

Michelle Czekalski Bradley
Chair
Appraisal Standards Board

Submitted Electronically on February 4, 2022

Dear Ms. Czekalski Bradley:

Thank you for the opportunity to provide comments on the 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).

Our comments relate to the Appraisal Standards Board Ethics Rule (Ethics Rule) and Advisory Opinion 16. These provisions state that an appraiser may not rely on “unsupported conclusions relating to characteristics such as race, color, religion, national origin, sex, sexual orientation, gender, marital status, familial status, age, receipt of public assistance income, disability, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.” However, these provisions do not prohibit an appraiser from relying on “supported conclusions” based on such characteristics and, therefore, suggest that such reliance may be permissible.

But the federal ban on discrimination under the FHAct and ECOA is not limited only to “unsupported” conclusions. Any discussion of prohibited appraisal bias should call attention to, and maintain consistency with, all applicable nondiscrimination standards provided in federal law, including the FHAct and ECOA. Other federal, state, and local laws may also apply. We have included below some general information on the FHAct and ECOA, and how they may apply in the context of appraisals.

The FHAct prohibits making housing unavailable or discriminating in the terms or conditions of housing because of a person’s race, color, religion, sex, disability, familial status, or national origin, 42 U.S.C. § 3604(a), (b), (f)(1)-(2); making statements with respect to a dwelling’s sale that indicate discrimination based on those same protected characteristics, 42 U.S.C. § 3604(c); and interfering with individuals in the exercise of their rights under the FHAct, 42 U.S.C. § 3617. The FHAct also prohibits discrimination against any person in making available a residential real estate-related transaction, including the appraising of residential real property, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin. *Id.* at § 3605. The FHAct is implemented by regulations found at 24 C.F.R. part 100.

ECOA prohibits discrimination by a creditor in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, an applicant’s receipt of public assistance, or the good faith exercise of an applicant’s rights under the Consumer Credit Protection Act. 15 U.S.C. § 1691. ECOA is implemented by regulations found at 12 C.F.R. part 1002, commonly known as “Regulation B.” ECOA and Regulation B apply to all types of credit, including business credit.

The FHAct and ECOA prohibit different treatment based on race, color, national origin, or other protected characteristics. Prohibited discrimination can occur in the appraisal context. For example, an appraiser’s use of or reliance on conclusions based on protected characteristics, regardless of whether the appraiser believes the conclusions are supportable, constitute illegal discrimination. These laws also prohibit neutral policies or practices that disproportionately harm a protected group except when justified by business necessity and absent a less discriminatory alternative. Any determination that entities and individuals may have engaged in prohibited discrimination will depend on the statute, its implementing regulations, and other factors.

Please note that this response does not constitute approval of any specific content contained in the Ethics Rule or Advisory Opinion 16. We would welcome the opportunity to discuss these requirements and provide whatever further assistance may be appropriate. We believe that a full presentation of these requirements is an essential part of any guidance provided in the Ethics Rule or Advisory Opinion 16 to ensure compliance with fair housing and fair lending laws.

Sincerely,

Patrice Alexander Ficklin
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