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Challenges & opportunities: USPAP '24 - by William Pastuszek

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It's here! The much-delayed and long-awaited new version of the Uniform Standards of Appraisal Practice. (USPAP). Truth be told, for many appraisers and users, this is not the most exciting thing that could happen in their appraisal lives, especially if they need to take the dreaded USPAP update. On the other hand, some who are passionate about USPAP are clapping hands in delight (mostly...).

This is the first USPAP edition since 2020, and the first since the pandemic. Normally, USPAP gets updated every two years to match state license renewal cycles. Why so long for a new version of USPAP? Is it because nothing noteworthy has happened in the world of appraisal in four years? Or is it because nothing is normal in appraisal?

The last four years have resulted in major changes, threats, and opportunities in real estate appraising. The Racial Discrimination in Residential Real Estate Appraisal Movement has raised major issues that the profession has had to face.

What changes were made in USPAP to reflect the dynamic nature of the real estate appraisal profession? Read on.

Biggest change: ETHICS RULE. The ASB 2024 Summary of Actions best describes the changes.

“The Board [ASB] adopted a Nondiscrimination Section in the ETHICS RULE and deleted all language relating to supported and unsupported conclusions in the Conduct section of the ETHICS RULE.” (The Management and Confidentiality sections of the RULE did not change.)

The section begins by prohibiting an appraiser from acting “in a manner that violates or contributes to a violation of federal, state, or local antidiscrimination laws or regulations.” It highlights the Fair Housing Act (FHAAct), the Equal Credit Opportunity Act (ECOA), and the Civil Rights Act of 1866, three key federal antidiscrimination laws that are relevant to appraisal practice.

The Summary continues, requiring an “appraiser to have knowledge of antidiscrimination laws and regulations and when those laws and regulations apply to the appraiser or to the assignment.” (more about this shortly.) Further, it states “specific prohibitions apply” in residential real property assignments or in an assignment where the intended use is in connection with a credit transaction. These prohibitions, grounded in the three applicable laws – The Fair Housing Act (FHAAct), The Equal Credit Opportunity Act (ECOA), and the Civil Rights Act of 1866 – prohibit appraisers from basing their opinions of value on any of the characteristics protected under relevant law.

Further, the Nondiscrimination section further states there are “four additional prohibitions that apply across appraisal disciplines, regardless of whether (or which) antidiscrimination laws or regulations also apply.” Thus, not only residential real estate appraisers are affected. (These prohibitions are

lengthy: go to USPAP Detailed Summary of Changes, P. 4)

ADVISORY OPINION 16 (AO-16), which dealt with Fair Housing, was retired. Two new Advisory Opinions were created that deal with fair housing and racial discrimination. AO-39 deals with how federal antidiscrimination laws affect appraisal practice. AO-40 covers issues with respect to researching, analyzing, and reporting of location data, including demographic data in residential appraisal assignments. These AO's, as promised, provide useful guidance.

There has been a good deal of pushback from some appraisers, USPAP instructors, and others on the USPAP changes. However, USPAP “requires an appraiser to be, or become, knowledgeable about and to fully comply with all laws applicable to the appraiser or to the assignment, including antidiscrimination laws. “The main objections seem to revolve around the fact that appraisers are not competent to interpret complex laws and regulations and are not attorneys.

This argument fails, unfortunately, because appraisers constantly parse laws and regulations in the course of their work just like many other professionals who are not lawyers. Take for example the law(s) having to do with confidentiality that arose out of the Gramm-Leach-Bliley Act. Appraisers wrestle with confidentiality issues on a daily basis without being worse off for the effort.

Many USPAP instructors feel put upon to have to teach “law.” This argument also fails since teaching USPAP does (and always has) required understanding how laws and regulations affect USPAP and appraisal. This version of USPAP underwent five exposure drafts – somewhat of a record – before finally being adopted. The Appraisal Standards Board (ASB) endured strong pressure from many different stakeholder groups on the form and content of the ETHICS RULE. In the end, the Board produced guidance that doesn't please everyone but is workable for now. The ASB also vowed to provide guidance and did so in the form of ADVISORY OPINIONS and other educational materials to assist students in understanding, and educators in teaching, USPAP.

Other important changes were made to Definitions – some were added, some deleted – and other minor edits. Also, Advisory Opinion 2 (AO-2) was edited to reflect the changing nature of “inspections” by clarifying the purpose of an inspection (to gather relevant information about a property's characteristics) and to underscore that a personal inspection is an “in-person” observation of a property. Also, the sales history section also requires reporting “transfers” as well as “sales.”

The questions of whether the appraisal process is biased in its core principles and whether appraisers are inherently biased; whether the profession as a whole acts in a biased manner; and whether some overtly biased or merely incompetent appraisers tarnish the profession and the appraisal process are questions that remain to be answered. With the arrival of 2024 USPAP, it is much clearer how appraisers need to act with respect to racial discrimination and bias in the appraisal process. These changes represent an important challenge to the profession. The profession, now aware of its responsibilities, can take on the challenges, the changes, and help craft the solutions.

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