



March 14, 2016

To: Clients and Friends

From: Peter B. Idziak

Subject: Federal Banking Agencies Clarify Expectations for the Use of Property Evaluations

2905 Corporate Circle

Flower Mound, TX 75028

Phone: 972-353-4174

Fax: 972-221-9316

Partners

Thomas E. Black, Jr.*

Gregory S. Graham

Shawn P. Black **

Regina M. Uhl*** ‡

Senior Lawyers

David F. Dulock

Diane M. Gleason

Associates

Peter B. Idziak **

Daniel S. Engle**

Nick Stevens

Of Counsel

David M. Tritter

Benjamin R. Idziak **

Calvin C. Mann, Jr.

Retired Partner(s)

Calvin C. Mann, Jr.

* Also Licensed in Iowa, New York, Washington and West Virginia

** Also Licensed in New York

*** Also Licensed in Kentucky

‡ Board Certified- Residential Real Estate Law- Texas Board of Legal Specialization

On March 4, 2016, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the “Agencies”) issued an *Interagency Advisory on Use of Evaluations in Real-Estate Related Financial Transactions* (SR 16-5, [click here](#)), which applies to all state member banks, bank holding companies, and nonbank subsidiaries of bank holding companies, regardless of the asset size of the supervised institution. The advisory clarifies the circumstances under which the use of an evaluation, as opposed to a full USPAP appraisal, in the underwriting of a real estate-related financial transaction complies with the Agencies’ real estate appraisal regulations (Board: 12 CFR 208, subpart E and 12 CFR 225, subpart G; FDIC: 12 CFR 323; and OCC: 12 CFR 34, subpart C) and the *Interagency Appraisal and Evaluation Guidelines*, [click here](#), (the “Appraisal Regulations”).

The advisory clarifies that under the Appraisal Regulations, the following transaction types do not require a full USPAP appraisal, but do require an evaluation:

- Transactions where the “transaction value” (generally the loan amount) is \$250,000 or less and no other regulation requires an appraisal (e.g., higher-priced mortgages under TILA);
- Certain renewals, refinances, or other transactions involving existing extensions of credit; and
- Real estate-secured business loans with a transaction value of \$1,000,000 or less and when the sale of, or rental income derived from, real estate is not the primary source of repayment for the loan.

The Agencies do caution that there may be instances when a financial institution finds it prudent or necessary to obtain an appraisal, even if not required by the Appraisal Regulations.

Finally, the advisory clarifies that the Appraisal Regulations also require that:

- The evaluation preparer be knowledgeable, competent, and independent of the transaction and the loan production function of the institution, but do not require the preparer to be a licensed or state-certified appraiser;
- The preparer may consider one or more valuation approaches to estimate the market value of the property, but the approach or approaches used in an evaluation should be appropriate to the property being valued; and
- The evaluation contains sufficient information to allow a reader to understand the analysis that was performed to support the value conclusion and the institution’s decision to engage in the transaction.

We advise you to read the full advisory for more information.

This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone, but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.