FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. **10433**
February 13, 1991]

APPRAISAL STANDARDS FOR FEDERALLY RELATED TRANSACTIONS

Comment Requested on Inclusion of
Uniform Standards of Professional Appraisal Practice

*To All State Member Banks and Bank Holding Companies
in the Second Federal Reserve District, and Others Concerned:*

The following statement has been issued by the Board of Governors of the Federal Reserve System:

> The Federal Reserve Board, along with the other federal financial institutions regulatory agencies, has issued for comment an interim common rule that amends each agency's respective appraisal regulation by adding an appendix consisting of applicable provisions of the Uniform Standards of Professional Appraisal Practice ("USPAP").
>
> Comment is requested by March 1, 1991.
>
> Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 required the Board and the other financial institutions regulatory agencies to promulgate regulations governing appraisal standards and practices in real estate-related transactions of financial institutions. Title XI further required that these standards conform, at a minimum, with the USPAP.
>
> In publishing its final rule (55 *Federal Register* 27, 762 (July 5, 1990)), the Board required compliance with, among other standards, the USPAP. However, the Board stated at that time that the USPAP was undergoing revisions and that public comment would be solicited once these revisions were completed. The Board now seeks comment on the revised USPAP.

Enclosed — for State member banks and bank holding companies — is the text of the interim common rule, as it applies to the Board of Governors; additional, single copies may be obtained at this Bank (33 Liberty Street) from the Issues Division on the first floor, or by calling the Circulars Division (Tel. No. 212-720-5215 or 5216). Comments thereon should be submitted by March 1, 1991 and sent to your primary Federal regulator, as specified in the notice.

E. Gerald Corrigan,
President.

DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR PART 34

[DOCKET NO. 90-22]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR PART 225

[REGULATION Y; DOCKET NO. R-0720]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR 323

DEPARTMENT OF THE TREASURY
OFFICE OF THRIFT SUPERVISION

12 CFR PART 564

[DOCKET NO. 90-4000]

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR PART 722

RESOLUTION TRUST CORPORATION

12 CFR PART 1608

Excerpts from the Uniform Standards of Professional Appraisal Practice Applicable to Federally Related Transactions

AGENCIES: Office of the Comptroller of the Currency,

Treasury; Board of Governors of the Federal Reserve System;

[Enc. Cir. No. 10433]

Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration; and Resolution Trust Corporation.

ACTION: Interim common rule.

SUMMARY: Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Board"), Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), National Credit Union Administration ("NCUA"), and the Resolution Trust Corporation ("RTC") to adopt regulations regarding appraisals used in connection with certain real estate related financial transactions entered into or regulated by these agencies. At a minimum, appraisals used in connection with these federally related transactions must be performed in accordance with generally accepted appraisal standards as evidenced by the standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

This interim common rule will amend the existing appraisal regulations of the listed agencies by adding an appendix consisting of the applicable provisions excerpted from the Uniform Standards of Professional Appraisal

Practice (the "USPAP") as promulgated by the Appraisal Foundation's Appraisal Standards Board.

DATES: Effective date: This interim common rule is effective January 30, 1991.

Comment date: Comments must be received by March 1, 1991.

ADDRESSES: Comments should be directed to:

Office of the Comptroller of the Currency (OCC):

Communications Division, 5th Floor, 490 L'Enfant Plaza East SW, Washington, DC 20219, Attention: Docket No. 90-22. Comments will be available for public inspection and photocopying at the same location.

Board of Governors of the Federal Reserve System (Board):

Comments, which should refer to Docket No. R-0720, may be mailed to the Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

Federal Deposit Insurance Corporation (FDIC):

Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to Room F-402, 1776 F Street, N.W., Washington, DC, on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in Room F-402 between 8:30 a.m. and 5:00 p.m. on business days. [FAX number (202) 898-3838]

Office of Thrift Supervision (OTS):

Send comments, which should refer to Docket No. 90-4000, to Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. Comments will be available for inspection at 1735 I Street NW. 9th floor.

National Credit Union Administration (NCUA):

Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street NW., Washington, DC 20456. Comments will be available for inspection at the same location.

Resolution Trust Corporation (RTC):

Send comments to John M. Buckley, Jr., Executive Secretary, Resolution Trust Corporation, 801 17th Street NW., Washington, DC 20434. Comments may be hand delivered to Room 314 on business days between 8:30 a.m. and 5:00 p.m. Comments may also be inspected in the RTC Reading Room between 9:00 a.m. and 5:00 p.m. on business days. [FAX number: (202) 416-4753]

FOR FURTHER INFORMATION CONTACT:

OCC: Tommy R. Tucker, National Bank Examiner (202/447-1164), Supervision Policy/Research Division or Horace G. Sneed, Attorney, Legal Advisory Services Division, (202) 447-1881, Office of the Comptroller of the Currency.

Board: Roger Cole, Assistant Director (202/452-2618), Rhoger H. Pugh, Manager (202/728-5883), or Stanley B. Rediger, Senior Financial Analyst (202/452-2629), Division of Banking Supervision and Regulation, Board of Governors; or Michael J. O'Rourke, Senior Attorney (202/452-3288) or Mark J. Tenhundfeld, Attorney (202/452-3612), Legal Division, Board of Governors. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

FDIC: Robert F. Miailovich, Assistant Director (202/898-6918), James D. Leitner, Examination Specialist (202/898-6790), Division of Supervision, N. Jack Taylor, Senior Liquidation Specialist (202/898-7326), Division of Liquidation, or Walter P. Doyle, Counsel (202/898-3682), Legal Division.

OTS: Diana Garmus, Executive Assistant, Office of the Director, (202/906-6273), Office of Thrift Supervision, 1700

G Street, NW., Washington, DC 20552; Glen M. Sanders, Chief Appraiser and Loan Underwriter, Office of Thrift Supervision, District 11, (714/228-3672), Four Centerpointe Drive, Suite 300, La Palma, CA 90623; Kathryn Gearheard, MAI, District Appraiser, (503/242-3851), Office of Thrift Supervision, District 12, 610 SW. Alder, Suite 805, Portland, OR 97201; Gregory A. Hoefer, MAI-SRPA, Chief District Appraiser, (206/340-2401), Office of Thrift Supervision, District 12, 1501 Fourth Avenue, 19th Floor, Seattle, WA 98101; Ellen J. Sazzman, Attorney, (202/906-7133), Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

NCUA: Michael J. McKenna, Office of General Counsel, (202/682-9630), or Timothy P. Hornbrook, Office of Examination and Insurance (202/682-9640).

RTC: David R. Wiley, Review Appraiser, (202/416-7136), or Robert Dodge, Assistant Director for Real Estate Disposition, (202/416-7475).

SUPPLEMENTARY INFORMATION:

Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183 (1989), is designed to ensure that reliable appraisals are rendered in connection with federally related transactions. Section 1121 of FIRREA, 12 U.S.C. 3350, defines a "federally related transaction" as any real estate-related financial transaction requiring the services of an appraiser that is entered into, contracted for, or regulated by the OCC, Board, FDIC, OTS, NCUA, or the RTC (the "agencies").

Section 1110 of FIRREA, 12 U.S.C. 3339, requires each agency to adopt regulations setting minimum standards for appraisals used in connection with federally related transactions within the agency's jurisdiction. Under Section 1110 of FIRREA, the regulations must require all appraisals used in connection with federally related transactions to be performed in accordance with generally accepted appraisal practices as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

The Appraisal Standards Board of the Appraisal Foundation has promulgated appraisal standards for real-estate related transactions in its Uniform Standards of Professional Appraisal Practice (the "USPAP") as amended in June, 1990. Each agency has published a final appraisal regulation requiring appraisals for federally related transactions within its jurisdiction to be performed in accordance with the USPAP. <u>See</u> 55 FR 34684 (August 24,

1990) (OCC final rule on real estate appraisals); 55 FR 27762 (July 5, 1990) (Board final rule on appraisal standards for federally related transactions); 55 FR 33879 (August 20, 1990) (FDIC final rule on appraisals); 55 FR 34532 (August 23, 1990) (OTS final rule on real estate appraisals); 55 FR 30199 (July 25, 1990) (NCUA final rule on appraisals and requirements for insurance); 55 FR 34,219 (August 22, 1990) (RTC final rule on real estate appraisals). This interim common rule will amend the agencies' existing appraisal regulations by adding an appendix that contains excerpts from the USPAP provisions applicable to federally related transactions. The agencies are publishing these excerpts as an interim rule because Title XI and applicable regulations already require compliance with the USPAP.

Some of the provisions contained in the USPAP are inapplicable to real estate appraisals and, therefore, do not apply to federally related transactions. For instance, the USPAP includes sections on real estate and real property consulting and personal property appraisals. The interim common rule includes only those USPAP provisions which are applicable to federally related transactions. Cross references to those sections of the USPAP which are not applicable to federally related transactions have been excluded from the interim rule and in some places additional text has been added for clarification.

The agencies are soliciting public comment on those provisions of the USPAP which are being added as an appendix to each agency's appraisal regulation. A final common rule will be published after consideration of all comments received.

The complete text of the USPAP as promulgated by the Appraisal Standards Board is available from the Appraisal Foundation, 1029 Vermont Ave., N.W., Suite 900, Washington, DC 20005. The complete table of contents for USPAP is provided here to help readers understand what provisions are excluded from the interim rule.

Table of Contents

Uniform Standards of Professional Appraisal Practice
as promulgated by the
Appraisal Standards Board of
The Appraisal Foundation

STANDARD 10 [Excluded]

Business Appraisal Reporting

REGULATORY FLEXIBILITY ACT STATEMENT

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC, the Board, the FDIC, the OTS, the NCUA, and the RTC hereby independently certify that the common interim rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

For federally related transactions, Title XI of FIRREA requires financial institutions which are regulated by the OCC, the Board, the FDIC, the OTS, the NCUA, or the RTC to use appraisals prepared in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. Since the USPAP standards only codify appraisal practices that are usual and customary in the appraisal industry, adoption of this regulation should not result in a material departure from existing practice by regulated institutions or cause a significant economic impact on a substantial number of small entities.

OCC AND OTS EXECUTIVE ORDER STATEMENT

The OCC and the OTS have independently determined that this interim rule does not constitute a "major rule" within the meaning of Executive Order 12291 and Treasury Department Guidelines. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this interim rule, exclusive of those effects attributable to requirements imposed by Title XI of FIRREA, (1) would not have an annual effect on the economy of $100 million or more, (2) would not result in a major increase in the cost of financial institution operations or governmental supervision, and (3) would not have a significant adverse effect on competition (foreign and domestic), employment, investment, productivity or innovation, within the meaning of the executive order.

For federally related transactions, Title XI requires the financial institutions supervised by the OCC and the OTS to use appraisals prepared in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. Since these standards only codify appraisal practices and procedures that are usual and customary in the appraisal industry, they should not cause a significant departure from current appraisal practices by regulated institutions, or a substantial effect on the economy.

NCUA EXECUTIVE ORDER 12612 STATEMENT

This interim rule will apply to all federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined that the interim rule may have a substantial direct effect on the state, on the relationship between the national government and the state, or on the distribution of power and responsibilities among the various levels of government, but that Title XI of FIRREA requires that this interim rule apply to all federally insured credit unions.

TEXT OF INTERIM COMMON RULE

The text of the interim common rule appears below:

Appendix A to _______: EXCERPTS FROM THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE APPLICABLE TO FEDERALLY RELATED TRANSACTIONS

(Based upon the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of The Appraisal Foundation)[1]

TABLE OF CONTENTS

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[1] This document excludes portions of the Uniform Standards of Professional Appraisal Practice (USPAP) that are not applicable to federally related transactions. In addition, cross references to excluded provisions have been removed and additional text added for clarification only. The complete text of the USPAP is available from the Appraisal Foundation, 1029 Vermont Ave., N.W., Suite 900, Washington, DC 20005.

Section I - Introduction

PREAMBLE

It is essential that a professional appraiser arrive at and communicate his or her analyses, opinions, and advice in a manner that will be meaningful to the client and will not be misleading in the marketplace. These Uniform Standards of Professional Appraisal Practice reflect the current standards of the appraisal profession.

The importance of the role of the appraiser places ethical obligations on those who serve in this capacity. These standards include explanatory comments and begin with an Ethics Provision setting forth the requirements for integrity, objectivity, independent judgment, and ethical conduct. In addition, these standards include a Competency Provision which places an immediate responsibility on the appraiser prior to acceptance of an assignment. The standards contain binding requirements, as well as specific guidelines. Definitions applicable to these standards are also included.

These standards deal with the procedures to be followed in performing an appraisal or review and the manner in which an appraisal or review is communicated. Standards 1 and 2 relate to the development and communication of a real property appraisal. Standard 3 establishes guidelines for reviewing an appraisal and reporting on that review.

These standards are for appraisers and the users of appraisal services. To maintain the highest level of professional practice, appraisers must observe these standards. The users of appraisal services should demand work performed in conformance with these standards.

> Comment: Explanatory comments are an integral part of the Uniform Standards and should be viewed as extensions of the provisions, definitions, and standards rules. Comments provide interpretation from the Appraisal Standards Board concerning the background or application of certain provisions, definitions, or standards rules. There are no comments for provisions, definitions, and standards rules that are axiomatic or have not yet required further explanation; however, additional comments will be developed and others supplemented or revised as the need arises.

ETHICS PROVISION

Because of the fiduciary responsibilities inherent in professional appraisal practice, the appraiser must observe the highest standards of professional ethics. This Ethics Provision is divided into four sections: conduct, management, confidentiality, and record keeping.

> <u>Comment:</u> This provision emphasizes the personal obligations and responsibilities of the individual appraiser. However, it should also be emphasized that groups and organizations engaged in appraisal practice share the same ethical obligations.

<u>Conduct</u>

An appraiser must perform ethically and competently in accordance with these standards and not engage in conduct that is unlawful, unethical, or improper. An appraiser who could reasonably be perceived to act as a disinterested third party in rendering an unbiased appraisal, review, or consulting service must perform assignments with impartiality, objectivity, and independence and without accommodation of personal interests.

<u>Comment:</u> An appraiser is required to avoid any action that could be considered misleading or fraudulent. In particular, it is unethical for an appraiser to use or communicate a misleading or fraudulent report or to knowingly permit an employee or other person to communicate a misleading or fraudulent report.

The development of an appraisal, review, or consulting service based on a hypothetical condition is unethical unless: 1) the use of the hypothesis is clearly disclosed; 2) the assumption of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison and would not be misleading; and 3) the report clearly describes the rationale for this assumption, the nature of the hypothetical condition, and its effect on the result of the appraisal, review or consulting service.

An individual appraiser employed by a group or organization which conducts itself in a manner that does not conform to these standards should take steps that are appropriate under the circumstances to ensure compliance with the standards.

<u>Management</u>

The acceptance of compensation that is contingent upon the reporting of a predetermined value or a direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event is unethical.

The payment of undisclosed fees, commissions, or things of value in connection with the procurement of appraisal, review, or consulting assignments is unethical.

<u>Comment:</u> Disclosure of fees, commissions, or things of value connected to the procurement of an assignment should appear in the certification of a written report and in any transmittal letter in which conclusions are stated. In groups or organizations engaged in appraisal practice, intracompany payments to employees for business development are not considered to be unethical. Competency, rather than financial incentives, should be the primary basis for awarding an assignment.

Advertising for or soliciting appraisal assignments in a manner which is false, misleading or exaggerated is unethical.

Comment: In groups or organizations engaged in appraisal practice, decisions concerning finder or referral fees, contingent compensation, and advertising may not be the responsibility of an individual appraiser, but for a particular assignment, it is the responsibility of the individual appraiser to ascertain that there has been no breach of ethics, that the appraisal is prepared in accordance with these standards, and that the report can be properly certified as required by Standards Rules 2-3 or 3-2.

The restriction on contingent compensation in the first paragraph of this section does not apply to consulting assignments where the appraiser is not acting in a disinterested manner and would not reasonably be perceived as performing a service that requires impartiality. This permitted contingent compensation must be properly disclosed in the report.

Comment: The preparer of the written report of an assignment where the appraiser is not acting in a disinterested manner must certify that the compensation is contingent and must explain the basis for the contingency in the report, certification, executive summary and in any transmittal letter in which conclusions are stated.

Confidentiality

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

Comment: An appraiser must not disclose confidential factual data obtained from a client or the results of an assignment prepared for a client to anyone other than: 1) the client and persons specifically authorized by the client; 2) such third parties as may be authorized by due process of law; and 3) a duly authorized professional peer review committee. As a corollary, it is unethical for a member of a duly authorized professional peer review committee to disclose confidential information or factual data presented to the committee.

Record Keeping

An appraiser must prepare written records of appraisal, review, and consulting assignments-- including oral testimony and reports-- and retain such records for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

Comment: Written records of assignments include true copies of written reports, written summaries of oral testimony and reports (or a transcript of testimony), all data and statements required by these standards, and other information as may be required to support the findings and conclusions of the appraiser. The term written records also includes information stored on electronic, magnetic, or other media. Such records must be made available by the appraiser when required by due process of law or by a duly authorized professional peer review committee.

COMPETENCY PROVISION

Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; or alternatively:

1. **disclose the lack of knowledge and/or experience to the client before accepting the assignment; and**

2. **take all steps necessary or appropriate to complete the assignment competently; and**

3. **describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.**

<u>Comment:</u> The background and experience of appraisers varies widely and a lack of knowledge or experience can lead to inaccurate or inappropriate appraisal practice. The competency provision requires an appraiser to have both the knowledge and the experience required to perform a specific appraisal service competently. If an

appraiser is offered the opportunity to perform an appraisal service but lacks the necessary knowledge or experience to complete it competently, the appraiser must disclose his or her lack of knowledge or experience to the client before accepting the assignment and then take the necessary or appropriate steps to complete the appraisal service competently. This may be accomplished in various ways including, but not limited to, personal study by the appraiser; association with an appraiser reasonably believed to have the necessary knowledge or experience; or retention of others who possess the required knowledge or experience.

Although this provision requires an appraiser to identify the problem and disclose any deficiency in competence prior to accepting an assignment, facts or conditions uncovered during the course of an assignment could cause an appraiser to discover that he or she lacks the required knowledge or experience to complete the assignment competently. At the point of such discovery, the appraiser is obligated to notify the client and comply with items 2 and 3 of the provision.

The concept of competency also extends to appraisers who are requested or required to travel to geographic areas wherein they have no recent appraisal experience. An appraiser preparing an appraisal in an unfamiliar location must spend sufficient time to understand the nuances of the local market and the supply and demand factors relating to the specific property type and the location involved. Such understanding will not be imparted solely from a consideration of specific data such as demographics, costs, sales and rentals. The necessary understanding of local market conditions provides the bridge between a sale and a comparable sale or a rental and a comparable rental. If an appraiser is not in a position to spend the necessary amount of time in a market area to obtain this understanding, affiliation with a qualified local appraiser may be the appropriate response to ensure the development of a competent appraisal.

JURISDICTIONAL EXCEPTION[2]

If any part of these standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction.

SUPPLEMENTAL STANDARDS

These Uniform Standards provide the common basis for all appraisal practice. Supplemental standards applicable to appraisals prepared for specific purposes or property types may be issued by public agencies and certain client groups, e.g. regulatory agencies, eminent domain authorities, asset managers, and financial institutions. Appraisers and clients must ascertain whether any supplemental standards in addition to these Uniform Standards apply to the assignment being considered.

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[2] The Departure Provision that appears in the USPAP is not applicable to federally related transactions.

DEFINITIONS

For the purpose of these standards, the following definitions apply:

APPRAISAL: **(noun) the act or process of estimating value; an estimate of value.**
(adjective) of or pertaining to appraising and related functions, e.g. appraisal practice, appraisal services.

APPRAISAL PRACTICE: the work or services performed by appraisers, defined by three terms in these standards: appraisal, review, and consulting.

> <u>Comment:</u> These three terms are intentionally generic, and not mutually exclusive. For example, an estimate of value may be required as part of a review or consulting service. The use of other nomenclature by an appraiser (e.g. analysis, counseling, evaluation, study, submission, valuation) does not exempt an appraiser from adherence to these standards.

CASH FLOW ANALYSIS: a study of the anticipated movement of cash into or out of an investment.

CLIENT: any party for whom an appraiser performs a service.

CONSULTING: the act or process of providing information, analysis of real estate data, and recommendations or conclusions on diversified problems in real estate, other than estimating value.

FEASIBILITY ANALYSIS: a study of the cost benefit relationship of an economic endeavor.

INVESTMENT ANALYSIS: a study that reflects the relationship between acquisition price and anticipated future benefits of a real estate investment.

MARKET ANALYSIS: a study of real estate market conditions for a specific type of property.

MARKET VALUE: Market value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined.

A current economic definition agreed upon by federal financial institutions in the United States of America is:

> The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
>
> 1. buyer and seller are typically motivated;
>
> 2. both parties are well informed or well advised, and acting in what they consider their best interests;
>
> 3. a reasonable time is allowed for exposure in the open market;
>
> 4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Substitution of another currency for United States dollars in the fourth condition is appropriate in countries or in reports addressed to clients from other countries.

Persons performing appraisal services that may be subject to litigation are cautioned to seek the exact legal definition of market value in the jurisdiction in which the services are being performed.

MASS APPRAISAL: the process of valuing a universe of properties as of a given date utilizing standard methodology, employing common data, and allowing for statistical testing.

MASS APPRAISAL MODEL: a mathematical expression of how supply and demand factors interact in a market.

PERSONAL PROPERTY: identifiable portable and tangible objects which are considered by the general public as being "personal," e.g. furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all property that is not classified as real estate.

REAL ESTATE: an identified parcel or tract of land, including improvements, if any.

REAL PROPERTY: the interests, benefits, and rights inherent in the ownership of real estate.

> Comment: In some jurisdictions, the terms "real estate" and "real property" have the same legal meaning. The separate definitions recognize the traditional distinction between the two concepts in appraisal theory.

REPORT: any communication, written or oral, of an appraisal, review, or analysis; the document that is transmitted to the client upon completion of an assignment.

> Comment: Most reports are written and most clients mandate written reports. Oral report guidelines (See Standards Rule 2-4) and restrictions (See Ethics Provision: Record Keeping) are included to cover court testimony and

other oral communications of an appraisal, review or consulting service.

REVIEW: the act or process of critically studying a report prepared by another.

Section II - Real Property Appraisals

STANDARD 1

In developing a real property appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

Comment: Standard 1 is directed toward the substantive aspects of developing a competent appraisal. The requirements set forth in Standards Rule 1-1, the appraisal guidelines set forth in Standards Rules 1-2, 1-3, 1-4, and the requirements set forth in Standards Rule 1-5 mirror the appraisal process in the order of topics addressed and can be used by appraisers and the users of appraisal services as a convenient checklist.

<u>Standards Rule 1-1</u>

In developing a real property appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

<u>Comment:</u> <u>Departure from this binding requirement is not permitted.</u> This rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Important changes in the cost and manner of constructing and marketing commercial, industrial, and residential real estate and changes in the legal framework in which real property rights and interests are created, conveyed, and mortgaged have resulted in corresponding changes in appraisal theory and practice. Social change has also had an effect on

appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.

(b) not commit a substantial error of omission or commission that significantly affects an appraisal;

Comment: Departure from this binding requirement is not permitted. In performing appraisal services an appraiser must be certain that the gathering of factual information is conducted in a manner that is sufficiently diligent to ensure that the data that would have a material or significant effect on the resulting opinions or conclusions are considered. Further, an appraiser must use sufficient care in analyzing such data to avoid errors that would significantly affect his or her opinions and conclusions.

(c) **not render appraisal services in a careless or negligent manner, such as a series of errors that, considered individually, may not significantly affect the results of an appraisal, but which, when considered in the aggregate, would be misleading.**

Comment: Departure from this binding requirement is not permitted. Perfection is impossible to attain and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This rule requires an appraiser to use due diligence and due care. The fact that the carelessness or negligence of an appraiser has not caused an error that significantly affects his or her opinions or conclusions and thereby seriously harms a client or a third party does not excuse such carelessness or negligence.

Standards Rule 1-2

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines:

(a) adequately identify the real estate, identify the real property interest, consider the purpose and intended use of the appraisal, consider the extent of the data collection process, identify any special limiting conditions, and identify the effective date of the appraisal;

(b) define the value being considered; if the value to be estimated is market value, the appraiser must clearly indicate whether the estimate is the most probable price:

(i) in terms of cash; or

(ii) in terms of financial arrangements equivalent to cash; or

(iii) in such other terms as may be precisely defined; if an estimate of value is based on submarket financing or financing with unusual conditions or incentives, the terms of such financing must be clearly set forth, their contributions to or negative influence on value must be described and estimated, and the market data supporting the valuation estimate must be described and explained;

<u>Comment:</u> For certain types of appraisal assignments in which a legal definition of market

value has been established and takes precedence, the Jurisdictional Exception may apply to this guideline.

If the concept of reasonable exposure in the open market is involved, the appraiser should be specific as to the estimate of marketing time linked to the value estimate.

(c) **consider easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature;**

(d) **consider whether an appraised fractional interest, physical segment, or partial holding contributes pro rata to the value of the whole;**

Comment: This guideline does not require an appraiser to value the whole when the subject of the appraisal is a fractional interest, a physical segment, or a partial holding. However, if the value of the whole is not considered, the appraisal must clearly reflect that the value of the property being appraised cannot be used to estimate the value of the whole by mathematical extension.

(e) **identify and consider the effect on value of any personal property, trade fixtures or intangible items that are not real property but are included in the appraisal.**

Comment: This guideline requires the appraiser to recognize the inclusion of items that are not real property in an overall value estimate. Additional expertise in personal property or business appraisal may be required to allocate the overall value to its various components. Separate valuation of such items is required when they are significant to the overall value.

Standards Rule 1-3

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines:

(a) **consider the effect on use and value of the following factors: existing land use regulations, reasonably probable modifications of such land use regulations,**

economic demand, the physical adaptability of the real estate, neighborhood trends, and the highest and best use of the real estate;

Comment: This guideline sets forth a list of factors that affect use and value. In considering neighborhood trends, an appraiser must avoid stereotyped or biased assumptions relating to race, age, color, religion, gender, or national origin or an assumption that racial, ethnic, or religious homogeneity is necessary to maximize value in a neighborhood. Further, an appraiser must avoid making an unsupported assumption or premise about neighborhood decline, effective age, and remaining life. In considering highest and best use, an appraiser should develop the concept to the extent that is required for a proper solution of the appraisal problem being considered.

(b) **recognize that land is appraised as though vacant and available for development to its highest and best use and that the appraisal of improvements is based on their actual contribution to the site.**

Comment: This guideline may be modified to reflect the fact that, in various legal and practical situations, a site may have a contributory value that differs from the value as if vacant.

Standards Rule 1-4

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines, when applicable:

(a) value the site by an appropriate appraisal method or technique;

(b) collect, verify, analyze, and reconcile:
(i) such comparable cost data as are available to estimate the cost new of the improvements (if any);
(ii) such comparable data as are available to estimate the difference between cost new and the present worth of the improvements (accrued depreciation);
(iii) such comparable sales data, adequately identified and described, as are available to indicate a value conclusion;

(iv) such comparable rental data as are available to estimate the market rental of the property being appraised;

(v) such comparable operating expense data as are available to estimate the operating expenses of the property being appraised;

(vi) such comparable data as are available to estimate rates of capitalization and/or rates of discount.

Comment: This rule covers the three approaches to value. See Standards Rule 2-2(j) for corresponding reporting requirements.

(c) base projections of future rent and expenses on reasonably clear and appropriate evidence;

Comment: This guideline requires an appraiser, in developing income and expense statements and cash flow projections, to weigh historical information and trends, current market factors affecting such trends, and anticipated events such as competition from developments under construction.

(d) when estimating the value of a leased fee estate or a leasehold estate, consider and analyze the effect on

value, if any, of the terms and conditions of the lease(s);

(e) consider and analyze the effect on value, if any, of the assemblage of the various estates or component parts of a property and refrain from estimating the value of the whole solely by adding together the individual values of the various estates or component parts;

Comment: Although the value of the whole may be equal to the sum of the separate estates or parts, it also may be greater than or less than the sum of such estates or parts. Therefore, the value of the whole must be tested by reference to appropriate market data and supported by an appropriate analysis of such data.

A similar procedure must be followed when the value of the whole has been established and the appraiser seeks to estimate the value of a part. The value of any such part must be tested by reference to appropriate market data and supported by an appropriate analysis of such data.

(f) **consider and analyze the effect on value, if any, of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the effective appraisal date;**

Comment: In condemnation valuation assignments in certain jurisdictions, the Jurisdictional Exception may apply to this guideline.

(g) **identify and consider the appropriate procedures and market information required to perform the appraisal, including all physical, functional, and external market factors as they may affect the appraisal;**

Comment: The appraisal may require a complete market analysis.

(h) **appraise proposed improvements only after examining and having available for future examination:**

(i) **plans, specifications, or other documentation sufficient to identify the scope and character of the proposed improvements;**

(ii) **evidence indicating the probable time of completion of the proposed improvements; and**

(iii) reasonably clear and appropriate evidence supporting development costs, anticipated earnings, occupancy projections, and the anticipated competition at the time of completion.

<u>Comment:</u> The evidence required to be examined and maintained under this guideline may include such items as contractor's estimates relating to cost and the time required to complete construction, market, and feasibility studies; operating cost data; and the history of recently completed similar developments. The appraisal may require a complete feasibility analysis.

(i) All pertinent information in items (a) through (h) above shall be used in the development of an appraisal.

<u>Comment:</u> See standards Rule 2-2(k) for corresponding reporting requirements.

Standards Rule 1-5

In developing a real property appraisal, an appraiser must:

(a) consider and analyse any current Agreement of Sale, option, or listing of the property being appraised, if such information is available to the appraiser in the normal course of business;

(b) consider and analyse any prior sales of the property being appraised that occurred within the following time periods:

(i) one year for one-to-four family residential property; and

(ii) three years for all other property types;

Comment: The intent of this requirement is to encourage the research and analysis of prior sales of the subject; the time frames cited are minimums.

(c) consider and reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used.

Comment: Departure from this binding requirement is not permitted. See Standards Rule 2-2(k) Comment for corresponding reporting requirements.

STANDARD 2

In reporting the results of a real property appraisal an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

Comment: Standard 2 governs the form and content of the report that communicates the results of an appraisal to a client and third parties.

Standards Rule 2-1

Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

Comment: Departure from this binding requirement is not permitted. Since most reports are used and relied upon by third parties, communications considered adequate by the appraiser's client may not be sufficient. An appraiser must take extreme care to make certain that his or her reports will not be misleading in the marketplace or to the public.

(b) **contain sufficient information to enable the person(s) who receive or rely on the report to understand it properly;**

Comment: Departure from this binding requirement is not permitted. A failure to observe this rule could cause a client or other users of the report to make a serious error even though each analysis, opinion, and conclusion in the report is clearly and accurately stated. To avoid this problem and the dangers it presents to clients and other users of reports, this rule requires an appraiser to include in each report sufficient information to enable the reader to understand it properly. All reports, both written and oral, must clearly and accurately present the analyses, opinions, and conclusions of the appraiser in sufficient depth and detail to address adequately the significance of the specific appraisal problem.

(c) clearly and accurately disclose any extraordinary assumption or limiting condition that directly affects the appraisal and indicate its impact on value.

<u>Comment:</u> <u>Departure from this binding requirement is not permitted.</u> Examples of extraordinary assumptions or conditions might include items such as the execution of a pending lease agreement, atypical financing, or completion of onsite or offsite improvements. In a written report the disclosure would be required in conjunction with statements of each opinion or conclusion that is affected.

<u>Standards Rule 2-2</u>

Each written real property appraisal report must:

(a) identify and describe the real estate being appraised;

(b) identify the real property interest being appraised;

<u>Comment on (a) and (b):</u> These two requirements are essential elements in any report. Identifying the real estate can be accomplished by any

combination of a legal description, address, map reference, copy of a survey or map, property sketch and/or photographs. A property sketch and photographs also provide some description of the real estate in addition to written comments about the physical attributes of the real estate. Identifying the real property rights being appraised requires a direct statement substantiated as needed by copies or summaries of legal descriptions or other documents setting forth any encumbrances.

(c) **state the purpose of the appraisal;**

(d) **define the value to be estimated;**

(e) **set forth the effective date of the appraisal and the date of the report;**

Comment on (c), (d) and (e): These three requirements call for clear disclosure to the reader of a report the "why, what and when" surrounding the appraisal. The purpose of the appraisal is used generically to include both the task involved and rationale for the appraisal.

Defining the value to be estimated requires both an appropriately referenced definition and any comments needed to clearly indicate to the reader how the definition is being applied [See Standards Rule 1-2(b)]. The effective date of the appraisal establishes the context for the value estimate, while the date of the report indicates whether the perspective of the appraiser on the market conditions as of the effective date of the appraisal was prospective, current, or retrospective. Reiteration of the date of the report and the effective date of the appraisal at various stages of the report in tandem is important for the clear understanding of the reader whenever market conditions on the date of the report are different from market conditions on the effective date of the appraisal.

(f) **describe the extent of the process of collecting, confirming, and reporting data;**

Comment: This requirement is designed to protect third parties whose reliance on an appraisal report may be affected by the extent of the appraiser's investigation; i.e., the process of collecting, confirming and reporting data.

(g) **set forth all assumptions and limiting conditions that affect the analyses, opinions, and conclusions;**

<u>Comment:</u> It is suggested that assumptions and limiting conditions be grouped together in an identified section of the report.

(h) **set forth the information considered, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;**

<u>Comment:</u> This requirement calls for the appraiser to summarize the data considered and the procedures that were followed. Each item must be addressed in the depth and detail required by its significance to the appraisal. The appraiser must be certain that sufficient information is provided so that the client, the users of the report, and the public will understand it and will not be misled or confused. The substantive content of the report, not its size, determines its compliance with this specific reporting guideline.

(i) set forth the appraiser's opinion of the highest and best use of the real estate, when such an opinion is necessary and appropriate;

<u>Comment:</u> This requirement calls for a written report to contain a statement of the appraiser's opinion as to the highest and best use of the real estate, unless an opinion as to highest and best use is unnecessary, e.g. insurance valuation or value in use appraisals. If an opinion as to highest and best use is required, the reasoning in support of the opinion must also be included.

(j) explain and support the exclusion of any of the usual valuation approaches;

(k) set forth any additional information that may be appropriate to show compliance with, or clearly identify and explain permitted departures from, the requirements of Standard 1;

<u>Comment:</u> This requirement calls for a written appraisal report or other written communication concerning the results of an appraisal to contain sufficient information to indicate that the

appraiser complied with the requirements of Standard 1, including the requirements governing any permitted departures from the appraisal guidelines. The amount of detail required will vary with the significance of the information to the appraisal.

Information considered and analyzed in compliance with Standards Rule 1-5 is significant information that deserves comment in any report. If such information is unobtainable, comment on the efforts undertaken by the appraiser to obtain the information is required.

(l) include a signed certification in accordance with Standards Rule 2-3.

<u>Comment:</u> <u>Departure from binding requirements (a) through (l) above is not permitted.</u>

<u>Standards Rule 2-3</u>

Each written real property appraisal report must contain a certification that is similar in content to the following form:

I certify that, to the best of my knowledge and belief:

-- the statements of fact contained in this report are true and correct.

-- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

-- I have no (or the specified) present or prospective interest in the property that is the subject of this report, and I have no (or the specified) personal interest or bias with respect to the parties involved.

-- my compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

-- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

-- I have (or have not) made a personal inspection of the property that is the subject of this report.

(If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)

-- no one provided significant professional assistance to the person signing this report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

Comment: Departure from this binding requirement is not permitted.

Standards Rule 2-4

To the extent that it is both possible and appropriate, each oral real property appraisal report (including expert testimony) must address the substantive matters set forth in Standards Rule 2-2.

Comment: In addition to complying with the requirements of Standards Rule 2-1, an appraiser making an oral report must use his or her best efforts to address each of the substantive matters in Standards Rule 2-2.

Testimony of an appraiser concerning his or her analyses, opinions, and conclusions is an oral report in which the appraiser must comply with the requirements of this Standards Rule.

See Record Keeping under the **ETHICS PROVISION** for corresponding requirements.

Standards Rule 2-5

An appraiser who signs a real property appraisal report prepared by another, even under the label of "review appraiser", must accept full responsibility for the contents of the report.

Comment: Departure from this binding requirement is not permitted. This requirement is directed to the employer or supervisor signing the report of an employee or subcontractor. The employer or supervisor signing the report is as responsible as the individual preparing the appraisal for the content and conclusions of the appraisal and the report. Using a conditional label next to the signature of the employer or supervisor or signing a form report on the line over the words "review appraiser" does not exempt that individual from adherence to these standards.

This requirement does not address the responsibilities of a review appraiser, the subject of Standard 3.

Section III - Review Appraisals

STANDARD 3

In reviewing an appraisal and reporting the results of that review, an appraiser must form an opinion as to the adequacy and appropriateness of the report being reviewed and must clearly disclose the nature of the review process undertaken.

Comment: The function of reviewing an appraisal requires the preparation of a separate report or a file memorandum by the appraiser performing the review setting forth the results of the review process. Review appraisers go beyond checking for a level of completeness and consistency in the report under review by providing comment on the content and conclusions of the report. They may or may not have first-hand knowledge of the subject property or of data in the report. The COMPETENCY PROVISION applies to the appraiser performing the review as well as the appraiser who prepared the report under review.

Reviewing is a distinctly different function from that addressed in Standards Rule 2-5. To avoid confusion in the marketplace between these two functions, review appraisers should not sign the report under review unless they intend to take the responsibility of a cosigner.

Review appraisers must take appropriate steps to indicate to third parties the precise extent of the review process. A separate report or letter is one method. Another appropriate method is a form or checklist prepared and signed by the appraiser conducting the review and attached to the report under review. It is also possible that a stamped impression on the appraisal report under review, signed or initialed by the reviewing appraiser, may be an appropriate method for separating the review function from the actual signing of the report. To be effective, however, the stamp must briefly indicate the extent of the review process and refer to a file memorandum that clearly outlines the review process conducted.

The review appraiser must exercise extreme care in clearly distinguishing between the review process and the appraisal or consulting processes. Original work by the review appraiser may be governed by STANDARD 1 rather than this standard. A misleading or fraudulent review and/or report violates the ETHICS PROVISION.

Standards Rule 3-1

In reviewing an appraisal, an appraiser must:

(a) identify the report under review, the real estate and real property interest being appraised, the effective date of the opinion in the report under review, and the date of the review;

(b) identify the extent of the review process to be conducted;

(c) form an opinion as to the completeness of the report under review in light of the requirements in these standards;

<u>Comment:</u> The review should be conducted in the context of market conditions as of the effective date of the opinion in the report being reviewed.

(d) form an opinion as to the apparent adequacy and relevance of the data and the propriety of any adjustments to the data;

(e) form an opinion as to the appropriateness of the appraisal methods and techniques used and develop the reasons for any disagreement;

(f) form an opinion as to whether the analyses, opinions, and conclusions in the report under review are appropriate and reasonable, and develop the reasons for any disagreement.

<u>Comment:</u> <u>Departure from binding requirements (a) through (f) above is not permitted.</u> An opinion of a different estimate of value from that in the

report under review may be expressed, provided the review appraiser

1. satisfies the requirements of STANDARD 1;
2. identifies and sets forth any additional data relied upon and the reasoning and basis for the different estimate of value; and,
3. clearly identifies and discloses all assumptions and limitations connected with the different estimate of value to avoid confusion in the marketplace.

Standards Rule 3-2

In reporting the results of an appraisal review, an appraiser must:

(a) disclose the nature, extent, and detail of the review process undertaken;

(b) disclose the information that must be considered in Standards Rule 3-1 (a) and (b);

(c) set forth the opinions, reasons, and conclusions required in Standards Rule 3-1 (c), (d), (e) and (f);

(d) include all known pertinent information;

(e) include a signed certification similar in content to the following:

I certify that, to the best of my knowledge and belief:

-- the facts and data reported by the review appraiser and used in the review process are true and correct.

-- the analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased professional analyses, opinions and conclusions.

-- I have no (or the specified) present or prospective interest in the property that is the subject of this report and I have no (or the specified) personal interest or bias with respect to the parties involved.

-- my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this review report.

-- my analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the Uniform Standards of Professional Appraisal Practice.

-- I did not (did) personally inspect the subject property of the report under review.

-- no one provided significant professional assistance to the person signing this review report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

Comment: Departure from binding requirements (a) through (e) above is not permitted.

ADOPTION OF INTERIM COMMON RULE

The agency specific adoption of the interim common rule, which appears at the end of the common preamble, appears below:

FEDERAL RESERVE SYSTEM

12 CFR Part 225

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital Adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

AUTHORITY AND ISSUANCE

For the reasons set forth in the common preamble, Subpart G, Part 225, Chapter II, Title 12, Code of Federal Regulations, is amended as set forth below:

Part 225 -- BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

AUTHORITY: 12 U.S.C. 1817(j)(13), 1818. 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909; and sections 1101-1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1898 (12 U.S.C. 3310 and 3331-3351).

2. A new Appendix A is added to Subpart G of Part 225 to read as set forth at the end of the common preamble.

APPENDIX A TO SUBPART G OF PART 225 -- EXCERPTS FROM THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE APPLICABLE TO FEDERALLY RELATED TRANSACTIONS

December 20, 1990
Date

William W. Wiles
William W. Wiles
Secretary of the Board