

February 16, 2023

Via Email: www.surveymonkey.com/r/ASBComments

Michelle Czekalski Bradley
Chair, Appraisal Standards Board
The Appraisal Foundation
1155 15th Street NW, Suite 1111
Washington, DC 20005

Re: Proposed Changes to USPAP – Fourth Exposure Draft

Dear Chair Czekalski Bradley:

The Appraisal Subcommittee (ASC) staff appreciates the opportunity to review and comment on the Appraisal Standards Board's (ASB) Fourth Exposure Draft of proposed changes for the *Uniform Standards of Professional Appraisal Practice* (USPAP). The following comments reflect the opinions of ASC staff.

Section 1: ETHICS RULE

We were pleased to see that the Third Exposure Draft provided a detailed summary of the Fair Housing Act's (FHAct) and Equal Credit Opportunity Act's (ECOA) nondiscrimination standards and that any ambiguity as to their applicability was removed.

We are concerned that the Fourth Exposure Draft eliminated the Third Exposure Draft's summary of the FHAct's and ECOA's nondiscrimination standards and, instead, substituted a distinction between unethical discrimination and unlawful discrimination. Specifically, we are concerned that:

- A distinction between unethical discrimination and unlawful discrimination is not well established in either current law or practice. Suggesting that appraisers avoid "bias, prejudice, or stereotype" as general norms would permit individual appraisers wide discretion in applying these norms, likely yielding inconsistent results.
- Federal and state regulators responsible for examining for compliance with USPAP would face difficult challenges in determining when appraisers have engaged in unethical discrimination given that it is not defined in existing legal norms and standards.
- The introduction of the concept of unethical discrimination implies that USPAP and the Ethics Rule permit appraisers to engage in "ethical" discrimination. Furthermore, the term "ethical" discrimination appears to resemble the concept of "supported" discrimination that the ASC staff has taken exception with in letters to the ASB.

Though we understand that appraisers may seek additional guidance for valuations, such as those involving housing for older persons, that may be treated differently under the FHAct, we believe that a thorough explanation of those particular legal distinctions—perhaps in separate guidance—would be preferred to the introduction of the concept of “ethical” discrimination or other distinctions not found in current law and practice.

We urge the ASB to revise the proposed Nondiscrimination section of the Ethics Rule consistent with these comments and that stakeholders be allowed ample opportunity to comment on any accompanying guidance well in advance of the new Rule going into effect. In addition, given the importance of this clarifying guidance, we ask the Appraisal Foundation to make the guidance available at no charge along with the publicly available version of USPAP Standards 1-4.

Section 4: DEFINITIONS TO RETIRE and Section 5: DEFINITIONS TO MODIFY

Three definitions proposed to be retired were added to USPAP for the current edition (2020-2023):

- *Misleading*
- *Relevant Characteristics*
- *Personal Inspection*

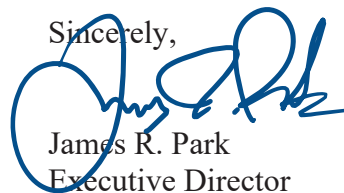
The ASB is also proposing to modify two existing definitions:

- *Appraiser* is to be modified by reinstating a Comment that was previously deleted for the current edition of USPAP.
- *Workfile* is proposed to revert to 2018-19 version.

The ASB has stated that the rationale for most of the proposed retirements and modifications of definitions is that once they went into effect, they proved to be problematic. ASC staff encourages the ASB to consider enhancing the Exposure Draft process to include a wider array of stakeholder input and other means to ensure adequate consideration is given to proposed changes before being put into practice.

We urge the ASB to issue a Fifth Exposure Draft addressing the issues noted above.

Please contact us if you have any questions.

Sincerely,

James R. Park
Executive Director