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VIA EMAIL

April 28, 2023

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

RE: Fifth Exposure Draft – Proposed Changes to USPAP

Dear Chair Bradley:

The American Society of Appraisers (“ASA”) welcomes the opportunity to comment on the Fifth Exposure Draft of the Uniform Standards of Professional Appraisal Practice (“USPAP”). Following are the observations, comments, and opinions of the collaborative efforts of a working group of USPAP instructors within ASA and others with interest in and knowledge of USPAP.

General. In five exposure drafts, the ASB has run a gauntlet created by regulators, those concerned with appraisal discrimination and bias, users, and appraisers. The most recent result is a proposed document that satisfies no one, does not solve the problems facing the profession and creates new ones. The proposed changes ultimately do not serve the public trust.

The proposed changes are presented in ways that are unteachable, verbose, confusing, and which are probably unenforceable, and which require appraisers to make legal interpretations that they are not trained to make. Appraisers and appraisal reviewers – along with users - will bear the brunt of this result of these changes, changes which appear to be driven more by the demands of stakeholder critics than by the needs of appraisers and appraisal users.

The Exposure Draft and the Intent of USPAP. The USPAP PREAMBLE states: “It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading.”

If the intent of USPAP is for appraisers to provide services that are “meaningful and not misleading,” the guidance of the current exposure draft falls short. The contents of the Exposure Draft leaves appraisers vulnerable as they attempt to understand and interpret law and how USPAP would have appraisers understand these complicated laws. USPAP instructors are not likely to be very helpful: most are not skilled in the law – nor should they be - and do not possess the background or experience to interpret the laws that are set forth as the requirements for producing unbiased, non-discriminatory appraisals. (It remains to be seen if effective education can be produced for USPAP classes.) Further, enforcement authorities face significant challenges in disciplinary actions.

USPAP, The Appraisal Standards and Law. The USPAP PREAMBLE further states that “Neither the Appraisal Foundation nor its Appraisal Standards Board is a government entity with the power to make, judge, or enforce law.” Is it possible that the changes suggested in the current Exposure Draft overstep this self-imposed limitation? Do the changes meet the goal of achieving appraisers’ recognition of and compliance with Fair Housing Laws?

Consider the CONFIDENTIALITY Section of the ETHICS RULE. This section of USPAP very clearly states the responsibilities of appraisers with respect to confidentiality and references the applicable law. Appraisers have operated in compliance with the section of USPAP successfully for some time. USPAP instructors have been able to teach this section of USPAP effectively.

Clarity, Conciseness, Coherence. The current version does not provide the clarity, conciseness, and coherence that USPAP in the recent past has strived for and achieved in many respects.

A significant appraiser responsibility in USPAP is: “An appraiser must comply with the ETHICS RULE in all aspects of appraisal practice.” As proposed, an appraiser is unable to comply with this requirement given the nature of the guidance provided. USPAP instructors will be similarly challenged as will others trying to interpret the guidance.

Non-Discrimination Section and Bias. The inclusion of a new Nondiscrimination section represents a positive effort towards addressing the issue. Is it possible that a further step back should have been taken with more definition of what bias is and is not - within the context of USPAP – would have provided more useful advice and guidance to appraisers? (Bias is a core concept relating to discrimination.)

USPAP defines bias as “a preference or inclination that precludes an appraiser’s impartiality, independence, or objectivity in an assignment.” The ETHICS RULE states that an appraiser “must not perform an assignment with bias.” The SCOPE OF WORK RULE notes “An appraiser must not allow the intended use of an assignment or a client’s objectives to cause the assignment results to be biased.” Bias is referred to in STANDARD 2 several times. Bias is also referred to in several ADVISORY OPINIONS and FAQs.

But USPAP does not provide any meaningful guidance to this important term. Perhaps one reason that the Appraisal Standards Board has struggled with creating guidance on nondiscrimination is in not going to the root cause of the issue and building from the basics rather than to craft solution from the top down.

Several areas of concern are noted. This is not a comprehensive list but attempts by use of these examples to set forth some of the concerns with the Exposure Draft.

Practice Areas. Lack of differentiation between residential appraisal, other appraisal, and “commercial” appraisal practice areas. Many “commercial” appraisal assignments – in particular, multi-family appraisal and review practice areas - might fall into non-compliance with many of these laws. The lack of distinction is confusing and may result in some appraisers believing that they have fulfilled their responsibilities but still be liable for violations of applicable laws and regulations.

Definitions. References to “neighborhood,” “geographic area,” “the inhabitants of a geographic area” are not well-defined within their context in USPAP.

In fact, it does not seem as if the term “persons” is stated consistently and clearly throughout the document. It is not clear if the term “protected classes” is consistently defined.

The laws themselves appear to provide contradictory and inconsistent definitions of various terms, including what an appraisal is. These differences provide a challenge to compliance.

The following sets forth issues found. This should not be considered as a comprehensive review. The particular points – among others – represent those raised by the work group in their consideration of the Exposure Draft.

ETHICS RULE

Lines 24-62. Sub headers for items 1, 2 & 3 to identify practice areas more clearly, would clarify to whom these requirements apply.

The material contains potentially conflicting market value definitions and appraisal definitions. Is it possible that these conflicting, possibly inconsistent terms and definitions could lead to confusion and motivate some appraisers to create a JURISDICTIONAL EXCEPTION in some case **ADVISORY OPINION 39**

Line 553. The example provided is instructive. Shouldn’t there also be a property-related example?

Lines 345-359. The language here is awkward.

ADVISORY OPINION 40

The title, “**Advisory Opinion 40, Antidiscrimination and the Research, Analysis, and Reporting of Location Data, including Demographics, for Residential Real Property Appraisal Assignments**” is not useful and runs completely counter to the way in which ADVISORY OPINIONS are titled.

A more concise title would provide users with the ability to understand the intent of this ADVISORY OPINION: the title reads more like a summary as currently written.

Markets, neighborhoods, and geographic areas are occupied by people who may or may not be members of protected classes as identified by law or regulations. Consequently, in properly developed appraisals, the collective behaviors of market participants in the relevant competitive market area will be reflected in market data relied upon to form an opinion by an appraiser that that is independent, impartial and objective. Appraisers that produce appraisals in conformity with USPAP analyze the actions of market participants and not the participants themselves. Analysis of market behavior and not of characteristics of individual is fundamental for an appraisal to be free of bias and discrimination. The comment to STANDARDS RULE 1-2, PROBLEM IDENTIFICATION (b) states, “An appraiser must not allow the intended use of an assignment or the client’s objectives to cause assignment results to be biased.”

With respect to determining what demographic data may be utilized in an appraisal assignment, ADVISORY OPINION 40 provides no practical guidance for appraisers. The Advisory Opinion needs to provide specific examples of how to demonstrate the avoidance of the appearance of bias or discrimination.

ADVISORY OPINION 2

This section provides guidance that is extremely difficult to understand. It appears more an effort to react to the GSE’s changing notion of the role of inspections in mortgage appraisals made for the secondary market rather than provide understandable guidance.

An unfortunate choice was made previously to use the term “inspection.” Continued use of the term n confuses it with the “inspection” made by an “inspector” in hybrid appraisals, as well as continuing to confuse it with “inspections” made by others.

Thank you for the opportunity to comment on the Fifth Exposure Draft. If there are questions or comments, please respond to the contact information provided below.

Sincerely,

Johnnie White

Johnnie White, CEO/EVP
ASA