



USPAP Q&A

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The Appraisal Standards Board (ASB) of The Appraisal Foundation develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. The USPAP Q&A is a form of guidance issued by the ASB to respond to questions raised by appraisers, enforcement officials, users of appraisal services and the public to illustrate the applicability of USPAP in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems. The USPAP Q&A may not represent the only possible solution to the issues discussed nor may the advice provided be applied equally to seemingly similar situations. USPAP Q&A does not establish new standards or interpret existing standards. USPAP Q&A is not part of USPAP and is approved by the ASB without public exposure and comment.

QUESTIONS REGARDING 2010-11 REVISIONS TO THE ETHICS RULE

The Appraisal Standards Board recently adopted changes to the Conduct section of the ETHICS RULE that will become effective January 1, 2010 for the 2010-11 edition of USPAP. The specific language that has been adopted, and which has initiated questions and concerns is:

If known prior to accepting an assignment, and/or if discovered at any time during the assignment, an appraiser must disclose to the client, and in the subsequent report certification:

- ***any current or prospective interest in the subject property or parties involved; and***
- ***any services regarding the subject property performed by the appraiser within the three year period immediately preceding acceptance of the assignment, as an appraiser or in any other capacity.***

Comment: Disclosing the fact that the appraiser has previously appraised the property is permitted except in the case when an appraiser has agreed with the client to keep the mere occurrence of a prior assignment confidential. If an appraiser has agreed with a client not to disclose that

he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three year period.

The goal of maintaining public trust makes it important that the client have knowledge regarding an appraiser's prior services associated with the subject property in advance of engaging that appraiser.

The ASB has compiled the following list of questions and answers:

Question 1:

I heard about the changes to the Conduct section of the ETHICS RULE and I am concerned. Is it true that I will not be able to reappraise a property for three years after a prior appraisal?

Response 1:

No. The revised ETHICS RULE that goes into effect on January 1, 2010, will require appraisers to disclose any services regarding the subject property provided as an appraiser or in any other capacity during the three years prior to the new assignment. It does not include any prohibition against reappraising a property.

Question 2:

I occasionally receive requests to appraise a property that I have appraised in the past. With the changes to the ETHICS RULE, I will be required to disclose any assignments that I performed within the three years prior to the date of acceptance of the assignment. Is such a disclosure not a violation of an appraiser's responsibility under the Confidentiality section of the ETHICS RULE?

Response 2:

Generally, no. The Confidentiality section of the ETHICS RULE prohibits, with some exceptions, the disclosure of "confidential information or assignment results prepared for a client." The mere fact that an appraiser appraised a property is not confidential information as defined in USPAP. However, the appraiser must be careful not to disclose confidential information from a previous assignment in the new assignment.

Question 3:

I am concerned that when I tell a prospective client that I have previously provided a service related to a property, it will lead to questions that I cannot answer without violating the Confidentiality section of the ETHICS RULE. I am sure the new client will want to know when I appraised it, and what my value conclusion had been. How can I address these questions and comply with USPAP?

Response 3:

It is likely that many potential clients will ask such questions. However, without authorization from the original client, the appraiser cannot disclose the results of the previous appraisal or any other confidential information. One way to address this problem would be to explain that as an appraiser, you are subject to confidentiality requirements and cannot disclose that information. You could go on to explain that the confidentiality requirements are in place to protect clients, including the one who is engaging you for the new assignment.

Those parties who regularly order appraisals will become accustomed to the new disclosure requirements, and will likely stop asking after a relatively short time.

Question 4:

Some of my best clients require me to keep all information regarding any assignments that I perform for them confidential. The Comment states in part, "If an appraiser has agreed with a client not to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three year period." Will this prevent me from appraising a property for a different client during that three year period?

Response 4:

Perhaps, but USPAP does not require that the disclosure provide any specific details. For example, the disclosure, both prior to accepting the assignment and in the report's certification, could include a statement similar to one of the following:

- I have provided a previous service regarding the subject property within the three years prior to this assignment; or
- I have previously appraised this property in the three years prior to this assignment.

If an appraiser cannot make such a statement without violating an agreement with a previous client, then the appraiser must not accept the new assignment. Appraisers should review their client agreements to specifically determine what information they have agreed to keep confidential.

Question 5:

Most of my assignments are completed using common residential appraisal report forms. I am concerned that my clients will not allow changes to the certification on the report forms. The Conduct section of the ETHICS RULE requires that I disclose prior services regarding the subject property in the certification. Does this mean that I will not be allowed to appraise a property for these clients if I had performed a service regarding that property in the previous three years?

Response 5:

USPAP compliance is the appraiser's responsibility and adding this information to the certification will be a requirement beginning January 1, 2010. While deletion or modification of client-imposed certifications are generally not allowed, most clients will likely allow additional certifications that do not constitute material alterations to the appraisal report. It is not uncommon for appraisers to add supplemental certifications and this may be necessary in some cases until commonly-used appraisal forms are revised to reflect the changes to USPAP.

Question 6:

The Conduct section of the ETHICS RULE requires that I disclose prior services regarding the subject property provided within the three years prior to acceptance of an assignment. I am appraising a residential property on which I acted as the general contractor when it was built four years ago. Since this service was more than three years ago, am I correct in not disclosing that to a new client?

Response 6:

USPAP establishes a minimum standard of three years, and that is what you are required to disclose. However, the overriding goal of USPAP is to promote and maintain public trust in appraisal practice. Therefore, when an appraiser believes that having provided a previous service that occurred prior to the three years may be relevant to the client, it would be important that the appraiser disclose the information.

Question 7:

If the firm that employs me as an appraiser has provided leasing or property management services in the past three years for the subject property, must this be disclosed?

Response 7:

Not necessarily. The ETHICS RULE requires disclosure of services "provided by the appraiser." However, if an appraiser believes that the provision of a service by the appraiser's firm or other related entity may be relevant, he or she *should* disclose that information to a potential client.

Question 8:

If I will be conducting an auction of the subject property after the appraisal, does this have to be disclosed?

Response 8:

Yes. This is an example of a "current or prospective interest in the subject property." USPAP currently requires that such an interest be disclosed in the certification, but not necessarily prior to accepting the assignment. Under the 2010 requirements, the appraiser must also disclose this prior to acceptance of an assignment or upon discovery during the assignment.

Question 9:

May the disclosure that must be made at the time of acceptance be oral? May it be made in an email to the client?

Response 9:

USPAP does not specify how the disclosure upon acceptance or discovery must be made. It may be appropriate in some cases to provide an initial oral disclosure. If the client decides to proceed, it may be appropriate that the appraiser's disclosure be restated in writing. One way to accomplish this is by including it in a letter of engagement. In other cases an email would be appropriate.

The Record Keeping section of the ETHICS RULE requires that the appraiser's workfile include "all data, information, and documentation necessary to...show compliance with this Rule..." So, the disclosure prior to acceptance or upon discovery must be documented in the appraiser's workfile.

The USPAP Q&A is posted each month on The Appraisal Foundation website (www.appraisalfoundation.org). The ASB compiles the monthly USPAP Q&A into the USPAP Frequently Asked Questions (USPAP FAQ) for publication with each edition of USPAP. In addition to incorporating the most recent questions and responses issued by the ASB, the USPAP FAQ is reviewed and updated to ensure that it represents the most recent guidance from the ASB. The USPAP Frequently Asked Questions can be purchased (along with USPAP and USPAP Advisory Opinions) by visiting the "Foundation Store" page on The Appraisal Foundation website (<https://commerce.appraisalfoundation.org>).

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