



**Devalued, Denied, and Disrespected:
How Home Appraisal Bias and Discrimination
Are Hurting Homeowners and Communities of Color**

**Testimony of Lisa Rice
President and CEO, National Fair Housing Alliance**

**Before the
U.S. House Committee on Financial Services
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I. Introduction

Chairwoman Waters, Ranking Member McHenry, and other distinguished members of the United States House Financial Services Committee,

Thank you for inviting the National Fair Housing Alliance to testify today on the extremely important issue of appraisal bias and reform, which affects millions of people across the country.

My name is Lisa Rice and I am the President and CEO of the National Fair Housing Alliance (“NFHA”). NFHA is the country’s only national non-profit civil rights agency solely dedicated to eliminating all forms of housing discrimination and ensuring equitable housing opportunities for all people and communities. We do this through the provision of our education and outreach, member services, public policy, advocacy, housing and community development, tech equity, enforcement and consulting and compliance programs. NFHA is also the trade association for more than 170 fair housing organizations throughout the U.S.

An appraiser has the unique power to determine the value of a home, which for most Americans, is their single most important financial asset and holds the key to wealth, stability, and opportunity for their family and generations to come. In addition, home values affect the tax base, school funding, and community investments. Moreover, time and again, our nation’s economy and financial markets have been significantly impacted by home valuations, with communities of color often bearing the brunt of failings in the mortgage market and the home appraisal process. Given the importance of homeownership to American families, particularly families of color, governmental and private organizations have called for reforms and a comprehensive examination of the structure and governance of the appraisal industry.

Several organizations have answered this urgent call to action. In January 2022, the National Fair Housing Alliance along with its partners, Dane Law and the Christensen Law firm, released a report commissioned by the Appraisal Subcommittee and managed by the Council on Licensure, Enforcement and Regulation (NFHA Report).¹ We conducted an independent review of the Uniform Standards of Professional Appraisal Practice (“USPAP Standards”) and the Real Property Appraiser Qualification Criteria (“Qualification Criteria”). The goal of the review was to “ensure that the USPAP Standards and the Appraiser Criteria do not encourage or systematize bias, and that the standards and criteria consistently support or promote fairness, equity, objectivity, and diversity in both appraisals and the training and credentialing of appraisers.” This groundbreaking report presented a roadmap for Congress, regulators, advocates, and

¹ NFHA, Dane Law LLC, Christensen Law Firm, *Identifying Bias and Barriers, Promoting Equity: An Analysis of the USPAP Standards and Appraiser Qualification Criteria* (Jan. 2022), https://nationalfairhousing.org/wp-content/uploads/2022/02/2022-01-28-NFHA-et-al_Analysis-of-Appraisal-Standards-and-Appraiser-Criteria_FINAL.pdf.

the industry to address the nation’s long legacy of bias in real estate valuations and build a future in which a family’s most valuable asset is treated fairly. Congress, federal regulators, and The Appraisal Foundation have already taken concrete actions to address the findings in the NFHA Report.

Just recently, on March 23, 2022, the Property Appraisal and Valuation Equity (“PAVE”) Task Force released an Action Plan, which announced a transformative set of bold agency and legislative actions designed to root out racial and ethnic bias in home valuations.² The PAVE Task Force is made up of 13 agency members and is co-chaired by the Department of Housing and Urban Development Secretary Marcia Fudge and Ambassador Susan Rice, White House Domestic Policy Advisor. The Task Force was created in response to President Biden’s directive to launch an interagency initiative to combat bias in home appraisals.

To understand the challenges and solutions for appraisal reform, following is:

- A summary of the established history of appraisal bias to understand how we got to where we are today;
- An overview of the civil rights laws that provide a robust legal framework designed to address appraisal discrimination;
- An explanation of how the promise of the Fair Housing Act remains unfulfilled as appraisal discrimination continues today on an individual and systemic basis;
- Recommendations for congressional action that can ensure a fair, transparent, and consistent valuation process that benefits all borrowers, including borrowers of color; and
- An appendix with a one-page summary of recommendations.

II. There Is an Established History of Appraisal Bias

The Appraisal System Historically Undervalued Homes in Communities of Color

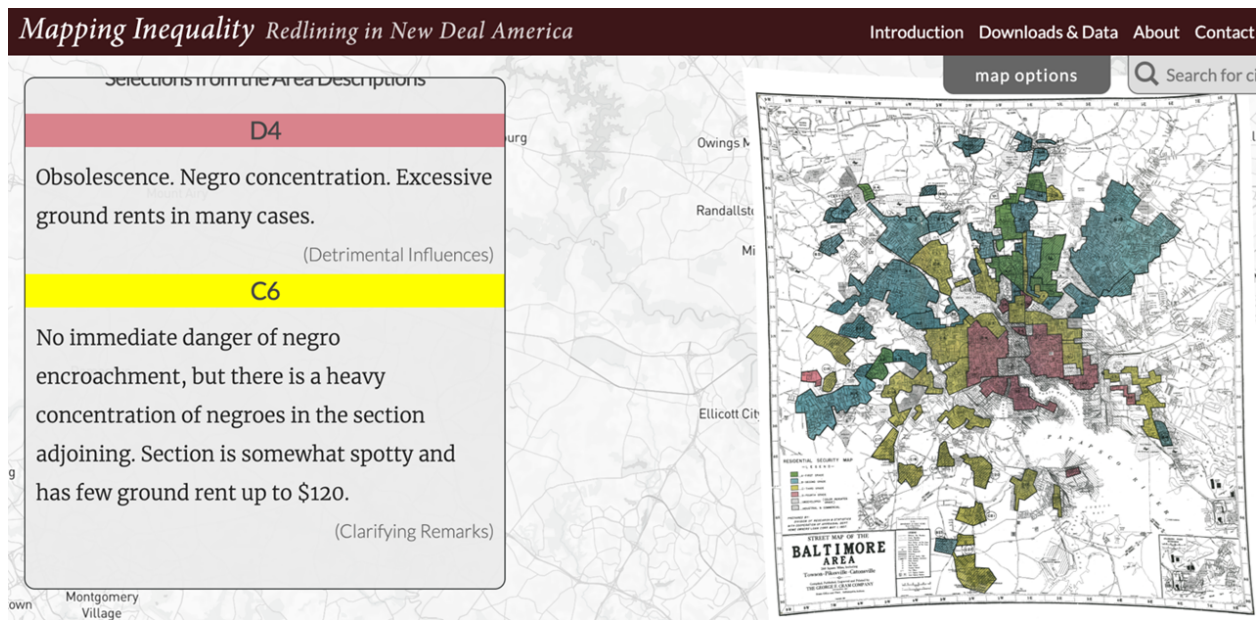
For centuries, laws and policies enacted to create land, housing, and credit opportunities were race-based, denying critical opportunities to Black, Latino, Asian American and Pacific Islander (“AAPI”), and Native American individuals. Despite our founding principles of liberty and justice for all, these policies were developed and implemented in a racially discriminatory manner.³

In particular, the New Deal’s federal Home Owners Loan Corporation (“HOLC”) developed one of the most harmful policy decisions in the housing and financial

² PAVE Interagency Task Force, *Action Plan to Advance Property Appraisal and Valuation Equity* (March 2022), <https://pave.hud.gov/sites/pave.hud.gov/files/documents/PAVEActionPlan.pdf>.

³ See Lisa Rice, *The Fair Housing Act: A Tool for Expanding Access to Quality Credit*, *The Fight for Fair Housing: Causes, Consequences, and Future Implications of the 1968 Federal Fair Housing Act* (Gregory Squires, 1st ed. 2017) (providing a detailed explanation of how federal race-based housing and credit policies promoted inequality).

services markets by perpetuating a system that included race as a fundamental factor in determining the desirability and value of neighborhoods.⁴ As shown in the graphic below, the HOLC created appraisal maps that were color-coded to evaluate, grade, and indicate the value of neighborhoods. Communities of color – and even neighborhoods with small numbers of Black residents – were coded as “hazardous” as signified by red shading on the map and were assigned the lowest value despite the reality that families who could afford mortgage loans resided within those communities. Moreover, areas that were adjacent to communities with Black residents could be downgraded simply based on their proximity to a community of color. Notably, the data used to create the maps were not just collected randomly, but were based on the opinions of the leading real estate professionals at the time, including appraisers. Later, the Federal Housing Administration adopted these maps and race-based policies as the basis for its mortgage insurance underwriting decisions. Thus, these policies and procedures helped systematize redlining as well as the unfounded association between race and risk in the U.S. housing and financial services markets.



HOLC Map of Baltimore. Source: Mapping Inequality⁵

⁴ The Home Owners' Loan Act of 1933 established the HOLC as an emergency agency under the Federal Home Loan Bank Board. 12 U.S.C. § 1461 *et seq.*

⁵ See University of Richmond, Virginia Tech, University of Maryland, and Johns Hopkins University, *Mapping Inequality* (documenting the maps and area descriptions created by the HOLC between 1935 and 1940), <https://dsl.richmond.edu/panorama/redlining/#loc=3/41.245/-105.469&text=intro>.

Appraisal Principles and Practices Further Perpetuated an Unfounded Association between Race and Risk

In addition to the mapping system, explicitly discriminatory principles and practices further perpetuated an unfounded association between race and risk. These practices promoted the idea that a home should be valued based on its neighborhood and that a homogeneous, all-White neighborhood held the highest value. Following are excerpts from a few appraisal texts and manuals.

1932: Valuation of Real Estate –

“There is one difference in people, namely race, which can result in very rapid decline [in real estate values].”

1935: American Institute of Real Estate Appraisers Manual, Real Estate Appraisal –

“To have the attributes of a good residential area, it is essential that protection be afforded against the infiltration of inharmonious racial groups....”

1938: Federal Housing Administration Underwriting Manual –

“Areas surrounding a location are investigated to determine whether incompatible racial and social groups are present, for the purpose of making a prediction regarding the probability of the locations being invaded by such groups. If a neighborhood is to retain stability, it is necessary that properties continue to be occupied by the same social and racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values.”

1946: McMichael’s Appraising Manual, Third Edition –

“Those nationalities and races having the most favorable influence [in Chicago] come first in the list and those exerting detrimental effects come last:

1. English, Germans, Scotch, Irish, Scandinavians.
2. North Italians.
3. Bohemians or Czechs.
4. Poles.
5. Lithuanians.
6. Greeks.
7. Russian, Jews (lower class).
8. South Italians.
9. Negroes.
10. Mexicans.”

1967: American Institute of Real Estate Appraisers Textbook, *The Appraisal of Real Estate* –

“The causes of racial and ethnic conflicts are not the appraiser’s responsibility. However, he must recognize the fact that values change when people who are different from those presently occupying an area advance into and infiltrate a neighborhood.”

In sum, these historical maps and policies resulted in homes in neighborhoods with similar amenities being systematically undervalued primarily on the basis of race and ethnicity. Discriminatory valuation systems and policies developed by the HOLC, the Federal Housing Administration, the American Institute of Real Estate Appraisers, and other entities also helped create, entrench, and perpetuate residential segregation. Real estate professionals used the redlining maps to racially steer people of color into red-coded or “hazardous” areas and to establish racially restrictive covenants to keep areas racially homogeneous. To this day, racial disparities in homeownership, wealth, health, education, and other key factors of success continue to follow the harmful redlining patterns set forth in these historical maps, policies, and practices.

III. The Civil Rights Laws Provide a Robust Framework for Addressing Appraisal Discrimination

The civil rights laws established a robust legal framework for addressing appraisal discrimination. Indeed, courts have long held that appraisal discrimination on the basis of race, color, religion, national origin, sex, disability, familial status, and other protected classes violates federal and state civil rights laws.⁶

The Civil Rights Act of 1866

Racial discrimination in the appraisal of housing violates the Civil Rights Act of 1866.⁷ Section 1981 of this law, among other things, guarantees to all persons within the jurisdiction of the United States the same right as White citizens to make and enforce contracts. Section 1982 of this law provides all citizens with the same right as is enjoyed by White citizens to purchase, lease, sell, hold, and convey real and personal property. The Civil Rights Act of 1866 generally applies only to intentional racial discrimination, but the Supreme Court has expanded the scope of the Act to include certain types of ethnic discrimination. In conjunction with the Fair Housing Act, this law has been used in the courts to challenge appraisal discrimination.

⁶ See, e.g., *Steptoe v. Savings of America*, 800 F. Supp. 1542 (N.D. Ohio 1992). See also, DOJ Statement of Interest, *Austin, et al., v. Miller, et al.*, Case 3:21-cv-09319-MMC (N.D. Cal. Filed Feb. 14, 2022) (explaining that the Fair Housing Act prohibits discrimination in home appraisals), <https://www.justice.gov/crt/case/statement-interest-austin-et-al-v-miller-et-al>.

⁷ 42 U.S.C. §§ 1981-1982.

The Fair Housing Act of 1968 and HUD's Regulation

The principal federal statute that prohibits appraisal discrimination is Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 (the “Fair Housing Act”), which bars discrimination in home appraisals and other housing-related transactions on the basis of race, color, religion, national origin, sex, disability, and familial status (known as “prohibited bases,” “protected classes,” or “protected characteristics”).⁸

The Fair Housing Act makes it unlawful for “any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction or in the terms or conditions of such transaction” on the basis of any protected class under the statute.⁹ The term “residential real estate-related transaction” is defined in the statute to include “the appraising of residential real property.”¹⁰

Courts have relied on other provisions of the Fair Housing Act to prohibit discrimination in the appraisal industry, including provisions associated with housing-related services that “otherwise make unavailable...a dwelling” or that discriminate in the “terms, conditions, or privileges of sale or rental of a dwelling.”¹¹ Courts have observed that “an appraisal sufficient to support a loan request is a necessary condition precedent to a lending institution making a home loan.”¹² Because an appraisal is a critical service associated with securing a home loan, a discriminatory appraisal may lead to the denial of a home, thereby making housing “unavailable.” Appraisals may be regarded as a service provided in connection with the sale of a home, such that discriminatory appraisal practices may result in unlawful differences in treatment.

Implementing regulations under the Fair Housing Act, promulgated by HUD, broadly define the term “appraisal” to mean “an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.”¹³

According to these regulations, the Fair Housing Act squarely bars any person or entity engaged in appraising residential real property from discriminating against any person “in making available such services, or in the performance of such services, because of

⁸ 42 U.S.C. § 3601, *et seq.*

⁹ *Id.* at § 3605(a).

¹⁰ *Id.* at § 3605(b).

¹¹ *Id.* at § 3604(a) and § 3604(b).

¹² *Steptoe v. Savings of America*, 800 F. Supp. 1542, 1546 (N.D. Ohio 1992).

¹³ 24 C.F.R. § 100.135(b).

race, color, religion, sex, handicap, familial status, or national origin.”¹⁴ The regulation also states that prohibited practices include “[u]sing an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.”¹⁵

This prohibition against discrimination as it expressly applies to appraisal services was added to the Fair Housing Act in 1988, essentially clarifying the existing scope of the Fair Housing Act as the courts had come to interpret its application in the appraisal industry.¹⁶ The update also included a section titled “Appraisal Exemption,” which notes that nothing in these mandates prohibits a person “engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex handicap, or familial status.”¹⁷

The Equal Credit Opportunity Act of 1974 and the CFPB’s Regulation B

Appraisal-related services are necessary in the provision of housing-related credit services. Accordingly, a discriminatory appraisal that results in the denial of home financing may also violate the Equal Credit Opportunity Act of 1974 (“ECOA”), which prohibits creditors from discriminating on the basis of race, color, religion, national origin, sex, marital status, age, and source of income (known as “prohibited bases,” “protected classes,” or “protected characteristics”).¹⁸ In 2013, the Consumer Financial Protection Bureau (“CFPB”) amended Regulation B, which implements the ECOA, by requiring creditors to provide to applicants free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling, and to notify applicants in writing that copies of appraisals will be provided to them promptly.¹⁹ Notably, these provisions of ECOA and Regulation B only apply to the “creditor” and only if the appraisal was conducted in connection with the issuance of credit.

¹⁴ 24 C.F.R. § 100.135(a).

¹⁵ 24 C.F.R. § 100.135(d)(1).

¹⁶ Robert Schwemm, *Housing Discrimination and the Appraisal Industry*, in *Mortgage, Lending, Racial Discrimination, and Federal Policy* (John Goering and Ron Wienk eds., 1996), <https://www.fhcci.org/wp-content/uploads/2021/05/Schwemm-Housing-Discrimination-Appraisal-1996.pdf>.

¹⁷ 42 U.S.C. § 3605(c).

¹⁸ 15 U.S.C. § 1619(a); see e.g., *Cartwright v. American Savings & Loan Ass’n*, 880 F.2d 912, 925-27 (7th Cir. 1989).

¹⁹ CFPB, *Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B)*, 78 Fed. Reg. 7215 (Jan. 31, 2013) (codified at 12 C.F.R. § 1002).

Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and HUD's Regulation

The Federal Housing Enterprises Financial Safety and Soundness Act (“FHEFSSA”) of 1992 detailed Congress’ expectations that Fannie Mae and Freddie Mac (collectively, the “Government-Sponsored Enterprises” or “GSEs”) would adhere to the requirements of the fair housing and fair lending laws.²⁰ The implementing regulations promulgated by HUD state that “[n]either [GSE] shall discriminate in any manner in making any mortgage purchases because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect.”²¹

State Laws and Other Prohibited Bases

In addition to these federal laws, most states and many localities have statutes prohibiting discrimination in housing-related transactions, including home appraisals.²² Moreover, compliance with federal and state fair housing laws requires understanding the prohibited bases, which may be broader than federal law. For example, the state of California prohibits discrimination in appraisals on the basis of gender expression and military status.²³ Similarly, while rare, the interpretation of a prohibited basis under federal law may evolve. For example, based on a recent Supreme Court holding in the employment context, the CFPB and HUD have interpreted the ECOA and the Fair Housing Act’s prohibition on discrimination on the basis of “sex” to include discrimination on the basis of sexual orientation and gender identity.²⁴

IV. The Promise of the Fair Housing Act Remains Unfulfilled: Appraisal Discrimination Continues on an Individual and Systemic Basis

Although the establishment of the robust legal framework of civil rights laws designed to combat appraisal discrimination was a critically-important development, these laws did not immediately change policies, practices, and attitudes. For example, although the Fair Housing Act passed in 1968, the explicitly discriminatory appraisal guidance continued. As late as the 1970s, the appraiser course material still contained the following explicitly race-based guidance:

²⁰ 12 U.S.C. 4545.

²¹ 24 C.F.R. 81.42.

²² A recent survey of state fair housing laws is available here:

<http://lawatlas.org/datasets/state-fair-housing-protections-1498143743>.

²³ Cal. Business and Professions Code § 11424(a).

²⁴ See CFPB, *Equal Credit Opportunity (Regulation B); Discrimination on the Bases of Sexual Orientation and Gender Identity, Interpretive Rule*, 86 Fed. Reg. 14363 (March 16, 2021),

<https://www.govinfo.gov/content/pkg/FR-2021-03-16/pdf/2021-05233.pdf>; HUD, *Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act* (Feb. 11, 2021),

https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf.

“Ethnological information also is significant to real estate analysis. As a general rule, homogeneity of the population contributes to stability of real estate values. Information on the percentage of native-born whites, foreign whites, and non-white population is important, and the changes in this composition have a significance.... As a general rule, minority groups are found at the bottom of the socio-economic ladder, and problems associated with minority group segments of the population can hinder community growth.”

-American Institute of Real Estate Appraisers Course Material (1973)

In 1976, the U.S. Department of Justice (“DOJ”) filed suit against the American Institute of Real Estate Appraisers and three other defendants for alleged violations of the Fair Housing Act.²⁵ The DOJ alleged that the four defendants had engaged in unlawful discriminatory practices by promulgating standards and offering educational materials which had caused appraisers and lenders to treat race and national origin as negative factors in determining the value of dwellings and in evaluating the soundness of home loans, and by failing to take adequate steps to correct the continuing effect of past discrimination and ensure non-discrimination by appraisers and lenders whose practices were subject to the influence or authority of the four organizations. The parties eventually entered into a settlement agreement in which the American Institute of Real Estate Appraisers agreed to adopt the following policy statements:

1. It is improper to base a conclusion or opinion of value upon the premise that the racial, ethnic, or religious homogeneity of the inhabitants of an area or of a property is necessary for maximum value.
2. Racial, religious, or ethnic factors are deemed unreliable predictors of value trends or price variance.
3. It is improper to base a conclusion or opinion of value, or a conclusion with respect to neighborhood trends, upon stereotyped or biased presumptions relating to race, color, religion, sex, or national origin or upon unsupported presumptions relating to the effective age or remaining life of the property being appraised or the life expectancy of the neighborhood in which it is located.

As Currently Structured, the Sales Comparison Approach Allows Discretion to Perpetuate the Unfounded Association between Race and Risk

Although explicitly race-based policies have been removed from written guidance, valuation methods still provide appraisers with broad discretion, which has long been recognized as a key fair lending risk factor often leading to adverse outcomes for

²⁵ *United States v. American Institute of Real Estate Appraisers*, 442 F. Supp. 1072 (N.D. Ill. 1977).

borrowers of color.²⁶ While there are several possible methods of valuation, the GSEs generally require the use of the sales comparison approach, which means that most residential real estate appraisals use this approach.

On its face, the sales comparison approach is not necessarily discriminatory. According to the Fannie Mae Single Family Selling Guide (“Selling Guide”): “The sales comparison approach to value is an analysis of comparable sales, contract sales, and listings of properties that are the most comparable to the subject property.”²⁷ The Selling Guide further states: “The appraiser is responsible for determining which comparables are the best and most appropriate for the assignment.... Comparable sales from within the same neighborhood (including subdivision or project) as the subject property should be used when possible.”²⁸ Again, on its face, this is a race-neutral approach, but it must be understood in the context of historical discrimination.

Although guidance on the sales comparison approach no longer contains explicit race-based references, the historical undervaluation of communities of color as well as the broad discretion leaves open the opportunity for appraisers to perpetuate bias on a passive or active basis. That is, appraisers may passively or unwittingly perpetuate bias by continuing to use the undervalued comparable sales in neighborhoods of color. This undervaluation began in the 1930s and was never rectified. Under the current structure of the sales comparison approach, appraisers are instructed to limit the comparable sales to homes within the same undervalued neighborhood of color, even if there are similar homes with higher values in comparable White neighborhoods. Thus, appraisers must rely on biased data, which further perpetuates the bias.

In some instances, appraisers may be more active participants in perpetuating discrimination. For example, the qualitative research conducted by Dr. Elizabeth Korver-Glenn raises concerns about the extent to which appraisers may be active participants in a race-based market distortion using the sales comparison approach. Many of the appraisers in the study “assumed that White buyers were the standard for determining an area’s desirability, with White areas meeting this standard and receiving the highest values and non-White areas falling below the standard.”²⁹ Following is a sample of the feedback from some of the appraisers in the study:

²⁶ See, e.g., FFIEC, *Interagency Fair Lending Examination Procedures* (2009), <https://www.ffiec.gov/PDF/fairlend.pdf>.

²⁷ Fannie Mae Single Family Selling Guide, *Sales Comparison Approach Section of the Appraisal Report*, B4-1.3-07 (April 15, 2014), <https://selling-guide.fanniemae.com/Selling-Guide/Origination-thru-Closing/Subpart-B4-Underwriting-Property/Chapter-B4-1-Appraisal-Requirements/Section-B4-1-3-Appraisal-Report-Assessment/1032992461/B4-1-3-07-Sales-Comparison-Approach-Section-of-the-Appraisal-Report-04-15-2014.htm>.

²⁸ See *id.* at *Comparable Sales*, B4-1.3-08 (Oct 2, 2018).

²⁹ Dr. Elizabeth Korver-Glenn, “Appraising Value,” *Race Brokers: Housing Markets and Segregation in 21st Century Urban America*, at 116-143 (2021).

- Allan, a White appraiser, assumed that neighborhoods of color were low-income and poorly maintained, stating: “It’s kind of generalizing, but it seems to me that neighborhoods where I go to [appraise] where there are pockets where they’re very strictly one ethnicity – it just seems like they’re generally lower priced, and overall the properties aren’t as well kept.”³⁰
- Allan also assumed that values would rise as a neighborhood became more homogeneous and whiter, stating: “And then up here [north of Montrose] it’s getting better because of all the Mexican people moving out....”³¹
- Larry, a White appraiser, stated that an “influx of minorities” to a neighborhood would be perceived by White homeowners as having a “negative impact,” which would cause White homeowners to leave, which would lower home values.³²
- Carl, a White appraiser, stated: “I think people want to be near their own kind. And I feel 100 percent about that. And I think it’s factual when you look at the racial makeup of neighborhoods.”³³
- Diego, a Latino appraiser, described a majority Black and majority Latino neighborhood as follows: “The demographics are completely different, and I don’t think that they directly compete because of that.”³⁴

It seemed that the appraisers in this study did not necessarily feel that they were injecting their own biases into the valuation, but felt that, under the sales comparison approach, their valuation should reflect the market’s biased perception of certain neighborhoods, based on that neighborhood’s dominant race or ethnicity. As further evidence of this, note the perceptions these appraisers had about the value of a neighborhood based on who was moving into and out of the area. According to Allan, neighborhoods were “getting better” and presumably housing values were increasing because of all the Mexican people moving out” while Larry opined that an “influx of minorities” into an area would lower values.

This research also suggests that appraisers may be using their discretion to establish neighborhood boundaries and, in this way, arbitrarily restricting which comparable sales are used to establish a property’s value. The high levels of segregation in many communities likely contribute to perceptions about neighborhood boundaries. But those boundaries are not objective and fixed, and, in some instances, perceptions of the boundaries can change when the race of local homeowners changes. With little guidance and unfettered discretion, appraisers may believe that the sales comparison

³⁰ *Id.* at 126.

³¹ *Id.* at 131.

³² *Id.* at 128.

³³ *Id.* at 129.

³⁴ *Id.* at 137.

approach requires incorporating their perception of the market’s racial bias into the valuation.

Appraisal Discrimination Continues on an Individual and Systemic Basis

Given the broad discretion and lack of guidance, it is not surprising that the appraisal process continues to suffer from bias on an individual and systemic basis. Recent news stories from across the country have highlighted anecdotal evidence on an individual basis. In many instances, Black homeowners have had to “whitewash” their homes and remove all evidence of their racial identity in order to receive a fair valuation. A few of these stories are highlighted below.

California. A Black couple in Marin City, California, seeking to refinance received an initial appraisal of \$995,000.³⁵ Suspecting that the valuation of their home was unjustifiably low, they removed all evidence of their racial identity and asked a White friend to pose as the homeowner and then received an appraisal of \$1,482,500, which was almost \$500,000 more than the appraisal conducted just weeks earlier. The homeowner said, “There are implications to our ability to create generational wealth or passing things on if our houses appraise for 50 percent less than its value.”



³⁵ Fair Housing Advocates of Northern California, Discrimination Lawsuits Filed Alleging Discrimination in Home Appraisal Process, Press Release (Dec. 2, 2021), https://www.fairhousingnorcal.org/uploads/1/7/0/5/17051262/press_release_-_austin_case.final.pdf; Julian Glover, Black California Couple Lowballed by \$500K in Home Appraisal, Believe Race Was a Factor, ABC7News (Feb. 12, 2021), <https://abc7news.com/black-homeowner-problems-sf-bay-area-housing-discrimination-minority-homeownership-anti-black-policy/10331076/>.

Indiana. After receiving an initial appraisal of \$110,000, a Black woman in Indianapolis, Indiana, removed all family photos, Black art and books; declined to identify her race on the refinancing application; communicated with the appraiser by email only; and asked a White friend to pose as her brother and meet the appraiser.³⁶ This time, the home appraised for \$259,000. Upon seeing that amount, the homeowner was first overcome with joy, but then felt hurt that she had had to erase herself from her home in order to get a value that was fair and accurate.



Colorado. A mixed-race couple in Denver, Colorado, scheduled an appraisal in connection with a home equity loan.³⁷ When the Black husband greeted the appraiser, the home was valued at \$405,000 based on comparison to homes selected by the appraiser in a Black neighborhood in a different location. When the White wife greeted the second appraiser, the home was valued at \$550,000, which was an increase of \$145,000. The wife stated, "Race obviously played a role in how we were treated. But what's deflating is that this experience put a dollar figure on it."

Connecticut. After receiving an initial appraisal of \$340,000, a Black family in Bloomfield, Connecticut, removed all family photos and asked a White neighbor to pose as the homeowner.³⁸ This time, the home appraised for just over \$400,000. The homeowner stated, "[T]his kind of experience not only robs you of the ability to refinance, but also affects opportunities at building generational wealth."

³⁶ Fair Housing Center of Central Indiana ("FHCCI"), FHCCI Announces HUD Complaints Alleging Discrimination in Home Appraisals, Press Release (May 4, 2021), <https://www.fhcci.org/wp-content/uploads/2021/05/5-4-21-HUD-Appraisal-Filings-Revised.pdf>.

³⁷ Troy McMullen, For Black Homeowners, A Common Conundrum with Appraisers, Washington Post (Jan. 21, 2021),

https://www.washingtonpost.com/realestate/for-black-homeowners-a-common-conundrum-with-appraisals/2021/01/20/80fbfb50-543c-11eb-a817-e5e7f8a406d6_story.html.

³⁸ *Id.*

Florida. After receiving an initial appraisal of \$330,000, a mixed-race couple in Jacksonville, Florida, removed all photos of the Black wife and her side of the family, books by Black authors, and holiday cards from Black friends.³⁹ When the White husband greeted the second appraiser, the home appraised at \$465,000, which was an increase of more than 40 percent. After posting the story on Facebook, the homeowners received over 2,000 comments, many of which were from Black homeowners saying that they had a similar experience. The wife stated, “[I]n the Black community, it’s just common knowledge that you take your pictures down when you’re selling your house.”

Ohio. A Black family in a suburb of Cincinnati, Ohio were elated to learn that they received an offer from a buyer to purchase their home.⁴⁰ The offer of \$507,500 came in even before the family had an opportunity to formally list their home. But their hopes were dashed when the appraiser valued their home at \$465,000, which was \$42,500 lower than the sales price. The purchasers asked the couple to lower the sales price to comport with the appraisal. But the sellers believed they were being low-balled. Even after the couple requested a reconsideration of value, the appraiser refused to conduct another appraisal and the lender also refused to order a second appraisal. The family then “white-washed” their home, removing photos and images of themselves and replacing them with photos and images from their White neighbors. The family’s real estate agent, who was White, agreed to be present for a second, independent appraisal - which the family secured on their own. The second appraisal came in \$92,000 higher than the first appraisal and roughly \$50,000 higher than the sales price.

While the individual stories of discrimination in appraisals are alarming, the analyses of systemic bias are even more stunning and disturbing. Recent studies contain the following findings:

³⁹ Debra Kamin, Black Homeowners Face Discrimination in Appraisals, The New York Times (Aug. 25, 2020),

<https://www.nytimes.com/2020/08/25/realestate/blacks-minorities-appraisals-discrimination.html>.

⁴⁰ Lucy May, *This Black Family's Their Race*, ABC-WCPO (Aug. 19, 2021),

<https://www.wcpo.com/news/our-community/this-black-familys-home-appraisal-grew-by-92-000-after-the-y-removed-all-signs-of-their-race>.

Appraisal Reports: Federal Housing Finance Agency (“FHFA”). FHFA recently analyzed appraisal reports and found that thousands of the reports contained descriptions based on race, ethnicity, and religion in the “Neighborhood Description” and other free-form text fields.⁴¹ Some examples include:

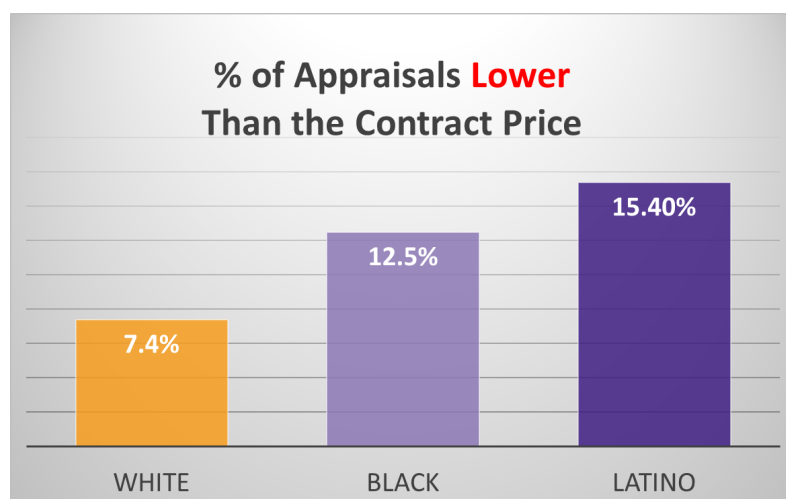
- A town was described as having a **“Black race population above state average.”**
- A neighborhood was described as **“predominately Hispanic”** and that the residents have “assimilated their cultural heritage” into the neighborhood.
- It was noted that “there is more **Asian influence** of late” buying the market.
- Amenities were described as a “commercial strip featuring storefronts supplying **Jewish households.**”
- A neighborhood was described as a **“homogeneous** neighborhood with good schools.”

⁴¹ FHFA, Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary, FHFA Insights Blog (Dec. 14, 2021), <https://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx>.

Purchases: Freddie Mac. In a groundbreaking study, researchers at Freddie Mac analyzed more than 12 million appraisals submitted for purchase transactions and found unexplained racial disparities in the percentage of properties that received an appraisal value lower than the contract price (the “appraisal gap”).⁴² More specifically, the research showed that:

- *For Black/Latino neighborhoods.* An appraisal gap is more likely to occur in Black or Latino census tracts than White census tracts.
- *For Black/Latino individuals.* Similarly, an appraisal gap is more likely to occur for Black or Latino mortgage applicants than White mortgage applicants, regardless of the neighborhood where the property is located.
- *Across appraisers.* The majority of appraisers reviewed showed an appraisal gap. (That is, the issue was not limited to just “a few bad apples,” but rather the majority of appraisers reviewed were more likely to show an appraisal gap for properties in Black or Latino census tracts than for properties in White census tracts.)

In other words, even when a buyer and seller agreed upon a value in an arms-length market transaction, the appraiser was less likely to support and validate that market value in neighborhoods of color than in White neighborhoods. This raises the question of whether these appraisers were actively distorting the market and thus further depressing the value of homes that were already undervalued because they were located in historically-redlined neighborhoods of color. That is, it may be difficult to rely on market forces to increase the values of the homes in these neighborhoods of color to match the value of homes in comparable White neighborhoods, because some appraisers may be actively distorting the market and keeping the values lower based on unfounded associations between race and risk.



⁴² Melissa Narragon, et al., *Racial and Ethnic Valuation Gaps in Home Purchase Appraisals*, Freddie Mac Economic and Housing Research Note (Sept. 2021), <http://www.freddiemac.com/fmac-resources/research/pdf/202109-Note-Appraisal-Gap.pdf>.

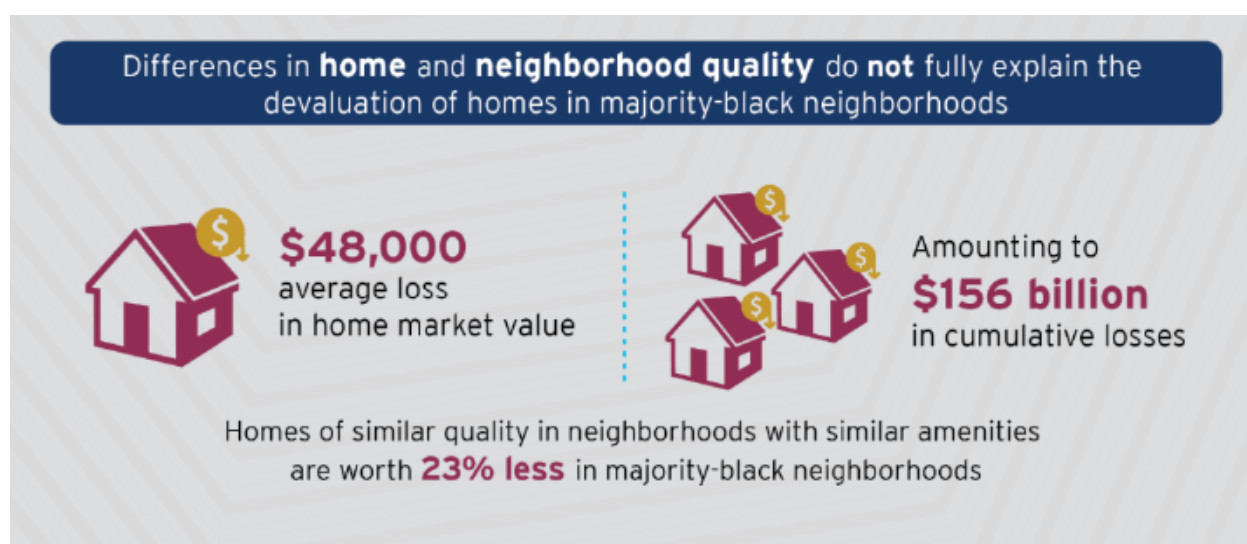
Refinancings: Fannie Mae. In another groundbreaking study, researchers at Fannie Mae analyzed 1.8 million appraisals submitted for refinancing transactions and found that appraisers were more likely to overvalue White-owned homes in majority-Black neighborhoods.⁴³ Moreover, the overvaluation could be attributed to appraisers relying on comparable sales from outside of the subject property's immediate area (i.e., the majority-Black neighborhood) even though potentially more appropriate comparable properties were available closer to the subject property.

White borrowers in Black neighborhoods	
CU overvaluation reason codes	%
Multiple factors	36.4%
Comparable location	16.5%
Market adjustments	8.3%
Comparable selection	4.1%
Room count GLA adjustments	5.8%
All other	28.9%
Total	100.0%

Data: Refinance loan acquisitions from July – September 2021

⁴³ Jake Williamson and Mark Palim, *Appraising the Appraisal*, Fannie Mae Working Paper (Feb. 2022), <https://www.fanniemae.com/media/42541/display>.

Cumulative Cost: The Brookings Institution. A 2018 Brookings Institution study of 2016 American Community Survey homeowner estimates and 2012-2016 Zillow data found that homes in majority Black neighborhoods had values that were 23 percent less than properties in mostly White neighborhoods, even after controlling for home features and neighborhood amenities.⁴⁴ That is, differences in home and neighborhood quality could not fully explain the devaluation of homes in Black neighborhoods, raising questions about whether discrimination was the determining factor. The study estimated that homes in majority-Black neighborhoods were undervalued by \$48,000 per home on average, leading to a \$156 billion cumulative loss in value nationwide.

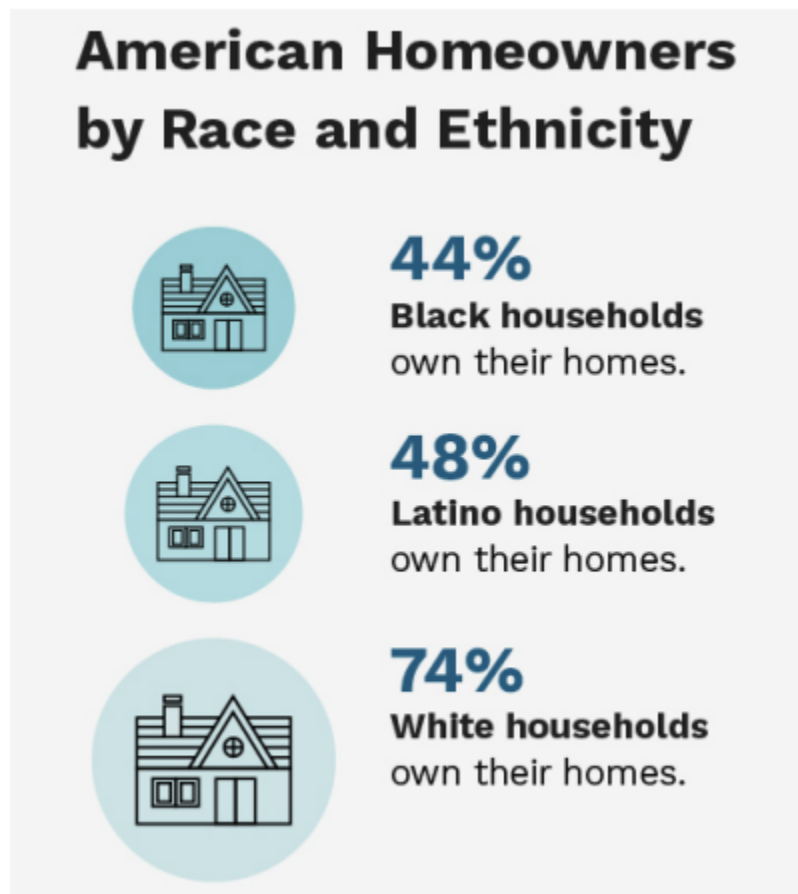


Source: Brookings Institution

⁴⁴ Andre M. Perry, Jonathan Rothwell, and David Harshbarger, The Devaluation of Assets in Black Neighborhoods, The Brookings Institution Metropolitan Policy Program (Nov. 2018), https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf. See also Junia Howell and Elizabeth Korver-Glen, Neighborhoods, Race, and the Twenty-first Century Housing Appraisal Industry, 4 *Sociology of Race and Ethnicity* 473 (2018), <https://journals.sagepub.com/doi/abs/10.1177/2332649218755178?journalCode=srea> (finding substantial differences in home values in communities of color even after controlling for home features, neighborhood amenities, socioeconomic status and consumer demand).

Today, Appraisal Bias Remains One of the Key Drivers of the Wealth Gap

Given these circumstances, it is not surprising that the homeownership and wealth gaps remain large and persistent, and are, in part, driven by bias in home valuations. As a result of this troubled history of inequity and continuing discrimination, Black homeownership, the primary asset of Black families, is at levels similar to when the Fair Housing Act was passed in 1968.⁴⁵ Currently, the White homeownership rate is 74.1 percent, compared to 44.2 percent for Black households and 48.4 percent for Latino households.⁴⁶



Source: PAVE Action Plan

⁴⁵ Alanna McCargo and Jung Hyun Choi, *Closing the Gaps: Building Black Wealth Through Homeownership*, Urban Institute (November 2020), https://www.urban.org/sites/default/files/publication/103267/closing-the-gaps-building-black-wealth-through-homeownership_0.pdf. See also Laurie Goodman, Jun Zhu, and Rolf Pendall, *Are Gains in Black Homeownership History?*, Urban Institute (Feb. 14, 2017), <https://www.urban.org/urbanwire/are-gains-black-homeownership-history>.

⁴⁶ US Census Bureau, *Homeownership Rates by Race and Ethnicity of Householder*, Annual Statistics: 2021 (2021).

In addition, because home value has been the cornerstone of intergenerational wealth in the United States, the historical appraisal practices have had long-term effects in creating some of the current wealth inequalities. White wealth has soared while Black wealth has remained stagnant. In 2019, White household wealth sat at \$188,200 (median) and \$983,400 (mean).⁴⁷ In contrast, Black households' median and mean net worth were \$24,100 and \$142,500, respectively.⁴⁸ Moreover, overall White households held 10 times more wealth than Black households and seven times more than Latino households in 2016⁴⁹ with one study finding that homeownership accounted for 27 percent of the Black-White wealth gap.⁵⁰ These wealth disparities, in turn, reflect intergenerational transfer disparities: 29.9 percent of White households have received an inheritance, compared with only 10.1 percent of Black households.⁵¹

⁴⁷ Neil Bhutta, Jesse Bricker, Andrew Chang, et al., *Changes in U.S. family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances*, 106(5) Fed. Res. Bulletin (Sept. 2020), <https://www.federalreserve.gov/publications/files/scf20.pdf>.

⁴⁸ *Id.*

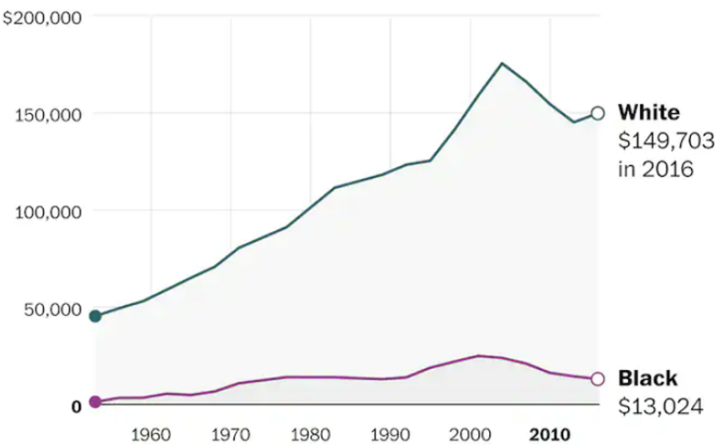
⁴⁹ Rakesh Kochhar and Anthony Cilluffo, *How Wealth Inequality Has Changed in the U.S. since the Great Recession, by Race, Ethnicity and Income* (Nov. 1, 2017), <https://www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/>.

⁵⁰ Thomas Shapiro, Tatjana Meschede, and Sam Osoro, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, Institute on Assets and Social Policy, Brandeis University (Feb. 2013), <https://community-wealth.org/content/roots-widening-racial-wealth-gap-explaining-black-white-economic-divide>.

⁵¹ Neil Bhutta, et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDS Notes, Board of Governors of the Federal Reserve System (Sept. 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>.

White wealth surges; black wealth stagnates

Median household wealth, adjusted for inflation



Source: Historical Survey of Consumer Finances via Federal Reserve Bank of Minneapolis and University of Bonn economists Moritz Kuhn, Moritz Schularick and Ulrike I. Steins
THE WASHINGTON POST

When the wealth of households with children is assessed, the gaps get even larger. A recent analysis found that White households with children have over 100 times the wealth as Black households with children.⁵² At the median, Black households with children had roughly one cent for every dollar held by White households. Moreover, Latino households with children had eight cents for every dollar held by a White household. The researchers for this study noted that homeownership levels, segregation, and housing values were significant contributing factors explaining the wealth gaps.⁵³

In addition to the wealth gap, undervalued home appraisals can have other significant consequences. Inaccurate appraisals can result in distortions in the loan-to-value ratio and in canceled home sales contracts or refinancing offers. Finally, low appraisals can pose significant challenges for using home equity for advancement opportunities, such as payment for college tuition or security for small business loans. Accurate home valuations are critically important to the advancement and security of people and communities of color.

The Promise of the Fair Housing Act Has Been Left Unfulfilled

The Fair Housing Act's promise of fair and equitable housing transactions is unfulfilled as shown by the well-documented evidence of appraisal bias on an individual and systemic basis. The current system unfairly limits the ability of many borrowers and communities of color to receive a fair valuation of their biggest financial asset and to

⁵² Christine Percheski and Christina Gibson-Davis, *A Penny on the Dollar: Racial Inequalities in Wealth among Households with Children*, SAGE Journal (June 1, 2020), <https://journals.sagepub.com/doi/full/10.1177/2378023120916616>.

⁵³ *Id.*

build wealth and opportunities. Moreover, while many appraisers determine a home's value in a fair and unbiased manner, without rectifying previous historical undervaluation, controlling for discretion, and conducting robust compliance oversight, the opportunity remains for the appraiser to perpetuate discrimination in an active or passive manner. Given the continued bias, the appraisal industry would benefit from reform of the current structure, appraisal standards, and appraiser criteria as well as a comprehensive review of the current approach, policies, and practices.

Finally, one reason individual and systemic bias are still so prevalent, is the failure of broadscale enforcement of anti-discrimination laws. Indeed, the PAVE Action Plan acknowledges that federal regulators do not even have examination procedures to identify appraisal bias.⁵⁴ Federal and state regulatory and enforcement agencies must take action to provide effective oversight and to ensure compliance with fair housing and lending laws. These agencies must also engage in enforcement measures to help provide compensation to individuals and communities that have been impacted by discrimination. Furthermore, Congress must ensure private fair housing organizations, who have historically led the way in addressing appraisal bias issues, are adequately funded through the Fair Housing Initiatives Program.

V. Congressional Action Can Ensure a Fair, Transparent, and Consistent Valuation Process that Benefits All Borrowers, including Borrowers of Color

Congress Is in a Unique Position to Ensure a Fair, Transparent, and Consistent Valuation Process

Through oversight and legislation, Congress is in a unique position to address the bias in the appraisal and valuation process. We applaud the Committee's leadership in convening this hearing and developing a discussion draft of legislation. The "Fair Appraisal and Inequity Reform Act" ("Discussion Draft") is responsive to many of the concerns highlighted in the NFHA Report and the PAVE Action Plan.⁵⁵ While there are several areas meriting discussion, today we will focus on five key issues:

1. Accountable, efficient governance
2. Fair, transparent, and consistent processes
3. Fair algorithms and other appraisal alternatives
4. Reasonable qualification criteria for valuation professionals
5. Transparent, public valuation database

⁵⁴ See PAVE Action Plan at 29.

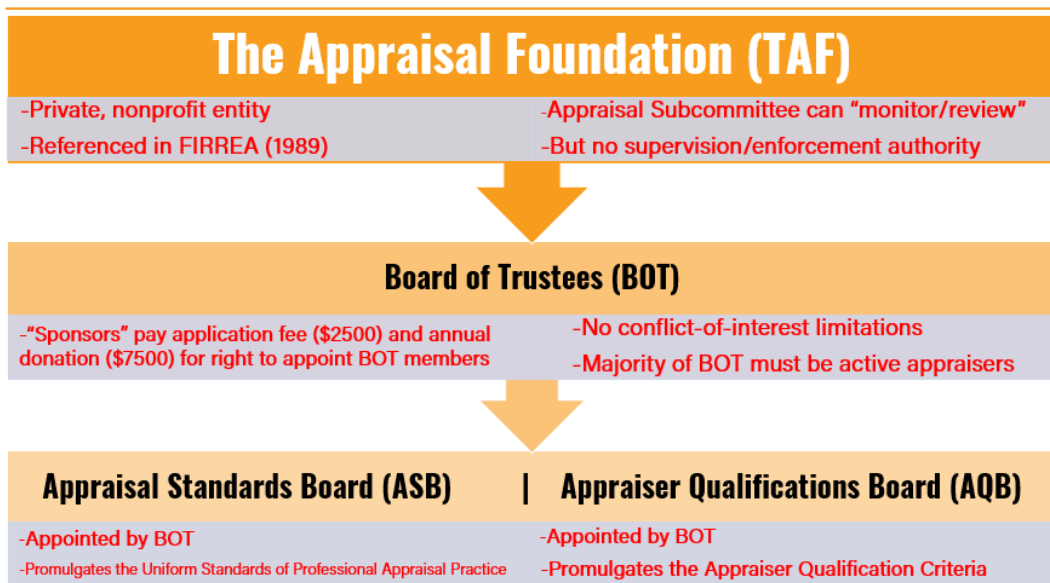
⁵⁵ House Financial Services Committee Discussion Draft, H.R. ____, "Fair Appraisal and Inequity Reform Act of 2022," <https://financialservices.house.gov/uploadedfiles/bills-117pih-endingappraisaldiscriminationactof2022.pdf>.

1

Congress Should Ensure Accountable, Efficient Governance of the Appraisal Industry

Problem: The Appraisal Foundation Is an Inefficient Governance Structure That Is Not Responsive to Small Businesses and Consumers, Particularly Consumers of Color

The current appraiser regulatory system is fundamentally broken for all consumers and for the small businesses that participate in the process, namely the appraisers and the Appraisal Management Companies (“AMCs”). The PAVE Action Plan covers several areas of concern with accountability and oversight, but we will focus on the issues raised by the structure of The Appraisal Foundation (“TAF”).⁵⁶ As depicted in the graphic below, TAF is a private, nonprofit entity, which is referenced in the Financial Institution Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”),⁵⁷ but whose legal authority is not clear. TAF’s boards set the baseline appraisal standards through the Uniform Standards for Professional Appraisal Practice (“USPAP”) and the baseline criteria for professional qualification through the Real Property Appraiser Qualification Criteria (“Qualification Criteria”), which are then adopted by the states. TAF’s main source of income is the sale of USPAP and the accompanying Advisory Opinions, which are largely behind a paywall.



⁵⁶ For more details about the governance of the appraisal industry, see NFHA Report at page 34-48, PAVE Action Report at page 27.

⁵⁷ 12 U.S.C. §§ 3331-3356, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), and the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018.

The Appraisal Subcommittee is a subcommittee of the Federal Financial Institutions Examination Council (“FFIEC”). The Appraisal Subcommittee was established in FIRREA and is a federal agency with the authority to “review” and “monitor” TAF, but with no supervision or enforcement authority.⁵⁸ Likewise, Congress has no authority to oversee TAF’s functions.

TAF is governed by a Board of Trustees. Industry organizations pay an upfront fee and annual donation for the right to appoint trustees. There are no conflict of interest rules for the trustees. Indeed, TAF’s bylaws require a majority of the Board of Trustees to be appraisers employed in the industry.⁵⁹ From there, the Board of Trustees then appoints the members of the Appraisal Standards Board, which promulgates USPAP; and the Appraiser Qualifications Board, which promulgates the Qualification Criteria. Typically, these individuals are also appraisers employed in the industry.

Moreover, although the nonprofits on The Appraisal Foundation Advisory Council can participate in the appointment process without making a donation, they are comprised of 60 organizations with the right to appoint only one trustee. Also, none of the current nonprofits are civil rights or consumer advocates; they are all industry trade associations or governmental agencies. But even if a few civil rights and consumer advocates were to join the advisory council, their voices would be easily diluted and outnumbered.

It’s hard to imagine Congress accepting a similar structure for the CFPB, with the rulemaking staff picked by industry creditors and the rules hidden behind a paywall. It’s not clear why Congress feels that this structure is appropriate for appraisers, who have the critical responsibility of valuing collateral to protect the safety and soundness of a financial institution and to protect a consumer’s most important financial asset.

TAF’s structure raises several concerns:

Out of step with the mortgage market. There is no other facet of the housing finance market that is governed in the same manner as the appraisal industry. That is, because the mortgage market is recognized as complex, risky, and high-stakes for consumers as well as financial institutions and the American economy, it is highly regulated by specialized experts who are employed to serve the public, not solely the industry. In part because of this closed-loop, self-regulated structure, TAF has not been effective at addressing the complexities of a myriad of concerns raised by housing finance stakeholders over the years, including concerns regarding the deep-rooted inequities in the appraisal process.

⁵⁸ 12 U.S.C. § 3332.

⁵⁹ The Appraisal Foundation, Restated Bylaws, § 6.02(b)(viii) (Nov. 16, 2019) (emphasis added), <https://appraisalfoundation.sharefile.com/share/view/s11d4d879051545738887fa0015cad511> (“Bylaws”).

Undemocratic. TAF's staff selection and standard-setting processes do not follow core principles of democracy and good government. The selection process seems to be designed as a pay-to-play structure that embeds rather than avoids conflicts of interest. Moreover, while TAF was historically funded through grants from the Appraisal Subcommittee, the majority of its funding is now generated by proceeds from the sale of USPAP. This approach prevents the Appraisal Subcommittee from adding a mechanism of accountability through the grantmaking process.

Viewpoints are too broad and too narrow. The viewpoints of the TAF boards are both too broad and too narrow. With respect to real property, the viewpoints are too broad because USPAP Standards 1-4 for real property cover all types of appraising, not just those related to mortgage transactions. So, appraisers end up with high-level guidance that does not provide the much-needed guardrails specific to the valuation of residential real estate in connection with mortgage transactions. Instead, appraisers often rely on Fannie Mae and Freddie Mac for specific guidance. At the same time, the viewpoints of TAF's boards are too narrow because they are not structured to consider the public interest, including the consumer and civil rights perspective. TAF's processes make it difficult to yield candidates who would be ready to address the complex challenges of appraisal bias and lack of appraiser diversity and seek solutions that would benefit the whole of the housing market, including consumers of color.

Inefficient. We applaud the incredible efforts of the PAVE Task Force and the proposed actions that the federal agencies will undertake to address inefficiencies and challenges in the appraisal industry. There are some who may criticize efforts at appraisal reform as federal government "overreach." Nothing could be further from the truth. It is, rather, an overreach for a single private entity to set standards for a whole industry with little accountability to policymakers and consumers for the outcomes. It is difficult to imagine any other industry nonprofit or advocate nonprofit with similar authority to set standards for such high-stakes operations.

Unfair to consumers. It seems unfair to have the standards for valuing a consumer's most significant financial asset be set by a private entity with no accountability to those consumers, their elected representatives, or regulators. This unfairness is amplified for consumers of color, who face special challenges and risks in the current appraisal process that have been far too long ignored.

Burdensome to small business. While TAF's structure favors industry, it tends to favor those who are well-resourced and well-connected. In addition, the TAF board's frequent changes to USPAP are particularly burdensome to small businesses, such as appraisers and AMCs who must expend resources adapting their policies and practices to comply with new USPAP standards. In fact, the changes are so frequent that some portions of the TAF training now simply reference where to find the standards, rather than provide training on the specific standards.

Recommendation for Congressional Action

Immediate action. Congress should encourage TAF to revise its bylaws to ensure accountable and democratic procedural standards and board member selection processes. For example, TAF should be encouraged to repeal the requirement that a majority of trustees be industry appraisers and that financial donations are necessary to appoint board members.

Legislative action. We applaud the Committee for its bold leadership in proposing to elevate the Appraisal Subcommittee to become the Federal Valuation Agency with enhanced authority, including rulemaking authority for USPAP and Qualification Criteria. See Section 2(a) of the Discussion Draft. We believe that this structure would promote a much more accountable, efficient governance structure for the appraisal industry. For example, as a federal agency, the Federal Valuation Agency would be subject to the normal procedural guardrails of the Administrative Procedures Act, the Freedom of Information Act, conflict of interest rules, and congressional oversight. In addition, we recommend that the Federal Valuation Agency have jurisdiction over all real estate (both residential and commercial) valuations in connection with mortgage transactions, have a dual mandate for both safety and soundness and civil rights/consumer protection, and be comprised of a highly specialized workforce with expertise in real estate valuation, including valuation for rural areas, manufactured homes, and communities of color. Finally, we applaud the Committee for requiring an Office of Fair Lending, which would report directly to the head of the agency. See Section 2(b) of the Discussion Draft. This agency structure would be well-equipped to tackle the complex challenges facing the appraisal profession.

2

Congress Should Ensure Appraisal and Valuation Standards Promote a Fair, Transparent, and Consistent Process

Problem: The Current Sales Comparison Approach Provides Appraisers with Broad Discretion, which Can Result in Unfair and Inconsistent Outcomes, Particularly for Consumers of Color

Although the USPAP Standards' Ethics Rules require an appraiser to perform assignments with "impartiality [and] objectivity,"⁶⁰ appraisers can use their discretion to make many choices that can affect the valuation of a home.⁶¹ For example, the appraiser can choose the neighborhood boundaries, the comparable sales, and the value adjustments. Since the 1990s when the DOJ first began filing fair lending lawsuits, discretion has been recognized as one of the key risk factors that can lead to fair

⁶⁰ USPAP Ethics Rule: Conduct, page 7, lines 185-186.

⁶¹ For more details about the risks of discretion in the appraisal process, see NFHA Report at pages 21-24.

lending violations and consumer harm.⁶² Just as lenders came to understand the risk of discretion in underwriting and pricing mortgage loans, appraisers will similarly need to understand the fair lending risk inherent in each discretionary decision and understand how to manage that risk appropriately. The current USPAP Standards provide almost no guidance on how to identify discretionary decisions and manage the fair lending risk.

Furthermore, private fair housing organizations, who have historically led the way in addressing appraisal bias issues, have been under-funded and are not sufficiently resourced to provide support and services to all consumers who experience discrimination in the appraisal market. Appraisal bias cases are highly complex and difficult to investigate. Qualified Fair Housing Enforcement Organizations⁶³ should receive adequate funding under the Fair Housing Initiatives Program⁶⁴ to enable them to provide a wide range of investigative and supportive services for consumers and communities impacted by appraisal bias.

Recommendation for Congressional Action

Immediate action. Congress should encourage TAF's Appraisal Standards Board to revise USPAP to minimize discretion and ensure a fair, transparent, and consistent appraisal process.⁶⁵

Legislative Action. We applaud the Committee for proposing to provide the Federal Valuation Agency with the authority to promulgate rules for appraisal standards. See Section 2(c) of the Discussion Draft. We believe this structure would be responsive to the concerns of small businesses and consumers, including consumers of color, because historical and current versions of rules and interpretations would be provided for free, proposals would be published in the Federal Register, and the rulemaking agenda and process would be more transparent and responsive to stakeholders and

⁶² See HUD, DOJ, Office of the Comptroller of the Currency ("OCC"), Office of Thrift Supervision, Board of Governors of the Federal Reserve System ("Federal Reserve"), Federal Deposit Insurance Corporation ("FDIC"), Federal Housing Finance Board, Federal Trade Commission, and National Credit Union Administration ("NCUA"), *Policy Statement on Discrimination in Lending*, 59 Fed. Reg. 73 (Apr. 15, 1994), <https://www.govinfo.gov/content/pkg/FR-1994-04-15/html/94-9214.htm>.

⁶³ As per 24 CFR 125.103, Qualified Fair Housing Enforcement Organizations are private, non-profit, tax-exempt, charitable agencies that 1) Have at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and 2) Are engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.

⁶⁴ See, Fair Housing Initiatives Program, https://www.hud.gov/program_offices/fair_housing_equal_opp/partners/FHIP#:~:text=Search%20FHIP%20Organizations-What%20is%20the%20Fair%20Housing%20Initiatives%20Program%3F,been%20victims%20of%20housing%20discrimination.

⁶⁵ On February 4, 2022, the CFPB, HUD, DOJ, FHFA, Federal Reserve, OCC, FDIC, and NCUA sent a comment letter to TAF's Appraisal Standards Board regarding the current draft of USPAP and advocating for consistency with all applicable nondiscrimination standards provided in federal law. https://files.consumerfinance.gov/f/documents/cfpb_appraisal-discrimination_federal-interagency_comment_letter_2022-02.pdf.

their needs. We further commend the Committee for seeking increased funding for FHIP and FHAP programs to ensure private fair housing organizations are sufficiently resourced to provide support and services to all consumers who experience discrimination in the appraisal market. See Section 6 of the Discussion Draft.

3

Congress Should Ensure Valuation Standards Promote Fairness in Algorithms and Other Appraisal Alternatives

Problem: There Are No Federal Standards to Ensure Fairness in Algorithms or Other Appraisal Alternatives

At this point, it appears that changes to the traditional appraisal business model are inevitable. In all aspects of the mortgage market, investors, lenders and consumers are demanding faster, economical, more streamlined processes that produce accurate, reliable, and fair valuations. Moreover, the appraisal industry is experiencing a unique stress in workforce retention and recruitment as older and more experienced professionals exit the industry while new professionals find the credentialing requirements and fee pressures ever more challenging.

As an alternative to more costly and time-intensive traditional appraisals, many mortgage industry stakeholders are turning to Automated Valuation Models (“AVMs”) for valuations or quality control. An AVM is defined in FIRREA as “any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer’s principal dwelling.”⁶⁶

AVMs mainly rely on large datasets and algorithmic models to generate outcomes, which has benefits as well as risks.⁶⁷ Because of their data-driven nature, they tend to be held up as a more objective, bias-free form of valuation. But the reality is more complex. The long history of unfair, race-based policies means that the data used to power and train the model may be imbued with bias. Also, AVMs are dependent on large datasets that are more prevalent in newer, suburban neighborhoods where homes are more uniform, but not in rural or urban areas where the housing stock is varied. AVMs may also be less reliable for certain types of housing, such as manufactured homes.

⁶⁶ 12 U.S.C. § 3354.

⁶⁷ For more details about the risks of certain appraisal alternatives, see NFHA Comment Letter, *FHFA Request for Information on Appraisal-Related Policies, Practices, and Processes* (Feb 26, 2021), https://nationalfairhousing.org/wp-content/uploads/2021/04/NFHA-Comments_FHFA-RFI-re-Appraisals_02-26-2021_FINAL.pdf. See also PAVE Action Plan at pages 26-27, 43-44.

The AVM model itself may also suffer from discriminatory bias. As some data scientists have remarked, “Algorithms are just opinions embedded in code.”⁶⁸ For example, a study by the Urban Institute found that AVMs in majority-Black neighborhoods produced a larger percentage magnitude of inaccuracies, relative to the underlying sales price, than AVMs in majority-White neighborhoods.⁶⁹ Even after controlling for certain neighborhood and income characteristics, the predominant race of the neighborhood still played a statistically significant role in the determination of the percentage AVM inaccuracy gap. These observations raise questions that warrant further review.

Other alternatives to traditional appraisals also warrant careful scrutiny, including desktop appraisals, evaluations, broker price opinions, and appraisal waivers. In particular, these concerns may raise the same issues pervasive in the dual credit market.⁷⁰ That is, appraisal alternatives may turn out to be more efficient and less costly, but the nature of such alternatives may make it less likely that they are commonly available for homes located in communities of color, which may result in a bifurcated valuation system.

The key to successfully improving the valuation business model is managing the changes to mitigate the fair lending risk and the risk of harm to consumers and communities, particularly those of color. Congress has the opportunity to play a central role in deconstructing decades of discrimination that undervalued homes in communities of color, which in turn unfairly stifled opportunities for advancement. It will be critically important to consider all changes in the valuation business model with an equity lens, carefully reviewing all processes for fair lending risk, testing outcomes for their effect and impact on people and communities of color, and seeking opportunities to construct a fair and transparent valuation system.

Recommendation for Congressional Action

Immediate action. Since 2010, FIRREA has provided the federal financial regulators with the authority to issue quality control standards for AVMs.⁷¹ Recently, the CFPB issued an

⁶⁸ See, e.g., Cathy O’Neil, *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy* (New York: Crown Publishers, 2016).

⁶⁹ Michael Neal, Sara Stochak, Linna Zhu, and Caitlin Young, *How Automated Valuation Models Can Disproportionately Affect Majority-Black Neighborhoods*, Urban Institute (Dec. 2020), <https://www.urban.org/research/publication/how-automated-valuation-models-can-disproportionately-affect-majority-black-neighborhoods>.

⁷⁰ There is a dual credit market in the United States where fringe financial services, such as payday lenders, are more often available in communities of color and lower-income communities, while mainstream lenders, such as banks, are more prevalent in White, middle-income, and high-income communities. See, Testimony of Nikitra Bailey, Senior Vice President of Public Policy, NFHA, *Hearing: Promoting Economic Prosperity and Fair Growth through Access to Affordable and Stable Housing*, U.S. House Select Committee on Economic Disparity and Fairness in Growth (March 1, 2022), https://fairgrowth.house.gov/sites/democrats.fairgrowth.house.gov/files/documents/Nikitra%20%20Bailey%20House%20Select%20Committee%20EDFG_Testimony%20%28FINAL%29.pdf.

⁷¹ 12 U.S.C. § 3354.

outline for an AVM rule, which would include a “fifth factor” (in addition to the statute’s enumerated four factors) requiring “nondiscrimination” be part of the quality control standards.⁷² Congress should encourage all of the applicable agencies to quickly issue the proposed and final rules to ensure that the proliferation of AVMs does not result in the perpetuation of discriminatory patterns.

Legislative action. We recommend that the Committee add to the Discussion Draft the authority for the Federal Valuation Agency to promulgate rules that will ensure that alternatives to traditional appraisals are fair and non-discriminatory and protect the value of the collateral for the financial institution as well as the consumer, including consumers of color. We further recommend that the rules for AVMs require guidance on the role of model risk management and fairness frameworks, such as NFHA’s Purpose, Process, and Monitoring framework.⁷³

4

To Address Shortages and Lack of Diversity, Congress Should Ensure There Are Reasonable Qualification Criteria for Valuation Professionals

Problem: The Current Appraiser Qualification Criteria Contain Stringent Barriers to Entry, Which Have Resulted in an Acute Appraiser Shortage and an Extreme Lack of Diversity

Unlike comparable professions, the path to becoming a certified residential appraiser consists of multiple barriers to entry, including:

- A college degree or equivalent,
- 200 appraiser education hours,
- 1,500 experience hours with a supervisory appraiser, and
- Passing a standardized test.⁷⁴

Even after completing the required education and training, only about 55-65 percent of individuals pass the standardized test on the first try.⁷⁵ This raises concerns about

⁷² CFPB, *Small Business Advisory Panel Review Panel for Automated Valuation Model Rulemaking* (Feb. 23, 2022), https://files.consumerfinance.gov/f/documents/cfpb_avm_outline-of-proposals_2022-02.pdf.

⁷³ See, NFHA, *Purpose, Process, and Monitoring: A New Framework for Auditing Algorithmic Bias in Housing and Lending* (Feb. 17, 2022), https://nationalfairhousing.org/wp-content/uploads/2022/02/PPM_Framework_02_17_2022.pdf.

⁷⁴ For more details about barriers to entry for the appraisal profession, see NFHA Report at page 64-69, PAVE Action Plan at pages 30-34..

⁷⁵ See The Appraisal Foundation, https://www.appraisalfoundation.org/imis/TAF/Standards/Qualification_Criteria/National_Uniform_Licensing_and_Certification_Exam_for_Real_Property_Appraisers_/TAF/AQB_National_Exam.aspx?hkey=50cf1d9e-6430-4e5d-ac6e-2fe92352cbdf.

whether these criteria are effectively designed to set the candidates up for success as a qualified appraiser.

TAF's Appraiser Qualifications Board sets these Qualification Criteria, which have resulted in an acute shortage, particularly in rural areas,⁷⁶ and an extreme lack of diversity. At this time, the appraiser profession is 97 percent White and 70 percent male.⁷⁷ Extensive efforts have been made to attempt to meet TAF's criteria and increase the pipeline of appraisers, including appraisers of color, but the criteria would benefit from a fresh look to determine whether certain criteria may be discriminatory or unnecessary.

Despite these extensive criteria, TAF's Appraiser Qualifications Board has not yet required comprehensive fair housing training for initial credentialing and renewals.⁷⁸ Moreover, TAF's continuing education course regarding fair housing training provides content that is inaccurate and misleading. In effect, appraisers are required to pay TAF for training that may mislead them about the extent of their liability under the federal fair lending laws. The persistence of bias in appraisal markets suggests that fair housing training programs for appraisers have not been as comprehensive or effective as they could be, exposing consumers to harm and appraisers to liability.

Recommendation for Congressional Action

Immediate action. Congress should encourage TAF's Appraiser Qualification Board to revise the Qualification Criteria to reduce the barriers to entry for appraisers and ensure comprehensive and accurate fair housing training.⁷⁹

Legislative action. We commend the Committee for proposing to provide the Federal Valuation Agency with authority to promulgate rules to ensure reasonable and appropriate qualification criteria. See Section 2(c) of the Discussion Draft. We further

⁷⁶ In 2015, U.S. Senators Mike Rounds and John Thune sent a letter to TAF expressing concern about the decreasing number of real estate appraisers, particularly in rural and underserved areas.

<https://www.rounds.senate.gov/newsroom/press-releases/rounds-thune-send-letter-to-appraisal-foundation-chair-regarding-decrease-in-real-estate-appraisers->

⁷⁷ According to the U.S. Bureau of Labor Statistics, the category of "Property appraisers and assessors" is 96.5% White, 2.3% Black, and 1.2% Asian. Six percent are classified as Hispanic and 29.7% were classified as female. See U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, (Jan. 22, 2021), <https://www.bls.gov/cps/cpsaat11.htm>.

⁷⁸ For more details about the lack of specific fair housing training requirements and lack of comprehensive and accurate content, see NFHA Report at pages 56-63.

⁷⁹ In a recent blogpost, the CFPB raised concerns about TAF's fair housing training: "We have also seen the organization that sets the standards for appraisers, The Appraisal Foundation (TAF), fail to include clear warnings about the requirements of federal law in the standards it sets, and in the training it provides for appraisers...These actions undermine a fair and competitive market free of bias and discrimination." CFPB Blogpost, Appraisal Discrimination Is Illegal Under Federal Law (Feb. 4, 2022), <https://www.consumerfinance.gov/about-us/blog/appraisal-discrimination-illegal-under-federal-law/>.

commend the Committee for requiring comprehensive fair housing training, including the following topics:

- History of housing and appraisal discrimination,
- Federal laws that prohibit appraisal discrimination,
- An appraiser’s legal duty not to discriminate and the legal penalties associated with violating such duties,
- Examples of discrimination violations and the harmful consequences of such discrimination on consumers and the market, and
- Best practices.

See Section 3 of the Discussion Draft. We also support requiring appraisers to enroll in a national registry and obtain a unique identifier, which may enable the lenders and AMCs to identify problem appraisers. See Section 3 of Discussion Draft.

5

Congress Should Promote the Development of a Transparent Public Valuation Database

Problem: The GSEs Maintain a Comprehensive Database of Millions of Appraisal Reports, but It Is Not Available for Research, Compliance, Supervision, or Enforcement

The Uniform Appraisal Dataset, which is maintained by the GSEs, contains millions of appraisal reports and rich data on valuations across the country.⁸⁰ Moreover, the FHA, Veterans Administration, and U.S. Department of Agriculture also maintain appraisal databases. Providing the public, including trusted researchers, with access to these databases could revolutionize research, risk management, efficiency, enforcement, and compliance, particularly with regard to the sources and solutions for appraisal discrimination. Under the PAVE Action Plan, the relevant federal regulators have pledged to enter an agreement to share data among each other and study a proposal for a public database.⁸¹

Recommendation for Congressional Action

Immediate action. Congress should encourage the appropriate federal regulators to move quickly to enter into an agreement to share with each other valuation data for the purposes of research, supervision, and enforcement. Congress should also require the agencies to establish a trusted researcher program. Congress should request a timeline and regular updates on their progress.

⁸⁰ For more details about the importance of appraisal datasets, see NFHA Report at pages 71-72 and PAVE Action Plan at pages 25-26, 38-42, 44.

⁸¹ PAVE Action Plan at pages 39-40, 44.

Legislative action. We commend the Committee for proposing that the CFPB lead development of a publicly available database of residential real estate valuation information. See Section 4 of the Discussion Draft. Much like HMDA, public release of the data will provide much-needed transparency, and further understanding of the sources and solutions for appraisal bias.

VI. Conclusion

In conclusion, we thank the Committee for its bold leadership on the important issue of appraisal reform. We want to acknowledge that during the course of our research, we spoke to many appraisers and appraisal organizations who recognize the challenges the industry faces and are dedicated to developing solutions. We thank them for their insights and applaud them for their earnest efforts for change. We hope that NFHA's research, the PAVE Action Plan, and congressional hearings will encourage conversations and action among key stakeholders to seek and implement workable, sustainable solutions that benefit the whole of the housing market, including borrowers of color.

APPENDIX - SUMMARY OF RECOMMENDATIONS

ISSUE	IMMEDIATE ACTION	LEGISLATIVE ACTION
1-Accountable, Efficient Governance	Encourage The Appraisal Foundation (TAF) to revise its bylaws to ensure accountable and democratic procedural standards and board member selection processes.	Elevate the Appraisal Subcommittee to a new Federal Valuation Agency subject to normal federal procedural safeguards (Congressional oversight, APA, FOIA, conflict of interest rules, no pay to play).
2-Fair, Transparent, Consistent Process	Encourage TAF's Appraisal Standards Board to revise the Uniform Standards of Professional Appraisal Practice (USPAP) to minimize discretion and ensure a fair, transparent, consistent appraisal process.	Provide the Federal Valuation Agency with rulemaking authority to ensure that all real estate valuations are subject to a fair, transparent, consistent process. Ensure adequate funding under the Fair Housing Initiatives Program to enable Qualified Fair Housing Enforcement Agencies to effectively support consumers and communities impacted by appraisal bias.
3-Fair Algorithms and Other Appraisal Alternatives	Encourage the appropriate federal regulators to promulgate the Automated Valuation Model (AVM) rule, including the addition of nondiscrimination as a "fifth factor" for quality control.	Provide the Federal Valuation Agency with rulemaking authority to ensure that all valuation methods (including AVMs) result in a fair, transparent, and consistent valuation process. Set a deadline for the rulemaking.
4-Reasonable Qualification Criteria For Valuation Professionals	Encourage TAF's Appraiser Qualification Board to revise the Real Property Appraiser Qualification Criteria (Qualification Criteria) to reduce the barriers to entry for appraisers and ensure appropriate training.	Provide the Federal Valuation Agency with rulemaking authority to set reasonable qualification criteria for all valuation professionals; ensure that they receive appropriate training, including comprehensive fair housing training; and ensure that they are registered with a unique identifier.
5-Transparent Public Valuation Database	Encourage the appropriate federal regulators to enter into an agreement to share with each other valuation data for the purposes of research, supervision, and enforcement. Also encourage the regulators to develop a trusted researcher program.	Provide the CFPB with rulemaking authority to develop and implement a public HMDA-like database of valuation data for the purposes of research, compliance, supervision, and enforcement.