



THE APPRAISAL FOUNDATION

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Standards and Appraiser Qualifications*

APPRAISAL STANDARDS BOARD

Attachment #4

January 9, 2017

Richard E. Livingston, Chair
Kansas Real Estate Appraisers Board
Jayhawk Tower
700 SW Jackson, Suite 804
Topeka, KS 66603

Dear Chair Livingston:

The Appraisal Foundation (TAF) has numerous concerns related to the proposal in Kansas to adopt alternative standards that could be applied in lieu of the Uniform Standards of Professional Appraisal Practice (USPAP). These concerns fall into two broad categories. First, TAF does not see where there is a need for alternative standards and is concerned that such standards would only cause confusion among practitioners and users of appraisal services. Second, we are concerned the proposed standards do not meet or exceed the standards (USPAP) established by the Appraisal Standards Board (ASB) and will expose users of appraisal services to greater risk.

It has been stated that the proposed alternative standards are principles based and that USPAP is rules based. TAF does not agree with that characterization. USPAP is a set of enforceable rules that are based on long established valuation principles. If the standards being proposed are so different from USPAP (principles vs rules, etc.), how can they also be reasonably offered up as being equivalent?

Need for Alternative Standards and Potential Confusion:

The only rationale provided for considering alternative standards has been that meeting the requirements of USPAP is burdensome and has an adverse effect on appraisers' ability to compete with other providers of valuation products. However, there was no rationale or support for the conclusion that such a disadvantage exists other than anecdotal comments from appraisers.

The fact of the matter is that USPAP provides significant flexibility to appraisers. The SCOPE OF WORK RULE, which was adopted in 2006, is based on the concept that when developing an appraisal, an appraiser must do whatever is necessary to provide the client with credible assignment results. Credible is a defined term in USPAP and the Comment to the definition explains that the credibility is always established in the context of the intended use of the assignment results. It is difficult to believe that there are practitioners who think that credible results, in the context of the intended use, is too high a bar.

We have also heard that some believe that the reporting requirements are too rigid and that in many cases some form of abbreviated report would be appropriate. Fortunately, USPAP provides flexibility for reporting as well. The Restricted Appraisal Report is a written report option that is available whenever there are no intended users other than the client(s). In the Restricted Appraisal Report, the appraiser is not required to provide great detail. USPAP recognizes that when this report option is used, the client might not have sufficient information to understand the appraiser's rationale for his or her conclusions, but the opinions and conclusions themselves must be presented in a manner that is sufficient for the client's understanding of the report. As with the development standards, it is hard to believe that this is too high a bar.

1155 15th Street, NW, Suite 1111
Washington, DC 20005
T 202.347.7722
F 202.347.7727

For many years, appraisers have been completing appraisal reports based on customary practices that may go well beyond what is required by USPAP. The requirements placed on appraisers when completing residential form reports that are required by Fannie Mae, Freddie Mac, and others must not be confused with USPAP. Likewise, narrative commercial property appraisal reports with varying levels of detail that have been the norm in general practice should not be confused with USPAP. USPAP allows for far less detail than appraisers have been providing.

In the mid-1980s the ad hoc committee got together to develop the initial “uniform standards” as a replacement for each association’s standards. The committee, and the groups that empaneled the committee, recognized that appraisers (many of whom belonged to more than one association) and users of appraisal services (who may have engaged appraisers associated with different associations) would both be better served by a set of uniform standards that provided clients with consistent expectations and appraisers with consistent objectives.

Do the Proposed Alternative Standards Meet or Exceed USPAP?

Whether the criterion to be met is (a) meet or exceed the requirements in USPAP, or (b) be substantially equivalent to USPAP, the proposed standards do not satisfy either condition. There are several areas where this can be clearly demonstrated.

USPAP recognizes that in order to foster public trust in appraisal practice it is necessary to avoid not only a conflict of interest, but the appearance of such a conflict. This recognition is woven into USPAP in various ways. Among these are disclosure obligations and prohibitions against advocacy, bias (as defined in USPAP), and certain contingent compensation arrangements. The contingent fee arrangements that are prohibited are those that might be seen as rewarding bad behavior (see the Management section of USPAP’s ETHICS RULE).

As defined in USPAP, an appraiser is expected to perform competently and in a manner that is independent, impartial, and objective. Because advocacy involves supporting a cause or issue, it effectively precludes impartiality. Any standards that allow advocacy (and thereby define the role of the appraiser differently) cannot meet or exceed the requirements of USPAP or be a substantial equivalent.

Similarly, standards that allow compensation arrangements that are specified as unethical in USPAP do not meet or exceed the requirements of USPAP and are not substantially equivalent.

There are several other areas in which questions arise regarding whether the alternative standards meet or exceed, or are substantially equivalent to, the requirements of USPAP. These include differences in definitions (e.g., scope of work, appraiser/valuer, and bias/biased), which have a ripple effect on application of the standards. In addition, TAF sees a substantial difference in one of the benchmarks for an acceptable scope of work; the actions of “another valuer” (singular) who possesses competency is a lower standard than the actions of “the appraiser’s peers’ actions” (peers - plural and as defined in USPAP).

The report requirements in the alternative standards are also substantially different from and less inclusive than those of USPAP. Nearly all of the items specifically required to be in a certification under USPAP are not required under the alternative standards. In fact, the USPAP requirement to disclose any services regarding the subject property provided by the appraiser in the three years prior to the assignment is completely absent from the alternative standards.

The confidentiality requirements in the alternative standards prohibit disclosure, but do not address the appraiser’s obligation to take reasonable steps to protect confidential information or the obligation to ensure that others with access to the information are aware of the confidentiality requirements.

Additional Issues and Concerns:

Some parts of the VCPE are poorly written. For example, ER 1-1 states that it is unethical to “transmit a Report containing an analysis, opinion, or conclusion that reasonable valuers would not believe to be justified.” If reasonable

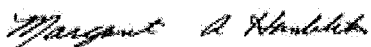
valuers disagree on appropriate methodology (there are areas in appraisal practice with multiple schools of thought) does that mean that anyone transmitting a report that touches on those areas is unethical?

Another example is ER 1-2 which states: *It is unethical to engage in conduct of any kind that leads to a conviction of a crime involving fraud, dishonesty, false statements, or moral turpitude.* This is not worded very well - Suppose a witness to a crime involving fraud, dishonesty, false statements, or moral turpitude reports and provides testimony about that crime committed by another individual. That person's coming forward leads to the conviction of the person who committed the crime. Now the witness's conduct (reporting and testifying about the incident) led to a conviction of a crime; therefore, per ER1-2, the witness acted unethically. Or, is it ethical for an appraiser to commit such a crime as long as he or she is never convicted? Obviously, this is not the intent of the rule, but it is the letter of the rule. TAF's exposure process helps to avoid wording that does not work as intended.

Summary:

- The market (both providers and users of appraisal services) have been well served by having uniform standards that establish consistent expectations and objectives. Adding an alternative will add unnecessary confusion.
- The bars set by USPAP are credible assignment results (development) and communication that is not misleading and that contains sufficient information for intended users (reporting). These are minimums all practitioners should want to meet.
- USPAP requires that an appraiser perform in a manner that is independent, impartial, and objective. Advocacy precludes impartiality. Any standard that allows advocacy is not equivalent to USPAP.
- USPAP recognizes that is crucial for public trust in appraisal practice that appraisers avoid even the appearance of a lack of independence; therefore, fee arrangements contingent on the factors that could appear to reward a compromise of the appraiser's independence are prohibit. Any standard that allows such contingencies is not the equivalent of USPAP.
- USPAP emphasizes the importance of a signed certification in a report; the certification attests to the appraiser's compliance with specific key expectations and the appraiser's acceptance of responsibility. A report that does not comply with this certification requirement is not the equivalent of a USPAP compliant report.
- USPAP has requirements regarding the appraiser's obligations in protecting confidential information and assignment results; any standards without such requirements are not equivalent to USPAP.
- The alternative standards have wording that could be problematic for enforcement.

Sincerely,



Maggie Hambleton, SRA
Chair, Appraisal Standards Board

cc: Robin Taggart Hannigan, Member
Kenton G. Landenburger, Member
James F. Stallbaumer, Member
Fred L. Samuelson, Member
Jeffrey D. Caudle, Member
Sally Pritchett, Director