

# USPAP Q&A

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*This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. The ASB USPAP Q&A is issued to inform appraisers, regulators, and users of appraisal services of the ASB responses to questions raised by regulators and individuals; to illustrate the applicability of the Uniform Standards of Professional Appraisal Practice (USPAP) in specific situations; and to offer advice from the ASB for the resolution of appraisal issues and problems.*

The Q&A's shown below appear in our 2006 *Frequently Asked Questions* publication. They have been reprinted here because they are questions which continue to be asked on a regular basis. Additional questions may be reprinted in future months. The 2006 *Frequently Asked Questions* publication is available for purchase from The Appraisal Foundation at a cost of \$20.00 for a hard copy or \$14.95 for an electronic PDF file.

## 1. CONFLICTS OF INTEREST

**Question:** The principals of a local mortgage company propose to acquire an appraisal firm and have the appraisal firm complete assignments for the mortgage company. Is this a conflict of interest for the appraisers completing assignments for the mortgage company?

**Response:** An appraiser should review the ETHICS RULE and Standards Rule 2-3 when completing appraisal assignments in situations where the appraisal company that engages (by employment or contract) the appraiser is owned by the client.

It is important to note that USPAP does not prohibit the acceptance of an assignment in this specific situation. In an appraisal assignment developed under STANDARD 1 and reported under STANDARD 2, an appraiser must specify the particulars in a situation where he or she has any present or prospective interest with respect to the parties involved in the property that is the subject of the report.

The engagement of an appraiser by an appraisal company that is owned by the client or by owners of the client does not, in and of itself, mean that the appraiser has an interest or bias with respect to the property or properties involved. If the appraiser has an interest but could provide the service in an ethical, unbiased manner then the appraiser could accept the assignment as long as the appraiser

was competent and properly disclosed the interest in accordance with Standards Rule 2-3.

If the appraiser's interest in the property or the parties involved in the assignment prevented the appraiser from providing an unbiased service, then the appraiser should not accept the assignment for it would be in violation of the ETHICS RULE and parts of the appraiser's certification in Standards Rule 2-3.

## 2. SAMPLE APPRAISALS AND THE ETHICS RULE

**Question:** I am a fee appraiser currently seeking to get on the approved list for a local mortgage company. In order to be considered for approval, this lender requires appraisers to provide sample appraisal reports performed within the past year. Is there a way that I can accomplish this without violating USPAP?

**Response:** In order to provide this information an appraiser must satisfy the Confidentiality section of the ETHICS RULE. This section states:

*An appraiser must protect the confidential nature of the appraiser-client relationship.*

*An appraiser must act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results.*

*An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.*

*An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law; and a duly authorized professional peer review committee except when such disclosure to a committee would violate applicable law or regulation.*

The Comment further explains that if all essential elements of confidential information are removed through redaction or the process of aggregation, client authorization is not required for the disclosure of the remaining information, as modified.

The appraiser in this case has three options:

1. Turn down the request to provide the information, or
2. Secure a release from the client of each sample appraisal report, or
3. Provide sample reports, but redact all information that should not be provided to anyone other than the client, such as confidential information or assignment results.

### 3. RESPONSIBILITY FOR WORKFILE RETENTION

**Questions:** a) **Jim, an independent contractor, works for my appraisal company on a regular basis. I have always kept all appraisal file documentation (including hard copies of appraisal reports, field notes, drawings, etc.) at my office. Now Jim wants to keep the files relating to his work in his own possession. Under USPAP, which appraiser should keep the workfile?**

b) **Is the Record Keeping section of the ETHICS RULE upheld if an institutionally employed appraiser ensures that his organization retains copies of his appraisal work for five years? Or, must the appraiser also maintain a personal file of all work performed?**

c) **A client's attorney requested that I supply all of my files/records regarding an assignment. Can I do this and still be in compliance with the record keeping requirements for USPAP? Also, what must I retain in my files as proof that the files are now the responsibility of the attorney? Will a simple letter from the client be sufficient?**

**Response:** According to USPAP, the **appraiser**, not the appraiser's employer or client, is ultimately responsible for the retention of the workfile for the prescribed period. (See Record Keeping section of the ETHICS RULE.)

An appraiser who is employed by, or works in conjunction with, another party must make arrangements with that party to protect and preserve the workfile, and to allow the appraiser to make the workfile available to other parties (e.g., State Appraisal Boards and such representatives) when required by due process of law.

There are a number of ways an appraiser who works for or with another party can ensure that files are retained so that the appraiser can have access to the files to meet the requirements of the ETHICS RULE. For example, an appraiser and his employer or colleague may agree that the files will remain in the employer's or colleague's custody for the duration of the requisite retention period and that the appraiser will have access to those files, if needed.

USPAP does not dictate the form or format of workfile documentation. It is not necessary to include original documents in the file; photocopies and electronic files are acceptable as "true copies." Because there have been cases where employers and others have denied appraisers access to workfiles, an appraiser may wish to make and retain copies of workfiles. However, USPAP does not address any specific manner by which an employer or contractor and appraiser should handle record retention. This is a business matter, which should be arranged in the context of the employer- or contractor-appraiser relationship.

By the same token, providing the workfile to a duly authorized party, such as a client's attorney, is permitted by USPAP. However, this does not relieve the appraiser of the responsibility for that workfile. At no time may an appraiser abdicate his or her responsibility for a workfile. Therefore, when an appraiser relinquishes possession of a file to a client or the client's representative, the

appraiser should retain either a copy of the workfile or a written reference to an agreement with the client that the appraiser will have access to the workfile, if the need arises.

4. **APPRAISAL MANAGEMENT COMPANY AS AUTHORIZED AGENT FOR A CLIENT**

**Question:** I accept assignments from an Appraisal Management Company (AMC) that has informed me they are an authorized agent for the lenders they represent. The AMC does not want me to list their name as the client, and asks that I only list the name of the lender they are representing. USPAP says the appraiser's client is the party who engages the appraiser. Is it ethical to omit the AMC's name as the client on my reports?

**Response:** Yes. If the AMC is acting as a duly authorized agent for a lender, identifying only the lender's name as your client is acceptable.

5. **SUBSEQUENT USER REQUESTS A "RELIANCE LETTER"**

**Question:** I delivered an appraisal report to my client. A week later, an entity other than one of the identified intended users contacted me and asked that I provide a "reliance letter," enabling them to rely on the appraisal report for their own investment use. My client says they have no problem with my doing that. Can I provide this entity with such a letter, even though I had not originally identified them as an intended user?

**Response:** No. You cannot add what is in effect a new "intended user" after the completion of an assignment, no matter what terminology you use.

USPAP defines Intended User as:

*The client and any other party as identified, by name or type, as users of the appraisal, appraisal review, or appraisal consulting report by the appraiser on the basis of communication with the client **at the time of the assignment.** (Bold added for emphasis)*

The proper way to handle this is to initiate a new assignment with this entity as the client and provide them an appraisal, being careful to develop an appropriate scope of work consistent with their own intended use.

This new assignment could be based on virtually the same data and analysis, and the value conclusion might be the same. However, in the new assignment you must consider the assignment elements most appropriate to the scope of work for that client and the assignment, which could well be different from those of your prior client.

**6. PURCHASE CONTRACT IS NOT PROVIDED TO THE APPRAISER**

**Question:** I was recently engaged to conduct a market value appraisal of a one-to-four unit residential property. The intended use of this appraisal is to assist the client in analyzing the loan collateral associated with the property's purchase. I requested a copy of the purchase contract from the client, but they refused to provide it although they acknowledged that a contract for purchase of the property in fee simple exists. They did, however, provide a sale price orally. Can I continue this assignment, without the purchase contract, and comply with USPAP?

**Response:** Yes, you can complete the assignment in compliance with USPAP. However, you will need to ensure compliance with Standards Rule 1-5(a) in developing the appraisal, and with Standards Rule 2-2(a)(viii), (b)(viii), or (c)(viii), as applicable to the type of appraisal report determined most appropriate, given the intended users, in reporting the assignment results.

Standards Rule 1-5(a) states:

*When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:*

*(a) analyze all agreements of sale, options, or listings of the subject property current as of the effective date of the appraisal;*

The Comment to Standards Rule 1-5 states:

*See the Comments to Standards Rules 2-2(a)(viii), 2-2(b)(viii), and 2-2(c)(viii) for corresponding reporting requirements relating to the availability and relevance of information.*

For example, the corresponding reporting requirements in Standards Rule 2-2(a)(viii), in the Comment, are, in part:

*...If such information is unobtainable, a statement on the efforts undertaken by the appraiser to obtain the information is required.*

Complying with these Standards Rules ensures that the existence and unavailability of the purchase contract is appropriately disclosed, and intended users will not be misled as to how this situation was handled in the analysis and report.

**7. UPDATE OF AN APPRAISAL COMPLETED BY ANOTHER APPRAISER**

**Question:** I was recently asked to update an appraisal performed by another appraiser who works for a different appraisal company. Can I prepare an update if the original appraisal was performed by another appraiser?

**Response:** Yes. Advisory Opinion 3, *Update to a Prior Assignment*, provides advice on how such an assignment can be performed in conformance with USPAP.

**For further information regarding  
USPAP Q&A, please contact:**

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