



Office of Thrift Supervision

Department of the Treasury *Managing Director, Examinations, Supervision, and Consumer Protection*

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March 22, 2005

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

FROM:

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SUBJECT:

Frequently Asked Questions (FAQ) on the Agencies' Appraisal Regulations and Related Guidance

The Office of Thrift Supervision (OTS), Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and National Credit Union Administration (the agencies) are issuing the attached FAQ document in response to questions from federally regulated institutions on the agencies' real estate appraisal standards. The FAQ topics address existing standards and include selecting individuals to perform appraisals and evaluations, ordering appraisals, accepting transferred appraisals, appraisal reviews, and evaluation development.

Savings associations' board of directors and management should review the FAQ in conjunction with the OTS appraisal regulations¹, the Interagency Appraisal and Evaluation Guidelines² (October 1994), and the Interagency Statement on Independent Appraisal and Evaluation Functions (October 2003)³. Internal policies and procedures should ensure that, among other considerations, the savings association's appraisal and evaluation function is safeguarded from internal influence and interference from the loan production staff. Savings associations are also reminded that independence is compromised when an institution uses an appraiser who is recommended by the borrower or allows the borrower to select the appraiser.

For further information regarding the FAQ, contact Debbie Merkle, Project Manager, Credit Risk Policy at (202) 906-5688.

Attachment

¹ 12 CFR Part 564.

² TB55a, Interagency Appraisal and Evaluation Guidelines, dated October 27, 1994 (<http://www.ots.treas.gov/docs/8/84042.pdf>).

³ CEO Letter #184, Independent Appraisal and Evaluation Functions, dated October 27, 2003, (<http://www.ots.treas.gov/docs/2/25184.pdf>).

**Office of the Comptroller of the Currency
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of Thrift Supervision
National Credit Union Administration**

**Frequently Asked Questions on the Appraisal Regulations
and the Interagency Statement¹ on
Independent Appraisal and Evaluation Functions**

March 22, 2005

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration (the agencies) prepared this document in response to questions from federally regulated institutions (regulated institutions) on existing standards for selecting appraisers, ordering appraisals, accepting transferred appraisals, and other related topics. It should be reviewed in conjunction with the agencies' appraisal regulations, the "Interagency Appraisal and Evaluation Guidelines" (interagency guidelines), dated October 27, 1994, and the joint statement "Independent Appraisal and Evaluation Functions" (independence statement), dated October 28, 2003.

SELECTING AN APPRAISER AND ORDERING AN APPRAISAL

1. *Do the interagency guidelines and independence statement apply for ordering and reviewing appraisals if the collateral property is residential (mortgage or home equity) rather than commercial?*

Answer: The agencies' guidance applies to both commercial and residential transactions. While the guidance does not differentiate between commercial and residential transactions, a regulated institution's appraisal policy and practices may differ for certain transactions. The regulated institution needs to consider the type of transaction when ordering appraisals, selecting appraisers, and reviewing appraisals. The transaction type should influence the type of appraisal that the regulated institution orders and whether the appraisal is eligible for a compliance review or should receive a comprehensive, analytical review prior to the credit decision. Moreover, for all lending activity, a regulated institution should ensure that independence is maintained when selecting appraisers, ordering appraisals, and reviewing appraisals.

2. *A regulated institution plans to make a construction loan to a tract developer to build 10 homes. Is it permissible for the developer to order appraisals on the properties and use them to support the construction loan request? Could the developer select an appraiser from*

¹ See OCC: AL 2003-9; FRB: SR letter 03-18; FDIC: FIL-84-2003; OTS: CEO letter 184; and NCUA: LTCU 03-CU-17.

the lender's approved appraiser list and in turn submit the appraiser's name to potential permanent lenders?

Answer: No, the regulated institution may not accept a borrower-ordered appraisal and may not allow the borrower to select an appraiser from its approved appraiser list.

- 3. Who should be considered the loan production staff for purposes of achieving appraiser independence? Could loan production staff select an appraiser?*

Answer: The loan production staff consists of those responsible for generating loan volume or approving loans, as well as their subordinates. This would include any employee whose compensation is based on loan volume. Employees responsible for the credit administration function or credit risk management are not considered loan production staff.

Loan production staff should not select appraisers. However, in a small or rural institution or branch, the only individual qualified to analyze the real estate collateral may also be a loan officer, other officer, or director of the institution. To ensure their independence, such lending officials, officers, and directors should abstain from any vote or approval involving loans for which they engaged the appraiser, reviewed the appraisal, or performed an evaluation.

- 4. What information should the regulated institution provide to the appraiser upon engagement?*

Answer: The regulated institution should provide the property's address, its description, and any other relevant information. The regulated institution may also provide a copy of the sales contract for purchase transactions. However, the information provided by the regulated institution should not unduly influence the appraiser or in any way suggest the property's value. The regulated institution and the appraiser should agree on the scope of the appraisal in advance, consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) and the agencies' appraisal regulations and interagency guidelines.

- 5. When selecting residential appraisers, may loan production staff use a revolving pre-approved appraiser list, provided the list is not under their control?*

Answer: Yes, loan production staff may use a revolving, board-approved list to select a residential appraiser, provided the development and maintenance of the list is not under their control. Staff responsible for the development and maintenance of the list should be independent of the loan production process. In developing the list, a regulated institution should consider the knowledge and expertise of the selected appraiser for a given assignment. For example, the list should indicate the qualifications of the appraiser to perform appraisals in particular markets and on various types of residential property transactions. If the next available name on the list is not selected, the departure should be properly documented in the credit file. The administrative procedures should include a process for qualifying an appraiser for initial placement on the list as well as for periodic monitoring of the appraiser's performance to assess whether to retain an appraiser on the list. Further, there should be periodic internal review of the appraiser selection process to ensure that appropriate procedures are being followed and that controls exist to ensure independence.

6. *Must the individual appraiser, rather than the appraisal firm, sign and accept the terms of an engagement letter for it to be considered valid?*

Answer: The agencies have no specific requirements with respect to who signs and accepts the engagement letter. The appraiser, however, must sign the certification page of the appraisal report.

7. *Are appraisers required to disclose whether they have been engaged to appraise a given property in the past or is this information confidential?*

Answer: The agencies' appraisal regulations do not require that the regulated institution obtain information from appraisers as to whether they have previously appraised a given property. However, the regulations do require when engaging a fee appraiser that the regulated institution ensures that the appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction. The regulated institution should ask relevant questions of an appraiser to ensure that the appraiser is independent of the transaction and capable of rendering an unbiased opinion.

8. *When ordering appraisals, can a staff appraiser or an appraisal company affiliated with the regulated institution be considered independent since the regulated institution compensates them?*

Answer: Yes, if a staff appraiser prepares an appraisal, that appraiser must be independent of the lending, investment, and collections functions and not involved in the approval of the transaction. When fee appraisers from an affiliated appraisal company prepare appraisals, similar independence standards apply.

ACCEPTING A TRANSFERRED APPRAISAL

9. *Can a regulated institution accept an appraisal from a prospective borrower and determine its acceptability based on a review?*

Answer: No, a regulated institution cannot accept a borrower-ordered appraisal.

10. *Can an appraisal be transferred from one lender to another and, if so, under what circumstances?*

Answer: A regulated institution may accept an appraisal transferred from another regulated institution or from a financial services institution (that is, a non-regulated institution), provided 1) the appraiser is engaged directly by the institution transferring the appraisal, 2) the appraiser has no direct or indirect interest in the property or transaction, 3) the existing appraisal or evaluation remains valid, and 4) the regulated institution determines that the appraisal conforms to the agencies' appraisal requirements and interagency guidelines and is otherwise appropriate. (A financial services institution describes entities that provide services in connection with real estate lending transactions on an ongoing basis.)

Regulated institutions are expected to perform a more thorough review when accepting an appraisal from another financial services institution to confirm that the appraisal complies with the regulation and has sufficient information to support the lending decision. Moreover, the regulated institution accepting the appraisal should determine whether appropriate documentation is available to confirm that the financial services institution (not the borrower) ordered the appraisal.

11. Can a regulated institution accept an appraisal prepared by an appraiser who was engaged by a loan broker?

Answer: The agencies' appraisal regulations allow a regulated institution to accept an appraisal prepared by an appraiser engaged by another financial services institution, including a loan broker. This is allowed as long as the regulated institution has appropriate controls in place to ensure that the appraiser is acting on behalf of the financial services institution, the appraisal conforms to the requirements of the regulation and is otherwise acceptable, and the appraiser is independent from the borrower. Regulated institutions should review broker-ordered appraisals thoroughly to ensure that the appraisal complies with the regulation and meets the quality standards required by the institution's appraisal policies.

12. May an appraisal be readdressed to a regulated institution from the borrower or another institution?

Answer: A regulated institution cannot accept an appraisal that has been readdressed or altered by the appraiser with the intent to conceal that the original client was the borrower. Readdressing appraisals to conceal the original client, whether the client is a borrower or another financial services institution, is misleading and violates the agencies' regulations and USPAP.

13. May an appraisal be routed from one lender to a regulated institution via the borrower?

Answer: A regulated institution cannot accept an appraisal from the borrower unless the regulated institution can confirm that the appraisal was in fact ordered by another regulated institution or financial services institution. In accepting the appraisal, the regulated institution must also confirm that the appraiser is independent of the transaction and that the appraisal conforms to the agencies' appraisal regulations and is otherwise acceptable.

14. Can a borrower pay the appraiser directly for an appraisal that is ordered by the lender?

Answer: Since the regulated institution has engaged the appraiser for its services, the regulated institution should be the party to remit payment to the appraiser. The regulated institution may seek reimbursement from the borrower for the cost of the appraisal. However, the borrower may not recommend an appraiser to the institution or select the appraiser.

15. *Can an appraiser deliver an appraisal report to more than one lender assuming the appraisal has been ordered by one of the lenders?*

Answer: The agencies' appraisal regulations do not address whether an appraiser can deliver an appraisal report to more than one lender. The case may depend upon the provisions of the engagement letter. For example, the lender may specify in the engagement letter that the appraisal may be provided to another financial institution if the lender decides not to go forward on the loan. In the case of a syndicated loan, a lead lender is usually responsible for engaging the appraiser and providing copies of the appraisal to the other participating financial institutions. With regard to standards of confidentiality, USPAP directs an appraiser to be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

16. *Can the regulated institution accept an appraisal prepared by an appraiser who is a family member of the loan broker who engaged him/her?*

Answer: The agencies' appraisal regulations do not address family relationships between the appraiser and the person who engages the appraiser. However, the agencies' appraisal regulations do not permit a regulated institution to accept an appraisal in which the appraiser has a direct or indirect interest, financial or otherwise, in the property or the transaction. Therefore, the regulated institution should review appraisals where a potential conflict of independence may exist and should accept the appraisal only if it can determine that the appraiser is independent of the transaction.

17. *Can the regulated institution accept an appraisal prepared by an appraiser who is engaged by a financial services institution with whom the appraiser has an affiliated business relationship?*

Answer: The business relationship between the financial services institution and the appraiser may not necessarily violate the independence requirement of the agencies' appraisal regulations. However, the agencies' appraisal regulations do not permit a regulated institution to accept an appraisal in which the appraiser has a direct or indirect interest, financial or otherwise, in the property or the transaction. The regulated institution should evaluate the financial services institution's controls to ensure independence and that there is appropriate separation of responsibilities and reporting lines between the appraiser and the financial services institution's lending function.

18. *How can a regulated institution ensure appraiser independence when accepting an appraisal prepared for a financial services institution?*

Answer: Documentation (that is, an engagement letter) should be available to indicate that the financial services institution (not the borrower) ordered the appraisal and that the appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction. The original lender's engagement letter to the appraiser should be made part of the appraisal report to provide additional information on the identity of the client in order to ensure independence in the appraisal process.

REVIEWING APPRAISALS

19. *Should all appraisals undergo a compliance review?*

Answer: Yes, prior to a final credit decision, regulated institutions should perform a compliance review on all appraisals to confirm that they comply with the minimum appraisal standards as outlined in the agencies' appraisal regulations, the interagency guidelines, and the independence statement. Loan administration files should document this compliance review, which may be in checklist or narrative format. In addition, certain appraisals should be reviewed more comprehensively to assess the technical quality of the appraiser's analysis prior to making a final credit decision. The regulated institution should establish guidelines for a more detailed, technical review based on transaction risk, transaction size, or other criteria. (See "Program Compliance" in the interagency guidelines.)

20. *Can a regulated institution approve a loan subject to receipt and review of an appraisal, or must the appraisal be obtained and reviewed prior to making the final decision?*

Answer: A regulated institution may grant conditional approvals to prospective borrowers before obtaining an appraisal. However, a final credit decision or action should only occur after the regulated institution receives, reviews, and accepts the appraisal.

21. *What qualifications would constitute a "qualified and adequately trained individual" for the purpose of conducting appraisal reviews?*

Answer: Individuals who review appraisals as part of a regulated institution's internal compliance function should be independent of the transaction and possess the requisite education, expertise, and competence to perform the review commensurate with the complexity of the transaction.

EVALUATION AND OTHER APPRAISAL TOPICS

22. *Can an otherwise qualified individual prepare an evaluation of a property securing a loan that will be approved by his/her direct supervisor? Can one officer perform an evaluation for another if they are both members of a loan committee, provided the evaluating officer abstains from voting? Could the lending officer or branch manager in a small, regulated institution perform the evaluation if he/she abstains from the final loan approval?*

Answer: To maintain independence, the individual preparing an evaluation should not directly report to someone involved in loan production. In a small, regulated institution where absolute lines of independence cannot be achieved, one officer may perform an evaluation for another as long as the evaluating officer abstains from the lending decision.

23. *Do the interagency guidelines apply only to loans in excess of \$250,000? Is the \$250,000 threshold the loan amount or the property value?*

Answer: The interagency guidelines apply to all real-estate-related financial transactions regardless of size or whether loans are for a regulated institution's own portfolio, held for sale, or held in asset-backed conduits. However, the agencies' appraisal regulations allow regulated institutions to use an appropriate evaluation of the real estate in lieu of an appraisal for transactions with a value of \$250,000 or less, business loans \$1 million or less, or subsequent transactions (transactions involving an existing extension of credit at the lending institution). The regulations define transaction value as the amount of the loan or extension of credit, not the value of the property. The interagency guidelines contain minimum standards for evaluation content and address the qualifications of individuals performing evaluations.

[Note: NCUA's business loan evaluation threshold is \$250,000 or less. (12 CFR Part 722.3(b)(2)]

24. *Should a regulated institution comply with the independence requirements if an appraisal is not required by the agencies' appraisal regulations?*

Answer: A regulated institution should ensure independence in the ordering process for an appraisal even if the appraisal was not required under the agencies' appraisal regulations. Regulated institutions should also maintain independence for evaluations.

25. *Does a tax-assessment value from the local taxing authority constitute an evaluation? Can a loan officer who approves and/or recommends a loan conduct an evaluation if the market value that the officer develops in the evaluation does not exceed the tax-assessment value?*

Answer: A value from the taxing authority alone is insufficient to be considered an evaluation. An evaluation report should include calculations, supporting assumptions, and, if utilized, a discussion of comparable sales. If tax assessment information is used as part of an evaluation, the regulated institution should document the facts and analysis used to demonstrate that there is a valid correlation between the assessed values of the taxing authority and the property's market value. In addition, an evaluation should describe the real estate collateral, its condition, and its current and projected use.

A regulated institution should ensure that an individual who performs an evaluation is independent of the loan production function. Simply restricting the size of a transaction to less than the tax-assessed value alone does not comply with the agencies' appraisal regulations or the interagency guidelines, which address standards of independence. (See "Independence of the Appraisal and Evaluation Function" in the interagency guidelines.)

26. *The work-out plan on a \$5 million problem loan calls for a regulated institution to receive an assignment of a \$2 million note from the borrower's relative secured by a deed of trust on a different property. Is this financial transaction considered real-estate-related and is an appraisal required on the collateral property?*

Answer: Yes, this is considered a real-estate-related financial transaction. The agencies' appraisal regulations and interagency guidelines allow for an evaluation in lieu of an appraisal on new real estate collateral in certain loan workout situations depending on loan quality, collateral quality, and validity of an existing appraisal or evaluation. (See "Renewals, Refinancings and Other Subsequent Transactions" in the interagency guidelines.)

27. *What is the useful life of an appraisal?*

Answer: The useful life of an appraisal varies with market conditions and property type. The agencies allow a regulated institution to use an existing appraisal to support a subsequent transaction if the institution documents that the existing value estimate remains valid. Factors which could impact the value include the passage of time; the volatility of the local market; the availability of financing; the inventory of competing properties; improvements to, or lack of maintenance of, the subject property or competing surrounding properties; changes in zoning; or environmental contamination. (See "Valid Appraisals and Evaluations" in the interagency guidelines.)

28. *Can a regulated institution advance new funds without a new appraisal if the value of the total loan continues to be supported by an existing appraisal and is consistent with supervisory LTV limits? Does the age of the appraisal matter if the physical condition of the property and the market conditions have not changed?*

Answer: A regulated institution may use an existing appraisal or evaluation to support a subsequent transaction, as long as the credit file documents the facts and analysis that support the institution's conclusion that the appraisal or evaluation remains valid. Criteria for determining whether an existing appraisal or evaluation remains valid will vary depending upon the condition of the property and the marketplace and the nature of any subsequent transaction.