

# IDENTIFYING BIAS AND BARRIERS, PROMOTING EQUITY:

An Analysis of the Appraisal Standards and  
Appraiser Qualifications Criteria

*February 2022*

## Part I: Background

- Report Origin & Goals
- Authors
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- Bias in Appraisals (Historical)
- Civil Rights Laws
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- The Wealth Gap

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- Governance of the Appraisal Industry
- Fair Housing Requirements & Training
- Barriers to Entry
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# **PART I: BACKGROUND**

## Origin

- Commissioned by: The Appraisal Subcommittee (ASC)
- Managed by: The Council on Licensure, Enforcement and Regulation (CLEAR)

## Goals

- Identify any instances in which the following facilitate or systematize racial/ethnic bias:
  - Appraisal Standards: The Uniform Standards of Professional Appraisal Practice (USPAP),
  - Appraiser Criteria: The Real Property Appraiser Qualification Criteria, and
  - Appraiser Training

## National Fair Housing Alliance

- Lisa Rice, President and CEO
- Morgan Williams, General Counsel
- Maureen Yap, Senior Counsel
- Scott Chang, Senior Counsel

## Christensen Law Firm

- Peter Christensen, Principal



## Dane Law LLC

- Stephen M. Dane, Founder and Owner

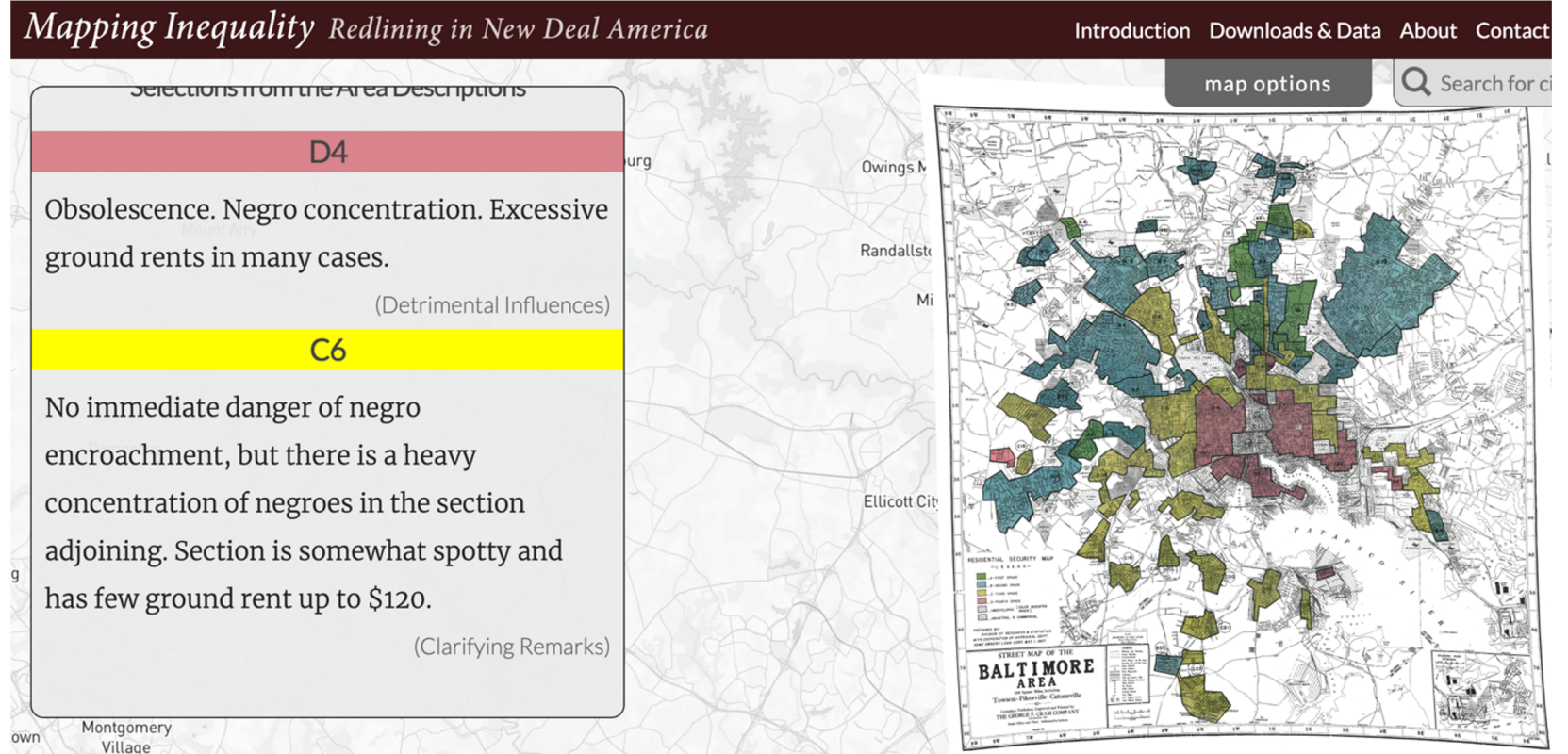
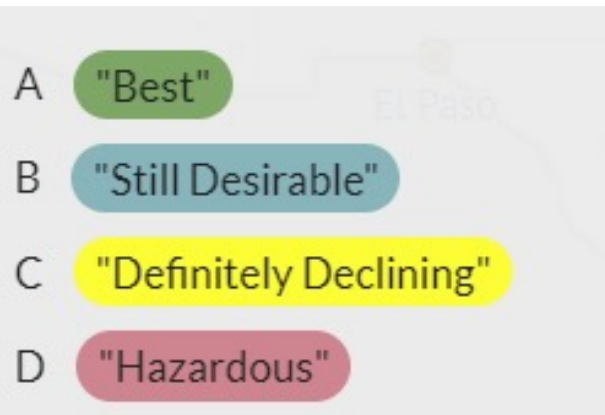


# IMPORTANCE OF APPRAISALS

Why are appraisals important?



Historical Evidence: The Appraisal System Historically Undervalued Homes in Communities of Color and Placed the Highest Value on White, Homogenous Areas





## Historical Evidence: Appraisal Principles and Practices Further Perpetuated the Unfounded Association Between Race and Risk

### 1934: Hoyt's Hierarchy (FHA's First Chief Economist)

1. English, German, Scots, Irish, Scandinavians
2. North Italians
3. Bohemians or Czechoslovakians
4. Poles
5. Lithuanians
6. Greeks
7. Russian Jews of the lower class
8. South Italians
9. Negroes
10. Mexicans

**1938: FHA 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."

**1967: American Institute of Real Estate Appraisers Manual**- "[The appraiser] must recognize the fact that values change when people who are different from those presently occupying an area advance into and infiltrate a neighborhood."



## Appraisal Discrimination Violates the Fair Housing Act

### Statute

- It is 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 a prohibited basis.

### Regulation

- 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” a prohibited basis.

## Appraisal Discrimination Violates the Equal Credit Opportunity Act

### Statute

- "It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction" on a prohibited basis.

### Regulation Commentary

- "The general rule [prohibiting discrimination] covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation."

## Prohibited Basis

### FHA

- Familial Status
- Disability

### Both

- Race
- National Origin
- Color
- Sex\*
- Religion

### ECOA

- Marital Status
- Age
- Source of Income
- Exercise of Rights under the Consumer Credit Protection Act

*\*Includes discrimination on the basis of sexual orientation and gender identity*

## Appraisal Discrimination Can Be Proven Under the Disparate Treatment or Disparate Impact Theory of Discrimination

### Disparate Treatment

- Direct Evidence or Circumstantial/Comparative Evidence
- Does not require proof of a conscious intent to discriminate

### Disparate Impact

- Neutral policy/practice with a discriminatory impact
- No legitimate, nondiscriminatory purpose
  - Or, if so, there is a less discriminatory alternative

Even After Passage of Civil Rights Laws,  
Appraisal Discrimination Continued

1968: The Fair  
Housing Act

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

"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."

1977: DOJ settlement -agreement  
not to base appraisals on:

Racial/ethnic stereotypes

Racial/ethnic homogeneity

Today: The Sales Comparison Approach Continues to Allow for Broad Discretion, which is a Key Fair Lending Risk Factor

Uniform Residential Appraisal Report

File #

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

Property Address	City	State	Zip Code
Borrower	Owner of Public Record	County	
Legal Description			
Assessor's Parcel #	Tax Year	R.E. Taxes \$	
Neighborhood Name	Map Reference	Census Tract	
Occupant <input type="checkbox"/> Owner <input type="checkbox"/> Tenant <input type="checkbox"/> Vacant	Special Assessments \$	<input type="checkbox"/> PUD	HOA \$ <input type="checkbox"/> per year <input type="checkbox"/> per month
Property Rights Appraised <input type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Other (describe)			
Assignment Type <input type="checkbox"/> Purchase Transaction <input type="checkbox"/> Refinance Transaction <input type="checkbox"/> Other (describe)			
Lender/Client	Address		
Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Report data source(s) used, offering price(s), and date(s).			
I <input type="checkbox"/> did <input type="checkbox"/> did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.			
Contract Price \$ Date of Contract Is the property seller the owner of public record? <input type="checkbox"/> Yes <input type="checkbox"/> No Data Source(s)			
Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, report the total dollar amount and describe the items to be paid.			
<b>Note: Race and the racial composition of the neighborhood are not appraisal factors.</b>			
Neighborhood Characteristics		One-Unit Housing Trends	
Location <input type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Rural	Property Values <input type="checkbox"/> Increasing <input type="checkbox"/> Stable <input type="checkbox"/> Declining	One-Unit Housing PRICE AGE	Present Land Use %
Built-Up <input type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply <input type="checkbox"/> Shortage <input type="checkbox"/> In Balance <input type="checkbox"/> Over Supply	\$ (000) (yrs)	One-Unit %
Growth <input type="checkbox"/> Rapid <input type="checkbox"/> Stable <input type="checkbox"/> Slow	Marketing Time <input type="checkbox"/> Under 3 mths <input type="checkbox"/> 3-6 mths <input type="checkbox"/> Over 6 mths	Low	Multi-Family %
Neighborhood Boundaries		High	Commercial %
Neighborhood Description		Pred.	Other %
Market Conditions (including support for the above conclusions)			

Uniform Residential Appraisal Report

File #

There are comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ to \$

There are comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ to \$

FEATURE	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3
Address				
Proximity to Subject				
Sale Price	\$	\$	\$	\$
Sale Price/Gross Liv. Area	\$ sq. ft.	\$ sq. ft.	\$ sq. ft.	\$ sq. ft.
Data Source(s)				
Verification Source(s)				
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(-) \$ Adjustment	DESCRIPTION
Sale or Financing				+(-) \$ Adjustment
Concessions				
Date of Sale/Time				
Location				
Leasehold/Fee Simple				
Site				
View				
Design (Style)				
Quality of Construction				

Individual Evidence: Dr. Elizabeth Korver-Glenn – Appraisers exercised their discretion to interpret the sales comparison approach using a race-based lens.

- “And then up here, it’s getting better because of all of the Mexican people moving out...”
- “I think people want to be near their own kind. And I feel 100 percent about that.”
- “If I didn’t buy this house in [the majority Black] Fifth Ward today, what else am I going to buy?...[A]m I going to go to [the majority Latino] Second Ward? The demographics are completely different, and I don’t think that they directly compete because of that.”



Systemic Evidence: Federal Housing Finance Agency - Thousands of appraisal reports contained race-related language.

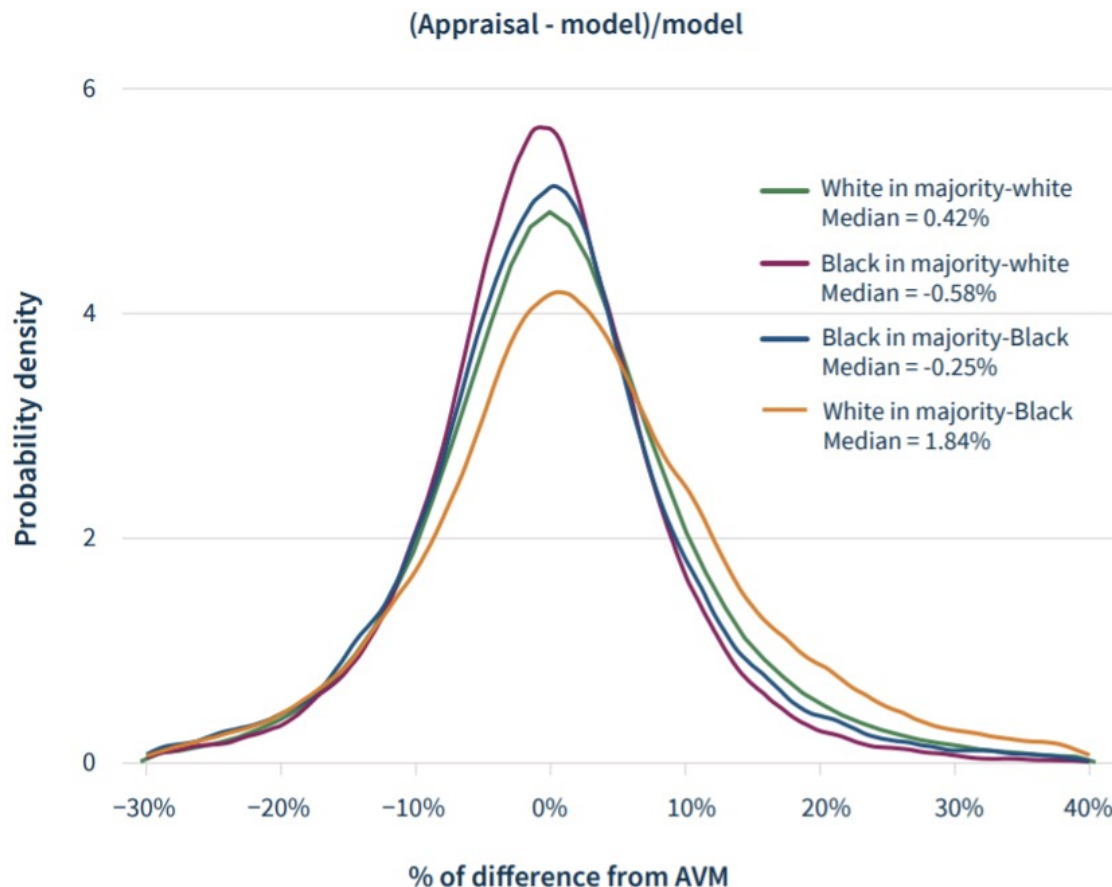
- "Black race population above state average"
- "Storefronts supplying Jewish households"
- "Predominately Hispanic"
- "More Asian influence of late"
- "Homogenous neighborhood with good schools"

Individual Evidence (refinancing): Homeowners of color  
“whitewashed” their homes to get a fair appraisal.

The Homeowner	Initial Appraisal	White Friend Who Posed as the Homeowner (or a relative)	Appraisal After “Whitewashing” the Home
<p>Austin Family in CA</p> 	\$995,000		<p>\$1,482,500 (+487,500)</p>
<p>Carlette Duffy in IN</p> 	\$110,000		<p>\$259,000 (+149,000)</p>

Systemic Evidence (refinancing): Fannie Mae – White-owned homes were overvalued more frequently than Black-owned homes.

**Figure 1:** Distribution of AVM comparison differences by racial groups



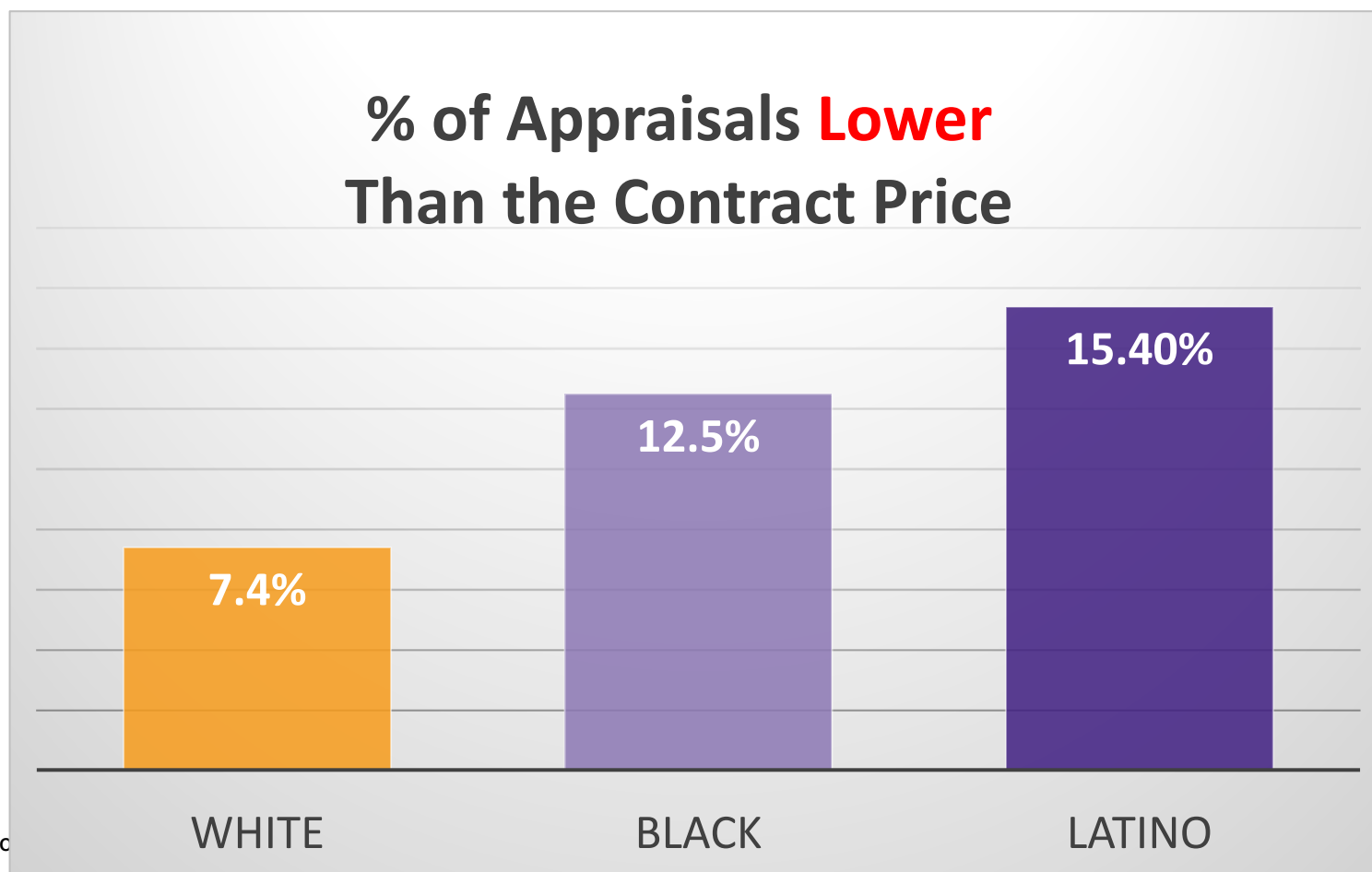
Systemic Evidence (refinancing): Fannie Mae – For White-owned homes in Black neighborhoods, appraisers used comparable sales outside of the Black neighborhood.

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%
<b>Total</b>	<b>100.0%</b>

For white borrowers in majority-Black neighborhoods, the leading, separately identifiable reason category of overvaluation is “comparable location.” This indicates that the appraiser relied on comparable sales from outside of the subject property’s immediate area even though potentially more appropriate comparable properties were available closer to the subject property.

**Data:** Refinance loan acquisitions from July – September 2021

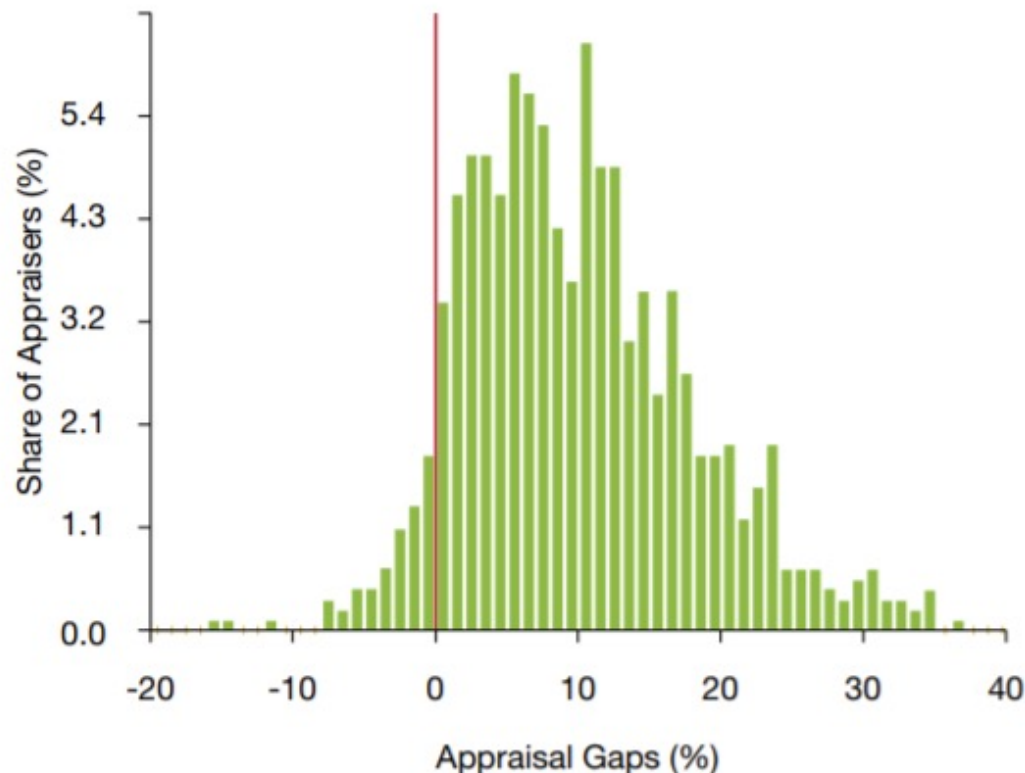
Systemic Evidence (purchase): Freddie Mac - Appraisers were more likely to find that the appraised value fell below the contract price in Black and Latino census tracts.



Systemic Evidence (purchase): The Freddie Mac Study – The majority of appraisers showed a statistically significant Black v. White “appraisal gap.”

EXHIBIT 3:

Distribution of gaps, Black vs. White



That is, the majority of the appraisers in the sample were more likely to determine that the appraised value was below the contract values in the Black neighborhoods in which they worked than in the White neighborhoods in which they worked.

Systemic Evidence: Dr. Andre Perry, Brookings Institution – Appraisal undervaluations cost families of color and the U.S. economy billions.

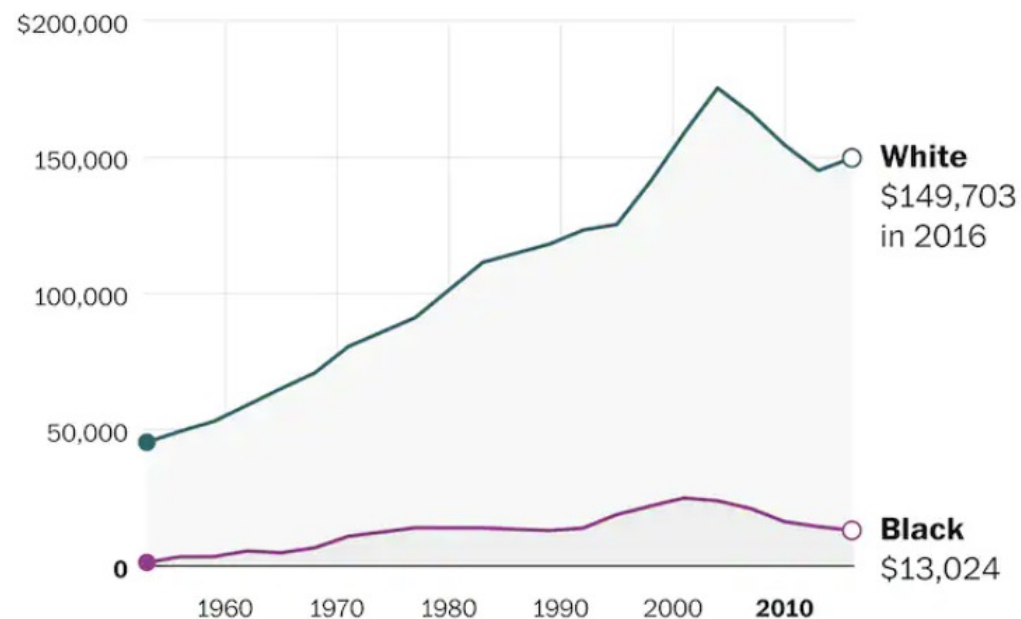




## Discriminatory Policies and Practices Have Resulted in Today's Homeownership and Wealth Gaps

### 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

# RECOMMENDATIONS

**A: GOVERNANCE OF THE APPRAISAL INDUSTRY**

**B: FAIR HOUSING REQUIREMENTS & TRAINING**

**C: BARRIERS TO ENTRY TO THE PROFESSION**

**D: COMPLIANCE & ENFORCEMENT**

# Part II.A: Governance of the Appraisal Industry

## The Appraisal Foundation (TAF)

- Private, nonprofit entity
- Referenced in FIRREA (1989)

- Appraisal Subcommittee can "monitor/review"
- But no supervision/enforcement authority



## Board of Trustees (BOT)

- Majority of BOT must be active appraisers

- “Sponsors” pay application fee and annual donation for right to appoint BOT members



### Appraisal Standards Board (ASB)

### Appraiser Qualifications Board (AQB)

- Appointed by BOT
- Promulgates the Appraisal Standards

- Appointed by BOT
- Promulgates the Appraiser Criteria

## Problem

- The Appraisal Foundation's legal authority to promulgate standards and criteria is not clear.

LEGAL ISSUE	COMPARISON: CFPB	THE APPRAISAL FOUNDATION
Did Congress properly delegate rulemaking authority to the entity?	<b>YES</b> – CFPB is a government agency. <b>YES</b> – Dodd Frank Act provides CFPB with explicit rulemaking authority.	<b>UNCLEAR</b> – TAF is a private nonprofit. <b>UNCLEAR</b> – FIRREA only incorporates TAF by reference.
Did Congress specify the limits of the rulemaking authority?	<b>YES</b> – Each consumer protection law specifies the coverage and limits.	<b>UNCLEAR</b> – FIRREA may limit the authority to “federally-related transactions.”
Is the entity covered by the Administrative Procedures Act (APA)?	<b>YES</b>	<b>UNCLEAR</b> – FIRREA may require compliance with the APA.

## Recommendation

- Congress and other stakeholders should consider The Appraisal Foundation's legal authority, including under:
  - The Nondelegation Doctrine,
  - FIRREA, and
  - The APA.

## Problem

- The Appraisal Foundation's procedures tend to favor industry access and viewpoints, rather than the public interest.

PROCEDURAL REQUIREMENT	COMPARISON: CFPB (Statute)	THE APPRAISAL FOUNDATION (Bylaws)
Notice to the Public	YES – APA	ASB - YES AQB - NO
Specify the Legal Authority	YES – APA	ASB - NO AQB - NO
Public Participation	YES – APA	ASB – YES, but Advisory Opinions and FAQs are behind a paywall AQB – NO
Consumer Perspective	YES – Dodd Frank Act	ASB - NO AQB - NO

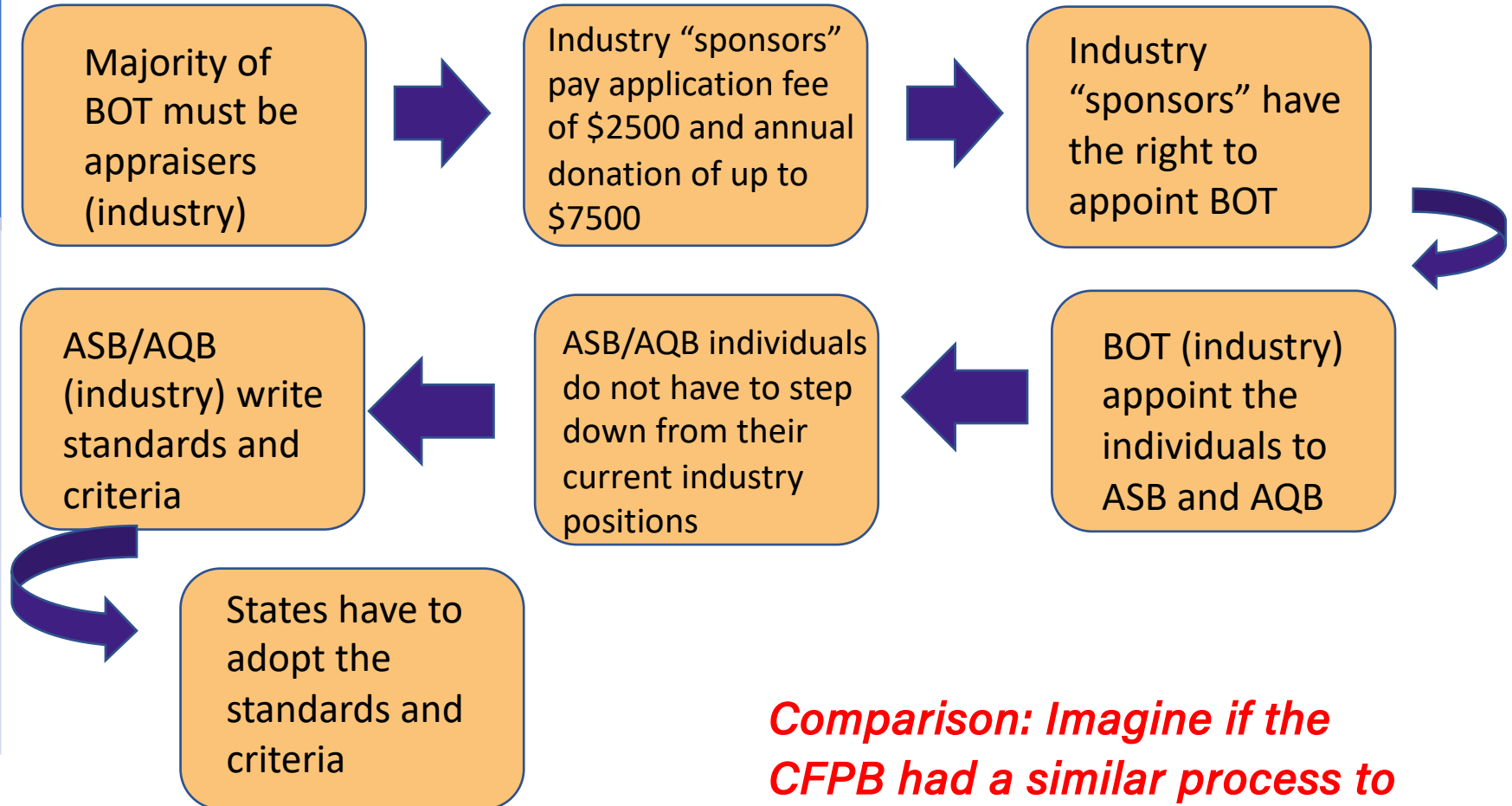


## Recommendation

- **The Appraisal Foundation should:**
  - State the legal authority for standards and criteria,
  - Provide the standards and criteria to the public for free, and
  - Consider the impact on consumers and neighborhoods (including those of color).

## Problem

- The Appraisal Foundation's process for selecting individuals to write the standards and criteria tends to favor a closed-loop system of industry viewpoints, rather than the public interest.



*Comparison: Imagine if the CFPB had a similar process to select the rulewriting staff??*

## Recommendation

- **The Appraisal Foundation should:**
  - Repeal the requirement that a majority of the BOT must be appraisers,
  - Repeal the requirement of financial donations to appoint trustees, and
  - Provide advocates with equal opportunities to participate.

# Part II.B: Fair Housing Requirements And Training

## Problem

- The Appraisal Standards contain only a vague and confusing discussion of discrimination.

### ADVISORY OPINION 16 (AO-16)

*This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. Advisory Opinions are issued to illustrate the applicability of appraisal standards in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems.*

**SUBJECT:** Fair Housing Laws and Appraisal Report Content

**APPLICATION:** Real Property

#### ADVICE FROM THE ASB ON THE ISSUE:

##### Relevant USPAP & Advisory References

- The PREAMBLE states, in part:  
*It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading.*
- The Conduct section of the ETHICS RULE states, in part:  
*An appraiser must not engage in criminal conduct.  
An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.*
- The COMPETENCY RULE states, in part:  
*An appraiser must: (1) be competent to perform the assignment; (2) acquire the necessary competency to perform the assignment; or (3) decline or withdraw from the assignment. In all cases, the appraiser must perform competently when completing the assignment.*

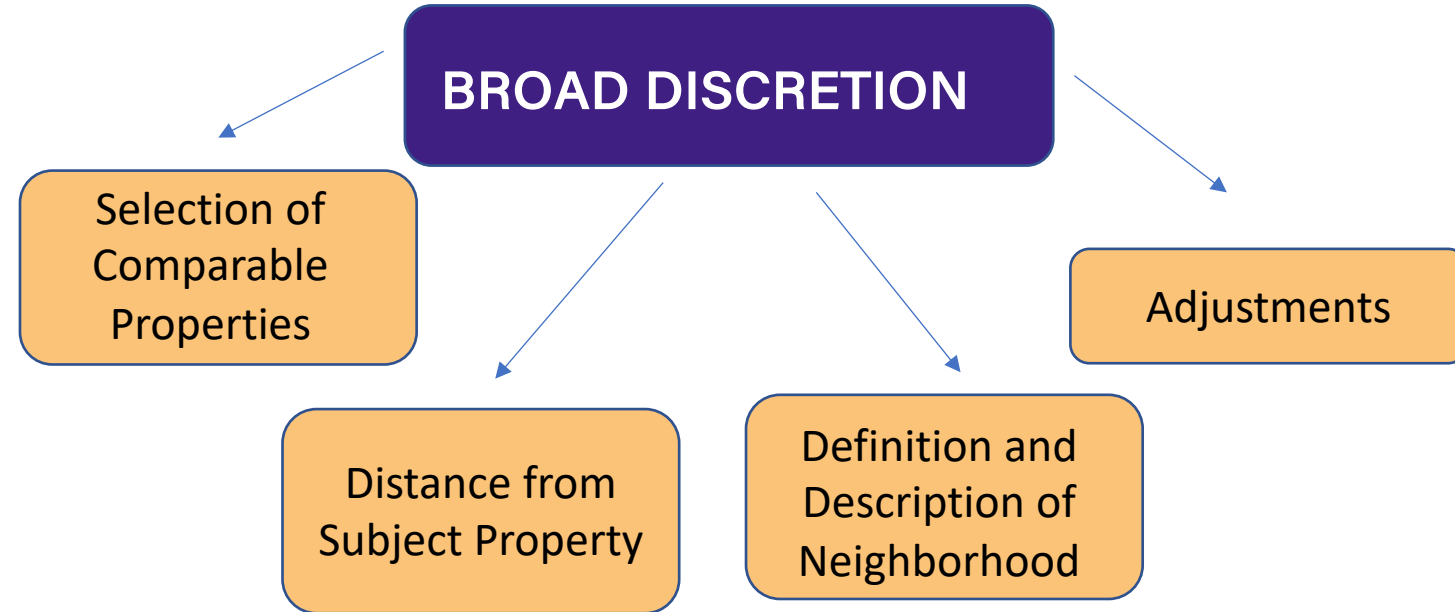
- The Conduct section of the ETHICS RULE states, in part:  
*An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.*

## Recommendation

- The Appraisal Standards Board should revise the Appraisal Standards to clearly state that discrimination is prohibited.

## Problem

- The Appraisal Standards and the sales comparison approach provide the appraiser with broad discretion, which has long been recognized as a fair housing risk.





## Recommendation

- The Appraisal Standards Board should review the appraisal process for fair housing risk (including discretion) and amend the Appraisal Standards to provide fair and equitable outcomes.

## Problem

- The Appraiser Criteria contain only a vague requirement to include fair housing training in the initial course.

H. Valuation Bias, Fair Housing, and/or Equal Opportunity

## Recommendation

- The Appraiser Qualifications Board should revise the Appraiser Criteria to clearly require comprehensive fair housing training for every appraiser.

## Problem

- The Appraisal Foundation's recently-issued fair housing training for continuing education is incomplete, inaccurate, and misleading.

The main types of bias claims made against appraisers fall into two categories:

- Intentional bias (an appraiser is accused of deliberately acting with bias)
- Unintentional bias (the appraiser has no awareness of acting with bias)

*Instead of standards for "intentional" and "unintentional" bias (which are not correct), the training should discuss "disparate treatment" and "disparate impact"*

## Recommendation

- **The Appraisal Foundation** should work with civil rights experts to immediately revise the training and develop a comprehensive course.

# Part II.C: Barriers to Entry

## Problem

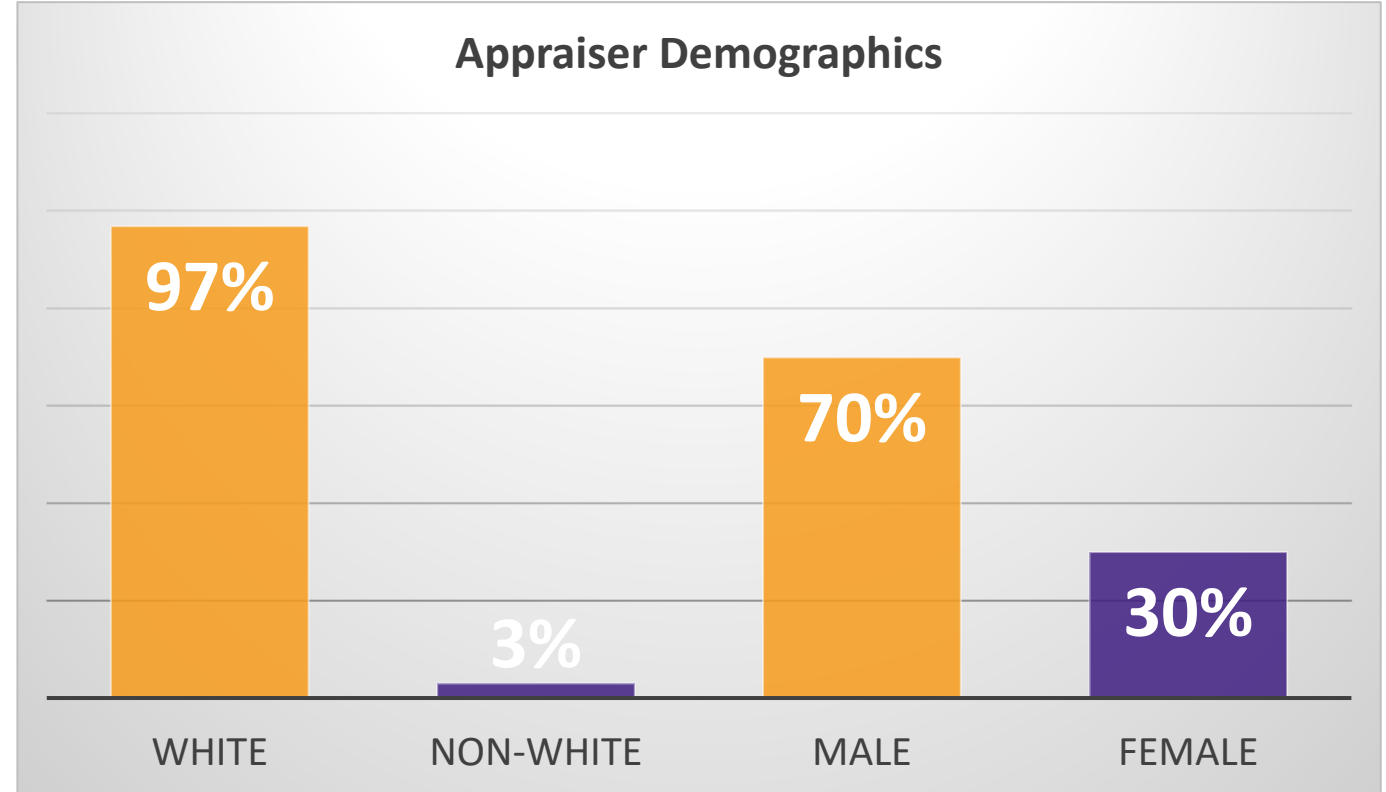
- The Appraiser Criteria contain many barriers to entry.

### Certified Residential Appraiser

- College Degree (or equivalent)
- 200 Appraiser Education Hours
- 1500 Experience Hours with a Supervisory Appraiser
- Pass a Standardized Test
  - Only 55-65% passage rate

## Problem

- The appraiser workforce does not reflect the diversity of the U.S.
- There is an appraiser shortage.





## Recommendation

- **The Appraiser Qualifications Board should:**
  - Analyze each barrier for disparate impact,
  - Expand outreach,
  - Monitor demographics, and
  - Prepare new professionals for the technology of the future.

# Part II.D: Compliance & Enforcement

Uniform Collateral Data Portal<sup>SM</sup>

Fannie Mae



Freddie Mac

## Problem

- Fannie Mae and Freddie Mac maintain a non-public database of millions of appraisal reports that (like HMDA) could be used to enhance oversight and conduct research.

## Recommendation

- **Government, the GSEs, and all stakeholders** should work collaboratively to release the appraisal data.

## Consumer Complaint Database

This database is a collection of complaints about consumer financial products and services that we sent to companies for response.



## Problem

- Lenders and other stakeholders cannot systematically track complaints to identify appraisers who consistently provide deficient or potentially discriminatory appraisals.

## Recommendation

- **Stakeholders** should work collaboratively to develop a publicly-available complaints database.



## Problem

- It is difficult for lenders and other stakeholders to manage fair housing risk.

## Recommendation

- Stakeholders should work collaboratively to:
  - Develop robust compliance management systems



# Problem

- It is difficult for consumers to challenge problematic or discriminatory appraisals.

# Recommendation

- **Stakeholders** should work collaboratively to:
  - Consider identifying consumers as "intended users" (negligence), and
  - Develop standards for the reconsideration of value process.

# PART III: QUESTIONS