

APPRAISAL TODAY

Risk Management for Real Estate Appraisers and Appraisal Firms - Book Review - Buy This Book!!

Book written by Peter T. Christensen, Esq. with contributing author Claudia L. Gaglione, Esq.

I have been publishing an annual E&O update every year since 1992, when I started this newsletter. I include a list of who is offering E&O plus many tips on managing risk. However, the articles are not very long and I can only include a limited amount of information.

This book includes almost anything that an appraiser would want or need, including very practical tips on many types of appraisals, such as residential, commercial, litigation, expert witness, appraising after a natural disaster, etc. Plus business tips, such as independent contractors and non-compete agreements. Examples of limiting conditions, proposals and engagement letters, plus lots of tips, are included.

The attorney authors speak with appraisers regularly and understand what we are worried about, and what we want to know, and how to reduce our risks.

How this book differs from other information sources on appraisal risk management

The authors are attorneys Peter Christensen and Claudia Gaglione. Bios are included at the end of this article.

I have read many articles on this topic and heard attorneys speak. What makes this book Very Special is that the authors work for an appraiser E&O company with over 15,000 clients and are involved with the issues. They know why appraisers get sued, who sues them and, more important, how to reduce your risks.

It also includes current hot topics of AMCs and employees, hybrid appraisals, etc. Plus, lots of practical business advice such as independent contractors.

I don't know of any other books on appraiser risk management.

Writing style

It is very well done for a book written by attorneys, who tend to include too much complicated "legalese" and complicated case studies.

Per the Introduction: "The purpose of this book is to provide practical guidance to real estate appraisers about how to manage liability risk associated with their professional work and the operation of appraisal firms. This book is not an academic treatise or a guide for lawyers defending (or bringing) claims against appraisers. Rather, the goal of this book is to provide appraisers and their firms with realistic, effective suggestions for how to manage their risk. I also hope to keep the content interesting by discussing real-world claim situations. To that end, the first case we'll discuss relates to the appraisal of a luxury resort hotel property. Someone left an appraisal report behind in an empty room at the

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subject hotel. In Chapter 2, we'll find out what happened when a housekeeper found the report." *Editor's note: Quite a story!*

Book layout

The 230-page book is very well organized. Chapters are relatively short. There are "call outs" or boxes with important information. At the end of some of the chapters are short "takeaways".

Summary of book contents (excerpt from book Introduction)

Part I of this book, Key Tools for Managing the Risk of Appraisal-Related Claims, introduces the essential concepts for managing risk related to appraisal work. The guidance provided in this part of the book applies to all types of appraisal assignments. Chapters 1 through 10 lay out the fundamental building blocks of risk management for appraisers. The book discusses what appraisers get sued for, what the elements of those claims are, and the appraiser's best tools for reducing liability risk.

Part II, Managing the Risk of Specific Assignments and Situations, focuses on unique issues relating to specific types of work and particular scenarios. Once you understand the fundamentals laid out in Part I, you can skip ahead to individual chapters in Part II to read about the specific kinds of assignments that you perform or special situations you encounter. However, keep in mind that it's crucial to first understand the building blocks covered in Part I before focusing on the specifics covered in Part II.

Part III, Additional Liability Considerations for Appraisal Firms, addresses several special risks relating to the operation of appraisal firms that have arisen in recent years. These problems have caught many appraisal firms and their owners by surprise. The discussion in this section addresses such matters as the extent of the protections offered by forming an appraisal firm as a limited liability type of business, the propriety of treating "staff" appraisers as independent contractors, and the use of non-compete clauses in employment agreements between firms and employee appraisers.

How to use the book

Editor's note: Chapter 2 in section 1 includes key legal details and definitions and is relatively short. The authors recommend reading Section 1 first, but I kept falling asleep. (I somehow passed the required business law classes for my MBA.) Also, the first case study was a bit tricky, but very interesting when the housekeeper found the appraisal left behind in the hotel room. However, the remainder of the book is very easy to understand.

If you have the same problem that I did, look at the Table of Contents and pick a topic. After reading a few chapters I returned to Chapter 2 to better understand how law works and the terminology used.

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About the authors

Editor's note: I have included the full bios of the authors as they are important to establish their special expertise.

Peter T. Christensen, Esq., is an attorney and has been a member of the California bar since 1993. He maintains a law practice focused on legal, regulatory, and insurance issues concerning real estate valuation. His legal counsel is regularly sought out by clients for liability and disciplinary matters involving appraisers, appraisal firms, and appraisal management companies.

Peter has published more than 50 articles relating to appraisal liability issues, many appearing in the Appraisal Institute's Valuation magazine, and has presented hundreds of liability prevention seminars to appraisers.

Peter earned both his BS in business administration and his JD (professional degree in law) at the University of California at Berkeley. Following graduation from law school, he practiced law with the national firms of Latham & Watkins LLP and Irell & Manella LLP. Peter then served for 14 years as the general counsel of LIA Administrators & Insurance Services, which specializes in managing professional liability insurance for real estate appraisers, appraisal management companies, and right of way service providers.

Peter's law firm-the Christensen Law Firm (www.valuationlegal.com) is based in Santa Barbara, California.

Claudia L. Gaglione, Esq., is an attorney and has been a member of the California bar since 1982. After earning her JD (professional degree in law) at the University of Southern California Law Center, she began her legal career as a litigation attorney handling professional liability matters involving the defense of attorneys, real estate agents/brokers, and real estate appraisers.

In 1987, Claudia began acting as national claims counsel for the appraiser professional liability insurance program managed by LIA Administrators & Insurance Services. In that role, she reviews and monitors all claims filed against insured appraisers in the program and works closely with LIA to provide liability prevention education for appraisers.

In 1994, Claudia and her law partner, Bob Dolan, formed the firm of Gaglione & Dolan (now Gaglione, Dolan & Kaplan), which continues to specialize in the defense of professional malpractice claims and is based in Woodland Hills, California.

In the past 30 years, Claudia has personally supervised over 9,000 lawsuits, claims, and disciplinary matters filed against real estate appraisers, providing her with a vast depth of experience from which to assist and advise appraisers with respect to claim prevention and defense.

Should you buy this book?

Yes. Every appraiser should have a copy, even if it is only used to advise other appraisers who are having issues discussed in this book, such as a subpoena. Or, maybe you want to add some additional risk reduction comments to your residential form appraisals. Lots of practical advice from the authors who know appraisers' risks from their years of experience helping appraisers.

How to order and pricing

I had some difficulty reading the book because of the small 10 point type. I receive many review books and this was the smallest font I have seen. The PDF version is readable, plus you can search for a topic. As usual, this AI book does not have an index.

If you have purchased the printed book and then decide you need the PDF version, the second item is at a discount (amount not specified).

Currently the AI is selling 70% print books and 30% PDFs. Although publishers anticipated that print books might go away, that hasn't happened. PDFs are popular, but sales have stabilized and the 70/30 split is typical - especially for professional books. It doesn't vary much by title, but the print + PDF packages are popular. Customers seem to read the book and search the PDF. Editor's comment: That's what I did!

Print or PDF: AI members \$50.
Non-members \$60.

Combo print and PDF (recommended) AI Members. \$70 Non-members \$84.

To order, don't google the title as that does not work well.

Use this direct link:
www.appraisalinstitute.org/risk-management-for-real-estate-appraisers-and-appraisal-firms/
Or, go to www.appraisalinstitute.org, then click on Publications (top of page), then New books (left side of page), then the book (lower right side).

Special offer of 4 Hour online Appraiser Liability course and discounted book price from Valuation Education

For more information, go to www.valuationeducation.com

The online courses have Peter Christensen speaking about topics in the book. He is an excellent speaker. I have heard him speak many times. The courses were recorded live, when Peter was speaking, and uses power-point slides for illustration.

How can you get a copy of the book? There are three ways:

1. Buy a copy in the Appraisal Institute's online bookstore: AI books.
2. Sign up for one of the online courses. When you sign up for one of the online courses, you can add the book for just \$25 more (the regular retail price of the book is \$60). There are two 4 hour courses, one with CE (\$75), "Appraisal Liability 101" and the other with no CE (\$40), "Appraiser Liability 50: Lending Work". The courses are the same. More tests in the one for credit.
3. Take one of Peter's live classes. If you're in one of his live classes, you can add the book for \$30.

About Valuation Education

"Valuation Education was formed to provide valuation professionals with education focused on legal, regulatory and risk issues. We strive to offer education that is interesting, useful and affordable."

"Valuation Education is brought to you by attorney Peter Christensen of the Christensen Law Firm (www.valuationlegal.com). Our courses are approved for risk management education by LIA Administrators & Insurance Services (www.liability.com), which insures more than 15,000 appraisers and appraisal firms throughout the United States."

"Appraisers who complete LIA-approved courses offered by Valuation Education become eligible for a discount on their E&O."

Data and Verification Source(s) Are Critical

Dave Towne, CREA
Sept. 11, 2019

The genesis for this essay began when I heard from another appraiser that a VA report reviewer rejected the comparables "DOC Number" on the Verification Source(s) line. The reviewer said the "DOC Number" was not acceptable as a Verification Source.

In fact, VA has said in a newsletter to appraisers that ".....Assessor's File Number may never be used as a Verification Source." I disagree with that position, and this essay explains why. It also explains what appraisers should do to provide credible Data and Verification Source(s) in reports. Caveat: *I don't do VA assignments.*

I decided that a deeper dive into these two different line items on the forms was necessary, and could be helpful to appraisers. Over the years I've seen incorrect entries on the Data and Verification Source(s) lines (*shown below*) in many reports done by other appraisers.

The first item to keep in mind is Source(s) can be plural because of the (s). That means more than one source can be revealed in the report....and probably should be. (**Regarding Data Source(s)** on grid page in UAD reports - see below)

Secondly, the purpose for indicating Data and Verification Source(s) is to provide the report user with supportable, researched proof that the various property characteristics and transaction details in the report are valid, and the comparable actually did sell.

Third, both of these items should be researched from multiple Sources. Property details are not always cor-

rect in just one Source; cross checking is vital for accuracy.

One problem in our work is the availability of accurate Source(s), especially in the many non-disclosure states. Later in this essay, I provide info about that.

Data Source(s)

While Verification was the trigger for this essay, let's examine **Data Source(s)** first, because that's the first item required on the report form. Probably the best place to gain better understanding of these items is from the forms creators (the GSE's) themselves...FNMA primarily because their Selling Guide (Section B4-1.3-07) seems to be written somewhat better than FrMAC's. Other report users, such as VA, tend to use FNMA guidelines as the de facto standard for report content.

Per FNMA, Data Source(s) are considered to be, but not limited to:

- * MLS listings (& the listing number + DOM)
- * deed records
- * tax records
- * realtors
- * builders
- * appraisers
- * appraiser's files
- * other third party sources and vendors

> To the above I will add Assessor, Recording Office, County Treasurer records, and articles in local publications

These must be specific in reports, not generic (such as just 'public records'), and reliable for where the property is located. Per *The Appraisal of Real Estate, 13th Edition*, we might call the 'Data Source(s)' "raw data" until it is actually verified by some-

one connected to the transaction.

Keep in mind that for **UAD** (Uniform Appraisal Dataset) reports, the current reporting protocol for comparable property Data Source(s) is to indicate only the MLS listing number, and the DOM (Days on Market). That doesn't leave room for much else in that form field, even abbreviated. In fact, due to the **UAD** form design and character space limitations, nothing else may be allowed on that grid field. Therefore, you should include a section in your report Addendum that describes the Data Source(s) you used.

Basically, Data Source(s) are just that....data. Raw. The specific details about a property found in or from the various Source(s) you use, whether it be on-line (like from a web site) or found in some printed document, a prior appraisal, chats with interested parties, etc..

Verification Source(s)

Again, turning to FNMA, they say **Verification Source(s)** can be, but not limited to:

- * Buyer
- * Seller
- * Listing and Selling agents
- * Closing Documents

To that list, I would add Auditor File Number, Recording Number, Deed Document Number, Instrument Number, Excise Number....or whatever the actual legal number for that sale is called in your area when the sale is technically closed and transferred, and the keys are handed to the buyer. That number is applied to the Deed when the Deed is recorded by the jurisdiction. This is the document the Title Company uses to show the chain of title, and verify that a transfer was made from and to. It's why I got a bit

Sale Price/Gross Liv. Area	\$	SQ.FT.	\$	SQ.FT.	\$	SQ.FT.	\$	SQ.FT.
Data Source(s)								
Verification Source(s)								
VAULT ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION	+(-) \$ Adjustment	

perturbed when the VA reviewer (and the VA newsletter) said the 'Doc Number' was not acceptable.

It seems to me that VA is taking a hard-line approach, believing that the "Doc Number" is ONLY a Data Source. It is not (in my view). That number VERIFIES that the sale actually happened. Anyone can tell you 'yeah, it sold.' But the "Doc Number" actually proves it did.

But there's more, as the info commercials say. Per FNMA, the verification process involves not just the legal property transfer, but the examination of **conditions of sale, financing concessions, physical characteristics and the type of transaction** (arms length or other). This is a process many appraisers skip.

Thus, Verification is more than just noting the Doc Number to prove the sale. (*This was what the VA reviewer reacted to, because no other Verification Source was identified.*) To verify the data means you actually need to talk with one or more parties involved with the comparable property sale.

Now, I've always scratched my noggin about this next part in the FNMA Selling Guide:

"It is acceptable to obtain **comparable sales data** from parties that have a financial interest in either the sale or financing of the **subject property**; however, the appraiser must verify the data with a party that does not have a financial interest in the subject transaction. For example, if the real estate agent of the **subject property** has provided comparable sales data, that information must be **verified through another disinterested source**."

I had to read that three times, out loud, to figure it out. Pixy dust

applied to my forehead also aided the process! Actually, using **bold type** and underlines help more!

What it means is if the property listing or selling agent supplies the appraiser with comparables for your subject property, then the appraiser must verify the comparable data with "disinterested" sources for those comparables.

Note that statement doesn't reference comparables found by the appraiser alone, without assistance from the subject's listing agent. So 'disinterested source' does not specifically apply to appraiser-found comparables.

Who exactly are disinterested sources?

If you take a look again at the lists for Data and Verification Source(s), almost all are INTERESTED parties to the comparable transaction. The only DISINTERESTED sources (in my view) is the person who applies the "Doc" number to the deed at the time of recording, or the person at the county Treasurer's office who applies the Excise Number to the property record for tracking purposes for the transfer fee payments.

Therefore, the 'Doc Number', or any other name as I mentioned on the previous page, is the most reliable Verification source for the actual property sale and transfer. The other parties are useful to provide the additional verification information for conditions of sale as noted below.

What I believe VA is really saying is they want 'more' than just the "Doc Number" in the Verification field for each comparable. They want to know who else you talked with to 'verify' the transaction components, etc.

What applies to VA assignments (in this case) also applies to every other type of assignment we do.

For form reporting purposes, I'd

recommend using the 'Doc Number' as the first item on the Verification Source(s) field, followed by 'Listing Agent**' for each comp. You may need to abbreviate Listing Agent due to space. Elsewhere in your report, you should include a list of additional Verification Sources that you used for each comparable. I'd also recommend that you explain what the 'Doc Number' means on the form grid page.

*** I mention Listing Agent because in some MLS associations, only the Listing Agent can modify the listing after sale to show the Seller Concession.*

Note that the MLS Listing Number is NOT a Verification Source for the sale. Do not put that number on the Verification line! Also, do not use Public Records as that Source.

Now that we have examined what Data and Verification Source(s) are, we need to examine the process to obtain the necessary information in more detail.

This comes down to where in the country you work, and the state laws involving real property transfers you have to know and use.

If you are working in a 'disclosure' state, verify the Sale Price from two or more Source(s), and talk with parties with first-hand knowledge of the transaction and conditions of sale.

Non-disclosure State Verification:

Most of the US states and territories are 'full disclosure' for all transactions. The 'raw' data is relatively easy to obtain, including the comparable Sale Price. Verification of that data, and the transaction info is relatively accessible, depending, of course, on the willingness of human Sources to discuss the details.

But there are 14 states which are considered to be 'non-disclosure' - which generally means the Sales Price is not publicly revealed.

These are:

- Alaska
- Idaho
- Indiana
- Kansas
- Louisiana
- Maine
- Mississippi
- Missouri
- Montana
- New Mexico
- North Dakota
- Texas
- Utah
- Wyoming

When doing research for this essay, I asked appraisers in non-disclosure states how they obtain the necessary info for appraisal reports. These folks have far more hassles than those of us in full disclosure states!

Some states are semi-full disclosure, in that property sale data and sale price is available, but the appraiser must access a specific web site, or physically visit a 'recording office' to look at the recorded deed. Sometimes, data is available from a paid subscription Legal News service, which some appraisers use.

In rare cases, some counties don't even have any records available for an appraiser to look at in person, and, thus, also don't have any info on-line. The appraiser who mentioned this has discontinued doing appraisals in those areas because data are lacking.

Using multiple Extraordinary Assumptions about data in reports may not build lender confidence in the reported value either (except for Texas, noted below)!

Obtaining the actual Sale Price is the biggest hurdle faced by appraisers in non-disclosure states. One appraiser reported the best way to get that data point is to obtain a copy of the actual closing document used by the escrow agent. It would seem prudent that developing good relationships with escrow agents and the real estate agents who work with them would be beneficial. Having a ready source of chocolate kisses candy to hand out would probably help!

Sometimes you can determine the actual Sale Price by getting the excise tax amount paid at the time of transfer, and multiplying (or dividing) that figure by the percentage factor number used to calculate the excise tax. The appraiser would have to talk with the jurisdiction recording department staff to get the factor number. But, as one appraiser pointed out, this may not always be accurate due to *non-realty items*, such as livestock or machinery, *included with the sale* (which needs to be verified).

It appears to me that Texas is the worst in terms of obtaining accurate and credible data, and to verify that information. Texas state laws are specifically designed to thwart the ability of ANYONE to find the Sale Price and other significant data about real property transactions. Recorded Deeds normally don't have the Sale Price shown. Realist data, etc., can be hog-tied and redacted. Sale Prices are often 'extrapolated' by appraisers from limited info. This is one state where EA's are commonly used by appraisers, and the MLS reported 'Sale Price' is used. Appraisers in Texas can obtain a copy of the closing statement from a Title Company - but only if the real estate agent(s) allow that to be *forwarded* to the appraiser. Talk about doing

appraisals while blindfolded, with wrists handcuffed to ankles, and mouths duct taped! Only occasionally, usually with REO properties, Texas property deeds prepared from out-of-state title companies will show the Sale Price.

In Idaho, appraisers have to work to get the closing document, typically from the Agent(s) involved. But that's not always guaranteed.

For appraisers working in non-disclosure states, including a statement in reports about Data and Verification Source(s) should be prominent, so that the client understands the situation. One of the appraisers I have been communicating with provided two such statements which you might consider using:

1) "(State) is a non-disclosure state and recollection of details and anticipation often fade with time; as such it is not always possible to obtain exact details from a respective transaction.

Additionally, since (State) is a non-disclosure state, details of comparable property sales or leases are presumed to be accurately portrayed by the parties to the respective agreements; in lieu of cooperation by the parties (or in some cases, where parties have no recollection of such details), assumptions and/or reasonable approximations are sometimes necessitated."

2) "(State) is a non-disclosure state. This means essential information like grantor, grantee, sale prices and sale dates for real estate transactions are not listed in public records. Hence, appraisers must gather key details from parties involved who have no incentive to cooperate. Often appraisers are compelled to obtain the information from secondary sources. This lessens reliability of the data. [Appraiser] discloses s/he made reasonable attempts, within the context of the scope of work, to obtain all key information from seemingly reliable sources; but common sense suggests some data may not be completely accurate."

So, what are the 'take-aways' from this essay?

- a) Data and Verification Source(s) are different items, and need to be defined and reported separately
- b) Data is basically 'raw' info in written form obtained from several Sources and then cross checked
- c) Verification includes verbal discus-

sions with transaction participants. But in my view, a Verification Source can also include the Deed Recording Number (or whatever it is named in your area) and should be shown on the Comparables report form grid field because it is the legal evidence that a transfer occurred; i.e., the property actually sold

d) Appraisers in non-disclosure states have extra due diligence requirements to obtain data and to do verification

About the author

Dave Towne is a Certified Residential Appraiser with nearly 2 decades 'stretching tape' in small urban, suburban and rural areas in NW WA State. He is experienced with small cabins to mcmansions on large acreage, waterfront estates to MFH in parks. Dave has not seen everything yet, but working on it! He is a freelance writer on appraisal topics since 2006. Website: www.towneappraisals.com Email: dtowne@fidalgo.net

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Appreciation to Mr. Timothy Andersen, MAI for editing suggestions.

Appraisal Today

ISSN 1066-3900

Appraisal Today is published 12 times per year by Real Estate Communication Resources.

Subscription rate: \$99 per year, \$169 - 2 years

Publisher

Ann O'Rourke, MAI, SRA, MBA
ann@appraisaltoday.com

Subscriber Services

Theresa Lua

M,T,W 7AM to noon

Friday 7AM to 9 AM (Pacific time)

info@appraisaltoday.com (24 x 7)

Editorial and Subscription Offices

2033 Clement Ave., Suite 105
 Alameda, CA 94501

Phone: 1-800-839-0227

Fax: 1-800-839-0014

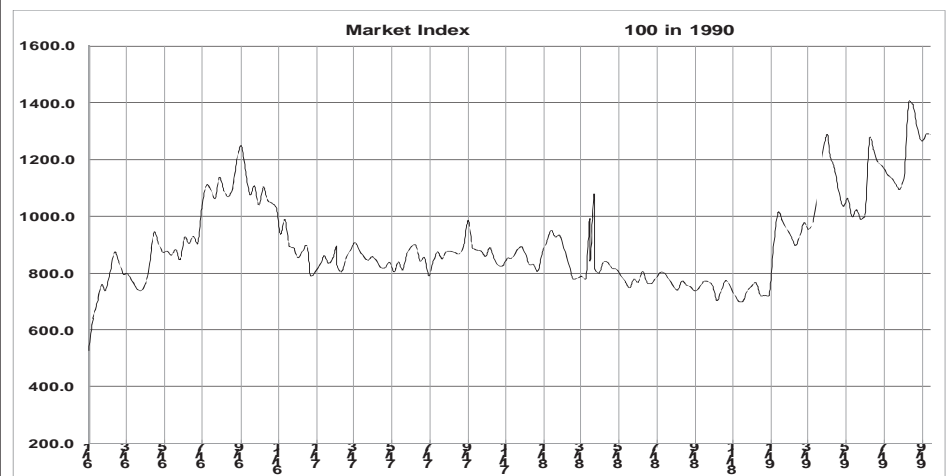
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MBA Loan Volume Application Index – 1/16 to 9/19



The Differences Between Evaluations and Appraisals, Part 2

By Timothy C. Andersen, MAI, MSc, MNAA, CDEI

Editor's Note: Last month's newsletter included Part 1 "Evaluations: Yes, No or Maybe?" which discusses practical issues such as: when are evaluations used/needed, will evaluations take appraisers out of the mortgage lending continuum, who/what will enforce evaluations as state boards enforce USPAP, etc. USPAP does not include evaluations.

This month discusses the details of What USPAP and the Interagency Guidelines say on the differences between an evaluation and an appraisal (including a side-by-side summary. Who is qualified to perform evaluations .

I decided to put this section after Part 1, which is more practical. This section, Part 2 goes into the technical details of evaluations and who can do them.

Appraisers wonder about the differences between an *appraisal* and an *evaluation*. This essay investigates that question and provides an answer. It also addresses the challenges facing the appraiser relative to performing an evaluation versus an appraisal. It refers to the *Interagency Guidelines*, as well as USPAP 2018-2019. The former are available free on-line. Please download this document and keep it handy [Interagency Appraisal and Evaluation Guidelines](http://www.fdic.gov/news/news/financial/2010/fil10082a.pdf). www.fdic.gov/news/news/financial/2010/fil10082a.pdf

What USPAP says on the Matter

When it comes to evaluations, in some states an evaluation is *not* an appraisal. In other states, an evaluation *is* an appraisal. Some states' statutes¹ do not treat the issue. *USPAP says an evaluation is an appraisal* (see AO-13, ll. 42, 43). However, state law trumps USPAP, so check your own state statutes on the matter.

There is no mention of the term *evaluation* in Standard 1 or Standard 2. USPAP does not mention the word *evaluation*, although Advisory Opinion 13 does (although the AOs are *not* part of USPAP). From this, it is safe to conclude *USPAP does not address evaluations*²

Since USPAP contemplates neither the development of an evaluation, nor the communication of the results of that evaluation to a client, AO-13 merely assumes that if an

¹ Neither USPAP nor state statutes treat who will enforce evaluations as the state boards enforce USPAP. Chances are, state boards will claim this function even if state statutes are silent on the matter. Whether this bodes well or ill for appraisers it is still an open question, as well as one that a court will likely have to answer.

² It may or may not govern those who perform them. This is a function of state statute.

appraiser (i.e., a person acting as an appraiser) is going to write an evaluation it must conform to USPAP. *In that case, per USPAP, an evaluation becomes an appraisal, subject to Standards 1 and 2 in USPAP, as well as the state appraisal board.* But, again, state statute trumps USPAP.

What the Interagency Guidelines Say on this Matter

However, the [Interagency Appraisal and Evaluation Guidelines](#) (aka Interagency Guidelines, fka herein as IGs) define an *evaluation* as "[a] valuation permitted by the Agencies' appraisal regulations for transactions that qualify for the appraisal threshold exemption, business loan exemption, or subsequent transaction exemption" (ibid. p. 41). USPAP has *no definition* for an evaluation other than that an evaluation is an appraisal (which it does define [following]), thus is subject to USPAP. USPAP defines an appraisal as "...the act or process of developing an opinion of value; an opinion of value...of or pertaining to appraising and related functions such as appraisal practice or appraisal services" (bibliographic citation by reference).

However, the IG definition puts evaluations under the *Agencies'* appraisal regulations, not the *States'* appraisal statutes or The Appraisal Foundation's USPAP regulations. It makes clear the need³ for an *appraisal* kicks in only *after* a mortgage loan request exceeds the threshold exemption⁴. As of this writing, that threshold is a loan in excess of \$250,000 (with an increase⁵ to \$400,000 now under *serious* contemplation by the lending powers-that-be). Therefore, any mortgage less than \$250,000 is subject to an evaluation rather than appraisal (although the lender is still free to choose an appraisal - as many choose to do).

Further, the IGs declare that USPAP "...identifies the minimum set of standards that apply in all *appraisal*, *appraisal review*, and *appraisal consulting* assignments⁶..." (emphasis added), but USPAP has nothing to add on the development and communication of evaluations. Since, by definition, an evaluation is *not* an appraisal (except insofar as USPAP and some state appraisal boards are concerned) this description makes it clear that appraisals and evaluations are two completely different⁷ animals with different purposes and functions.

USPAP and Evaluations - A Side-by-Side Comparison

In a side-by-side comparison, here is what the IGs require for an *evaluation* versus what USPAP requires for an appraisal. For brevity's sake, there is no intent here to summarize the

³ Fannie has waived the appraisal altogether with the Appraisal Waiver Programs where CU measures a loan's riskiness.

⁴ In other words, a lender, out of an abundance of caution, may order an appraisal on a loan less than \$250,000 if it chooses to do so. It is under no *legal* obligation to do so, however.

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⁶ USPAP no longer recognizes that appraisal consulting is different from appraisal. However, in 2010, when this edition of the IGs came into being, USPAP did recognize appraisal consulting as separate from appraisal and even had a definition for it.

⁷ As but one example, USPAP declares that the client is the party to engage the appraiser's services, be that party a lender, private person, corporate entity, and so forth. The IGs, however, make it clear that the "...*appraiser* should be aware that *the client* is the regulated institution..." (ibid; p. 40 - italics added). This is ironic since most of the states declare that an *appraiser* cannot do evaluations. This is despite what the IGs set out an appraiser can do.

differences between the two. The following table merely lists them, and leaves to the reader to understand the details of those differences. Note that USPAP changes every two years, whereas the IGs have been in place since 2010. Of course, that, too, may change.

Interagency Guidelines	USPAP
Identify the location of the property	Same
Provide the description of the property and its current and projected use	Same
Provide an estimate of the property's market value in its actual physical condition, use and zoning designation as of the effective date of the evaluation (that is, the date that the analysis was completed), with any limiting conditions.	Same
Describe the method(s) the institution used to confirm the property's actual physical condition and the extent to which an inspection was performed	Not in USPAP; however this likely means the institution would use the appraiser or evaluator to confirm this. The institution has the responsibility to ascertain the appraiser or evaluator "got it right". This would be part of an appraiser's scope of work. An evaluation has no scope of work standard.
Describe the analysis that was performed and the supporting information that was used in valuing the property	Same
Describe the supplemental information that was considered when using an analytical method or technological tool	Same

<p>Indicate all source(s) of information used in the analysis, as applicable, to value the property, including:</p> <ul style="list-style-type: none"> ✓ External data sources (such as market sales databases and public tax and land records); ✓ Property-specific data (such as previous sales data for the subject property, tax assessment data, and comparable sales information); ✓ Evidence of a property inspection; ✓ Photos of the property; ✓ Description of the neighborhood; or ✓ Local market conditions <p>(The IGs then refer to Appendix B, <i>Evaluations Based on Analytical Methods or Technical Tools</i>)</p>	<p>This is difficult to compare. USPAP requires all of these. Some of the IGs are less data intensive. Further, USPAP requires no inspection at all, whereas the IGs require "...evidence of a property inspection", but this does <i>not</i> indicate the appraiser must carry out that inspection.</p> <p>As to analytical methods or technical tools, USPAP does not refer to these in Standards 1 or 2. There is some mention of them, however, in the AOs.</p>
<p>Include information on the preparer when an evaluation is performed by a person, such as the name and contact information, and signature (electronic or other legally permissible signature) of the preparer.</p>	<p>While USPAP requires the appraiser to sign the Certification page, it has no specific requirements there be any information on the appraiser in the Certification</p>
<p>The IGs have nothing such as the RULES USPAP has, although it does reference them. It implies appraisers must follow these in an evaluation, but make no mention of them relative to a non-appraiser</p>	<p>NA</p>
<p>Nothing in the IGs corresponds to Standard 1, but they do reference it, but in an appraisal context, not an evaluation context. The IGs do not reference Standard 2</p>	<p>NA</p>
<p>In the IGs, Section XII refers to <i>Evaluation Development</i>. However, it is far less stringent than is SR1.</p>	<p>SR1-1</p>

<p>There are corresponding requirements in the IG to SR1-2. The IGs refer both to hypothetical conditions and extraordinary assumptions, but in an appraisal context, not an evaluation context. Note SR1-2 an opinion of reasonable exposure time (assuming the value standard is that of market value). The IGs have no such requirement.</p> <p>The IGs use the same definition of Market Value. However the IGs have nothing to correspond to SR1-2(c)(i-iv)</p> <p>The IGs do not have a SCOPE OF WORK RULE, but they do require the evaluator to have a specific scope of work, as does SR1-2</p>	<p>SR1-2</p>
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<p>In the IGs there is a reference to highest and best use, but it is in an appraisal context, not an evaluation context. Indeed, according to the above requirements, there is no need for a highest and best use analysis of any kind in an evaluation.</p> <p>Section XII requires the evaluator to "...address the property's actual physical condition and characteristics as well as the economic and market conditions that affect the estimate the collateral's market value". These analyses are a component of SR1-3(a), but the IGs do no address highest and best use specifically.</p> <p>Given that an evaluation is used extensively to value properties in a lender's portfolio, there is no real issue about a property's highest and best use, since the appraiser who appraised the property <i>prior</i> to the loan has already analyzed this</p>	<p>SR1-3 (Highest and best use)</p>
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<p>SR1-4 refers to the three approaches to value and requires the appraiser to "...collect, verify, and analyze all information necessary for credible assignment results" (ibid). The IGs have no such requirements.</p> <p>- Section XII covers <i>Evaluation Development</i> (thus corresponds roughly to Standard 1). It says (in relevant part) "An evaluation must be consistent with safe and sound banking practices and...[provide] a reliable⁸ estimate of the collateral's market value...". Neither USPAP nor the IGs define what a "reliable" estimate of market value is. Further, USPAP requires a credible opinion of market value, whereas the IGs require a reliable estimate of market value.</p>	<p>SR1-4</p> <p>"Credible" (USPAP) vs "reliable" (IGs)</p> <p>"Opinion of value" (USPAP) vs "Estimate of value" (IGs)</p>
<p>Nothing in the IGs corresponds to SR1-5</p>	<p>SR1-6</p>
<p>Nothing in the IGs corresponds to SR1-6 since, typically, there is nothing to correlate.</p>	<p>SR1-6</p>
<p>There is a <i>rough</i> correspondence with IG Sections XI and XII to SR2</p>	<p>SR2-1(a, b, and c) call for a clear and accurate report that is not misleading, one that contains sufficient information to the client or intended user(s) can understand the report, and disclosure of any assumptions, hypothetical conditions, and/or extraordinary assumptions.</p>
<p>IG Section XIII carries the title <i>Evaluation Content</i> (by reference). It corresponds <i>roughly</i> with SR2-2(a)(i)-(xi). However, this Section has no requirement for a highest and best use analysis, disclosure of exposure time, nor the requirement of a Certification</p>	<p>SR2-2(a)(i)-(xi)</p>

⁸ The IGs do not define reliable. One [source](#) defines it as, "...giving the same result on successive trials..." Another [source](#) has it as, "the ability to be relied on or depended on, as for accuracy, honesty, or achievement". Finally, a third [source](#) has it as, "...things that are reliable can be trusted to work well or to behave in the way you want them to".

<p>There is nothing corresponding in the IGs since they contemplate only an evaluation report and do not dictate its format or nomenclature.</p> <p>There are those who think an evaluation is merely a restricted appraisal report but by another name. This is not true as this grid points out. A Restricted Appraisal Report must align with the USPAP requirements of SR2-2(b). There are no such requirements in the IGs.</p>	<p>SR2-2(b)(i)-(xi)</p>
<p>In the IGs, there is no requirement a certification of any type be included. There is nothing corresponding to SR2-3 in the IGs.</p>	<p>SR2-3 (The Certification)</p>
<p>Neither USPAP nor the IGs have any requirement there be an estimate of marketing time since this is a future concept, thus cannot be measured (despite what Fannie Mae requires)</p>	<p>AO-7 (Marketing Time)</p>
<p>An evaluation is the evaluator's <i>estimate</i>⁹ of market value (with proper support)</p>	<p>An appraisal is the appraiser's <i>opinion</i>¹⁰ of market value (with proper support)</p>

⁹ "[To] roughly calculate or judge the value, number, quantity or extent of...an approximate calculation or judgment of the value, number quality or extent of something."

¹⁰ "[A] view or judgment formed about something, not necessarily based on fact or knowledge...a formal statement of advice by an expert on a professional matter".

Summary of Differences Between an Appraisal and an Evaluation

Here are the *major* differences between an appraisal and an evaluation:

- ✓ An appraisal requires both an analysis of the property's *highest and best use*, as well as a summary of the logic and rationale behind that analysis within the report. *There is no such requirement in an evaluation;*
- ✓ An appraisal requires an analysis of *reasonable exposure time*, as well as its statement within the report, *but not in an evaluation;*
- ✓ Currently, an appraisal can present in only one of *two formats*, an Appraisal Report, or a Restricted Appraisal Report. *An evaluation has no such requirement* (see IG, Section XIII for more details);
- ✓ An appraisal requires a *signed certification* (in format more or less as it is found in SR2-3) as part of every written appraisal report (and it must be in the workfile in the case of an oral report). *An evaluation has no such requirement;*
- ✓ In an appraisal there are numerous I's to dot and T's to cross. Given that an evaluation is a less formal document, *there are fewer I's and T's;*
- ✓ USPAP requires an appraisal to be *credible*. The IGs require an evaluation to be *reliable*. However, the IGs do not define reliable, while USPAP defines credible¹¹ (as worthy of belief). The two terms¹² are not synonyms.

Who is Qualified to Perform Evaluations?

Section VI of the IGs carries the title *Selection of Appraisers or Persons Who Perform Evaluations*. Here are the qualifications necessary to do appraisals or evaluations under the IGs:

- "The person selected possesses the requisite education, expertise, and experience¹³ to competently complete the assignment.
- "The work performed by appraisers and persons providing evaluations services is periodically reviewed by [the client institution].
- "The person selected is capable¹⁴ of rendering an unbiased opinion.

¹¹ One [source](#) defines *credible* as, "able to be believed; convincing...capable of persuading people that something will happen or be successful".

¹² The IGs introduce another term into the mix of credible and reliable: *validity* (or valid). There is no definition for valid or validity in the IGs (or USPAP, for that matter), but the IGs *describe* it as, "...assessing whether an existing appraisal or valuation continues to reflect the market value of the property" (see Section XIV). This is interesting since the IGs assume an appraisal can be valid, an assumption USPAP *never* makes. It further implies this validity will last over time. An appraisal is valid for one day, the effective date of the appraisal.

¹³ There is no indication in the IGs what these three terms mean.

¹⁴ This is a *weasel word*. Just because a person is capable of rendering an unbiased opinion does not mean that person *will* render an unbiased opinion.

- "The person selected is independent and has no direct, indirect, or prospective interest, financial or otherwise, in the property or transaction¹⁵.
- "The appraiser selected to perform an appraisal holds the appropriate state certifications or license at the time of the assignment. Persons who perform evaluations should possess the appropriate appraisal or collateral valuation education, expertise, and experience relevant to the type of property being valued. Such persons may include appraisers, real estate lending professionals, agricultural extension agents, or foresters".

The IGs read, "Although *not required*, an institution may use state certified or licensed appraisers to perform evaluations. Institutions should refer to USPAP Advisory Opinion 13 for guidance on appraisers performing evaluations of real property collateral" (ibid; italics added).

In relevant part, AO-13 teaches that, "an evaluation, per the [IGs], provides an *estimate* of market value. When that estimate of market value is the opinion of an individual who is required to comply with USPAP, *that opinion (i.e., the evaluation) is, per USPAP, an appraisal*. Therefore, an appraiser who is required to comply with USPAP must meet both the [IGs'] requirements for an evaluation, and the requirements of STANDARDS 1 and 2 and other applicable parts of USPAP" (ibid; capitalization in original; italics added).

In some states, statutes allow appraisers to produce evaluations. Since state law trumps USPAP, in those states appraisers can perform evaluations yet not be held to USPAP standards. Some states' appraisal statutes are silent on the matter. Thus, in those states, USPAP holds sway. Therefore, if an appraiser does an evaluation, that evaluation, *in those states*, is an appraisal per USPAP. The performing appraiser is subject to USPAP's Standards 1 and 2 (whereas an evaluator is *not*).

¹⁵ This language is very similar to that of SR2-3. Note that many evaluators are employees of banks and other mortgage lenders. Is this a potential conflict of interest?

About the author

Timothy Andersen is a Florida state certified general appraiser. In addition to his work helping appraisers defend themselves against charges of USPAP violation, teaching USPAP, and helping appraisers write USPAP compliant reports, he enjoys spending time riding his bike and doting on his grandchildren. Contact him at tim@theappraisersadvocate.com.

Web site: www.theappraisersadvocate.com

The author is grateful to Josh Wallit, SRA, MNAA, CDEI for his constructive and professional critique of this essay prior to its publication. It incorporates many of his suggestions and thoughts. However, the author is totally responsible for this essay and all of its content.

The Differences Between Evaluations and Appraisals, Part 2

By Timothy C. Andersen, MAI, MSc, MNAA, CDEI

Editor's Note: Last month's newsletter included Part 1 "Evaluations: Yes, No or Maybe?" which discusses practical issues such as: when are evaluations used/needed, will evaluations take appraisers out of the mortgage lending continuum, who/what will enforce evaluations as state boards enforce USPAP, etc. USPAP does not include evaluations.

This month discusses the details of What USPAP and the Interagency Guidelines say on the differences between an evaluation and an appraisal (including a side-by-side summary. Who is qualified to perform evaluations .

I decided to put this section after Part 1, which is more practical. This section, Part 2 goes into the technical details of evaluations and who can do them.

Appraisers wonder about the differences between an *appraisal* and an *evaluation*. This essay investigates that question and provides an answer. It also addresses the challenges facing the appraiser relative to performing an evaluation versus an appraisal. It refers to the *Interagency Guidelines*, as well as USPAP 2018-2019. The former are available free on-line. Please download this document and keep it handy [Interagency Appraisal and Evaluation Guidelines](http://www.fdic.gov/news/news/financial/2010/fil10082a.pdf). www.fdic.gov/news/news/financial/2010/fil10082a.pdf

What USPAP says on the Matter

When it comes to evaluations, in some states an evaluation is *not* an appraisal. In other states, an evaluation *is* an appraisal. Some states' statutes¹ do not treat the issue. *USPAP says an evaluation is an appraisal* (see AO-13, ll. 42, 43). However, state law trumps USPAP, so check your own state statutes on the matter.

There is no mention of the term *evaluation* in Standard 1 or Standard 2. USPAP does not mention the word *evaluation*, although Advisory Opinion 13 does (although the AOs are *not* part of USPAP). From this, it is safe to conclude *USPAP does not address evaluations*²

Since USPAP contemplates neither the development of an evaluation, nor the communication of the results of that evaluation to a client, AO-13 merely assumes that if an appraiser (i.e., a person acting as an appraiser) is going to write an evaluation it must conform

¹ Neither USPAP nor state statutes treat who will enforce evaluations as the state boards enforce USPAP. Chances are, state boards will claim this function even if state statutes are silent on the matter. Whether this bodes well or ill for appraisers it is still an open question, as well as one that a court will likely have to answer.

² It may or may not govern those who perform them. This is a function of state statute.

to USPAP. *In that case, per USPAP, an evaluation becomes an appraisal, subject to Standards 1 and 2 in USPAP, as well as the state appraisal board.* But, again, state statute trumps USPAP.

What the Interagency Guidelines Say on this Matter

However, the [Interagency Appraisal and Evaluation Guidelines](#) (aka Interagency Guidelines, fka herein as IGs) define an *evaluation* as "[a] valuation permitted by the Agencies' appraisal regulations for transactions that qualify for the appraisal threshold exemption, business loan exemption, or subsequent transaction exemption" (ibid. p. 41). USPAP has *no definition* for an evaluation other than that an evaluation is an appraisal (which it does define [following]), thus is subject to USPAP. USPAP defines an appraisal as "...the act or process of developing an opinion of value; an opinion of value...of or pertaining to appraising and related functions such as appraisal practice or appraisal services" (bibliographic citation by reference).

However, the IG definition puts evaluations under the *Agencies'* appraisal regulations, not the *States'* appraisal statutes or The Appraisal Foundation's USPAP regulations. It makes clear the need³ for an *appraisal* kicks in only *after* a mortgage loan request exceeds the threshold exemption⁴. As of this writing, that threshold is a loan in excess of \$250,000 (with an increase⁵ to \$400,000 now under *serious* contemplation by the lending powers-that-be). Therefore, any mortgage less than \$250,000 is subject to an evaluation rather than appraisal (although the lender is still free to choose an appraisal - as many choose to do).

Further, the IGs declare that USPAP "...identifies the minimum set of standards that apply in all *appraisal, appraisal review, and appraisal consulting assignments*⁶..." (emphasis added), but USPAP has nothing to add on the development and communication of evaluations. Since, by definition, an evaluation is *not* an appraisal (except insofar as USPAP and some state appraisal boards are concerned) this description makes it clear that appraisals and evaluations are two completely different⁷ animals with different purposes and functions.

USPAP and Evaluations - A Side-by-Side Comparison

In a side-by-side comparison, here is what the IGs require for an *evaluation* versus what USPAP requires for an appraisal. For brevity's sake, there is no intent here to summarize the differences between the two. The following table merely lists them, and leaves to the reader to understand the details of those differences. Note that USPAP changes every two years, whereas the IGs have been in place since 2010. Of course, that, too, may change.

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Interagency Guidelines	USPAP
Identify the location of the property	Same
Provide the description of the property and its current and projected use	Same
Provide an estimate of the property's market value in its actual physical condition, use and zoning designation as of the effective date of the evaluation (that is, the date that the analysis was completed), with any limiting conditions.	Same
Describe the method(s) the institution used to confirm the property's actual physical condition and the extent to which an inspection was performed	Not in USPAP; however this likely means the institution would use the appraiser or evaluator to confirm this. The institution has the responsibility to ascertain the appraiser or evaluator "got it right". This would be part of an appraiser's scope of work. An evaluation has no scope of work standard.
Describe the analysis that was performed and the supporting information that was used in valuing the property	Same
Describe the supplemental information that was considered when using an analytical method or technological tool	Same

<p>Indicate all source(s) of information used in the analysis, as applicable, to value the property, including:</p> <ul style="list-style-type: none"> ✓ External data sources (such as market sales databases and public tax and land records); ✓ Property-specific data (such as previous sales data for the subject property, tax assessment data, and comparable sales information); ✓ Evidence of a property inspection; ✓ Photos of the property; ✓ Description of the neighborhood; or ✓ Local market conditions <p>(The IGs then refer to Appendix B, <i>Evaluations Based on Analytical Methods or Technical Tools</i>)</p>	<p>This is difficult to compare. USPAP requires all of these. Some of the IGs are less data intensive. Further, USPAP requires no inspection at all, whereas the IGs require "...evidence of a property inspection", but this does <i>not</i> indicate the appraiser must carry out that inspection.</p> <p>As to analytical methods or technical tools, USPAP does not refer to these in Standards 1 or 2. There is some mention of them, however, in the AOs.</p>
<p>Include information on the preparer when an evaluation is performed by a person, such as the name and contact information, and signature (electronic or other legally permissible signature) of the preparer.</p>	<p>While USPAP requires the appraiser to sign the Certification page, it has no specific requirements there be any information on the appraiser in the Certification</p>
<p>The IGs have nothing such as the RULES USPAP has, although it does reference them. It implies appraisers must follow these in an evaluation, but make no mention of them relative to a non-appraiser</p>	<p>NA</p>
<p>Nothing in the IGs corresponds to Standard 1, but they do reference it, but in an appraisal context, not an evaluation context. The IGs do not reference Standard 2</p>	<p>NA</p>
<p>In the IGs, Section XII refers to <i>Evaluation Development</i>. However, it is far less stringent than is SR1.</p>	<p>SR1-1</p>
<p>There are corresponding requirements in the</p>	<p>SR1-2</p>

<p>IG to SR1-2. The IGs refer both to hypothetical conditions and extraordinary assumptions, but in an appraisal context, not an evaluation context. Note SR1-2 an opinion of reasonable exposure time (assuming the value standard is that of market value). The IGs have no such requirement.</p> <p>The IGs use the same definition of Market Value. However the IGs have nothing to correspond to SR1-2(c)(i-iv)</p> <p>The IGs do not have a SCOPE OF WORK RULE, but they do require the evaluator to have a specific scope of work, as does SR1-2</p>	
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<p>In the IGs there is a reference to highest and best use, but it is in an appraisal context, not an evaluation context. Indeed, according to the above requirements, there is no need for a highest and best use analysis of any kind in an evaluation.</p> <p>Section XII requires the evaluator to "...address the property's actual physical condition and characteristics as well as the economic and market conditions that affect the estimate the collateral's market value". These analyses are a component of SR1-3(a), but the IGs do no address highest and best use specifically.</p> <p>Given that an evaluation is used extensively to value properties in a lender's portfolio, there is no real issue about a property's highest and best use, since the appraiser who appraised the property <i>prior</i> to the loan has already analyzed this</p>	<p>SR1-3 (Highest and best use)</p>
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<p>and requires the appraiser to "...collect, verify, and analyze all information necessary for credible assignment results" (ibid). The IGs have no such requirements.</p> <p>- Section XII covers <i>Evaluation Development</i> (thus corresponds roughly to Standard 1). It says (in relevant part) "An evaluation must be consistent with safe and sound banking practices and...[provide] a reliable⁸ estimate of the collateral's market value...". Neither USPAP nor the IGs define what a "reliable" estimate of market value is. Further, USPAP requires a credible opinion of market value, whereas the IGs require a reliable estimate of market value.</p>	<p>"Credible" (USPAP) vs "reliable" (IGs)</p> <p>"Opinion of value" (USPAP) vs "Estimate of value" (IGs)</p>
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- "The person selected is capable¹⁴ of rendering an unbiased opinion.

¹¹ One [source](#) defines *credible* as, "able to be believed; convincing...capable of persuading people that something will happen or be successful".

¹² The IGs introduce another term into the mix of credible and reliable: *validity* (or valid). There is no definition for valid or validity in the IGs (or USPAP, for that matter), but the IGs *describe* it as, "...assessing whether an existing appraisal or valuation continues to reflect the market value of the property" (see Section XIV). This is interesting since the IGs assume an appraisal can be valid, an assumption USPAP *never* makes. It further implies this validity will last over time. An appraisal is valid for one day, the effective date of the appraisal.

¹³ There is no indication in the IGs what these three terms mean.

¹⁴ This is a *weasel word*. Just because a person is capable of rendering an unbiased opinion does not mean that person *will* render an unbiased opinion.

- "The person selected is independent and has no direct, indirect, or prospective interest, financial or otherwise, in the property or transaction¹⁵."
- "The appraiser selected to perform an appraisal holds the appropriate state certifications or license at the time of the assignment. Persons who perform evaluations should possess the appropriate appraisal or collateral valuation education, expertise, and experience relevant to the type of property being valued. Such persons may include appraisers, real estate lending professionals, agricultural extension agents, or foresters".

The IGs read, "Although *not required*, an institution may use state certified or licensed appraisers to perform evaluations. Institutions should refer to USPAP Advisory Opinion 13 for guidance on appraisers performing evaluations of real property collateral" (ibid; italics added).

In relevant part, AO-13 teaches that, "an evaluation, per the [IGs], provides an *estimate* of market value. When that estimate of market value is the opinion of an individual who is required to comply with USPAP, *that opinion (i.e., the evaluation) is, per USPAP, an appraisal*. Therefore, an appraiser who is required to comply with USPAP must meet both the [IGs'] requirements for an evaluation, and the requirements of STANDARDS 1 and 2 and other applicable parts of USPAP" (ibid; capitalization in original; italics added).

In some states, statutes allow appraisers to produce evaluations. Since state law trumps USPAP, in those states appraisers can perform evaluations yet not be held to USPAP standards. Some states' appraisal statutes are silent on the matter. Thus, in those states, USPAP holds sway. Therefore, if an appraiser does an evaluation, that evaluation, *in those states*, is an appraisal per USPAP. The performing appraiser is subject to USPAP's Standards 1 and 2 (whereas an evaluator is *not*).

¹⁵ This language is very similar to that of SR2-3. Note that many evaluators are employees of banks and other mortgage lenders. Is this a potential conflict of interest?

About the author

Timothy Andersen is a Florida state certified general appraiser. In addition to his work helping appraisers defend themselves against charges of USPAP violation, teaching USPAP, and helping appraisers write USPAP compliant reports, he enjoys spending time riding his bike and doting on his grandchildren. Contact him at tim@theappraisersadvocate.com.

Web site: www.theappraisersadvocate.com

The author is grateful to Josh Wallit, SRA, MNAA, CDEI for his constructive and professional critique of this essay prior to its publication. It incorporates many of his suggestions and thoughts. However, the author is totally responsible for this essay and all of its content.