

Michelle Czekalski Bradley
Chair
Appraisal Standards Board

Submitted Electronically on February 14, 2023

Dear Ms. Czekalski Bradley:

Thank you for the opportunity to provide comments on the Fourth Exposure Draft of Proposed Changes for the 2023 Edition of the Uniform Standards of Professional Appraisal Practice (USPAP). We are federal agencies charged with enforcing nondiscrimination standards under the Fair Housing Act (FHAct) and the Equal Credit Opportunity Act (ECOA).

In February 2022, we provided comments on the Second Exposure Draft. We expressed particular concern that the Second Exposure Draft suggested that an appraiser may rely on “supported” conclusions based on race or other protected characteristics. We noted that the federal ban on discrimination under the FHAct and ECOA is not limited to “unsupported” conclusions and outlined the nondiscrimination standards provided in the FHAct and ECOA. We emphasized that a full presentation of these requirements would be an essential part of any guidance included in the Ethics Rule.

We were pleased to see that the Third Exposure Draft provided a detailed summary of the FHAct’s and ECOA’s nondiscrimination standards and that any ambiguity as to their applicability was removed. The agencies reviewed the Third Exposure Draft and did not suggest any edits to the text.

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:

- The term “unethical discrimination” is not well established in either current law or practice. Accordingly, we believe the introduction of the term in USPAP, and the resulting need to distinguish between unethical discrimination and unlawful discrimination, would create confusion in the appraisal industry. In addition, 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 and is inherently vague and subjective.
- 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, and reference to the possibility of a protected characteristic being “essential to the assignment and necessary for credible assignment results,” appears to resemble the concept of “supported” discrimination that the agencies previously disfavored and whose removal and replacement with a summary of the relevant law significantly improved the draft Ethics Rule.
- 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.

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, as the Appraisal Standards Board indicates is forthcoming—would be preferred to the introduction of the concept of “ethical” discrimination or other distinctions not found in current law and practice.

Please note that this response does not constitute approval of any specific content contained in the Ethics Rule or the proposed changes to USPAP.

Luke H. Brown
Associate Director for Supervisory Policy
Division of Depositor and Consumer Protection
Federal Deposit Insurance Corporation

Patrice Alexander Ficklin
Fair Lending Director
Consumer Financial Protection Bureau

Amy Frisk
Executive Director for Field Operations
U.S. Department of Housing and Urban Development

JeanMarie Komyathy
Deputy Director, Office of Credit Union Resources and Expansion
National Credit Union Administration

Arthur Lindo
Deputy Director, Division of Supervision and Regulation
Federal Reserve Board

Sameena Shina Majeed
Chief, Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice

Donna Murphy
Deputy Comptroller for Compliance Risk Policy
Office of the Comptroller of the Currency

James Wylie
Associate Director of Fair Lending
Federal Housing Finance Agency