MEMORANDUM FOR CHIEF EXECUTIVE OFFICERS

FROM: Scott M. Albinson

SUBJECT: Statement on Real Estate Appraisal Standards

This past year, our Office along with the other federal banking agencies asked the Appraisal Standards Board (ASB) to affirm how appraisers should apply the Uniform Standards of Professional Appraisal Practice (USPAP) to comply with the minimum standards of the agencies’ appraisal regulations. The areas of concern involved appraisals for commercial real estate properties and residential tract development projects, appraisal reviews, and appraiser independence. In response to this request, the ASB recently released the attached Statement on Appraisal Standards No. 10 (Statement) entitled “Assignments for Use by a Federally Insured Depository Institution in a Federally Related Transaction”. The ASB periodically issues Statements on Appraisal Standards to clarify, interpret, explain, or elaborate on USPAP.

The Statement is incorporated along with other revisions in the 2001 USPAP, effective as of January 1, 2001. The 2001 USPAP can be ordered through The Appraisal Foundation’s web site at www.appraisalfoundation.org. Management should closely review the issues addressed in the Statement and confirm that the institution’s appraisal function complies with 12 CFR Part 564 and Thrift Bulletin 55a (Interagency Appraisal and Evaluation Guidelines).

An institution’s internal controls must promote compliance with appraisal program standards and applicable appraisal regulations and guidelines, as well as ensure that the institution engages competent and ethical appraisers. In utilizing appraisal services, if management finds that a State licensed or certified appraiser violates USPAP, applicable laws or engages in unethical or unprofessional conduct, the institution should make a referral to the appropriate state appraiser regulatory authority.

If you have any questions, contact Debbie Merkle at (202) 906-5688 or your local Regional office.
STATEMENT ON APPRAISAL STANDARDS NO. 10 (SMT-10)

SUBJECT: Assignments for Use by a Federally Insured Depository Institution in a Federally Related Transaction

THE ISSUE:

Federal financial institution regulatory agencies (agencies) have experience that indicate some appraisers are not following Uniform Standards of Professional Appraisal Practice (USPAP) and, when applicable, the agencies’ appraisal regulations51 and guidelines52 issued by the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (OTS). This is particularly true in appraisals of commercial real estate and residential tract development projects. The agencies’ concerns involve three general appraisal areas: USPAP compliance, appraiser independence, and appraisal review.

Federally insured depository institutions recognize that the agencies’ appraisal regulations and guidelines include the requirement that appraisals comply with USPAP in a federally related transaction.

Most appraisers recognize that the agencies’ appraisal regulations and guidelines supplement the USPAP requirements when an intended user of the assignment results is a federally insured depository institution for a federally related transaction. However, some appraisers are uncertain as to:

- What does USPAP require when the intended user of assignment results is a federally insured depository institution and the intended use is in a federally regulated transaction, and
- how do the agencies’ appraisal regulations and guidelines, which include supplemental standards, affect the appraiser’s scope of work and report content requirements?

THE STATEMENT:

This Statement provides appraisers, users of appraisal services, and enforcement bodies with clarification, interpretation, explanation, and elaboration to reaffirm an appraiser’s USPAP obligations when performing an assignment for use by a federally insured depository institution in a federally related transaction.

The requirements in this Statement apply and are binding when the purpose of an assignment includes developing an opinion of market value of real property for intended use by a federally insured depository institution in a federally related transaction.

ASB RESPONSE TO THE ISSUE:

Each ASB response on how USPAP applies to a specific concern appears in italics followed by references to USPAP and guidance material in the Advisory Opinions section.

When the agencies’ appraisal regulations and guidelines supplement USPAP requirements, this Statement notes the agencies’ appraisal regulations or guidelines as SUPPLEMENTAL STANDARDS. The ASBs’ statements about compliance with those requirements are in the context of the appraiser’s obligation to comply with the ETHICS RULE or COMPETENCY RULE, as applicable.

Given the scope of this Statement, a Table of Contents is provided on the following page.

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A. GENERAL USPAP COMPLIANCE QUESTIONS:

Appraisers who provide valuation services to a federally insured depository institution for use in a federally related transaction may be uncertain as to:

- when USPAP applies;
- whether the COMPETENCY RULE requirements extend to a client's appraisal regulations and guidelines, which supplement USPAP;
- whether use of the DEPARTURE RULE is permitted;
- whether the JURISDICTIONAL EXCEPTION RULE applies in such assignments; and
- whether compliance with the client's appraisal regulations and guidelines that apply under the SUPPLEMENTAL STANDARDS RULE is a USPAP compliance requirement.

1. Applicability of USPAP

Compliance with USPAP is required when either the service or the appraiser is obligated by law or regulation, or by agreement with the client or intended users, to comply. The agencies' appraisal regulations and guidelines require appraisers' compliance with USPAP in an assignment where the intended user of the assignment results is a federally insured depository institution and the intended use is in a federally related transaction. Therefore, appraisers are bound to comply with USPAP in performing those assignments.

USPAP Reference: ETHICS RULE

2. Competency is Required

Competency to perform an assignment includes the ability to complete the assignment in compliance with USPAP and any supplemental standards that the appraiser agrees are applicable in the assignment at the time the assignment is accepted by the appraiser.

An appraiser violates the ETHICS RULE if he or she knowingly misrepresents his or her competency to complete an assignment in compliance with USPAP and the agencies' appraisal regulations and guidelines (supplemental standards).

Failure to complete the assignment competently, in accordance with the applicable USPAP requirements and supplemental standards the appraiser agreed to in accepting the assignment, violates the COMPETENCY RULE.

USPAP References: ETHICS RULE
COMPETENCY RULE
SUPPLEMENTAL STANDARDS RULE

3. Departure is Permitted

The DEPARTURE RULE may be invoked in an appraisal assignment only when:

- the appraiser has determined that the scope of work in performing the appraisal assignment is not so limited that the results of the assignment are no longer credible;
- the appraiser has advised the client that the assignment calls for something less than, or different from, the work required by the specific requirements and that the report will clearly identify and explain the departure(s); and
- the client has agreed that performing the assignment as a limited appraisal would be appropriate, given the intended use.

USPAP Reference: DEPARTURE RULE
4. Jurisdictional Exception

None of the requirements in the agencies’ appraisal regulations and guidelines cause a need to apply the JURISDICTIONAL EXCEPTION RULE.

USPAP Reference: JURISDICTIONAL EXCEPTION RULE

5. Supplemental Standards

The agencies’ appraisal regulations and guidelines contain requirements that supplement USPAP. These supplemental standards, which affect an appraiser’s obligations in several areas, include:

a) Appraiser Independence: The agencies’ appraisal regulations require that an appraiser have no direct or indirect interest, financial or otherwise, in the property or the transaction.

b) Departure: The agencies’ appraisal regulations require that appraisals include sufficient information and analysis to support the institution’s decision to engage in the transaction.

c) Analysis: The agencies’ guidelines require an appraisal to include the current market value of the property in its actual physical condition and subject to the zoning in effect as of the date of the appraisal (a current date of value).

d) Reporting: The agencies’ appraisal regulations require that appraisals be written.

An appraiser accepting an assignment to be performed under the agencies’ appraisal regulations and guidelines is obligated to complete that assignment in a manner that complies with the above and any other supplemental standards included in the agencies’ appraisal regulations and guidelines.

USPAP Reference: SUPPLEMENTAL STANDARDS RULE

Specific Concerns Involving Noncompliance, Inconsistencies, and Omissions in Assignments Completed for Use by a Federally Insured Depository Institution in a Federally Related Transaction Are as Follows:

Bankers and examiners report that some appraisers are not following USPAP and the agencies’ appraisal regulations and guidelines. Each area of noncompliance, inconsistency, or omission is noted in bold and underlined text, followed by the ASB’s response in italicized text as to the appraiser’s obligations to ensure compliance with USPAP. Where necessary, reference is also provided to the agencies’ appraisal regulations and guidelines following the subheading of SUPPLEMENTAL STANDARDS RULE.

B. APPRAISER INDEPENDENCE ISSUES:

1. Failing to follow existing appraisal standards to disclose present or prospective relationships with borrowers

Accepting an assignment involving parties or property in which the appraiser has a current or prospective interest that causes bias violates the ETHICS RULE.

Failure to disclose in the appraiser’s certification any present or prospective relationships with a party involved with the assignment or the subject of the assignment violates Standards Rule 2-3.

SUPPLEMENTAL STANDARDS RULE: The agencies’ appraisal regulations do not permit an appraiser to accept an assignment involving a property or transaction in which the appraiser has a direct or indirect interest, financial or otherwise. If an appraiser who has such an interest violates the agencies’ appraisal regulations by accepting such an assignment, he or she violates the SUPPLEMENTAL STANDARDS RULE.
2. Altering the title page, transmittal letter, or the identity of the intended user of an appraisal report to mislead the reader to believe the report was originally prepared for the lender and not the borrower.

Alteration of a report in a manner that conceals the original client or intended users in the assignment is misleading and violates the Conduct section of the ETHICS RULE. For example, an appraiser performs an appraisal and delivers the report to his client. The appraiser's client then asks the appraiser to readdress this appraisal to a specific federally insured depository institution. The client knows that the appraiser is on that institution's approved appraiser list. The appraiser knows, when the original assignment is offered, that the client intends to request a loan from that institution after the original appraisal is completed. Accommodating the client's request to readdress the appraisal report in this example violates the ETHICS RULE. Indeed, even if the appraiser did not know the client's original intent, altering such a report in a manner to conceal the original client or intended users violates the ETHICS RULE.

USPAP Reference: ETHICS RULE
USPAP Guidance: AO-10 The Appraiser-Client Relationship

C. DEPARTURE ISSUES—MISUSING THE DEPARTURE RULE:

1. Insufficiently supporting an opinion of value that results in a conclusion that is not credible (by inappropriate use of the DEPARTURE RULE)

Using departure as the basis for not completing a part of the appraisal process stated as a specific requirement in USPAP is not permitted unless the appraiser has satisfied all three conditions for such use set forth in the DEPARTURE RULE. The first condition is that the appraiser has determined that the scope of work in performing the appraisal assignment is not so limited that the results of the assignment are no longer credible. The appraiser has the burden to support his or her scope-of-work decision (SR 1-2(f)), including the appropriateness of any departures. Failure to develop credible opinions and conclusions in an assignment wherein departure is invoked violates the DEPARTURE RULE and Standards Rule 1-2(f).

USPAP References: DEPARTURE RULE
Standards Rule 1-2(f)

2. Failing to clearly identify and explain the reasons for the departure

Failure to state and explain permitted departures from specific requirements in STANDARD 1 violates the applicable reporting rules (SR 2-2(a) or (b)(xi)) as well as the DEPARTURE RULE. For example, if a Cost Approach is applicable, but not necessary, in a particular assignment, and if the client and appraiser agree on departure by excluding this approach, the appraiser must state in the report that he or she is invoking departure and then identify and explain the departure and the specific requirement involved — in this case, SR 1-4(b).

USPAP References: DEPARTURE RULE
Standards Rule 1-4(b)
Standards Rules 2-2(a) and (b)(xi)
3. **Omitting an approach to value that typical practice and peers would require**

Omitting an approach to value that would be completed as typical practice by an appraiser's peers in the same or a similar assignment, without adequate and reasonable support for such omission, violates Standards Rule 1-2(f). For example, using other approaches while failing to develop an indication of value by a direct sales comparison approach [SR 1-4(a)] when there are sufficient sales for analysis and the market response to the property is most credibly indicated by direct sales analysis violates SR 1-2(f).

Failure to state and explain the reason for excluding any of the usual valuation approaches violates the applicable reporting rules [SR 2-2(a) or (b)(xi)].

**USPAP References:**
- DEPARTURE RULE
- Standards Rule 1-2(e)
- Standards Rules 1-4(a)
- Standards Rule 1-2(f)
- Standards Rules 2-2(a) and (b)(xi)

4. **Failing to obtain written concurrence from the client that there is agreement with the use of departure**

Use of the DEPARTURE RULE requires agreement by the client after the appraiser has informed the client that the assignment calls for something less than, or different from, the work required by the specific requirements and that the report will clearly identify and explain the departures. Failure to obtain the concurrence of a thus informed client violates the DEPARTURE RULE.

As a prudent professional practice, to ensure a common understanding of the scope of work to be completed in an assignment, appraisers could obtain written confirmation of the client's concurrence in the scope of work. This is particularly critical when departure is invoked as it documents the expectation and obligation of both parties and precludes either party being misled as to the scope of work. Such confirmation can be part of an engagement letter or other similar documentation.

**USPAP References:**
- DEPARTURE RULE

D. **USING HYPOTHETICAL CONDITIONS:**

1. **Failing to disclose known facts concerning the physical, legal, or economic characteristics of the property being appraised when using a hypothetical condition**

When a property is appraised for market value as of a current date based on a hypothetical condition, an appraiser must ensure:

- That use of a hypothetical condition [SR 1-2(h)], such as when the subject property involves proposed improvements as of a current date [SR 1-4(h)], is appropriate and produces credible assignment results.
- The appraisal report states the property use as of the date of value and the use reflected in the appraisal under the hypothetical condition [SR 2-2(a) or (b)(xi)]. For example, the subject property that exists as of the date of value, which is a current date, is raw land but is appraised under a hypothetical condition as an improved property. The property use information included in response to Standards Rule 2-2(a) or (b)(xi) must include the property characteristics relevant to both the existing and proposed uses.

When the client requests a prospective value for the property under an extraordinary assumption [SR 1-2(g)] that the proposed improvement project or rehabilitation is completed as of a future date, an appraiser must ensure compliance with SR 1-4(h) and
review Statement on Appraisal Standards No. 4 (SMT-4), “Prospective Value Opinions.”
Additional guidance is contained in Advisory Opinion AO-17, “Appraisal of Real Property with Proposed Improvements.”

USPAP References:
- Standards Rules 1-2(g) and (h)
- Standards Rule 1-4(b)
- Standards Rules 2-2(a) and (b)(x)
- Statement on Appraisal Standards No. 4 (SMT-4), Prospective Value Opinions

USPAP Guidance:
- Advisory Opinion AO-17, Appraisal of Real Property with Proposed Improvements

2. **Failing to indicate the “as is” value of the property as of the date of the report and how the “as is” value differs from the value conclusion under a hypothetical condition**

When a property is appraised for market value as of a current date based on a hypothetical condition, an appraiser must ensure that the appraisal report contains appropriate disclosure of the hypothetical condition, including an indication of its impact on value (SR 2-1(c) and SR 2-2(a) or (b)(vii)).

**SUPPLEMENTAL STANDARDS RULE:** The agencies’ appraisal regulations require sufficient information and analysis to support the regulated institution’s decision to engage in the transaction. The agencies’ guidelines state that for federally related transactions, “an appraisal is to include the current market value of the property in its actual physical condition and subject to the zoning in effect as of the date of the appraisal” (current date of value). If, by failing to provide this opinion, when possible, an appraiser violates the agencies’ appraisal regulation and guidelines, the appraiser violates the SUPPLEMENTAL STANDARDS RULE.

If it is not possible to provide an opinion as to the current market value of the property in its actual physical condition and subject to the zoning in effect as of the date of the appraisal, the appraiser must clearly explain the circumstances and reasons why such an opinion could not be developed and reported.

USPAP References:
- ETHICS RULE
- COMPETENCY RULE
- Standards Rule 2-1(c)
- Standards Rules 2-2(a) and (b)(viii)
- SUPPLEMENTAL STANDARDS RULE

**E. ANALYSIS ISSUES:**

1. **Failing to adequately address real estate market risk (trends)**

An appraiser must be certain that the gathering of factual information is conducted in a manner that is sufficiently diligent, given the scope of work as identified according to Standards Rule 1-2(f), to ensure that the data that would have a material or significant effect on the resulting opinions or conclusions are identified and, where necessary, analyzed [SR 1-1(b), Comment].

An appraiser must have sound reasons in support of the scope-of-work decision and be prepared to support the decision to exclude any information or procedure that would appear relevant to the client, an intended user, or the appraiser’s peers in the same or a similar assignment. Failing to include in the scope of work sufficient market trend research and analyses to develop credible results violates Standards Rules 1-1(a) and (b) and Standards Rule 1-2(f).
SUPPLEMENTAL STANDARDS RULE: The agencies' appraisal regulations require sufficient information and analysis to support the regulated institution's decision to engage in the transaction. Market area trend analysis information is essential to the intended user's understanding of market risk and how market trend was addressed in developing the value opinion in a market value appraisal.

Analysis of market area trend information is a necessary part of the scope of work to comply with the requirements stated in Standards Rules 1-3(a), 1-4(c)(iv), and 1-4(h)(iii). While departure is permitted from each of these specific requirements, an appraiser must ensure that the scope of work is not so limited that the results of the assignment are no longer credible. An appraiser has the burden of proof to support his or her scope-of-work decision (SR 1-2(f)), including the appropriateness of any departures in view of the agencies' appraisal regulations that require sufficient information and analysis to support the regulated institution's decision to engage in the transaction that prompted the need for the appraisal.

Standards Rule 1-3(a) includes the requirement to identify and analyze, among other things, economic demand and market area trends. The Comment to Standards Rule 1-3(a) states, "An appraiser must avoid making an unsupported assumption or premise about market area trends, ..." If an appraiser violates the agencies' appraisal regulations by failure to conduct sufficient research and analysis of market area trend data or by failure to include the result of such analysis in the appraisal report, the appraiser thus violates the SUPPLEMENTAL STANDARDS RULE.

Standards Rule 1-4(c)(iv) states, "When an income approach is applicable, an appraiser must: ... base projections of future rent and expenses on reasonably clear and appropriate evidence." The Comment to Standards Rule 1-4(c)(iv) states, "An appraiser must, in developing income and expense statements and cash flow projections, weigh historical information and trends, current demand and supply factors affecting such trends, and anticipated events such as competition from developments under construction." If an appraiser violates the agencies' appraisal regulations by failure to complete sufficient research and analysis of market area trends affecting rental and expense levels and relationships in an appraisal of income-producing commercial real estate in which an income approach was completed, or by failure to include the result of such analysis in the appraisal report, the appraiser thus violates the SUPPLEMENTAL STANDARDS RULE.

Standards Rule 1-4(h)(iii) states, "When appraising proposed improvements, an appraiser must examine and have available for future examination: ... reasonably clear and appropriate evidence supporting development costs, anticipated earnings, occupancy projections, and the anticipated competition at the time of completion." Market area trend information and analysis is essential to understand and evaluate the credibility of such information. If, an appraiser violates the agencies' appraisal regulations by failure to conduct sufficient research and analysis of market trends affecting these elements in an appraisal involving a property appraised with proposed improvements, or by failure to include the result of such analysis in the appraisal report, the appraiser thus violates the SUPPLEMENTAL STANDARDS RULE.

USPAP References:

- Standards Rule 1-1(b)
- Standards Rule 1-2(f)
- Standards Rules 1-3(a) and (b)
- Standards Rules 1-4(c)(iv) and (h)(iii)
- Standards Rule 2-2(a) or (b)(ix)
- SUPPLEMENTAL STANDARDS RULE
2. Using comparable sales transactions that are not arm’s length

The definition of market value applicable in an assignment establishes the conditions for an arm’s length sale transaction under that definition. Using sales that are not arm’s length in an appraisal for the purpose of market value is not acceptable appraisal practice when an adequate number of relevant arm’s length sales are available for analysis. If market conditions result in the necessity to use sales that are not arm’s length in an appraisal, the sale analysis must identify and apply appropriate adjustments to result in a value indication consistent with the terms and conditions of sale set forth in the market value definition applicable in the assignment.

USPAP References Standards Rule 1-1(b)
Standards Rule 1-4(a)

3. Reporting the sum of retail values of units for a tract development project (5 units or more in a single development) as representing the market value of the whole property

The subject property in an appraisal of a subdivision or a tract development is the project itself (e.g., land with entitlements to develop improved properties, such as lots or finished lots with structures), not the individual units of finished product.

The sum of “retail values” for the lots or homes produced in tracts is not the market value of the project in an appraisal developed for use in project development financing. It is inappropriate to value a subdivision or tract development project by adding together the values for the individual units of finished product. It is misleading to report the sum of the values for individual units of production as the market value of the subdivision or tract development project.

If the market value for individual units of production (e.g., proposed residences) is requested by the client, such as for use in take-out loan commitments, those values opinions must be developed in the context of that intended use. The individual values must not be summed and characterized in an appraisal report as the market value of the project.

USPAP References Standards Rule 1-1(a)
Standards Rules 1-2(b) and (c)
Standards Rule 1-4(e)
Standards Rule 2-2(a) or (b)(iii)

USPAP Guidelines Advisory Opinion AO-23, Identifying the Relevant Characteristics of the Subject Property of a Real Property Appraisal Assignment

4. Using non-market-based time constraints when applying deductions and discounts in the valuation of proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units. For example, some appraisers do not apply deductions and discounts if they believe the tract will sell within a year.

The use of non-market-based time constraints when analyzing a property produces a result that is not market value. In the event a client requests use of non-market based factors, or no discounting for a defined time period, the result is more in character with an investment value or some other value under its specified marketing, loan liquidation or collection criteria, or accounting applications. When the purpose of an assignment includes client-specified marketing, sale, or acquisition conditions that are distinct from typical market conditions, it is misleading to label the result a market value opinion.
5. Providing an undiscounted value conclusion to an institution when the institution is financing the development of and not the end purchase of the individual unit(s); and failing to report appropriate deductions and discounts for a tract development appraisal.

When the intended use of assignment results is for tract development project financing and a market value opinion is developed by use of a discounted cash flow analysis (DCF), the DCF analyses must include appropriate market-based deductions and discounts to reflect market value (present worth).

When the subject of the appraisal is a proposed project and an analysis method is a DCF, or other methods that involve discounting, the time frame over which discounting occurs must be consistent with the project’s overall production and completed unit absorption period. The factors applied should be market-derived and must reflect the market’s anticipated response to the difference between the date of value and receipt of the cash flows, project risk, and market trends, not only the time-value of money.

USPAP References:
- Standards Rules 1-2(b) and (e)
- Standard Rule 1-3(a)
- Standards Rules 1-4(e), (f), and (h)
- Statement on Appraisal Standards No. 2 (SMT-2)
- Discounted Cash Flow Analysis

USPAP Guidelines
- Advisory Opinion AO-23, Identifying the Relevant Characteristics of the Subject Property of a Real Property Appraisal Assignment.

6. Failing to analyze a current agreement of sale, option, or listing of the property being appraised; and failing to identify and analyze all prior sales of the subject property (within required time frames), which may facilitate “land flip” deals.

Given the intended use of the assignment results by a federally insured depository institution, an appraiser must take all reasonable steps to gather and verify relevant information concerning the subject properties’ current market activity and marketing history.

An appraiser can demonstrate due diligence efforts, in compliance with Standards Rule 1-1(b), to obtain relevant information regarding a current agreement of sale, option, or listing of the property being appraised [SR 1-5(a)] by documenting in the appraisal report the appraiser’s direct inquiry to the federally insured depository institution, or its agent, that requested the appraisal service. Failure to make such due diligence effort, or failure to state adequate supporting reasons in response to Standards Rule 2-2(a) or (b)(6) why such information is not relevant, violates Standards Rule 1-1(b).

The time frames cited in Standards Rule 1-5(b) are minimums. If market activity concerning the subject property from prior periods is known and relevant, it should also be analyzed and addressed. The requirement is for an analysis of any sale that occurred in the minimum time frame, not just the most recent sale. For example, if a property sold twice within the minimum time frame, both sales must be analyzed. The summary of the sales’ analyses reported in compliance with Standards Rule 2-2(a) or (b)(6) must include data sufficient to identify each relevant prior sale of the subject, including (when available) sale date, amount, type and terms of financing if any, and names of the seller.
and buyer. If relevant and necessary to a proper understanding of the sale, the conditions of sale and the property condition at sale must also be reported.

USPAP References: Standards Rule 1-1(b)

1. Changing the market value opinion in the appraisal report without adequately supporting their opinion, thus producing a conclusion that is not credible

An appraiser functioning as reviewer may state his or her own opinion of value as part of the appraisal review assignment results, but that opinion must be developed in compliance with the requirements in STANDARD 1 applicable in the assignment that generated the work under review. When appropriate, the reviewer can use extraordinary assumptions regarding the elements of the work under review that the reviewer accepts as credible to support the reviewer’s value opinion. Elements of the work under review that the reviewer does not deem credible must be replaced by the reviewer’s own scope of work in developing his or her value opinion. The overall scope of work used to support the reviewer’s value opinion cannot be less than the scope of work applicable to the work under review.

USPAP References Standards Rule 3-1(c)–(g)

2. Failing to meet minimum USPAP reporting requirements for an institution that requires USPAP Standard 3 reviews

An appraiser functioning as reviewer has the obligation to include information in the appraisal review report as required in Standards Rule 3-2(a)–(f).

G. CONCLUSIONS:

- General USPAP Compliance Questions

Appraisers are bound to comply with USPAP in performing assignments where the intended user of the assignment results is a federally insured depository institution and the intended use is in a federally related transaction. Competency to perform an assignment includes the ability to complete the assignment in compliance with USPAP and any supplemental standards that the appraiser agrees are applicable in the assignment at the time the assignment is accepted by the appraiser.

An appraiser accepting an assignment to be performed under the agencies’ appraisal regulations and guidelines is obligated to complete that assignment in a manner that complies with USPAP and the supplemental standards included in the agencies’ appraisal regulations and guidelines.

Accepting an assignment that the appraiser knowingly cannot complete in compliance with USPAP and the agencies’ appraisal regulations and guidelines that the appraiser agreed to in accepting the assignment violates the ETHICS RULE.
Failure to complete the assignment competently, in accordance with the applicable USPAP requirements and supplemental standards the appraiser agreed to in accepting the assignment, violates the COMPETENCY RULE.

- Appraiser Independence Issues

The agencies' appraisal regulations, which supplement USPAP, do not permit an appraiser to accept an assignment involving a property or transaction in which the appraiser has a direct or indirect interest, financial or otherwise. If an appraiser who has such an interest violates the agencies' appraisal regulations by accepting such an assignment, he or she violates the SUPPLEMENTAL STANDARDS RULE.

Alteration a report in a manner that conceals the original client or intended users in the assignment is misleading and violates the Conduct section of the ETHICS RULE.

- Departure Issues—Misusing the DEPARTURE RULE

Failure to develop credible opinions and conclusions in an assignment wherein departure is invoked violates the DEPARTURE RULE and Standards Rule 1-2(f).

Failure to state and explain permitted departures from specific requirements in STANDARD 1 violates the applicable reporting rules (SR 2-2(a) or (b)(xii)) as well as the DEPARTURE RULE.

Failure to state and explain the reason for excluding any of the usual valuation approaches violates the applicable reporting rules (SR 2-2(a) or (b)(xii)).

Use of the DEPARTURE RULE requires agreement by the client after the appraiser has informed the client that the assignment calls for something less than, or different from, the work required by the specific requirements and that the report will clearly identify and explain the departures. Failure to obtain the concurrence of a thus informed client violates the DEPARTURE RULE.

- Using Hypothetical Conditions

The agencies' appraisal regulations require sufficient information and analysis to support the regulated institution's decision to engage in the transaction. The agencies' guidelines state that for federally related transactions, an appraisal is to include the current market value of the property in its actual physical condition and subject to the zoning in effect as of the date of the appraisal.

When such an appraisal with a current date of value is based on a hypothetical condition, the information in the appraisal report must include the appraiser's opinion of the current market value of the property in its actual physical condition and subject to the zoning in effect as of the date of the appraisal (current date of value). If, by failing to provide this opinion when possible, an appraiser violates the agencies' appraisal regulation and guidelines, the appraiser violates the SUPPLEMENTAL STANDARDS RULE. If it is not possible to provide an opinion as to the current market value of the property in its actual physical condition and subject to the zoning in effect as of the date of the appraisal, the appraiser must clearly explain the circumstances and reasons why such an opinion could not be developed and reported.
Analysis Issues

Failing to include in the scope of work sufficient market trend research and analyses to develop credible results violates Standards Rules 1-1(a) and (b) and Standards Rule 1-2(f).

If an appraiser violates the agencies' appraisal regulations by failure to conduct sufficient research and analysis of market area trend data or failure to include the result of such analysis in the appraisal report, an appraiser thus violates the SUPPLEMENTAL STANDARDS RULE.

If an appraiser violates the agencies' appraisal regulations by failure to complete sufficient research and analysis of market area trends affecting rental and expense levels and relationships in an appraisal of income-producing commercial real estate in which an income approach was completed, or failure to include the result of such analysis in the appraisal report, the appraiser thus violates the SUPPLEMENTAL STANDARDS RULE.

Using sales that are not arm's length in an appraisal for the purpose of determining market value is not acceptable appraisal practice when an adequate number of relevant arm's length sales are available for analysis. If market conditions result in the necessity to use sales that are not arm's length in an appraisal, the sale analysis must identify and apply appropriate adjustments to result in a value indication consistent with the terms and conditions of sale set forth in the market value definition applicable in the assignment.

It is inappropriate to value a subdivision or tract development project by adding together the values for the individual units of finished production. It is misleading to report the sum of the values for individual units of production as the market value of the subdivision or tract development project.

The use of non-market-based time constraints when analyzing a property produces a result that is not market value. When the purpose of an assignment includes client-specified marketing, sale, or acquisition conditions that are distinct from typical market conditions, it is misleading to label the result a market value opinion.

When the intended use of assignment results is for tract development project financing and a market value opinion is developed by use of a discounted cash flow analysis (DCF), the DCF analyses must include appropriate market-based deductions and discounts to reflect market value (present worth).

When the subject of the appraisal is a proposed project and an analysis method is a DCF, or other methods that involve discounting, the time frame over which discounting occurs must be consistent with the project's overall production and completed unit absorption period. The factors applied should be market-derived and must reflect the market's anticipated response to the difference between the date of value and receipt of the cash flows, project risk, and market trends, not only the time-value of money.

An appraiser must take all reasonable steps to gather and verify relevant information concerning the subject properties' current market activity and marketing history. The time frames cited in Standards Rule 1-5(b) are minimums. If market activity concerning the subject property from prior periods is known and relevant, it should also be analyzed and addressed. The requirement is for an analysis of any sale that occurred in the minimum time frame, not just the most recent sale. The summary of the sales' analyses reported in compliance with Standards Rule 2-2(a) or (b)(10) must include data sufficient to identify each relevant prior sale of the subject, including (when available) sale date, amount, type and terms of financing if any, and the seller and buyer. If relevant and necessary to a proper understanding of the sale, the conditions of sale and the property condition at sale must also be reported.
• Appraisal Review Issues

An appraiser functioning as reviewer may state his or her own opinion of value as part of the appraisal review assignment results, but that opinion must be developed in compliance with the requirements in STANDARD 1 applicable in the assignment that generated the work under review.

An appraiser functioning as reviewer has the obligation to include information in the appraisal review report as required in Standards Rule 3-2(a)-(f).

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