necessary for credible assignment results violates the SCOPE OF WORK RULE and STANDARD 1.
- 83 • An appraiser who fails to report assignment results in accordance with the assignment conditions that
84 are necessary to enable intended users to understand the report properly violates STANDARD 2.

85 **Obligations for Appraisers Performing Appraisals for Use by a Federally Regulated Financial Institution**

86 Note: All quotations in this section are from the agencies' appraisal regulations.² The quoted text is only a
87 portion of the complete regulations, and the applicable regulations should be reviewed in their entirety.

88 **Appraiser Independence**

89 The agencies' appraisal regulations state, in part:

90 "If an appraisal is prepared by a staff appraiser, that appraiser must be independent of the lending,
91 investment, and collection functions and not involved, except as an appraiser, in the federally related
92 transaction, and have no direct or indirect interest, financial or otherwise, in the property. If the only
93 qualified persons available to perform an appraisal are involved in the lending, investment, or
94 collection functions of the regulated institution, the regulated institution shall take appropriate steps to
95 ensure that the appraisers exercise independent judgment. Such steps include, but are not limited to,
96 prohibiting an individual from performing an appraisal in connection with federally related
97 transactions in which the appraiser is otherwise involved and prohibiting directors and officers from
98 participating in any vote or approval involving assets on which they performed an appraisal."

99 "If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated
100 institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or
101 the transaction."

102 "A regulated institution also may accept an appraisal that was prepared by an appraiser engaged
103 directly by another financial services institution, if:

- 104 (i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the
105 transaction; and
- 106 (ii) The regulated institution determines that the appraisal conforms to the requirements of this subpart
107 and is otherwise acceptable."

108 For more information on these requirements and related USPAP obligations, see Advisory Opinion 25,
109 *Clarification of the Client in a Federally Related Transaction* and Advisory Opinion 26, *Readdressing*
110 *(Transferring) a Report to Another Party*.

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

111 **Appraisal Development and Reporting**

112 The agencies' appraisal regulations state, in part:

113 "For federally related transactions, all appraisals shall, at a minimum:

- 114 (a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of
115 Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the
116 Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of
117 safe and sound banking require compliance with stricter standards;
- 118 (b) Be written and contain sufficient information and analysis to support the institution's decision to
119 engage in the transaction;
- 120 (c) Analyze and report appropriate deductions and discounts for proposed construction or renovation,
121 partially leased buildings, nonmarket lease terms, and tract developments with unsold units;
- 122 (d) Be based upon the definition of market value as set forth in this subpart; and
- 123 (e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in
124 this subpart."

125 **Market Value Definition**

126 The agencies' appraisal regulations state, in part:

127 "*Market value* means the most probable price which a property should bring in a competitive and open
128 market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and
129 knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is
130 the consummation of a sale as of a specified date and the passing of title from seller to buyer under
131 conditions whereby:

- 132 (1) Buyer and seller are typically motivated;
- 133 (2) Both parties are well informed or well advised, and acting in what they consider their own best
134 interests;
- 135 (3) A reasonable time is allowed for exposure in the open market;
- 136 (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable
137 thereto; and
- 138 (5) The price represents the normal consideration for the property sold unaffected by special or
139 creative financing or sales concessions granted by anyone associated with the sale."

140 **Commonly Asked Questions**

141 1. How do the assignment conditions that apply to appraisals for use by a federally regulated financial
142 institution affect the appraiser's scope of work and report content?

143 An appraiser accepting an assignment to be performed under the agencies' appraisal regulations and
144 guidelines is obligated to complete that assignment in a manner that adheres to the applicable appraisal
145 regulations and guidelines.

ADVISORY OPINION 30

146 2. What is a “real estate-related financial transaction”?

147 The term is defined in Title XI of FIRREA and the agencies’ appraisal regulations as “any transaction
148 involving —

149 (1) The sale, lease, purchase, investment in or exchange of real property, including interests in
150 property, or the financing thereof; or

151 (2) The refinancing of real property or interests in real property; or

152 (3) The use of real property or interests in property as security for a loan or investment, including
153 mortgage-backed securities.”

154 3. What is a “federally related transaction”?

155 The term is defined in Title XI of FIRREA as “any real estate-related financial transaction which —

156 (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages
157 in, contracts for, or regulates; and

158 (B) requires the services of an appraiser.”

159 The agencies’ appraisal regulations define when the services of an appraiser are required. The
160 agencies’ appraisal regulations also list specific categories of transactions that do not require the
161 services of an appraiser.

162 4. Do the agencies’ appraisal regulations apply to FHA, VA, Fannie Mae, Freddie Mac, Farmer Mac, or Sallie
163 Mae?

164 FHA, VA, Fannie Mae, Freddie Mac, Farmer Mac and Sallie Mae are not under the supervision of the
165 federal financial institutions regulatory agencies and therefore are not subject to their appraisal
166 regulations.