

April 28, 2023

Michelle Czekalski Bradley  
Chair, Appraisal Standards Board  
The Appraisal Foundation  
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Washington, DC 20005  
Via: <https://www.surveymonkey.com/r/ASBComments>  
[ASB@appraisalfoundation.org](mailto:ASB@appraisalfoundation.org)

Re: USPAP Fifth Exposure Draft and Advisory Opinions: Nondiscrimination Language

Dear Ms. Bradley:

The National Fair Housing Alliance (“NFHA”) and the undersigned civil rights and consumer advocacy organizations are writing in response to the Appraisal Standards Board’s request for comment on the proposed changes to the Uniform Standards of Professional Appraisal Practice (“USPAP”), which would add nondiscrimination language to USPAP’s Ethics Rule as well as provide more detailed explanations in two Advisory Opinions.<sup>1</sup> Appraisals are critically important to America’s communities. The appraisal has the power to determine the value of a borrower’s most important financial asset, which can hold the key to determining whether that family can purchase a permanent home rather than rent, access credit on reasonable terms, and build wealth for generations to come. We applaud the Appraisal Standards Board for proposing language that clearly prohibits discrimination in appraisals. Our organizations believe that the responses below will help the Appraisal Standards Board further strengthen the proposed USPAP revision and Advisory Opinions.

**Comments on the Fifth Exposure Draft:  
This Draft More Clearly Prohibits Appraisal Discrimination and Can Be Further Strengthened**

We commend the Appraisal Standards Board for proposing clear, strong language prohibiting appraisers from engaging in discrimination on a prohibited basis. This Fifth Exposure Draft shows improvement over previous drafts by:

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<sup>1</sup> ASB, USPAP Fifth Exposure Draft (March 30, 2023), <https://appraisalfoundation.sharefile.com/share/view/s1c715f1ed49541e6a5170f7bda14329f>. The ASB issues non-binding advisory opinions that are meant to interpret the USPAP Standards. They are not part of the USPAP Standards and, with only a few exceptions, are not adopted by the states as enforceable requirements.

- Deleting the confusing language that appeared to allow “supported” conclusions based on race and other protected characteristics;
- More clearly identifying the federal antidiscrimination laws: the Fair Housing Act, the Equal Credit Opportunity Act (“ECOA”), and the Civil Rights Act of 1866;
- Removing the term “unethical discrimination,” which was not well established in current law or practice and may have suggested that there is “ethical discrimination”;
- Removing the vague suggestion that appraisers avoid “bias, prejudice, or stereotypes”;
- and
- Providing more detailed explanations of nondiscrimination law in two Advisory Opinions.

We think the proposal can be further strengthened with the revisions suggested below.

### **Ethics Rule: Nondiscrimination Section (new)**

#### Lines 16-19: General Prohibition on Appraisal Discrimination

Proposal: An appraiser must not act in a manner that violates or contributes to a violation of federal, state, or local antidiscrimination laws or regulations. This includes the Fair Housing Act (FHAct), the Equal Credit Opportunity Act (ECOA), and the Civil Rights Act of 1866.

We recommend:

- Revising and strengthening this proposal by adding the following language from the Third Exposure Draft: “A violation of antidiscrimination laws is a violation of the Ethics Rule.”

#### Lines 20-23: Knowledge and Compliance

Proposal: An appraiser must have knowledge of antidiscrimination laws and regulations and when those laws or regulations apply to the appraiser or to the assignment. An appraiser must complete an assignment in full compliance with applicable laws and regulations.

We recommend:

- Revising and strengthening this proposal using the following language from the Third Exposure Draft. Changes to the Third Exposure Draft are in bold (for recommended additions) or in strike through (for recommended deletions).

“An appraiser must ~~have knowledge of~~ **be knowledgeable about and fully comply with** antidiscrimination laws and regulations and when those laws or regulations apply to the appraiser or to the assignment. ~~An appraiser must complete an assignment in full compliance with applicable laws and regulations.”~~

Explanation of recommendation:

- Replace “knowledge of” with “knowledgeable about.” Knowing “about” laws and regulations is more comprehensive than simply knowing “of” them.

- Replace the second sentence with “fully comply with.” The second sentence seems limited to the completion of an assignment rather than a broader mandate to “fully comply with” laws and regulations. For example, our recommended revision would prohibit deciding whether or not to take an assignment on the basis of race.

Lines 24-56: Subsection 1 & 2: The Fair Housing Act, Civil Rights Act, and ECOA

Proposal: 1. An appraiser, when completing a residential real property assignment, must not base their opinion of value in whole or in part on race, color, religion, national origin, sex, disability, or familial status.

Proposed Comment: The FHAct prohibits discrimination in residential real estate appraisals on the basis of race, color, religion, national origin, sex, disability, or familial status. Under the FHAct, an appraiser may not use or rely upon information relating to these protected characteristics, with limited exceptions.

The FHAct can be violated through disparate treatment (treating individuals of one protected group differently from and less favorably than others not in that protected group) and disparate impact (employing neutral policies or practices that disproportionately harm members of a protected group, except when those policies or practices are justified and there are no less disproportionate policies or practices that could be used instead).

Section 1981 of the federal Civil Rights Act of 1866 prohibits many forms of discrimination with respect to the making and enforcement of contracts, and Section 1982 of the same law prohibits discrimination with respect to the purchasing, leasing, selling, holding, and conveyance of real and personal property. The Civil Rights Act of 1866 applies to real property appraisals, in addition to personal property and other appraisals.

Proposal: 2. An appraiser, when completing an assignment where the intended use is in connection with a credit transaction, not limited to credit secured by real property, must not base their opinion of value in whole or in part on race, color, religion, national origin, sex, marital status, age, source of income, or the good-faith exercise of rights under the Consumer Credit Protection Act.

Proposed Comment: ECOA prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, source of income, or the good-faith exercise of any right under the Consumer Credit Protection Act in any aspect of a credit transaction, with limited exceptions. An appraisal used in connection with a credit transaction is an aspect of the credit transaction.

We recommend:

- Revising and strengthening this proposal using the language from the Third Exposure Draft, which more clearly delineates how each law applies (the Fair Housing Act, ECOA, and the Civil Rights Act of 1866). Changes from the Third Exposure Draft are in bold (for recommended additions) or in strike through (for recommended deletions).

“1. The FHAct **applies to appraisal practice in connection with residential dwellings (including multifamily properties and vacant land for dwellings) and residential real property.** It prohibits making housing unavailable or discriminating in residential real estate appraisals and other related transactions on the basis of race, color, religion, national origin, sex, disability, or familial status. An appraisal, **an appraisal review**, or the development or reporting of assignment results that are subject to the FHAct may not be based either in whole or in part on information involving any of those protected characteristics, regardless of the appraiser’s intention, unless expressly permitted by law.

“2. The ECOA applies to appraisal practice in the mortgage lending and credit contexts, including those **credit transactions** related to **real property**, **business property**, and personal property. It prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, age, and source of income. An appraisal, **an appraisal review**, or the development or reporting of assignment results that are subject to the ECOA may not be based either in whole or in part on information involving any of these protected characteristics, regardless of the appraiser’s intention, unless expressly permitted by law.

“3. **The Civil Rights Act of 1866 applies to real property, business property, and personal property.** Section 1981 of the federal Civil Rights Act of 1866 prohibits many forms of discrimination with respect to the making and enforcement of contracts, and Section 1982 of the same law prohibits discrimination with respect to the purchasing, leasing, selling, holding, and conveyance of real and personal property. **Courts have interpreted these laws to prohibit discrimination on the basis of race, color, religion, and national origin.** ~~These laws create additional risks and obligations across the appraisal industry in how appraisers offer services, accept assignments, and treat clients.”~~

Explanation of recommendation:

- Revise and strengthen the FHAct language to clarify that the prohibition also includes Section 3604(a) of the FHAct and “dwellings” (or “housing”) in addition to Section 3605 and “residential real property.” See U.S. Department of Justice, Statement of Interest, *Austin v. Miller*, Case No. 3:21 cv-09319-MMC (N.D.Cal. March 25, 2022).
- Revise the FHAct and ECOA language to clarify that the requirements apply to and include all aspects of an appraisal or appraisal review, not just “completing” the “opinion

of value.”

- Revise the Civil Rights Act language to explain the types of appraisals covered and the protected characteristics.
- Delete the last sentence from the Civil Rights Act language to avoid implying that the Civil Rights Act is the only law of the three federal laws mentioned that would create risks or create obligations in how appraisers offer services, accept assignments, and treat clients.
- Deleting the comment regarding disparate treatment and disparate impact to avoid implying that these methods of proof are only available under the FHAct and to move that nuanced discussion to the Advisory Opinion.

#### Lines 57-62: Subsection 3-State or Local Antidiscrimination Law

Proposal: An appraiser must not violate any state or local antidiscrimination laws or regulations applicable to the appraiser or to their assignment.

Proposed Comment: State and local laws may expand upon federal antidiscrimination requirements to protect additional characteristics and/or prohibit additional practices. The specific laws and regulations that are applicable to an appraiser or an assignment will vary.

We recommend:

- Revising and strengthening this proposal by adding the following sentence from the Third Exposure Draft: “It is the appraiser’s responsibility and duty to be familiar with all applicable state or local antidiscrimination laws that apply to the appraiser’s practice.”

#### Addition of Lines regarding Retaliation

We recommend:

- Revising and strengthening this proposal by adding the following language consistent with the retaliation provisions of the FHAct and the ECOA:

“An appraiser must not coerce, intimidate, threaten or interfere with any person on account of that person exercising their rights under nondiscrimination laws or this USPAP Ethics rule, or on account of that person having aided or encouraged any other person exercising their rights under nondiscrimination laws or this USPAP Ethics rule.”

- For a more thorough discussion of the retaliation provision of the FHAct, See U.S. Department of Justice, Statement of Interest, *Connolly v. Lanham*, Case No. 1:22-cv-02048-SAG (D.Md. March 13, 2023).

### Lines 63-110: Transactions Not Involving Residential Real Property or Credit Transactions

We do not have any recommendations for this section, which appears to extend the protections of the FHAct and the Equal Credit Opportunity Act to other types of appraisals that do not involve residential real property or credit transactions.

## **Comments on Proposed Advisory Opinion 39-Antidiscrimination Laws and Nondiscrimination:**

### **This Advisory Opinion Appropriately Addresses the Nuances of Civil Rights Law and Can Be Further Strengthened**

We commend the Appraisal Standards Board for appropriately addressing the important nuances of civil rights law in this advisory opinion. In particular, we commend:

- Providing detailed explanations of the FHAct, ECOA, and the Civil Rights Act of 1866; and
- Explaining that the prohibition on discrimination on the basis of “sex” under the FHAct and ECOA includes gender identity and sexual orientation.

We think the proposed Advisory Opinion can be further strengthened with the following revisions:

- Adding an explanation of how the FHAct’s prohibition under Section 3604(a) (“otherwise make unavailable...a dwelling”) applies to appraisal activities;
- More clearly explaining that the prohibition on “contributing to a violation” is meant to address the situation where an appraiser contributes to a creditor’s violation under ECOA;
- Moving the explanation of disparate treatment and disparate impact under both the FHAct and ECOA to show that these methods of proof apply to ECOA as well;
- Substituting the current language regarding disparate treatment and disparate impact for the clearer language found in the Third Exposure Draft:
  - “Disparate treatment refers to treating people differently in whole or in part because of a protected characteristic; evidence of hate or animus is not required. Disparate impact refers to the use of neutral policies or practices that disproportionately harm a protected group except when justified by business necessity and absent a less discriminatory alternative”;
- More clearly explaining and distinguishing “pretexts” and “proxies,” and explaining that their prohibition does not depend on whether the appraiser intended to conceal their use; and
- Adding an explanation of anti-retaliation provisions.

**Comments on Proposed Advisory Opinion 40-Antidiscrimination and the Research, Analysis, and Reporting of Location Data, including Demographics, for Residential Real Property Appraisal Assignments:  
This Advisory Opinion Should Be Tabled for Further Consideration**

We have concerns with Advisory Opinion 40 and recommend that this letter be tabled until further outreach is conducted with stakeholders. With respect to liability, the Advisory Opinion appears to distinguish between language that is a proxy for race and data that is a proxy for race. However, the legal support for that proposition is not entirely clear. For that reason, we recommend holding the release of that Advisory Opinion until further research and discussions are conducted.

**Additional Comments:**

**The Appraisal Standards Board Should Further Strengthen USPAP by Addressing the Appraiser’s Nondiscrimination Obligations in Other Standards**

In addition to the comments above, we note that the following sections of USPAP should be strengthened to address the appraiser’s nondiscrimination obligations.

USPAP Standard 1: Real Property Appraisal, Development  
(Also applies to Standard 3: Appraisal Review, Development)

*Standards Rule 1-1, General Development Requirements:*

We recommend:

- Adding a new subsection (d) to read: “In developing a real property appraisal, an appraiser must...(d) not render appraisal services in a discriminatory manner.”

*Standards Rule 1-4, Approaches to Value:*

We recommend:

- Amending subsection (a) to add more information about ways to limit the risk of discretion and fair housing/fair lending risk in the sales comparison approach. For example, a new subsection (a)(i) could be added to read: “An appraiser must not select comparable sales that are influenced by the parties’ or neighborhoods’ race or other protected characteristics.”

USPAP Standard 2: Real Property Appraisal, Reporting  
(Also applies to Standard 4: Appraisal Review, Reporting)

*Standards Rule 2-1, General Reporting Requirements:*

We recommend:

- Adding a new subsection (d) to read: “Each written or oral real property appraisal report must:...(d) clearly and accurately set forth the appraisal in a manner that is not discriminatory.”

*Standards Rule 2-3, Certification:*

We recommend:

- Adding: “I am aware of and have complied with all applicable laws and regulations, including the Fair Housing Act and the Equal Credit Opportunity Act and their implementing regulations, that apply to the appraiser and to the assignment.”
- Coordinating with Fannie Mae and Freddie Mac to ensure that USPAP and the certifications for the Uniform Residential Appraisal Report Redesign are similar and certify that the appraisal is not discriminatory.

## **The Appraisal Foundation Can Further Strengthen the Nondiscrimination Framework**

We recommend that The Appraisal Foundation and its boards further strengthen the appraisal nondiscrimination framework by:

- Providing the USPAP Ethics Rule and the associated Advisory Opinions to the public for free;
- Ensuring that the Appraiser Qualifications Board quickly issues comprehensive fair housing training requirements for every stage of the credentialing process and at renewal; and
- Ensuring that appraisers are immediately provided with practical, comprehensive, and accurate fair housing training content.

Thank you for considering our views.

Sincerely,

National Fair Housing Alliance  
Center for Responsible Lending  
Connecticut Fair Housing Center  
Disability Rights Advocates  
Homeownership Alliance  
National Association for Latino Community Asset Builders  
National Coalition for Asian Pacific American Community Development (National CAPACD)



National Community Reinvestment Coalition  
National Consumer Law Center (on behalf of its low-income clients)  
National Urban League  
Prosperity Now