

ADVISORY OPINION 21 (AO-21)

This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. Advisory Opinions are issued to illustrate the applicability of appraisal standards in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems.

SUBJECT: USPAP Compliance

APPLICATION: Real Property, Personal Property, Intangible Property

THE ISSUE:

Individuals perform numerous roles within the broad realm of valuation services. Examples include appraisal, brokerage, auctioning, property management, consulting, appraisal review and collecting market data. Some valuation services are part of appraisal practice and require compliance with USPAP. What are the USPAP compliance requirements for these various services? More specifically:

1. When should an individual comply with USPAP?
2. What is the relationship between Valuation Services and Appraisal Practice?
3. What does acting “as an appraiser” or performing a service “as an appraiser” mean?
4. Why does an expectation for an individual to act as an appraiser indicate an obligation to comply with USPAP?
5. What are the responsibilities of an appraiser regarding intended user expectations?
6. What are the USPAP obligations for appraisal practice outside of appraisal and appraisal review?
7. What are the USPAP obligations for valuation services outside of appraisal practice?

ADVICE FROM THE ASB ON THE ISSUE:

1. When should an individual comply with USPAP?

The PREAMBLE states that *compliance with USPAP is required when either the service or the appraiser is obligated to comply by law or regulation, or by agreement with the client or intended users. An obligation to comply with USPAP is created by law, regulation, or agreement with intended users.¹³ In such cases an appraiser must follow USPAP. The PREAMBLE also states that *when not obligated, individuals may still choose to comply with USPAP. The ETHICS RULE states that *an individual should comply any time that individual represents that he or she is performing the service as an appraiser.*¹⁴ An ethical obligation to comply with USPAP is created by choice, that is, by choosing to represent oneself as an appraiser.**

Therefore,

- When required by law, regulation, or agreement, an individual must comply with USPAP.
- When choosing to represent oneself as an appraiser, an individual should comply with USPAP.

2. What is the relationship between Valuation Services and Appraisal Practice?

A key to distinguishing an appraiser’s obligations is understanding the relationship between “valuation services” and “appraisal practice” in USPAP. Appraisal practice is a subset of valuation services.

“Valuation services” are *services pertaining to aspects of property value*. Appraisers and others for whom value is an issue provide valuation services. Examples include appraisal, brokerage, auctioning, property management, consulting, appraisal review and collecting market data.

“Appraisal practice” is defined as *valuation services performed by an individual acting as an appraiser*. Only appraisers may offer services that are considered appraisal practice. Examples include appraisal, appraisal review and collecting market data (acting as an appraiser).

Since USPAP obligations apply to those who are acting as appraisers, USPAP applies to appraisal practice.

¹³ USPAP gains legal authority through adoption by the various state and federal jurisdictions. Consequently, the legal requirement to follow USPAP is rooted in federal and state laws or regulations.

¹⁴ The PREAMBLE states that the appraiser’s responsibility is to protect the overall public trust and it is the importance of the role of the appraiser that places ethical obligations on those who serve in this capacity. However, the PREAMBLE also states that USPAP does not establish who or which assignments must comply. Neither The Appraisal Foundation nor its Appraisal Standards Board is a government entity with the power to make, judge, or enforce law.

40 **3. What does acting “as an appraiser” or performing a service “as an appraiser” mean?**

41 An “appraiser” is defined as *one who is expected to perform valuation services **competently** and in a manner*
 42 *that is **independent, impartial, and objective*** (bold added for emphasis). Therefore, an individual “acting as an
 43 appraiser” is expected, in part, to be competent in the service being provided. Also, an individual “acting as an
 44 appraiser” is expected to provide the service in a manner that is independent, impartial, and objective. Performing
 45 a service in a manner that is independent, impartial, and objective is an ethical requirement within USPAP.

46 “Acting as an appraiser” means representing oneself as an appraiser. Many individuals have other professional
 47 roles in addition to their appraiser role. For example, some appraisers are also brokers, consultants, or leasing
 48 agents. Individuals who have appraiser roles as well as other professional roles must be careful to explain their
 49 role in performing a given valuation service (see question #7 below).

50 Law, regulation, agreement, or representation (choice) each prescribes when a valuation service is to be provided
 51 by an appraiser as part of appraisal practice. Emphasizing another portion of the definition of an “appraiser” is
 52 *one who is **expected** to perform valuation services competently and in a manner that is independent, impartial,*
 53 *and objective* (bold added for emphasis). The Comment to the definition goes on to state that the *expectation* (for
 54 ethical and competent performance) *occurs when individuals, either by choice or by requirement... represent that*
 55 *they comply*. Expectation is the crucial element in determining when one is acting as an appraiser.

56 **4. Why does an expectation for an individual to act as an appraiser indicate an obligation to comply with USPAP?**

57 Public trust requires that when an individual is expected to perform with the ethics and competency of an
 58 appraiser, he or she will do so. An individual who agrees to perform a valuation service as an appraiser has a duty
 59 to comply with the ethics and competency that the public expects from an appraiser. This obligates the individual
 60 to comply with USPAP in performing the service.

61 The definition of an appraiser in conjunction with the need for public trust establishes the “expectation” as the
 62 basis for the obligation to comply with USPAP.

63 Intended user expectations for valuation services performed in compliance with USPAP are created when an
 64 individual represents that he or she is acting as an appraiser in a service. For example, these expectations can
 65 arise when an individual advertises or solicits as an appraiser (such as telephone listings, professional directories,
 66 business cards, stationery, or office signage), holds appraiser accreditation from a licensing agency, or maintains
 67 membership in a professional appraiser organization. An individual’s identification as an appraiser in a given
 68 valuation service establishes a justifiable expectation that the valuation service will be performed in compliance
 69 with USPAP.

70 In summary, expectation is the basis for determining when an individual providing a valuation service is acting as an
 71 appraiser. Because of the need to preserve public trust and confidence in appraisal practice, the expectations of the
 72 client and other intended users for ethical and competent performance create an obligation to comply with USPAP.

73 **5. What are the responsibilities of an appraiser regarding intended user expectations?**

74 The appraiser has a professional responsibility to recognize the capacity in which he or she is performing. The
 75 responsibility includes inquiry about, and recognition of, the intended users’ expectations. When an individual’s
 76 appraisal expertise and reputation for providing services without bias induce the client or other intended users to
 77 select the individual to provide a valuation service, there is a justifiable expectation that the valuation service will
 78 be performed in compliance with USPAP.

79 When an individual who acts as an appraiser in some circumstances chooses to provide a valuation service in some
 80 other capacity (i.e., not as an appraiser and outside of appraisal practice), he or she must not represent himself or
 81 herself to be acting in the capacity of an appraiser. Since choice is an instrument to create USPAP obligations it
 82 follows that when an individual has an opportunity to choose the capacity in which he or she will provide a valuation
 83 service, he or she is free to provide the valuation service as an appraiser or in some other capacity. However, an
 84 individual who is recognized as an appraiser must use great care not to violate the public trust.

85 **6. What are the USPAP compliance obligations for appraisal practice outside of appraisal and appraisal review?**

86 Within appraisal practice, there are some assignments that are addressed by the Standards. The Standards
 87 describe the requirements for appraisal or appraisal review assignments.

88 However, the Standards do not apply in the performance of all appraisal practice services. Examples include

assignments (performed as an appraiser) to teach appraisal courses, provide sales data, collect market data, analyze specific elements of value (e.g., reproduction cost or functional utility), and develop educational texts. As defined in USPAP, assignments are performed by an individual acting as an appraiser. Therefore, all assignments fall within appraisal practice.

The PREAMBLE, the DEFINITIONS, the ETHICS RULE, the COMPETENCY RULE, and the JURISDICTIONAL EXCEPTION RULE apply generally to all appraisal practice. As a result, assignments to which the Standards do not apply must be provided without bias or accommodation of personal interest by competent appraisers.

The RECORD KEEPING RULE applies to appraisal and appraisal review assignments. For other assignments, there are no workfile or record keeping requirements in USPAP. The SCOPE OF WORK RULE also applies only to appraisal and appraisal review assignments.

Some assignments may include appraisal or appraisal review as well as other analyses that lead to additional opinions or recommendations. In these assignments, the appraiser must comply with the USPAP requirements that apply to appraisal or appraisal review in the appraisal or appraisal review portion of the assignment and, at a minimum comply with the ETHICS RULE, the COMPETENCY RULE and the JURISDICTIONAL EXCEPTION RULE for the rest of the assignment.

7. What are the USPAP obligations for valuation services outside of appraisal practice?

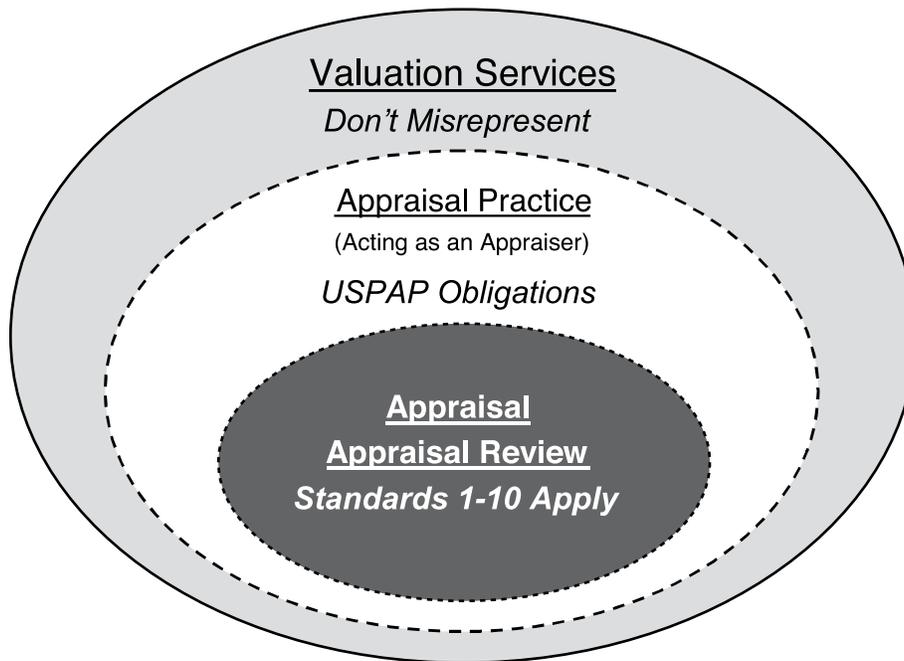
As previously stated, many individuals have other professional roles in addition to their appraiser role. For example, some appraisers are also attorneys, accountants, brokers, or consultants. USPAP also places an obligation on an individual who sometimes acts as an appraiser even when he or she provides a valuation service in some other capacity – that obligation being not to mislead the users of the valuation service about the capacity in which he or she is acting. The ETHICS RULE states that *an appraiser must not misrepresent his or her role when providing valuation services that are outside of appraisal practice*. If a valuation service is premised on advocacy or compensation arrangements that are contrary to the ETHICS RULE, the valuation service is not consistent with the objectives of USPAP and cannot be performed by the individual acting as an appraiser.

An individual who sometimes provides services as an appraiser, but who is currently acting in another role, must ensure that intended users are not misled as to the individual's role in providing that valuation service. This can be accomplished through such means as disclosure, notification, or careful distinction when providing the valuation service as to the individual's role. Additionally, clear representation of the valuation services to be rendered in the engagement communication, scope of work description, or contract, as well as in written and oral correspondence with the client should assist in ensuring intended users are not misled.

119 **Relationships and Application**

120 The relationship between valuation services and appraisal practice can be illustrated as follows:

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Valuation Services (large light-shaded oval): When providing valuation services, the obligation for an individual recognized in some circumstances as an appraiser is not to misrepresent his or her role.

Appraisal Practice (dotted-line oval): Within valuation services is appraisal practice (i.e., valuation services provided by an individual acting as an appraiser). All services performed as part of appraisal practice must comply with USPAP. The portions of USPAP that apply generally to appraisal practice include the PREAMBLE, the DEFINITIONS, the ETHICS RULE, the COMPETENCY RULE, and the JURISDICTIONAL EXCEPTION RULE.

Appraisal and Appraisal Review (dark-shaded oval within Appraisal Practice oval): Within appraisal practice, there are requirements that apply to developing and reporting appraisal or appraisal review assignments in addition to those that apply to all appraisal practice. These requirements are described by the Standards, the SCOPE OF WORK RULE, and the RECORD KEEPING RULE.

← Valuation Services →

<p>Appraisal Practice Valuation services performed by an individual acting as an appraiser Appraisal and Appraisal Review (Development and Reporting)</p>		
All Rules apply.	Other valuation services when acting as an appraiser	Valuation services when not acting as an appraiser
Standards apply. Which ones apply varies by assignment.	Three Rules apply: ETHICS RULE COMPETENCY RULE JURISDICTIONAL EXCEPTION RULE No Standards apply in these assignments. Compliance with the RECORD KEEPING RULE and SCOPE OR WORK RULE is not required in these assignments.	
		When performing these services , do not misrepresent your role: i.e., clearly communicate that you are not acting as an appraiser.

Examples

Appraisal and Appraisal Review (Development and Reporting)	Other valuation services when acting as an appraiser	Valuation services when not acting as an appraiser
Appraisal with Appraisal Report	Researching market data (when acting as appraiser)	Brokerage
Appraisal with Restricted Appraisal Report	Teaching appraisal courses	Consulting (when acting as an advocate)
Appraisal with oral appraisal report	Analyzing specific elements of value (e.g., reproduction cost of functional utility)	Ad valorem tax consulting (when acting as an advocate)
Expert witness testimony		Auctioning
Appraisal Review with report	Consulting (when acting as an appraiser)	Litigation support (when acting as an advocate)
Selecting comparable sales data	Mechanical computation	Property management
*Calculation engagement	Developing educational texts	Mortgage underwriting
*Limited scope appraisal	Ad valorem tax consulting (when acting as an appraiser)	Leasing (agent)
*Valuation engagement or		
*Evaluation		
Purchase price allocation	Providing raw sales data	
	Litigation support (when acting as an appraiser)	

* **Note:** These terms are commonly used by appraisers to describe appraisals with a narrow scope of work. Regardless of the label used in the assignment, these opinions of value are appraisals as defined in USPAP. An appraiser may perform these assignments under USPAP by complying with the Rules and applicable Standards.

SUMMARY:

- An individual must comply with USPAP when required by law, regulation, or agreement. 123
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- An individual should comply with USPAP when choosing to represent oneself as an appraiser. 125
- Appraisal practice is a subset of valuation services. Since USPAP obligations apply to those who act as appraisers, USPAP applies to appraisal practice. 126
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- The definition of appraiser and need for public trust establish the factor of “expectation” as the basis for the obligation to comply with USPAP. 128
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- An individual’s public identification as an appraiser establishes a justifiable expectation that valuation services will be performed in compliance with USPAP. Because of the need to preserve public trust and confidence in appraisal practice, the expectations of the client and other intended users for ethical and competent 130
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- 133 performance create an obligation to comply with USPAP.
- 134 • The appraiser has a professional responsibility to recognize the capacity in which he or she is performing. The
- 135 responsibility includes inquiry about, and recognition of, the client's expectations.
- 136 • When an individual has an opportunity to choose the capacity in which he or she will provide a valuation
- 137 service, he or she is free to provide the valuation service as an appraiser or in some other capacity.
- 138 • An individual who is recognized as an appraiser must use great care not to violate the public trust. An appraiser
- 139 acting in another role must ensure that intended users are not misled as to the individual's role in providing that
- 140 valuation service.
- 141 • USPAP also places an obligation on an appraiser even when he or she provides a valuation service in some
- 142 other capacity – that obligation being to not mislead the intended users of the valuation service about the
- 143 capacity in which he or she is acting.
- 144 • If a valuation service is premised on advocacy, or compensation arrangements that are contrary to the ETHICS
- 145 RULE, an individual acting as an appraiser cannot perform the valuation service.
- 146 • Within appraisal practice, there are Standards that describe the requirements for developing and
- 147 communicating appraisal or appraisal review assignments. Appraisers who provide valuation services for which
- 148 there are no Standards must comply with the portions of USPAP that apply generally to appraisal practice.
- 149 • The RECORD KEEPING RULE applies to appraisal or appraisal review assignments. For other assignments,
- 150 there are no USPAP record keeping or workfile requirements.
- 151 • The SCOPE OF WORK RULE applies only to appraisal and appraisal review assignments.

152 Illustrations:

153 *Brokerage and Appraisal*

- 154 1. Robert Agent is an individual who provides both brokerage and appraisal services. What are Robert's obligations
- 155 under USPAP when preparing a broker's price opinion (BPO)?

156 Answer: Many states' brokerage and appraiser licensing laws have specific provisions for appraisers who are

157 also brokers. In the absence of such laws, USPAP provides flexibility for brokers/appraisers and others who

158 have multiple professional roles.

159 If providing the service as an agent or broker, USPAP requires only that an appraiser must not misrepresent

160 his or her role. In others words, if Robert was contacted by his client because he is an agent or broker and

161 signing his report as an agent or broker, then Robert need not comply with USPAP except to not misrepresent

162 his role. If Robert is contacted by the client because he is known as an appraiser and is signing his report as

163 an appraiser, then USPAP applies.

164 *Appraisal Review*

- 165 2. Dan Williams is an appraiser. He was asked by a client to perform an "administrative screening review" of an
- 166 appraisal report to determine if a more thorough review is warranted. The client would like Dan to check the math
- 167 calculations and determine whether the appraisal report complies with the client's basic content specifications.
- 168 What are Dan's obligations under USPAP?

169 Answer: The client has engaged Dan because of his identification as an appraiser; this clearly creates an

170 expectation by the client that the service will be provided in compliance with USPAP. Therefore, this service

171 is part of appraisal practice; *at a minimum* Dan must comply with the portions of USPAP that apply generally

172 to appraisal practice (i.e., the PREAMBLE, the DEFINITIONS, the ETHICS RULE, the COMPETENCY RULE, and

173 the JURISDICTIONAL EXCEPTION RULE).

174 Dan must next decide if compliance with STANDARDS 3 and 4 is required. To do this, Dan must consider the

175 intended use, intended user, and type and definition of value for the assignment. These factors are the basis

176 of Dan's scope of work decision. If the appropriate scope of work includes *developing or communicating an*

177 *opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal*

178 *review assignment*, then that assignment is by definition an appraisal review. The label placed on the service

179 cannot support acting outside of STANDARDS 3 and 4. The client may call the assignment an "administrative

180 screening review," but it is the extent of the service that defines it.¹⁵ Dan must decide, based on the problem

15 The Comment to the definition of appraisal practice states that the use of other nomenclature for an appraisal or appraisal review assignment (e.g., analysis, counseling, evaluation, study, submission, or valuation) does not exempt an appraiser from adherence to the *Uniform Standards of Professional Appraisal Practice*.

to be solved and scope of work, if the assignment is an *appraisal review* as defined by USPAP. If the assignment is an *appraisal review*, then Dan must comply with the development and reporting requirements of STANDARDS 3 and 4. 181
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There may be circumstances when Dan is not acting as an appraiser. If Dan acts in other roles, say as a mortgage underwriter, then Dan may be in a position to provide the valuation service outside of appraisal practice. If Dan acts outside of appraisal practice, he must ensure that he does not misrepresent his role and that the client and any other intended users do not expect him to act as an appraiser. 184
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Rent Survey

3. A client has asked Mike Black to perform a rent survey. The client owns the Acme Office Building and wants to know if he is charging enough rent. The client asked Mike to perform this work because he knows Mike is an appraiser; therefore, this valuation service is included in appraisal practice and USPAP applies. How can Mike provide this service in compliance with USPAP? 188
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Answer: Mike should fully investigate the client's expectations before determining the scope of work for this assignment. Does the client want only to know what rental rates are being charged for other office buildings in the area? If so, this is likely a service for which USPAP has no Standards (i.e., STANDARDS 1 and 2 when providing real property appraisals). Mike would then be obligated to comply with the portions of USPAP that apply generally to appraisal practice (i.e., the PREAMBLE, the DEFINITIONS, the ETHICS RULE, the COMPETENCY RULE, and the JURISDICTIONAL EXCEPTION RULE). The development and reporting of the assignment results would be entirely at his discretion, and a workfile would not be required. 193
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However, if the client expects Mike to collect rental rate and lease term information and to analyze them to conclude the market rental terms for the Acme Building, this is an appraisal. This assignment is an appraisal because it includes a specific subject property (i.e., the right to use space in the building) and the problem to be solved in the assignment is a value opinion (i.e., the market rental terms for that space). The appraisal assignment should then be completed in compliance with STANDARDS 1 and 2. 200
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Litigation Services

4. Marie Vaughn has a diverse practice with a specialization in litigation services. She commonly aids attorneys in developing cross-examination strategies for expert witness testimony from appraisers. How does USPAP apply to Marie's "litigation services?" 205
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Answer: In order to determine Marie's obligation, it is necessary to understand the nature of her role. If she is acting as an appraiser, her litigation services are part of appraisal practice. The PREAMBLE, the DEFINITIONS, the ETHICS RULE, the COMPETENCY RULE, and the JURISDICTIONAL EXCEPTION RULE will apply to the assignment. As an appraiser, Marie cannot act as an advocate for any party or issue. 209
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If Marie's services include providing an opinion of value, she must also comply with the appropriate appraisal standards (STANDARDS 1 and 2, 7 and 8, or 9 and 10). If Marie's services include providing an opinion about the quality of another appraiser's work, the appraisal review requirements of STANDARDS 3 and 4 apply. If the service includes providing analysis, recommendation, or an opinion to solve a problem where an opinion of value is a component of the analysis leading to the assignment results, then Marie must comply with the ETHICS RULE, the COMPETENCY RULE and the JURISDICTIONAL EXCEPTION RULE for the entire assignment; and she must also comply with any applicable Rules and Standards if she performs an appraisal or appraisal review as part of the assignment. 213
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On the other hand, if Marie provides litigation services as an advocate, then she is providing a valuation service outside of appraisal practice. When performing services outside of appraisal practice, Marie can act as an advocate and accept contingent compensation. The only USPAP obligation is that she not misrepresent her role. She must use care to distinguish her role from other roles that would carry an expectation of being impartial, objective, and independent, i.e., acting as an appraiser. 221
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Marie may provide litigation services by either acting as an appraiser **or** acting as an advocate for the client's cause; however, she must not perform both roles in the same case. 226
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Assignments with Services Other Than Appraisal or Appraisal Review

229 5a. Jane Doe, an appraiser, accepts an assignment to perform a feasibility analysis for a proposed real estate
 230 subdivision. In order to complete the assignment, she develops prospective market value opinions for the
 231 potential lots in the subdivision given several different possible configurations. Each configuration may also have
 232 different absorption rates and/or absorption periods. The objective of the assignment is to recommend the optimal
 233 configuration. With which parts of USPAP must Jane comply in this assignment?

234 Answer: Jane must comply with the ETHICS RULE, the COMPETENCY RULE, and the JURISDICTIONAL
 235 EXCEPTION RULE for the entire assignment.

236 Because the value opinions are appraisals, the SCOPE OF WORK RULE and the RECORD KEEPING RULE
 237 apply to the appraisal portion of the assignment. In addition, she must develop each value opinion in
 238 compliance with STANDARD 1 and report the opinions in compliance with STANDARD 2.

239 5b. John Doe, an appraiser, accepts an assignment to advise a client regarding the feasibility of replacing existing
 240 manufacturing equipment with newer, more efficient pieces. In order to complete the assignment, he uses a
 241 liquidation value appraisal of the existing machinery. That appraisal was prepared by another appraiser and will
 242 be reviewed by John. The objective of the assignment is to recommend whether to replace the equipment now,
 243 or to wait. With which parts of USPAP must John comply in this assignment?

244 Answer: John must comply with the ETHICS RULE, the COMPETENCY RULE, and the JURISDICTIONAL
 245 EXCEPTION RULE for the entire assignment.

246 Since John is doing an appraisal review, the SCOPE OF WORK RULE and the RECORD KEEPING RULE apply
 247 to the appraisal review portion of the assignment. He must also develop and report the review opinion in
 248 compliance with STANDARDS 3 and 4.

249 5c. Chris Filo is an appraiser who has an assignment to advise a corporation regarding a potential stock offering.
 250 The corporate officers have provided Chris with a value for the existing stock. Chris has made the extraordinary
 251 assumption that the value provided is credible and will use that value as part of the analysis before making final
 252 recommendations. Which parts of USPAP apply to this assignment?

253 Answer: Chris must comply with the ETHICS RULE, the COMPETENCY RULE, and the JURISDICTIONAL
 254 EXCEPTION RULE for this assignment.

255 Because this assignment does not include an appraisal or appraisal review, neither the SCOPE OF WORK
 256 RULE nor the RECORD KEEPING RULE applies. In addition, there are no development or reporting standards
 257 applicable to this assignment.

258 5d. Jane Doe is a real estate practitioner who offers a variety of services to her clients. She is a licensed real
 259 estate broker and is also a certified appraiser. Jane has been asked by a client to perform a service that is
 260 viewed by Jane and her client as a consulting service that relates to value, but is to be undertaken by her in the
 261 role of a broker/consultant, not as an appraiser. Which parts of USPAP apply to Jane in this assignment?

262 Answer: Individuals may fulfill different roles in different assignments. In general, USPAP applies only when an
 263 individual is acting as an appraiser. As long as it is clear that Jane is not performing as an appraiser, Jane's only
 264 obligation when acting as a broker/consultant is stated in Conduct section of the ETHICS RULE, which states:

265 an appraiser:

266 *must not misrepresent his or her role when providing valuation services that are outside of*
 267 *appraisal practice;*