

APPRAISAL STANDARDS BOARD SUMMARY OF ACTIONS JUNE 27, 2003

Background

On June 27, 2003 the Appraisal Standards Board (ASB) approved and adopted modifications to the 2003 edition of the Uniform Standards of Professional Appraisal Practice (USPAP). These changes to USPAP were the result of two exposure drafts issued on February 19, 2003 (First Exposure Draft) and May 9, 2002 (Second Exposure Draft). The changes will be incorporated in the 2004 USPAP with an effective date of January 1, 2004. Both exposure drafts were presented in nine sections, as follows:

- New Advisory Opinion on the “Normal Course of Business”
- Edits to the PREAMBLE
- Revised Advisory Opinion (AO-10) “Clarification of the Client in a Federally Related Transaction”
- Proposed Advisory Opinion on “Readdressing (Transferring) a Report to Another Party
- Proposed Advisory Opinion on “Appraising the Same Property for a New Client”
- New Statement on Drafts of Reports
- Professional Assistance Edits to STANDARD 10
- Removal of the GLOSSARY from the bound edition of USPAP
- Miscellaneous
 - Edits to the definition of “Bias”
 - Deletion of certain definitions
 - Edits to the ETHICS RULE – Unethical Contingencies
 - Edits to the ETHICS RULE – Record Keeping requirements
 - The review of Restricted Use Appraisal Reports

The Board received 79 written comments from interested parties and heard oral comments at two public meetings, April 8 and June 27, 2003.

In reviewing comment letters received on the exposure drafts, the ASB’s primary focus is the reasoning and insight presented in the letters, rather than the source or authorship. While a numerical count of comment letters may be taken, the ASB does not weigh the numerical count as a determining factor in its final decisions. The quality, relevancy, and accuracy of the points made, and not their frequency, is what guides the ASB.

The following is a topic-by-topic analysis of the actions taken by the Board and rationale for those decisions.

Section 1 – Advisory Opinion 24 (AO-24) on the “Normal Course of Business”

Action:

The Board approved the new Advisory Opinion 24 (AO-24), “Normal Course of Business”, as exposed in the May 9 Exposure Draft with minor modifications.

Rationale:

Standards Rules 1-5 and 7-5 require appraisers to analyze the subject property’s sales history, and all current listings, options and agreements of sale when the value opinion to be developed is market value. These Standards Rules state that the analysis is required, “if such information is available to the appraiser in the *normal course of business*.”

Some believe this language requires the appraiser to perform a great deal of research and go to extreme measures to discover such information. Others believe that the language allows the appraiser to do very little to acquire this information, and that the “*normal course of business*” is essentially the same as the ordinary course of business in his or her own appraisal practice. Neither of these interpretations reflects the intentions of the Appraisal Standards Board.

Appraisers and users of appraisal services have requested additional guidance to help determine what the *normal course of business* might be in a given assignment. This Advisory Opinion provides such guidance and includes examples of applying the *normal course of business* concept relative to the requirements of SR 1-5 and SR 7-5.

The comments received on each Exposure Draft were generally in agreement with intent and presentation of the proposed new Advisory Opinion. The May 9 Exposure Draft incorporated several comments received on the February 19 Exposure Draft and other modifications made for clarification.

One comment on the May 9 Exposure Draft suggested that the Board address the linkages between SR 1-5 and SR 7-5 and the relevant Standards Rules in STANDARD 2 and STANDARD 8. The Board agrees that this may warrant a communication and will consider including it in the 2004 Work Plan.

Section 2 - Edits to the PREAMBLE

Action:

The Board adopted edits to the PREAMBLE of USPAP to improve its clarity

Rationale:

The Appraisal Standards Board received correspondence recommending edits to improve the clarity and organization of the PREAMBLE. The ASB is required to regularly examine every section of USPAP, and the PREAMBLE has not been reviewed in some time. Thus, the ASB undertook a review of the PREAMBLE section of USPAP.

The PREAMBLE was edited and reorganized. Some of the changes were necessitated by edits to USPAP over the past few years and others were editorial improvements. While the changes are numerous, the modifications to the PREAMBLE are not intended to introduce new concepts or obligations. The goal is to provide a clear and concise introduction to USPAP. The PREAMBLE describes:

- The purpose of USPAP;
- The place of USPAP in the profession;
- How compliance with USPAP is determined; and
- The content of each section of USPAP.

The Appraisal Standards Board received written and oral comments on the proposed revision of the PREAMBLE. Based on these comments, further edits were made to improve clarity.

Several respondents questioned why Advisory Opinions are not addressed in the PREAMBLE. 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. Traditionally, Advisory Opinions have been bound within the USPAP document, but they are not actually *part* of USPAP. Since Advisory Opinions are not a component of USPAP, they are not addressed in the PREAMBLE.

Section 3 – Revised Advisory Opinion 10 (AO-10) – “Clarification of the Client in a Federally Related Transaction”

Proposed Advisory Opinion on “Readdressing (Transferring) a Report to Another Party”

Proposed Advisory Opinion on “Appraising the Same Property for a New Client”

Action:

Originally, the Board considered revisions to Advisory Opinion 10 (AO-10). However, the Board ultimately voted to retire Advisory Opinion 10 – “The Appraiser-Client Relationship” and replace it with three new Advisory Opinions as exposed in the Second Exposure Draft with minor edits. The three new Advisory Opinions are:

- Advisory Opinion 25 (AO-25) – “Clarification of the Client in a Federally Related Transaction”
- Advisory Opinion 26 (AO-26) – “Readdressing (Transferring) a Report to Another Party”
- Advisory Opinion 27 (AO-27) – “Appraising the Same Property for a New Client”

Rationale:

First Exposure Draft History

Advisory Opinion 10 (AO-10) addressed appraisals performed for use by regulated institutions and questions concerning:

1. an appraiser’s obligation to ensure their services are directly engaged by a regulated institution (Question 1);
2. the issue of an appraiser readdressing an appraisal report to another party (Question 2); and
3. the length of the appraiser-client relationship (Question 3).

When AO-10 was first drafted, Statement on Appraisal Standards No. 10 (SMT-10) had not been written. SMT-10 provides clarification on appraiser independence issues and elaborates on the appraiser’s role if requested to “readdress” an appraisal report (alter a title page or transmittal letter) when the appraisal report was originally performed for another party in a federally related transaction.

In the First Exposure Draft, AO-10 was revised to address existing Questions 1 and 2 and to reflect other edits. Also in the First Exposure Draft, the ASB proposed a new Advisory Opinion titled “Appraising the Same Property for a New Client.” This new Advisory Opinion negated the need for Question 3; therefore, the question was eliminated from the revised AO-10.

Second Exposure Draft History

In the revised AO-10 that appeared in the First Exposure Draft, the two questions still addressed only federally related transactions. Several comments provided strong rationale for broadening the focus of Question 2 beyond federally related transactions.

As a result of this and other feedback, revisions were made for the Second Exposure Draft:

- The scope of AO-10 was narrowed further to address only Question 1 and edits were made.
- Question 2 was eliminated from AO-10 and edited as a proposed new Advisory Opinion, titled “Readdressing (Transferring) a Report to Another Party”. The topic was broadened to address situations other than federally related transactions, and the discussion was made applicable to all disciplines – real property, personal property, and intangible property.

Some confusion was apparent between the treatments of a) “readdressing” (transferring) a report (Question 2) and b) appraising the same property for a new client (the proposed new Advisory Opinion from the First Exposure Draft titled “Appraising the Same Property for a New Client”). The subject of “readdressing” (transferring) a report is closely linked to the subject of appraising the same property for a new client. Appraising the property for a second client may be an appropriate method of handling a request to “readdress” (transfer) an existing report.

The Board considered combining these two topics into one Advisory Opinion; but ultimately decided against this course of action. Appraising the same property for a second client is a much broader topic than “readdressing” (transferring) a report, and the Board believed it necessary to address these two issues in separate Advisory Opinions. This separation also facilitates easier reference by appraisers and users of appraisal services.

Some comments received expressed concern about the advice that allows an appraiser to appraise a property for a new client without disclosure to the prior client. There seemed to be concern that this could, in some way, allow confidential information or assignment results to be disclosed to the second client. Others were concerned that, in some cases, reappraising the property for a new client could harm the business goals of the first client. The ASB understands these concerns and attempted to address them in the advice. Regarding the first concern, confidential information clearly cannot be disclosed to the second client and the appraiser must be careful in identifying what is confidential information. Additionally, the ASB cannot require that the first client be notified prior to acceptance of a “reappraisal” assignment because, sometimes, the mere fact that someone has approached the appraiser to appraise a particular property is confidential information. Regarding disclosure of the first client’s assignment results to the second client, USPAP is already clear that this is not allowed.

Regarding the second point, if, in certain circumstances, a client believes that his or her legitimate business goals could be harmed by the appraiser reappraising the same property for another client, those concerns may be specifically addressed in the agreement between that client and appraiser for that assignment- i.e., the first client can specify under what conditions the appraiser may or may not appraise the property for another client. Absent such a contractual agreement with the client, the ASB believes acceptance of the second assignment (to reappraise the property) should be a business decision, as long as the ethics and confidentiality requirements of USPAP are met.

As a result of the edits and proposed new advice, the topics covered in the prior AO-10 are now addressed in three Advisory Opinions. Because the topics of the three Advisory Opinions are interrelated, the ASB decided to retire the prior AO-10 and place these three Advisory Opinions together in the document, becoming new Advisory Opinions 25, 26 and 27.

The following is an overview of the final results of the Exposure Process:

1. AO-25 was created to address Question #1 from the retired AO-10 – who is the client in appraisals for federally related transactions?
2. AO-26 was created to address Question #2 from the retired AO-10 in a broader manner – can an appraiser “readdress” (transfer) an appraisal report?
3. AO-27 was created to address appraising the same property for a new client that correlates with the “readdressing” issue and eliminates the need for Question #3 in the retired AO-10.

Section 4 - Statement on Drafts of Reports

Action:

This issue was tabled for further consideration.

Rationale:

The ASB has been asked to address requirements associated with the communication of data and analysis results to the intended user(s) prior to issuance of a *report*, as defined.

Comments on this subject from the First Exposure Draft were numerous and varied. Some observed that in many segments of appraisal practice, drafts of reports are common and serve a legitimate purpose, while others did not use drafts of reports and thought they should not be allowed. Some believe drafts of reports need to be signed; others said they should not be signed. Many wanted a definition of “report draft”. Alternatively, some believe that drafts of reports are a form of communication that is adequately covered by the existing obligations of ethics and competency in USPAP, and that no revisions to USPAP are necessary. On the issue of retention, many thought that keeping drafts of reports preserves evidence of the appraiser’s independence, while others believe that keeping them is unnecessary.

After receipt of comments on material in the First Exposure Draft and deliberating on the issue, the ASB determined that further research and consideration is needed on this topic. Therefore, the ASB is continuing to actively research and study the issue and may issue an Advisory Opinion or other advice, or may propose revisions to USPAP in the future.

Professional Assistance Edits to STANDARD 10

Action:

The Board adopted revisions to SR 10-2(a)(vii) and SR 10-3, as exposed in both Exposure Drafts.

Rationale:

During edits made for the 2001 USPAP, certain requirements were revised regarding disclosure of professional assistance provided to the appraiser(s) signing a certification. More specifically, requirements were changed for the certification and a new requirement was added indicating that the extent of the professional assistance must be summarized (or stated) somewhere in the report (not necessarily in the certification).

No comments were received during the first or second exposure period presenting any concerns regarding the proposed revisions.

Removal of the GLOSSARY from the bound edition of USPAP

Action:

The Board voted to remove the Glossary from the bound edition of USPAP.

Rationale:

Since 1996, USPAP has included a Glossary of technical words and phrases used within the document. The original rationale for including the Glossary was to distinguish the meanings for specialized words or phrases utilized in USPAP that may have a different meaning or connotation outside of USPAP. A core premise for its inclusion was to make USPAP easier to understand.

It was apparent that the Glossary was not serving its intended purpose. Including the Glossary with the USPAP document caused confusion for some appraisers and users of appraisal services who looked at the Glossary as a supplemental DEFINITIONS section of USPAP. Therefore, the ASB is removing the Glossary from the 2004 USPAP document.

Miscellaneous Edits

Edits to the Definition of “Bias”

Action:

The Board voted to approve the following definition of Bias:

***BIAS:** a preference or inclination that precludes an appraiser’s impartiality, independence, or objectivity in an assignment.*

Rationale:

During the exposure process in 2002, it was noted that the definition of “Bias” in USPAP focused on “impartiality” and thus did not fully represent the full range of mental and emotional predispositions required of appraisers in USPAP. The previous definition read:

***BIAS:** a preference or inclination used in the development or communication of an appraisal, appraisal review, or appraisal consulting assignment that precludes an appraiser’s impartiality.*

The Board focused on **expanding** the coverage of “Bias” not the nature of the concept. The intent was not to change the root of the definition, just its application.

The previous definition only covered an appraiser’s activities while engaged in appraisal, appraisal review, or appraisal consulting assignments. These activities only describe some of the services that fall under the definition of “assignments” in USPAP (“assignment” and “appraisal practice” both encompass the full range of an appraiser’s activities under USPAP). In fact, an appraiser must abide by these ethical requirements anytime they are engaged in any form of appraisal practice (i.e. assignment). For example, USPAP has no specific Standards Rules for appraisal practice services such as teaching appraisal courses or writing educational texts; however, USPAP does require an appraiser providing such services to do so in an impartial, objective, and independent manner

Deletion of Two Definitions:

Action:

The Board voted to delete the definitions of *Investment Analysis* and *Market Analysis* from USPAP as exposed in the Second Exposure Draft.

Rationale:

As USPAP has been revised over the years, some terms that were used in the Rules, Standards Rules, etc. have been removed. As a result, the DEFINITIONS section contains some terms that are no longer used or have very limited use in the document.

Periodically, in the interest of clarity and consistency, certain terms are eliminated from the DEFINITIONS section. The Board exposed the following terms for deletion:

~~INVESTMENT ANALYSIS: a study that reflects the relationship between acquisition price and anticipated future benefits of a real estate investment.~~

~~MARKET ANALYSIS: a study of market conditions for a specific type of property.~~

Responses to both Exposure Drafts revealed no significant issues by respondents with the proposed deletion of these terms. Therefore, these edits will occur in the 2004 version of USPAP.

Edits to the ETHICS RULE – Unethical Contingencies

Action:

The Board voted to edit the Management section of the ETHICS RULE for clarity.

Rationale:

The portion of the Management section of the ETHICS RULE dealing with unethical forms of contingencies has been a source of confusion for some. This is due to the ambiguous use of the pronoun “it” as bolded in the following phrase:

*“It is unethical for an appraiser to accept compensation for performing an assignment when **it** is contingent upon....”*

Some interpreted this language relative only to the acceptance of compensation. This led to the claim that it is not unethical to perform assignments with the contingencies listed, if no compensation is involved. This is not the intent of USPAP.

The previous wording also led to the misconception that all forms of contingencies or dependencies related to compensation arrangements are unethical. In USPAP a contingent form of compensation refers to an arrangement that is dependent upon another event. However, the

USPAP prohibition is not against any form of dependency, but only those that involve events that are themselves unethical or which would inspire unethical behavior. For example, to accept payment for services only after delivery of the report is a dependent arrangement, but this is not prohibited since it is not unethical and does not unduly inspire unethical behavior. If, however, receipt of payment is dependent on the development or reporting of biased results, then the contingency is prohibited, because the ETHICS RULE prohibits the development or reporting of biased results.

The edits to this section clarify that “it” actually refers to both the acceptance of an assignment and to the compensation arrangement specific to that assignment.

Previous USPAP WORDING:

It is unethical for an appraiser to accept compensation for performing an assignment when it is contingent upon:

- 1. the reporting of a predetermined result (e.g., opinion of value);*
- 2. a direction in assignment results that favors the cause of the client;*
- 3. the amount of a value opinion;*
- 4. the attainment of a stipulated result; or*
- 5. the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.*

2004 USPAP WORDING:

It is unethical for an appraiser to accept an assignment, or to have a compensation arrangement for an assignment, that is contingent on any of the following:

- 1. the reporting of a predetermined result (e.g., opinion of value);*
- 2. a direction in assignment results that favors the cause of the client;*
- 3. the amount of a value opinion;*
- 4. the attainment of a stipulated result; or*
- 5. the occurrence of a subsequent event directly [DKW4]related to the appraiser's opinions and specific to the assignment's purpose*

Edits to the ETHICS RULE – Record Keeping requirements

Action:

The Board voted to edit the Record Keeping section of the ETHICS RULE for clarity.

Rationale:

On several occasions the Board has been asked to clarify specific language in the Record Keeping section of the ETHICS RULE that was unclear to many readers. The following edits have been made to clarify the intent and responsibility of appraisers regarding record retention relative to judicial proceedings. An additional edit was also approved to clarify the need for appraisers to have appropriate custody or access to their workfile. The edits made are as follows:

An appraiser must retain the workfile for a period of at least five (5) years after preparation, or at least two (2) years after final disposition of any judicial proceeding in which ~~testimony was given~~ the appraiser provided testimony related to the assignment, whichever period expires last.

An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.

The Review of Restricted Use Appraisal Reports

Actions:

The Board voted to delete one sentence from Standards Rules 2-2(c)(ix) and 8-2(c)(ix) regarding the review of Restricted Use Appraisal Reports.

Rationale:

The previous Comments to Standards Rules 2-2(c)(ix) and 8-2(c)(ix) stated, in part,

The review of a Restricted Use Appraisal Report in compliance with STANDARD 3 is not possible without the reviewer having benefit of the information retained in the workfile.

The above passage was deleted because it is not always true. No comments were received during the exposure that opposed this deletion.

The edit to SR 2-2 and SR 8-2 is:

The review of a Restricted Use Appraisal Report in compliance with STANDARD 3 ~~is not possible without the reviewer having benefit of the information retained in the workfile.~~