



The Appraisal FOUNDATION

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Standards and Appraiser Qualifications

APPRAISAL STANDARDS BOARD

TO: All Interested Parties

FROM: Wayne R. Miller, Chair
Appraisal Standards Board

RE: **Concept Paper – Evaluation Standards in USPAP**

DATE: September 3, 2019

I. Issue

The Appraisal Standards Board (ASB) is seeking your feedback on the concept of developing standards for performing evaluations in the *Uniform Standards of Professional Appraisal Practice* (USPAP).

II. Background

USPAP was written in 1986-87 to codify uniform minimum standards for all types of appraisal services including real property, personal property, business valuation, and mass appraisal. The purpose was to maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. Today the mission remains the same, but USPAP has adapted as new developments in markets, technology, and other factors have led to changes in the profession.

One change is the increase in the market's demand for evaluations. As early as 1989, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) allowed banks and other financial institutions to obtain *evaluations* of real estate collateral in certain federally-related transactions below a threshold amount when an appraisal may not be necessary. Beginning in 2010 the use of evaluations began to noticeably increase.

There are two reasons for this increase. First, in 2010, the five agencies listed below updated the *Interagency Appraisal and Evaluation Guidelines (Guidelines)*:

- Office of the Comptroller of the Currency (OCC)
- Board of Governors of the Federal Reserve System (Board)
- Federal Deposit Insurance Corporation (FDIC)
- Office of Thrift Supervision (OTS)
- National Credit Union Administration (NCUA)

These *Guidelines* identify specific types of real property financial transactions that do not require an appraisal and set forth content guidelines for financial institutions to follow when ordering or completing evaluations.

A second factor contributing to the growth of evaluations has been the agencies' recent decisions to increase appraisal threshold amounts. This has led to a reduction in the number of transactions requiring appraisals, particularly for new loan originations.

III. Controversy and Confusion

As the number of assignments eligible for evaluations has grown more significant, there has been controversy and confusion among appraisers, regulators and policy makers about aspects of the *Guidelines*. Some reasons for this controversy and confusion become apparent in the answers to common questions from the different perspectives of the *Guidelines*, *USPAP*, and state regulatory agencies.

Is an evaluation an appraisal, or not?

- **USPAP:** Yes. USPAP has a broad definition of “appraisal” that encompasses all opinions of value. Thus, according to USPAP an evaluation is an appraisal, albeit one with a narrow scope of work. In addition, many states have statutorily defined “appraisal” as any opinion of value.
- **Guidelines:** No. Unlike USPAP, the *Guidelines* draw a bright-line distinction between an “appraisal” and an “evaluation” based upon differences in required analyses and report content.
- **State regulatory agencies:** Different answers, depending upon the state.

Who is allowed to perform appraisals?

- **USPAP:** USPAP has no authority to specify who is allowed to perform appraisals.
- **Guidelines:** Only state licensed or certified appraisers may perform appraisals. According to the *Guidelines* appraisals must be performed by:

“... state certified or licensed appraisers in accordance with requirements set forth in the appraisal regulation. In determining competency for a given appraisal assignment, an institution must consider an appraiser’s education and experience. While an institution must confirm that the appraiser holds a valid credential from the appropriate state appraiser regulatory authority, a state certification or license is a minimum credentialing requirement. Appraisers are expected to be selected for individual assignments based on their competency to perform the appraisal, including knowledge of the property type and specific property market.”

- **State Regulatory Agencies:** When an appraisal is completed for a federally-related transaction, it must be performed by a state licensed or certified appraiser.

Who enforces standards for appraisals?

- **USPAP:** No enforcement. According to the PREAMBLE, *“Neither The Appraisal Foundation nor its Appraisal Standards Board is a government entity with the power to make, judge, or enforce law.”*

- **Guidelines:** The *Guidelines* specify that appraisals must be performed by state licensed or certified appraisers. Therefore state regulators enforce standards for real property appraisals.
- **State Regulatory Agencies:** State authorities are entrusted with the responsibility to enforce standards related to the qualifications and performance of real property appraisers.

Who is allowed to perform evaluations?

- **USPAP:** USPAP has no authority to specify who is allowed to perform evaluations.
- **Guidelines:** Qualified individuals may perform evaluations. For evaluations, the *Guidelines* place responsibility upon each financial institution for hiring appropriately qualified individuals. Among other criteria, the financial institution is advised that “*Persons who perform evaluations should possess the appropriate appraisal or collateral valuation education, expertise, and experience relevant to the type of property being valued. Such persons may include appraisers, real estate lending professionals, agricultural extension agents, or foresters.*”
- **State Regulatory Agencies:** The individual who can perform evaluations varies by state. Some states specifically exempt appraisers performing evaluations from USPAP compliance and state appraiser regulatory agency oversight. Other states require state licensed or certified appraisers to comply with USPAP when performing evaluations. A further subset of states do not permit evaluations unless they are performed by state licensed or certified appraisers.
- **Who enforces standards for evaluations?** There are currently no enforceable development or reporting standards for evaluations. The *Guidelines* are intended for clarification; they are not rules. According to the Purpose, “*...these Guidelines provide federally regulated institutions and examiners clarification on the Agencies’ expectations for prudent appraisal and evaluation policies, procedures, and practices.*”

Is it possible to perform an evaluation in compliance with USPAP and state laws and regulations?

Yes, but some of the reporting requirements may not mesh. For example, when reporting an evaluation opinion of value in a USPAP-compliant report, an appraiser must include the following contradictory labels:

- USPAP requires the evaluation report to *prominently state* whether it is an Appraisal Report or a Restricted Appraisal Report.
- Some states mandate that in addition to the required USPAP label, the evaluation report must state *on its face*, “*This is not an appraisal.*”

To complicate matters further, the *Guidelines* are written to provide guidance to federally regulated financial institutions and examiners – they are not written for appraisers or others completing evaluations.

It is also important to note that recent rulings have determined that federal guidance, such as the *Guidelines*, is merely guidance and is therefore not enforceable. This underscores the fact that there are no true standards for the performance of evaluations. Furthermore, when evaluations are performed by individuals who are not credentialed (or are exempted from oversight by state laws), there is no publicly accountable entity to turn to if the

evaluation is not completed competently, and if the results are called into question by the institution or by an institution's customers.

IV. Challenges and Questions

USPAP has sometimes been viewed as similar to building codes adopted by states and municipalities. To ensure public safety, licensed electricians and other professionals are required to follow the specified code, and building inspectors verify compliance. Individuals without specific credentials are unlikely to be able to obtain permits, and those who perform their own electrical work (for example) do so at their own risk including possible legal exposure. In this analogy, the set of standards (USPAP or a building code) may change but generally this happens only very slowly. This is because new technology, processes, and products have only limited impact upon basic safety codes.

Another analogy compares licensed, certified, or accredited appraisers to doctors or lawyers, who have successfully completed their state's required training and examinations. In these fields it used to be that only doctors were permitted to practice medicine, and only attorneys were permitted to practice law. However, today, there has been a shift in these professions so that physician assistants and paralegals, for example, now may perform tasks that used to be restricted to doctors and lawyers.

Whether welcome or unwelcome, it is clear that a similar shift is underway in the appraisal profession today. In the context of changing laws and regulations, appraisal products, and technology, the ASB is seeking input about whether USPAP should make an accommodation for evaluations, and if so, how to distinguish them from appraisals.

The ASB is seeking input on the following specific topics:

- Should the ASB investigate whether it would help foster public trust in valuations if they set minimum standards for evaluations? None of the USPAP Rules or development and reporting standards currently exist for non-appraisers who perform evaluations, because the *Guidelines* provide only broad guidance. Would it be beneficial to give everyone performing an evaluation a clear set of standards to follow including, for example, rules related to ethics and competency?
- What specific Rules or Standards Rules (in STANDARDS 1 and 2) would need to be modified or eliminated if the ASB were to develop specific standards for evaluations?
- If the ASB develops standards for evaluations, how would that impact Advisory Opinion 13, *Performing Evaluations of Real Property Collateral to Conform with USPAP*? If the ASB does not develop standards for evaluations, should the guidance in AO-13 be modified?
- Are USPAP Rules and Standards still the minimums required to protect public trust in the appraisal profession? If not, then are there any Rules or Standards Rules that should be considered for significant revision or elimination? Or, is USPAP a “safety code” that is best left in place despite pressure to reduce the requirements?
- Should the ASB modify the DEFINITION of *appraisal* to differentiate it from an evaluation? If evaluations were included as a separate category in USPAP, what would be the regulatory implications?
- How might the ASB help resolve the nomenclature issue so appraisers can prepare evaluation reports that comply with USPAP without the use of contradictory or confusing labels?
- How might USPAP reporting standards be changed and/or how might the ASB more effectively communicate the flexibility of USPAP to appraisers, regulators, clients, and policy makers?
 - Veteran appraisers understand the SCOPE OF WORK RULE and think that USPAP reporting requirements provide all the flexibility that is needed for appraisers to write evaluations or offer other services. Indeed, one of the first lines of *STANDARD 2: Real Property Appraisal, Reporting* states: “STANDARD 2 does not dictate the form, format, or style of real property appraisal reports.”
 - But not all understand or agree. For example, the *Guidelines* state: “Unlike an appraisal report that must be written in conformity with the requirements of USPAP, there is no standard format for documenting the information and analysis performed to reach a market value conclusion in an evaluation.” In March 2016, the Director of the Division of Banking Supervision and Regulation reiterated that there is no “standard format” for an evaluation “in contrast with the requirements of USPAP.”

Written comments on this concept paper can be submitted by mail and email. **Please submit your comments by October 11, 2019.**

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IMPORTANT NOTE: All written comments will be posted for public viewing on The Appraisal Foundation's website exactly as submitted to the ASB. Names may be redacted upon request.

The Appraisal Foundation reserves the right not to post written comments that contain offensive or inappropriate statements.

Learn more about this concept paper in a free WEBINAR on September 10, 2019, with Wayne Miller, Chair of ASB, and John Brennan, Vice President Appraisal Issues, by registering here: https://zoom.us/webinar/register/WN_gHPurbf0RLafGykE5NznrQ

The ASB plans to hold a public hearing on this topic on October 18, 2019, in Washington, DC. Your input is needed and greatly appreciated. The following panels are tentatively planned: State Appraiser Regulators; Appraiser Organizations; and Financial Institutions. You may register to attend the meeting in person, or watch it via live stream:

https://www.appraisalfoundation.org/TAFCore/Events/Event_Display.aspx?EventKey=ASB201910

If you have any questions regarding this concept paper, please contact Aida Dedajic, Standards Board Program Manager at The Appraisal Foundation, via e-mail at aida@appraisalfoundation.org or by calling (202) 624-3058.