

## Selected Subjects

### Guru Chatter\* on Appraisals



#### **Does a Denied Applicant Get Appraisal Copy?**

**Question:** When we send an Adverse Action notice to a customer when the loan would be secured by a 1-4 family dwelling, do we have to give them a right to receive a copy of appraisal? They are usually denied credit the same day as the application, if that matters.

Answer by Dan Persfull:

There are differing opinions. My belief is that if you did not obtain an appraisal, then the notice is not required. However, if you did obtain an appraisal then the notice is required even though the applicant is denied.

Answer by Andy Zavoina:

I have spoken with the OCC and FRB on this and each verbally recommended providing the notice, even if no appraisal was obtained. This is for accountability.

I brought it up because I also thought it was a waste of time to tell them about the appraisal disclosure and to tell them later that there wasn't one. But the Reg doesn't give much room for this and telling them there wasn't one may be important in the application process.

#### **Should we require a new appraisal?**

**Question:** We have a commercial account customer who wishes to refinance on an in-house loan. His previous appraisal is over 1 year old. Should we require a new appraisal?

Answer by Dan Persfull:

<http://www.fdic.gov/news/news/financial/2005/fil2005a.html>

This link will take you to the Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement<sup>1</sup> on Independent Appraisal and Evaluation Functions. Scroll down to questions 27 and 28.

#### **Signing for Notice of Right to Appraisal**

**Question:** Does Reg B require acknowledgment signatures on the Notice of Right to Receive a Copy of an Appraisal?

Answer by Dan Persfull: No. All you have to do is demonstrate in your procedures that you routinely provide the appraisal to the applicants, or that you provide the notice to the applicant.

### Recycling a "Used" Appraisal

Question: Our bank is in the process of updating our real estate appraisal policy. We want to address the use of assigned appraisals, but we are finding little guidance in the regulations. In particular, for instances where a new appraisal is not needed and the borrower has given us a copy of an appraisal previously prepared for another lender, must the other lender acknowledge an assignment? If an evaluation is sufficient, can the appraisal done previously for another lender be used as the basis for our evaluation whether or not the lender has assigned that appraisal to us?

Answer by Randy Carey:

Must a lender acknowledge an assignment? The regulators have never directly addressed this issue. However, there are a number of things to consider.

First, do you actually have a right to use an appraisal prepared and paid for by another financial services institution without their permission. I believe using an appraisal without an assignment from the original user constitutes a poor business practice. For example, just because I leave my keys in my car does not mean that it is OK for you to take it for a spin around the block.

Second, with the proliferation of desktop publishing software, forging an appraisal is not very difficult. Without an assignment from the original financial services institution, how do you know what you have in your hand?

Third, when the appraisal regulations were modified in 1994, the regulators allowed federally regulated financial institution to begin accepting appraisals prepared for other "financial institutions", which was a very broad category of entities. Prior to that it would have had to come from another federally regulated institution. Accordingly, the regulators made the following comment:

59 Federal Register 29482, June 7, 1994

"However, regulated institutions are not required to accept appraisals that are prepared for other financial services institutions. Therefore, the institution always retains complete control over the process of ordering real estate appraisals. In addition, institutions must determine that the appraisal ordered by the financial services institution complies with the requirements of the agencies' regulations and is otherwise acceptable. **This should include obtaining assurance that the financial services institution has an independent appraisal.**"

Without a formal assignment, I'm not sure how you receive that type of assurance.

### Will a Review of the Old Appraisal Suffice?

Question: Have a loan request for \$1MM, secured by a commercial property that was last appraised 18 months ago by a local competitor. Based on a copy of the appraisal there is a 23% LTV. Under FIRREA, is our bank required to have a new appraisal performed? There have been no negative trends in the R/E market since that time. Will a review of the old appraisal suffice?

Answer by Randy Carey:

The original appraisal guidelines from 1994 indicate that is really up to the bank to develop its own policies and procedures regarding the use of existing appraisals. Documenting why the original value is still valid will be the key. The 1994 guidance reads as follows:

The agencies allow an institution to use an existing appraisal or evaluation to support a subsequent transaction, if the institution documents that the existing estimate of value remains valid. **Therefore, a prudent appraisal and evaluation program should include criteria to determine whether an existing appraisal or evaluation remains valid to support a subsequent transaction.** Criteria for determining whether an existing appraisal or evaluation remains valid will vary depending upon the condition of the property and the marketplace, and the nature of any subsequent transaction. Factors that could cause changes to originally reported values include: the passage of time; the volatility of the local market; the availability of financing; the inventory of competing properties; improvements to, or lack of maintenance of, the subject property or competing surrounding properties; changes in zoning; or environmental contamination. The institution must document the information sources and analyses used to conclude that an existing appraisal or evaluation remains valid for subsequent transactions.

### Standards for Real Estate Appraisal Review

Question: Are there specific standards that each bank must meet on when, how and by whom a real estate appraisal gets reviewed?

Answer by Jim Bedsole:

Yes there are. See the Interagency Statement on Independent Appraisal and Evaluation Functions dated October 27, 2003 (for FDIC its at FIL-84-2003) <http://www.fdic.gov/news/news/financial/2003/fil0384.html> and also the just issued Interagency Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions dated March 22, 2005.

<http://www.fdic.gov/news/news/financial/2005/fil2005a.html>

## **Bank Using Appraisal Performed for Another Bank**

Question: We have a customer that would like to obtain a commercial loan with our bank. The customer recently had an appraisal performed at another bank and does not want to pay for a new appraisal. The transaction value will be greater than \$1 million.

Based on the FDIC information below, can we use the appraisal performed for the other bank without receiving an assignment or having the appraisal put into our bank name?

FDIC verbiage:

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

- (i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and
- (ii) The regulated institution determines that the appraisal conforms to the requirements of this part and is otherwise acceptable.

Answer by Randy Carey:

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financial services institution has an independent appraisal."

Without a formal assignment, I'm not sure how you receive that type of assurance.

**List Appraiser as Outside Source on Counteroffer**

Question: In Reg B, Sample form C-4 has a section saying the credit decision is based on a report from a credit bureau agency for the counteroffer. If you counteroffer due to appraisal amount and the appraiser was from an outside firm should you list them as the "outside source" on the counteroffer letter?

Answer by Randy Carey: No, the delivery of an appraisal has no bearing on the credit capacity or history of the customer and they should not be listed.