



Illinois Real Estate Appraisal Board

Robert C. Gorman
Chairman

David Dubois
Vice Chairman

December 31, 2008

OCC
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219

Re: Proposed Interagency Appraisal and Evaluation Guidelines
Docket ID OCC-2008-0021

Gentlemen:

One purpose of the proposed rule is to provide guidance relating to independence of the appraisal and evaluation program from influence by the loan production staff. We find an inordinately wide loophole in this section of the rules. — particularly in the area of agents and their lack of definition and responsibility.

Better than $\frac{2}{3}$ of residential real estate mortgages are originated by mortgage brokers. They are not regulated by the agencies proposing the new guidelines. They do, however, interact with the regulated financial institutions – and the proposed rules do not provide any guidelines on those interactions.

Mortgage Brokers are not required to adhere any rules separating the appraisal function from the loan production function of their business. Regularly mortgage brokers originate loans and order appraisals. These mortgage brokers do pressure appraisers – significantly.

While the proposed rules define agents (in a general sense, Appendix C) they do not specifically set forth the relationship between the agents and the financial institutions. Mortgage brokers are (according to the Financial Institution Letter dated October 27th 2003) agents of the institutions (see the last sentence of the first paragraph under the Appraisal and Evaluation Compliance Reviews section of the letter).

The banks have used mortgage brokers to outsource the job of finding and qualifying borrowers, but at the same time, they have outsourced their responsibility to separate the loan origination function from the appraisal function. Without incorporating the agent's responsibility within these rules, the rules are hollow – the vast majority of loans are not covered.

Just to be clear, not all loans originated by mortgage brokers are residential loans...mortgage brokers also originate many multi-million dollar loans – and they exercise the same pressure on the appraisers engaged for those loans as they do on the appraisers engaged for single family loans.

It is quite clear that in addition to outsourcing loan origination, borrower qualification and appraisal procurement, the banks also outsource some of the liabilities for fraud and foreclosure onto the originators through legal agreements. The rules should prevent this.

It is our opinion that the rules should incorporate language spelling out the relationship between the financial institutions and their agents. Agency law is well steeped in our legal system and incorporating it into the rules would go a long way to reduce the coercing of appraisers and fraud.

We believe the financial institutions agents should be covered under these rules. Leaving the banks totally unaccountable for the actions of their agents seems inappropriate during this time of financial crisis.

Thank you for the opportunity to comment,

State of Illinois Appraisal Licensing Board,

A handwritten signature in black ink, appearing to read 'R. Gorman', written in a cursive style.

Robert C. Gorman, Chairman

Attached are the first three of a number of findings the Illinois Appraisal Board has adopted in the Board's attempt to deal with these issues. More findings will be forthcoming.

Finding One ---- Client And Intended User Issue

USPAP Requires both the client and any intended users be addressed in reports. With the growing influence of Appraisal Management Companies (AMC) acting as agents, it has become clouded as to how to deal with this issue within an appraisal report. Typically, an AMC will order an appraisal on behalf of one of their clients. The question then becomes, who is the client.

USPAP defines the client as: “the party or parties who engage an appraiser (by employment or contract) in a specific assignment.”

Therefore, the Board has concluded the agent is the party arranging for the services of the appraiser and is therefore the client.

Sine the client (agent) is acting on the behalf of another party, the second party is an intended user. To that end, it is The Board’s position that both the client (agent) and the intended user must be disclosed in the report.

It is The Board’s opinion that the proper way to address this issue is to disclose the client/intended user in the following manner:

“ABC Incorporated acting as duly authorized agent for XYZ Bank, an intended user.”

If the client cannot provide the appraiser with documentation identifying them as a duly authorized agent, then a statement must be included within the appraisal indicating that the report may not comply with the Interagency Appraisal and Evaluation Guidelines, Adopted October 27, 1994 by the OCC, FRB, FDIC, and OTC.

Suggested notice: Neither a regulated financial institution nor the agent of a regulated financial institution ordered this appraisal.

Failure to include this notice will result in a misleading appraisal.

Finding Two The Issue of Agent's Authority

It is the Board's opinion that to be able to understand the proper scope of work and level of detail the appraisal must cover, the appraiser must understand both the needs of the client (agent) **and** the intended user.

The financial regulatory system has never defined the relationship between an institution and its agent. The Board's position is: an authorized agent is one approved by the Board of Directors of the financial institution and has a specified level of authority relating to the appraisal process.

Appraisal assignments come from many types of clients – some of them are clients that are acting as agents for others – the others being intended users of the appraisal. It is important for the appraiser to understand the relationship of the client (agent) and the intended user so as to provide a appraisal that meets both of their needs.

Some clients (agents) have a very restricted relationship with their clients. Their job may be restricted to find qualified appraiser in a certain location, or be more complex such as ordering the appraisal and reviewing the appraisal as well.

Among the some of the possible responsibilities of a client (agent) are:

- Providing the intended user with a recommendation for a qualified appraiser based upon geographic location.
- Obtains bids for appraisal assignment – agent’s client chooses the appraiser.
- Obtaining bids and awarding contracts – but appraisal is delivered directly to the intended user.
- Obtaining bids, awarding contracts, reviewing appraisals and forwarding the appraisal report to the intended user.
- Obtaining bids, awarding contracts, reviewing appraisals, requiring changes to the appraisal and forwards the appraisal to the intended user.
- Obtaining bids, awarding contracts, reviewing appraisals, requiring changes to the appraisal, summarizes (or otherwise alters the original the appraisal) and forwards the summary or altered appraisal on to the intended user.

The first issue to be addressed within the Scope of Work Rule of USPAP is identification of the appraisal problem to be solved. USPAP states developing a Scope of Work is the appraisers responsibility. It goes on to state, “Communication with the client is required to establish most of the information necessary for problem identification.”

The regulations are quite clear that communication between the financial institution and the appraiser (or evaluator) is a key element in the loan process. Only by knowing the relationship between the client (agent) and the financial institution (who is the intended user of the appraisals) can an appraiser know who to develop scope of work and level of detail required in the appraisal assignment.

It is therefore The Board's opinion that it is incumbent upon the appraiser to ascertain the relationship between the client (agent) and the intended user. We suggest the following options:

Option 1 - Obtain, from the client (agent), a copy of their agreement with the intended user. This agreement should set out the responsibilities and authority of the client (agent).

Option 2 - Obtain from the client (agent) a letter wherein the client (agent) sets forth their level of responsibility and authority.

If the client (agent) does not have the authority or knowledge to assist the appraiser in developing the scope of work, the appraiser must be allowed to interact with the intended user, or consider declining the assignment.

Finding Three – Delivery of Appraisal

The Scope of Work Rule states under Disclosure Obligations – “The report must contain sufficient information to allow intended users to understand the scope of work performed.”

The Board’s has become aware that some AMC’s and /or internet delivery portals do not provide “true copies” of delivered appraisal reports to their clients or other intended users. This can result in clients/intended users receiving non-credible or even misleading reports. A “true copy” is an exact duplicate of the written document.

While The Board recognizes appraisers have no control over what happens to their reports after they are delivered, The Board’s position is that appraisers may not be complicit in facilitating the delivery of other than “true copies” of the report.

Submission to the client of only the “data” contained in the blanks of a form is not an acceptable form of delivery. The entire report must be submitted. Data may be submitted separately. Proper delivery is either via U. S. Postal Service or by Portable Document Format (PDF) with all the pages (including all addenda) numbered consecutively.

It is unacceptable practice to deliver a report in a manner where the appraiser knows, or should know, a true copy of the report will not be delivered to ALL the intended users.