

# New USPAP Disclosure Requirement Handout

The most significant change in 2010 USPAP for many appraisers will be the new disclosure requirement for prior services regarding the subject property. The Conduct section of the ETHICS RULE (page U-8, line 231) states,

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

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

## Rationale for Change

To allow a prospective client to know, prior to the appraiser's selection to perform the assignment, whether the appraiser has performed other services that might create potential conflicts that could lead to bias. The ASB feels that giving the client an opportunity to evaluate this information is important in preserving public trust.

## QUESTIONS & ANSWERS

1. What kind of services must be disclosed?

"Any" services, whether performed as an appraiser or in any other capacity, are enough to trigger the requirement. The time period covers the three years immediately preceding acceptance of the assignment.

2. When should an appraiser disclose such services?

In addition to the written disclosure in the report, the appraiser is to inform the client of prior services at the point in time when the appraiser becomes aware of his or her previous involvement with the property. In some cases, this will be prior to acceptance of the assignment, and in other cases, it will not be until after the appraiser has accepted the assignment. In any event, the appraiser should promptly inform the client so the client can determine whether to proceed with the assignment.

**LIABILITY ALERT:** From the standpoint of good business practice and due diligence the disclosure to the client is best handled in writing (which may include Email, facsimile, etc.). It is **not** recommended that you simply make the initial disclosure orally. If that is your only choice, consider putting a written explanation in the workfile; and, include this explanation in the report with the new certification requirement.

## ILLUSTRATION:

**Question:** Allen and his wife Karen own a landscaping business. Karen runs the landscaping business while Allen spends most of his time doing appraisals. But when things get busy in the landscaping business Allen helps out. It occurs to Allen, during the inspection of a property that he mowed the subject property lawn within the last three years. Is Allen required to disclose this prior service to his client?

**Answer:** The answer is "Yes." The USPAP disclosure requirement applies to:

- a) *any services regarding the subject property,*
  - b) *whether performed as an appraiser or in any other capacity and*
  - c) *which has previously occurred within the three-year period*
3. Must an appraiser specifically state the services performed?

ILLUSTRATION:

Using the prior example to answer this question, must Allen state the specific service previously performed - mowed the lawn? Or, can he simply state that he "performed services" with regard to the property? See the 2010 Q&A January 02 by the ASB (Source: [http://www.appraisalfoundation.org/s\\_appraisal/bin.asp?CID=12&DID=1403&DOC=FILE.PDF](http://www.appraisalfoundation.org/s_appraisal/bin.asp?CID=12&DID=1403&DOC=FILE.PDF)).

**Question:** *If I have performed a service other than appraisal practice, such as acting as a general contractor within the prior three years, do I have to describe the **specific** service or merely state a service was performed?* (Bold added for emphasis.)

**Answer:** *You must disclose to the client the **type** of prior service you performed regarding the property **and** this must be included in the report certification. This disclosure is not limited to services provided as part of appraisal practice. Therefore, each service must be disclosed to the client and appear in the certification.*

4. Must an appraiser state specifically the number of times the service was performed?

ILLUSTRATION:

Using our prior example to answer this question, what if Allen performed the service – mowing the lawn, but did so more than once, let's say 10 times over a three-year period? Must he also disclose how many times he provided the service? See the 2010 Q&A January 01 by the ASB.

(Source: [http://www.appraisalfoundation.org/s\\_appraisal/bin.asp?CID=12&DID=1403&DOC=FILE.PDF](http://www.appraisalfoundation.org/s_appraisal/bin.asp?CID=12&DID=1403&DOC=FILE.PDF)).

**Question:** *If I have appraised a property multiple times within the previous three years, do I have to disclose the number of appraisal services? (e.g., "I have appraised the subject property three times during the previous three years.")*

**Answer:** *Yes. Each prior **service** must be disclosed to the client and included in the report certification...*

**Suggested Language:** "I have mowed the lawn of the subject property ten times over a three year period preceding the acceptance of the assignment."

Also recognize that if Allen is performing on-going services this requires disclosure. If true, Allen's certification might also include, "I regularly mow the subject property's lawn."

### Confidentiality

**All** assignments require the appraiser to comply with the Confidentiality section of the ETHICS RULE. How can an appraiser fulfill the new disclosure requirement without violating confidentiality and the ETHICS RULE?

There are a number of FAQs on this topic but the short answer is that unless the appraiser has agreed, at the request of the client, to keep the mere occurrence of an assignment confidential, or the appraiser makes a judgment call and decides such disclosure would not *protect the confidential nature of the appraiser-client relationship*, disclosing the single fact you previously performed an assignment **is permitted** under USPAP.

This is **not** to say that *specific information* from the prior assignment, such as the value opinion can be disclosed **without** the client's authorization. Confidentiality obligations in USPAP prohibit the appraiser from disclosing assignment results or confidential information. And in some cases, even identifying the previous client's name could violate the requirement to *protect the confidential nature of the appraiser-client relationship*.

DEFINITIONS (Source: 2010 USPAP, page U-2, line 42 and 60))

*Assignment Results: an appraiser's opinions and conclusions developed specific to an assignment.*

Comment: *Assignment results include an appraiser's:*

- *opinions or conclusions developed in an appraisal assignment, such as value;*
- *opinions of adequacy, relevancy, or reasonableness developed in an appraisal review assignment; or*
- *opinions, conclusions, or recommendations developed in an appraisal consulting assignment.*

*Confidential Information: information that is either:*

- *Identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or*
- *Classified as confidential or private by applicable law or regulation.*

So in most cases, an appraiser **will** be able to disclose that he or she has previously performed an assignment without violating the Confidentiality section of the ETHICS RULE **as long as** assignment results or confidential information are not disclosed.

### What if client stipulates assignment confidential?

But what if the original client **has** stipulated that the occurrence of the assignment itself is confidential? In that case, the appraiser will be unable to accept any assignment of the subject property if he or she agreed to not disclose any previous assignment **and** must decline all subsequent assignments that fall within the three year disclosure period.

The ASB has addressed this issue in the new Comment to the Conduct section of the ER (page U-8, line 237).

Comment: *Disclosing the fact that the appraiser has previously appraised the property is permitted **except** in the case when an appraiser has agreed with the client to keep the mere occurrence of a prior assignment confidential. If an appraiser has agreed with a client **not** to disclose that he or she has appraised a property, the appraiser must decline all subsequent assignments that fall within the three year period. (Bold added for emphasis.)*

### Placement of the Disclosure Statement

Narrative Report Format: This isn't much of an issue since the additional disclosure can be added to the list of existing certifications placed in a narrative report.

Pre-defined Report Format: Such as the *Uniform Residential Appraisal Report (URAR)*, where to place the disclosure involves judgment.

First, USPAP has no requirement for the “bunching” of certifications. Therefore, the new disclosure could be located in a variety of places. It should be clearly labeled as an “additional certification” and conspicuously identified in the report, so it is not easily overlooked by the client.

### **Suggested Placement:**

1. Place it **in** the pre-defined reporting form (not addenda), such as at the top of page three of the URAR.
2. Putting it into the addenda may not be the best choice because it is not on the pre-defined form and would be hard to defend as a “clear and conspicuous” disclosure.
3. Referencing the existence of the additional certification in the Reconciliation section of the form is another suggestion. That way the appraiser can claim that he or she was diligent in drawing this to the client’s attention. Example statement: “Please note an “Additional Certification” can be found at the top of page three in the report.”

### Disclosure Statement – Suggested wording

The statement should be direct and specifically answer the requirements set forth in the ER – simply state what current services you are providing or previous services you have provided. For example, for an assignment in which the appraiser **had** completed prior services, the following is suggested language to comply with this new certification requirement:

*I have performed (describe specific services including the number of times the service was performed) with regard to the subject property within the three-year period immediately preceding acceptance of this assignment.*

### Misconceptions

Some appraisers who use pre-defined reporting formats, like the URAR are under the impression that additional certifications cannot be added, this is incorrect. Fannie Mae/Freddie Mac pre-defined report formats prohibit *modifications or deletions* to the certification. However, additional certifications are permitted, as long as they don’t constitute material alterations to the report. And a certification related to disclosing prior services performed with regard to the subject property would hardly constitute a “material alteration.”

REFERENCE (Source: URAR Certification Excerpt, page 1)

*...Modifications or deletions to the certifications are also not permitted. However, **additional certifications** that do not constitute material alterations to the appraisal report, such as those required by law..., are **permitted**.* (Bold added for emphasis.)

### Additional Disclosure Statement – Did not perform services

**Question:** Does the new disclosure requirement **also** include disclosing that the appraiser has not performed any services with regard to the subject property?

**Answer:** No. There is no specific USPAP requirement to make such a disclosure. However, some clients are still requiring this disclosure; likely, as a due diligence issue to demonstrate that the appraiser is not simply unaware or forgot to include the new disclosure requirement. If the client *does* request such a disclosure, it becomes an assignment condition; therefore, a part of the appraiser’s scope of work.

### What about when the client knows you completed a prior assignment?

In some cases, the client is well aware that the appraiser has appraised a given property. That's often why the client is engaging that appraiser. Appraisers commonly encounter this when the assignment involves updating the value of a prior appraisal report, or when repairs and alternations were required. Residential appraisers commonly encounter this when using the Fannie Mae 1004D report form. Although it may seem foolish to disclose to the client what he or she already knows, it is still required under the new disclosure requirement.

The appraiser could preface the disclosure with an explanation that USPAP requires it – even if it seems obvious and redundant – and in the report provide the same suggested disclosure language as previously noted. Also, good business practice would suggest you include in the current assignment workfile references to any prior assignment.

### Positive consequences of this new disclosure requirement?

Positive consequence is that public trust in the appraisal profession will be maintained, or be improved. As stated earlier, the purpose of the new disclosure requirement is to allow the client to determine if a potential conflict may exist before hiring the appraiser; thereby, mitigating the potential for bias to be present in an assignment and preserving public trust.

### Unintended consequences of this new disclosure requirement?

After informing a client that you previously performed an assignment on the subject property:

- One obvious consequence will be that the client will request *specific information* from the prior report, like opinions and conclusions. This will put the appraiser at odds with the new client over assignment results and confidential information from a prior report.
- Another consequence is the new client may ask you to use confidential information from the prior assignment to complete the new assignment. Remember, you can't undo what you already know. If you can't provide credible assignment results without using confidential information from the prior report, you must decline the new assignment.
- Under this new disclosure requirement appraisers need to be secure in his/her understanding of the Confidentiality section of the ETHICS RULE. Sometimes clients need to be reminded "you can't have your cake and eat it too."

### Preparing for the new disclosure requirement

Prudent appraisers will want to prepare for the consequences of the new disclosure requirement.

1. Accept it; it's here and as you can see from this presentation isn't that bad.
2. Develop and use consistent disclosure language; consider the suggested language we have offered today.
3. Develop internal policies and procedures on how to handle Q&As from clients about the new obligation.
4. Monitor and modify your policies and procedures as new circumstances evolve.

**Developers & Instructors:** Richard Heyn, SRA and Dawn Molitor-Gennrich, SRA are the developers and instructors of this presentation. Both Rich and Dawn are AQB Certified USPAP instructors. Dawn is a former member of the Appraisal Standards Board and Rich is a Certified Distance Education Instructor. Both are approved instructors with the Appraisal Institute.