



THE APPRAISAL FOUNDATION
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Standards and Appraiser Qualifications*

APPRAISAL STANDARDS BOARD

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SUMMARY OF ACTIONS RELATED TO PROPOSED CHANGES
April 3, 2009

Background

On April 3, 2009, the Appraisal Standards Board (ASB) approved and adopted modifications to the *Uniform Standards of Professional Appraisal Practice* (USPAP). This action was the culmination of a 15-month joint ASB/AQB campaign that asked appraisers, users of appraisal services, regulators, educators, and others how well USPAP and USPAP education were serving their needs. This was accomplished with a series of public documents and public meetings. Written comments were received from almost 2,000 individuals, and oral comments were provided at public meetings. The ASB considered every comment, developed a work plan to address the issues brought forward, and received public comment on a proposed work plan. The work plan included changes for the 2010-11 edition of USPAP, as well as additional changes (such as those involving the issue of reporting) for the 2012-13 edition of USPAP.

2010-2011 Changes

The changes to USPAP that were adopted by the ASB were the result of three exposure drafts, issued on October 3, 2008, December 10, 2008, and February 10, 2009. These changes will be incorporated in the 2010-11 edition of USPAP and associated guidance material with an effective date of January 1, 2010. The Exposure Drafts proposed changes to the following areas of USPAP:

- Definition of “Signature”
- Definition of “Jurisdictional Exception”
- Definition of “Assignment”
- The ETHICS RULE
- The COMPETENCY RULE
- The JURISDICTIONAL EXCEPTION RULE
- STANDARD 3, *Appraisal Review, Development and Reporting*

The Board received written comments from interested parties on all three exposure drafts and heard oral comments at public meetings held on November 18, 2008, February 23, 2009, and April 3, 2009.

The goal of the *Uniform Standards of Professional Appraisal Practice* is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. All potential changes and additions to USPAP are evaluated in light of this goal. The adopted changes are intended to improve the clarity, understanding and enforcement of USPAP, thereby furthering the goal of promoting and maintaining public trust in appraisal practice.

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. The ASB is guided by the quality, relevancy, and accuracy of the points made, and not their frequency.

The actions taken by the Board, and rationale for those decisions, are discussed below. With the exception of minor administrative edits, the Board adopted the proposed revisions to USPAP as contained in the Third Exposure Draft.

Definition of "Assignment"

Action:

The Board adopted the revisions proposed in the Third Exposure Draft. The definition of *Assignment* was changed from "a valuation service provided as a consequence of an agreement between an appraiser and a client" to "1) an agreement between an appraiser and a client to provide a valuation service; 2) the valuation service that is provided as a consequence of such an agreement."

Rationale:

The prior definition clearly stated that an assignment was the service provided. However, there are several instances in USPAP where assignment is used to refer to the agreement itself. As a result, the Board addressed this inconsistency by revising the definition rather than rewording the document wherever assignment is used to refer to the agreement.

Definition of "Signature"

Action:

The Board adopted the revision proposed in the Third Exposure Draft. The Comment was removed from the definition of *Signature*.

Rationale:

The Comment was deleted from the definition and new language was added to the ETHICS RULE to address when appraisers affix or authorize the use of their signature. This change appropriately relocates requirements for proper management of an appraiser's signature from the definition to a Rule.

Definition of "Jurisdictional Exception"

Action:

As was proposed in the Third Exposure Draft, the Board adopted a revision to the definition of the term *Jurisdictional Exception* from "an assignment condition that voids the force of a part or parts of USPAP, when compliance with part or parts of USPAP is contrary to law or public policy applicable to the assignment," to "an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP."

Rationale:

The Board changed both the definition of *Jurisdictional Exception* and the JURISDICTIONAL EXCEPTION RULE. In both, the language that described parts of USPAP that are *contrary to law* was changed to law that *precludes* compliance. This change is intended to clarify that jurisdictional exceptions are created when compliance with USPAP is precluded by law or regulation.

The ETHICS RULE

Action:

The ETHICS RULE was largely rewritten. The proposed changes from the Third Exposure Draft were adopted, making revisions to portions of the entire Rule: the introductory section, Conduct section, Management section, Confidentiality section, and Record Keeping section.

Rationale:

The primary impetus behind the revisions to the ETHICS RULE is to increase clarity and enforceability, and to promote and preserve public trust. Rationale for the changes to each section of the ETHICS RULE follows.

ETHICS RULE, Introductory Section

The introduction was reorganized and reworded to be more direct. Language formerly in the Rule was moved to the Comment and edited for clarity.

USPAP is applicable to individuals; as stated in the PREAMBLE, it establishes “*requirements for appraisers.*” Therefore, portions of the Comment that were not enforceable since they relate to the ethical responsibilities of groups and organizations were deleted.

However, a portion of the Comment from the Management section related to an appraiser’s obligations when employed by a group or organization has been moved to the introductory section. These general statements about appraiser compliance with USPAP are more appropriate in this section.

Conduct Section

The Conduct section of the ETHICS RULE was reorganized to emphasize prohibitions.

A specific admonition against performing assignments with bias was added. This has always been implicit in the other admonishments; however, specifically adding it enhances clarity.

The admonitions against “misleading or fraudulent” acts were separated. The Board believed it was necessary to distinguish between a misleading act and a fraudulent one. Further, the Board added the term “knowingly” to differentiate between ethical violations and errors of performance.

The ASB further clarified appropriate conduct; and reordered the Conduct section by modifying and expanding the disclosure requirements to the following:

Prior to accepting an assignment, and if discovered at any time during the assignment, an appraiser must disclose to the client and in the report certification:

- any services regarding the subject property performed by the appraiser within the prior three years, as an appraiser or in any other capacity.

This disclosure requirement will allow a prospective client to know, at the time of the assignment, whether the appraiser is performing, or has performed other services with regard to the property, such as property management, leasing, brokerage, auction, or investment advisory services, , thus allowing the client to determine potential conflicts, if any.

Whether for potential or perceived conflicts of interest, disclosure prior to accepting an assignment is important to preserving public trust. The client should have an opportunity to evaluate this information *before* the appraiser is engaged. The appraiser must avoid bias – a preference or inclination that may preclude his or her impartiality, independence, or objectivity in the assignment. The perception of possible bias is also potentially damaging to public trust in the appraisal profession. Therefore, appraisers have an obligation to disclose an interest and potential conflict to the client prior to being engaged in an assignment.

Management Section

The ASB clarified that payment “*by the appraiser*” of undisclosed fees, commissions or things of value in connection with the procurement of an assignment is unethical. This revision, in the Rule and in the Comment, clarifies that the payment is made *by* the appraiser, rather than *to* the appraiser; a fact which has been a source of some confusion in the marketplace.

The Board edited the structure of the admonishments regarding advertising and payment of undisclosed fees so that they match the structure of the admonishment against contingent compensation and are more forceful.

As indicated previously, the Board adopted changes to the definition of “*signature*.” In addition, requirements regarding the appropriate use of an appraiser’s signature were made to the Management section of the ETHICS RULE.

The Comment to the definition of “*signature*” was deleted. New language was added to the ETHICS RULE to address when appraisers affix or authorize the use of their signature. This change appropriately relocated requirements for proper management of an appraiser’s signature from the definition to a Rule.

Confidentiality Section

The Confidentiality section of the ETHICS RULE focuses on the appraiser-client relationship and the use of confidential information and assignment results. Edits to the format of this section were made to make clear who may have access to certain information. In addition, information regarding the Graham-Leach-Bliley Act of 1999 currently in the Rule was moved to a footnote. The information describes legislative background, and does not impose requirements on appraisers; therefore, it is more appropriate in a footnote than in the text of the Rule.

Record Keeping Section

The Record Keeping section of the ETHICS RULE sets forth when an appraiser must have a workfile for an assignment, what must be in the workfile, and workfile retention and access obligations. The ASB edited the format of this section for clarity.

The existing language in this section stating “*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,” led to some confusion. As a result, the Board is added the following new language, “An appraiser having custody of a workfile must allow other appraisers with workfile obligations related to the assignment appropriate access and retrieval.”

The Board also deleted an appraiser’s obligation to allow the client access to the workfile for a Restricted Use Appraisal Report. The requirement that all appraisal reports contain sufficient information to enable the intended users of the appraisal to understand the report properly made this ETHICS RULE statement unnecessary.

Conforming edits to SR 2-2(c)(viii), SR 8-2(c)(viii) and SR 10-2(b)(ix) were also made.

The COMPETENCY RULE

Action:

The COMPETENCY RULE was essentially rewritten by the Board. The changes proposed in the Third Exposure Draft were adopted.

Rationale:

Overview of Changes

The prior COMPETENCY RULE was a brief, general statement, followed by 33 lines of Comment. The Comment addressed a number of different topics, including a rationale for the requirements of the Rule, examples of areas where competency is important, recognition of the diversity in appraiser experience and background, how an appraiser may obtain competency, and a discussion of geographic competency and its importance.

The following changes to the format of the Rule were made to improve its clarity:

- Dividing the Rule into three sections to distinguish an appraiser’s competency obligations in an assignment.
- Including a description of the characteristics of competency.
- Clearly stating the alternative actions an appraiser can take when he or she is not competent to perform the assignment.

Specific Changes to the COMPETENCY RULE

The first section of the Rule more clearly sets forth the requirements for competency. A portion of the prior Comment addressing an appraiser’s familiarity with laws and regulations has been included here as an element of competency. The Comment in the new Rule maintains the list of areas where an appraiser’s competency should be considered, and clarifies that competency applies at the time the appraiser provides the service.

The second section of the COMPETENCY RULE lists the three requirements for an appraiser who has determined that he or she is *not competent, but wishes to accept the assignment*. The requirements are followed by the portion of the prior Comment (with edits) which addresses how competency can be attained in this situation. No change was made in these requirements, although edits were made to improve clarity.

The third section of the COMPETENCY RULE addresses the three existing requirements for an appraiser who has determined *during the course of an assignment* that he or she is not competent. This material

was part of the prior Rule, but was presented as a Comment. In the new Rule, these requirements are presented as a separate section. In order to improve understandability, the new text specifies the steps an appraiser should take in this situation. The prior Rule simply referred appraisers to the prior section of the Rule. The improved clarity of the requirements offsets the repetitive presentation.

The fourth and final part of the COMPETENCY RULE states an appraiser's obligation to withdraw from the assignment if he or she is unable to comply with the requirements of the COMPETENCY RULE. This point was clearly implied by the prior Rule, and has been presented in current USPAP education courses, but an explicit statement was considered necessary based on comments received by the ASB.

Other revisions and edits were made throughout to improve clarity.

The JURISDICTIONAL EXCEPTION RULE

Action:

The Board adopted the revisions proposed in the Third Exposure Draft.

Rationale:

Work done in prior years related to the SUPPLEMENTAL STANDARDS RULE led the ASB to review the structure and content of the JURISDICTIONAL EXCEPTION RULE. The Board concluded that the structure of the Rule was not consistent with other Rules in USPAP and the requirements could be clearer. This decision was reinforced by responses to the *Invitation to Comment* calling for revisions to USPAP for greater clarity and enhanced enforcement.

The Rule, as it previously existed, served two purposes: first, in the event that a law or regulation of any jurisdiction was contrary to any portion of USPAP, USPAP ceded its authority to that law; second, only the portion of USPAP that contradicted an existing law would be rendered void and the appraiser would still be required to comply with the remainder of USPAP.

The JURISDICTIONAL EXCEPTION RULE has been misunderstood and misapplied by some appraisers and users of appraisal services. Appraisers often believed that the Rule was applicable when, in fact, it was not; and clients and intended users believed that their regulations and guidelines were jurisdictional exceptions when, in fact, they were not.

As stated previously, the Board changed the definition of "*Jurisdictional Exception*" and the JURISDICTIONAL EXCEPTION RULE. In both, the language that describes parts of USPAP that are *contrary* to law was changed to law that *precludes* an appraiser from complying with USPAP. Conceptually, this is not intended to change the meaning, but to clarify that jurisdictional exceptions are created when compliance with USPAP is precluded by law or regulation.

In the past, the Board had received questions relating to whether state and local laws took precedence over parts of USPAP when compliance with USPAP is required by federal law or regulation. This concern has been addressed by the addition of the Comment distinguishing the applicability of the Rule in assignments where compliance with USPAP is required by federal law or regulation, from its applicability in those assignments where USPAP compliance arises from other requirements, or by choice.

The descriptions of "law" and "regulation" in this Rule were also edited to conform to the description of those terms currently in the SCOPE OF WORK RULE.

The term “*public policy*” was deleted from the Comment because “*public policy*” is not consistently interpreted and does not always have a comparable level of precedent, rigor, and legal acceptance differentiating it from laws and regulations that preclude compliance with USPAP. Allowing USPAP compliance when portions of USPAP cannot be applied is the intent of the JURISDICTIONAL EXCEPTION RULE.

The ASB clarified the Rule by reorganizing the text and specifically identifying the four requirements imposed on an appraiser in assignments involving a jurisdictional exception:

1. identify the law or regulation that precludes compliance with USPAP;
2. comply with that law or regulation;
3. clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation; and
4. cite in the report the law or regulation requiring this exception to USPAP compliance.

The first and second statements are to identify and comply with the appropriate law or regulation creating the jurisdictional exception. Previously this was addressed with a negative statement, rather than the newly adopted positive statement of the appraiser’s responsibility to follow laws and regulations.

The third and fourth statements deal with the appraiser’s disclosure obligations. The prior version of the JURISDICTIONAL EXCEPTION RULE stated that failure to make these disclosures was misleading, rather than affirmatively stating that such disclosures are required. Furthermore, this was addressed in the Comment rather than the main body of the Rule.

STANDARD 3, *Appraisal Review, Development and Reporting*

Action:

The revisions to STANDARD 3 proposed in the Third Exposure Draft were adopted. The Standard has been rewritten significantly.

Rationale:

The Board had made updates and changes to STANDARD 3 in the past; however, a thorough review of the requirements and organization of STANDARD 3 had not been performed by the ASB in many years. In addition, the ASB received numerous written and oral comments regarding aspects of STANDARD 3 that warranted serious consideration. For these reasons, the ASB examined all the requirements that apply to appraisal review development and reporting. The goals of this examination were to:

- Revise the Standard for consistency with the requirements of the other Standards;
- Update the requirements for compatibility with current practices; and
- Review the organization and text to improve clarity.

The ASB’s intent was to update and clarify the requirements for appraisal review, not to introduce changes to current appraisal review practice or create new appraisal review requirements. The changes made in STANDARD 3 are extensive; as such, this Rationale will provide an overview of the changes followed by a more detailed discussion of each changed section.

Overview of Changes

An examination of the requirements for appraisal review revealed that although the Standard addresses the requirements for both development and reporting, the requirements are often not distinct or fully elaborated. Therefore, revisions were made to expand and distinguish the development and reporting requirements.

A review of the other Standards revealed that they all include a basic format of general requirements followed by specific requirements. For example, Standards Rule 1-1 provides for the basic requirements of appraisal development, followed by the requirements of problem identification in Standards Rule 1-2. The remaining Standards Rules present more specific requirements. However, STANDARD 3 did not follow this format, which complicated understanding, application, education, and enforcement. Therefore, revisions were made to create a more logical and comprehensive structure.

The requirements of Standards Rules 3-1(d) through (g) present the requirements related to the process of appraisal review. The considerations previously required (completeness, adequacy, relevance, appropriateness, and reasonableness) failed to reflect the true nature of current practice and were somewhat repetitive. The reviewer's scope of work can include much less than, or much more than, these considerations. Further, there was no distinction of the difference between reviewing an analysis (development) and reviewing a report. The revisions made are intended to better guide a review process that is in practice quite broad and flexible.

A common area of misunderstanding in STANDARD 3 related to the requirements that apply to reviewers who are providing their own opinion(s) related to the subject of an appraisal, an appraisal review, or an appraisal consulting problem addressed in the work under review. In the review of an appraisal assignment, the reviewer can provide an opinion of value for the property that is the subject of the appraisal review assignment. In the review of an appraisal review assignment, the reviewer can provide an opinion of quality for the work that is the subject of the appraisal review assignment. In the review of an appraisal consulting assignment, the reviewer can provide an analysis, recommendation, or opinion for the consulting problem that is the subject of the appraisal consulting assignment. Revisions were made to organize and clarify the requirements that apply to a reviewer providing their own opinion of value, review opinion, or consulting conclusion related to the work that is the subject of the appraisal review assignment.

Revisions and edits were also made throughout to improve clarity.

Specific Changes to STANDARD 3

The STANDARD was divided into two sections: one addressing development, and one addressing reporting. The revised language mirrors the form and content of the other STANDARDS.

The Comment sections in the STANDARD have been revised to incorporate Comment language found in other STANDARDS.

Some language was relocated to more appropriate locations.

Standards Rule 3-1

The text from the previous SR 3-1 was relocated to SR 3-2 (see comments below).

The revised SR 3-1 was created to incorporate the basic requirements for competency and diligence common to the other development Standards (SR 1-1, 4-1, 6-1, 7-1, and 9-1). The Comment to SR 3-1(a) was expanded to specifically address the issue of competency in appraisal review.

Standards Rule 3-2

The text from the current SR 3-2 was relocated to SR 3-3 (see comments below).

The revised Standards Rule 3-2 addresses the identification of the assignment elements necessary to properly identify the appraisal review problem to be solved and determine the appropriate scope of work. For an appraisal review assignment, the assignment elements are the client and other intended users, intended use, purpose, the work under review and its relevant characteristics, effective date of the review, and assignment conditions. This is similar to the organization and content of Standards (SR 1-2, 4-2, 6-2, 7-2, and 9-2). There is an individual identification requirement and Comment for each assignment element.

Standards Rule 3-2(c) was extensively revised to more clearly address that reviewers can provide their own opinion(s) when reviewing work product related to (1) appraisal, (2) appraisal review, or (3) appraisal consulting. The current requirements focus almost exclusively on a reviewer's opinions of value in the review of an appraisal, but a reviewer can also provide review and consulting opinions in the review of an appraisal review or an appraisal consulting assignment. In the review of an appraisal review assignment, the reviewer can provide an opinion of quality for the work that is the subject of the appraisal review assignment. In the review of an appraisal consulting assignment, the reviewer can provide an analysis, recommendation, or opinion for the consulting problem that is the subject of the appraisal consulting assignment.

Standards Rule 3-2(d) presents the requirement to identify the work under review and its relevant characteristics.

The prior Standard did not address the use of a hypothetical condition in an appraisal review assignment. While there may be few instances where a hypothetical condition is used in an appraisal review, requirements similar to those found in the other Standards were incorporated in the revised Standard Rule 3-2(g) to maintain consistency.

Standards Rule 3-3

The text from the prior SR 3-3 was relocated to SR 3-6 (see comments below).

The revised Standards Rule 3-3 addresses the requirements that apply to development of an appraisal review. In current appraisal practice, there are many reasons for performing an appraisal review and as a result the nature of the review process can vary widely. The Standards Rule reflects this fact with broad requirements. This is similar to the requirements that apply to appraisal consulting assignments. The current requirements to develop an opinion of completeness, adequacy, relevance, and reasonableness of the analysis in the work under review are retained as an aspect of the review process in the Comment.

Standards Rule 3-3 includes a clear recognition that the review process can address the adequacy of an analysis or the adequacy of a report of an analysis. The distinction recognizes that USPAP presents development and communication as separate processes. Further, in current practice, appraisal review assignments may include a review of the data and analysis provided in support of assignment results and/or a review of a report for conformity with applicable reporting requirements.

Standards Rule 3-3(c) is a response to many comments and questions regarding the development requirements that apply to a reviewer providing their own opinion of value, review opinion, or consulting conclusion related to the work that is the subject of the appraisal review assignment. The requirements have been organized and clarified in a single location.

The text makes clear that STANDARD 3 applies to the review of an appraisal review. In this type of assignment, the review appraiser offers an opinion on the quality of the appraisal review. Similar to a

reviewer providing their own opinion of value, the scope of work can also include the reviewer providing his or her own review opinion on the work that was the subject of the review.

Previously, there were Comments in SR 3-1(e) and SR 3-1(g) that applied to the review of a mass appraisal. These requirements: 1) were more properly characterized as best practice; 2) represented an inappropriate imposition of scope of work requirements; and 3) were inconsistent with the content of USPAP. For these reasons, the mass appraisal review comments in SR 3-1 (e) and SR 3-1 (g) were removed.

Standards Rule 3-4

The text from the prior SR 3-4 was relocated to SR 3-7 (see comments below).

The revised Standards Rule 3-4 addresses the general requirements that apply to reporting of an appraisal review assignment. The text was created to incorporate the basic requirements for clear and accurate communication common to the other development Standards (SR 2-1, 5-1, 6-8, 8-1, and 10-1).

Standards Rule 3-5

The revised Standards Rule 3-5 presents the reporting requirements for an appraisal review assignment. The prior reporting requirements were somewhat abbreviated and unclear. The revised language presents a more complete identification of the minimum report content, similar to the reporting requirements in other Standards.

Standards Rule 3-5(i) is a response to many comments and questions regarding the reporting requirements that apply to a reviewer providing their own opinion of value, review opinion, or appraisal consulting conclusion related to the work that is the subject of the appraisal review assignment. The requirements have been organized and clarified in a single location.

Standards Rule 3-6

Standards Rule 3-6 presents the certification requirements for an Appraisal Review Report. The certification requirements were revised for consistency with the other Standards.

Standards Rule 3-7

Standards Rule 3-7 presents the requirements for an oral Appraisal Review Report. No changes were made to the requirements applicable to an oral Appraisal Review Report.