

D. Gaps in Fair Housing Requirements and Training

As described above, the evidence clearly shows that the current appraisal system can result in biased valuations, both at the individual and neighborhood level. The causes of such bias are varied and complex. Following is a discussion of four gaps in the USPAP Standards' fair housing requirements and training that should be addressed in order to help remedy the issue:

- Lack of a clear prohibition on discriminatory conduct
- Lack of guidance on the use of discretion
- Lack of clear fair housing training requirements
- Lack of effective fair housing training

Gap: Lack of a Clear Prohibition on Discriminatory Conduct

The USPAP Standards fail to clearly prohibit discrimination in appraisals in accordance with the federal, state, and local fair housing and fair lending laws. According to the Appraisal Standards Board's Advisory Opinion 16 on fair housing,¹¹³ the following sources are meant to inform appraisers of the prohibition against illegal discrimination in appraisals.

- Preamble, page 1, lines 2-4
 - "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."
- Ethics Rule: Conduct, page 7, lines 185-186
 - "An appraiser must not engage in criminal conduct."
 - "An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests."
- Ethics Rule: Conduct, page 7, lines 198-200
 - "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."
- Competency Rule, page 11, lines 298-300, 307-310, 311-313
 - "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."
 - "Competency requires (1) the ability to properly identify the problem to be addressed; and (2) the knowledge and experience to complete the assignment competently; and (3) recognition of, and compliance with, laws and regulations that apply to the appraiser or to the assignment."

¹¹³ The Appraisal Standards Board issues non-binding advisory opinions that are meant to interpret the USPAP Standards. They are not part of the USPAP Standards and, with only a few exceptions, are not adopted by the states as enforceable requirements. AO-16 was issued in 1997 and has remained relatively unchanged since then.

- Comment: “Competency may apply to factors such as, but not limited to, an appraiser’s familiarity with a specific type of property or asset, a market, a geographic area, an intended use, specific laws and regulations, or an analytical method.”
- Standards Rule 1-1(a), page 16, lines 444-449
 - Comment: “Social change has also had an effect on appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and developing new methods and techniques to meet new circumstances. For this reason, it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.”
- Standards Rule 2-1(a), page 20, line 575
 - “Each written or oral real property appraisal report must clearly and accurately set forth the appraisal in a manner that will not be misleading.”

In addition, the appraiser is required to provide the following certification on each appraisal report:

“I certify that, to the best of my knowledge and belief...the reported analyses, opinions, and conclusions are my personal, impartial, and unbiased professional analyses, opinions, and conclusions...[and] my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.”

Although Advisory Opinion 16 provides reference to these different sections of the USPAP Standards, it does not clearly demonstrate how these disjointed concepts are meant to prohibit discrimination. These passages only provide vague references to an appraiser’s obligations under laws that are not even identified.

In particular, the following Ethics Rule has received criticism and is currently under review by the Appraisal Standards Board:

“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.” (Emphasis added.)

This language implies that conclusions on a prohibited basis are permissible as long as they are *supported*, which then raises the question of what is permissible “support.” At this time, the Appraisal Standards Board has proposed the following clarifying comment in a First Exposure Draft (dated August 18, 2021):

“In most instances, even supported conclusions based on one or more of the characteristics noted above must be avoided. Supported conclusions based on the characteristics of protected classes may be allowed if those conclusions are: (1) not

precluded by applicable law; (2) necessary for credible assignment results; and (3) based on relevant evidence and logic.”

Even with this comment, however, the language remains unclear, and still raises more questions than answers. It seems more efficient to restate the law more clearly in the USPAP Standards, and then provide a new Advisory Opinion and training module based on the applicable federal, state, and local fair housing laws.

One useful example of prohibiting discriminatory conduct in appraisals comes from HUD’s Federal Housing Administration. On November 17, 2021, HUD issued Mortgagee Letter 2021-27, which now contains the following Nondiscrimination Policy:

“The Appraiser must be knowledgeable of and fully compliant with all federal, state, and local laws, including any antidiscrimination laws, rules applicable to the subject property, or any provisions of the Fair Housing Act.

“No part of the appraisal analysis or reporting may be based on the race, color, religion, sex, actual or perceived sexual orientation, actual or perceived gender identity, age, actual or perceived marital status, disability, familial status, [or] national origin of either the prospective owners or occupants of the Property, present owners or occupants of the Property, or the present owners or occupants of the properties in the vicinity of the Property, or on any other basis prohibited by federal, state, or local law.”¹¹⁴

Following are additional examples from the GSEs and state laws that provide sample language for articulating a clear prohibition on discriminatory conduct in appraisals.¹¹⁵

¹¹⁴ HUD, *Appraisal Fair Housing Compliance and Updated General Appraiser Requirements*, Mortgagee Letter 2021-27 (Nov. 17, 2021), https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-27hsgml.pdf?utm_medium=email&utm_source=govdelivery.

¹¹⁵ In addition, real estate law and policy provides useful examples of clear prohibitions on discriminatory conduct. See, e.g., California, 10 Cal. Code. Reg. § 2780(b); N.Y. Comp. Codes, R. & Regs., Tit. 19 § 175.17; National Association of Realtors Code of Ethics and Standard of Practice, Article 10, at <https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2021-code-of-ethics-standards-of-practice>.

Prohibitions on Discriminatory Conduct in Appraisals

SOURCE	TEXT
Fannie Mae	"The following are examples of unacceptable appraisal practices...development of a valuation conclusion based either partially or completely on the sex, race, color, religion, disability, familial status, or including a reference to any protected class of either the prospective owners or occupants of the subject property or the present owners or occupants of the properties in the vicinity of the subject property." Fannie Mae, Single Family Selling Guide, B4-1.1-04 (Nov. 3, 2021).
Freddie Mac	"The following are examples of unacceptable appraisal practices..."[c]onsideration of the race, color, religion, sex, age, marital status, handicap, familial status or national origin of the prospective owners or occupants of the subject or of the present owners or occupants of the properties in the vicinity of the subject property." Freddie Mac, Single Family Seller/Service Guide, § 5601.4 (June 2, 2021).
California	"Licensees shall not base, either partially or completely, their analysis or opinion of market value on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, source of income, sexual orientation, familial status, employment status, or military status of either the present or prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property, or on any other basis prohibited by the federal Fair Housing Act." Cal. Business and Professions Code § 11424.
Minnesota	"An appraiser must not knowingly make any of the following unacceptable appraisal practices...develop a valuation conclusion that is based either partially or completely on factors identified in chapter 363A, including race, color, creed, religion, sex, marital status, status with regard to public assistance, disability, sexual orientation, familial status of the owner or occupants of nearby property, or national origin of either the prospective owners or occupants of the properties in the vicinity of the subject property." Minn. Stat. 82B.195 subd. 3(1)(vii).
Illinois	(Introduced): "Discrimination prohibited. An appraiser shall not discriminate when preparing a comparative market analysis for residential real estate. For the purposes of this Section, an appraiser discriminates when he or she considers the actual or perceived race, color, religion, or national origin of the owner of the real estate or the residents of the geographic area in which the real estate is located when determining the market value of the real estate." Ill. HB 93.
New Jersey	(Introduced): Holders of appraisal licenses or certifications, or appraisal management company registrations "shall not discriminate in the appraisal of a residential property on the basis of the race, creed, color, or national origin of the property buyer or property seller." N.J. AB 5185.

Recommendation

To make it easier for appraisers and the public to understand an appraiser's fair housing obligations, the USPAP Standards and Advisory Opinion 16 should be revised to clearly state that discrimination in appraisals is prohibited.

Gap: Lack of Guidance on the Use of Discretion

Although the USPAP Standards' Ethics Rules require an appraiser to perform assignments with "impartiality [and] objectivity," appraisers can use their discretion to make many choices that can affect the valuation of a home. For example, as described above, under the sales comparison approach, the appraiser can choose the distance from the subject property from which they will select comparable homes and which properties within the chosen distance will be used as comparables for the appraisal.¹¹⁶ Also, the appraiser can use their discretion to decide which adjustments to make and the extent of those adjustments. A review of the role of discretion in fair lending risk may be instructive as this could hold the key to developing a fairer, more equitable appraisal system.¹¹⁷

In fair lending, discretion has long been recognized as one of the key risk factors that can lead to violations of fair lending laws.¹¹⁸ Since the 1990s, the DOJ has highlighted the role that discretion has played in mortgage underwriting and pricing cases alleging unlawful discrimination. For example, with respect to underwriting, fair lending issues typically arise when loan officers have the discretion to make decisions on marginal applicants. They might choose to spend more time helping marginal White borrowers get approved, but immediately deny Black or Latino applicants with similar credit profiles. In the 1997 case of *United States v. First National Bank of Doña Ana County*,¹¹⁹ the DOJ described the issue in this way:

"Since at least 1990, First National Bank has provided its loan officers with vague and non-specific application processing and loan underwriting guidelines and instructions. As a consequence, loan officers were left with de facto authority to establish minimum application processing procedures and loan underwriting standards to establish minimum application processing procedures and loan underwriting standards for determining which applications should be approved and which applications should be denied....

¹¹⁶ The GSE guidelines prohibit discriminatory practices. For example, the Fannie Mae Single Family Selling Guide lists the following as an unacceptable appraisal practice: "...failure to use comparable sales that are the most locationally and physically similar to the subject property." Fannie Mae Single Family Selling Guide, *Unacceptable Appraisal Practices*, Section B4-1.1-04 (Nov. 3, 2021), <https://selling-guide.fanniemae.com/Selling-Guide/Origination-thru-Closing/Subpart-B4-Underwriting-Property/#Unacceptable.20Appraisal.20Practices>.

¹¹⁷ There are numerous other factors, such as discriminatory historical values and data, but discretion appears to be a key component and has long been recognized as a key factor in identifying discrimination in the mortgage market.

¹¹⁸ See FFIEC Interagency Fair Lending Examination Procedures (2009) <https://www.ffiec.gov/PDF/fairlend.pdf>. Other industry leaders have also made the connection between the broad discretion seen in the appraisal industry today and the mortgage loan underwriting of decades ago. See, e.g., Faith Schwartz, *Three Keys to the Future of Appraisals*, MBA Newslink (Nov. 18, 2021), https://newslink.mba.org/mba-newslinks/2021/november/mba-newslink-thursday-nov-18-2021/faith-schwartz-of-housing-finance-strategies-three-keys-to-the-future-of-appraisal/?utm_campaign=MBA%20NewsLink%20Thursday%20Nov.%2018%202021&utm_medium=email&utm_source=Eloqua.

¹¹⁹ *United States v. First National Bank of Doña Ana County*, Civ. Action No. 97-0096 HB (D.N.M. 1997), <https://www.justice.gov/crt/housing-and-civil-enforcement-cases-documents-588>.

“...The loan files reveal that in processing applications, the lender’s loan officers made greater efforts to obtain information from Anglo applicants that would demonstrate their eligibility for financing compared to the efforts expended in processing the applications of Hispanics. For example, First National Bank’s loan officers have:

1. Failed to make comparable efforts to allow Hispanic applicants to explain adverse items on credit reports;
2. Failed to make comparable efforts to verify credit sources listed on Hispanics’ mobile home loan applications; and
3. Failed to make comparable efforts to elicit from Hispanic applicants possible ‘offsetting’ qualifications that may compensate for any deficiencies in the required qualifying information.”

As evidenced by this case, a lender’s decision to provide their loan officers with broad discretion can result in discriminatory outcomes in the loan approval process.

Discretion also played a key role in the pricing cases that the DOJ began to file in the 2000s. With respect to pricing, the fact pattern usually consisted of a lender using an automated pricing system, but providing mortgage loan officers with the discretion to increase the interest rate. In the 2011 case of *United States v. Countrywide Financial Corp., et al.*,¹²⁰ the DOJ described a two-tier pricing system in which the lender first set the interest rate based on objective, credit-related characteristics (“par” or “base price”), but then provided its mortgage loan officers with broad discretion to increase the price up to a certain cap (“overage”), decrease the price (“shortage” or “underage”), and alter the standard fees. The complaint stated: “This subjective and unguided pricing discretion resulted in Hispanic and African-American borrowers paying more not based on borrower risk.”¹²¹

Notably, in the context of fair lending, discrimination resulting from the exercise of discretion can be proven under either the disparate treatment or disparate impact theory of discrimination and litigants often use both. Disparate treatment occurs when similarly-situated individuals receive different outcomes on a prohibited basis, and the difference cannot be explained by a legitimate non-discriminatory reason.¹²² For example, disparate treatment occurs if there is a statistically significant difference in pricing outcomes on a prohibited basis, even after controlling for all of the factors that the lender states it considers in pricing the loan.¹²³ Similarly, disparate impact liability can result if the lender’s race-neutral policy of discretion causes discriminatory pricing on a prohibited basis, even if not intentionally so.¹²⁴ The lender may assert that the policy of discretion is justified by business necessity, but the plaintiff can still prevail by showing that there are less discriminatory alternatives, such as reducing discretion or monitoring the outcomes of the policy of discretion and taking appropriate action.¹²⁵

¹²⁰ *United States. V. Countrywide Financial Corp. et al.*, CV11-10540-PSG (C.D.Cal. Complaint filed Dec. 21, 2011), <https://www.justice.gov/sites/default/files/crt/legacy/2011/12/21/countrywidecomp.pdf>.

¹²¹ See *id.* at Para. 29.

¹²² See *id.* at Para. 47.

¹²³ See *id.*

¹²⁴ See *id.* See also, HUD 2021 Disparate Impact Proposed Rule, 86 Fed. Reg. 33597.

¹²⁵ See *id.*

Over time, lenders have understood the significant risk that discretion creates under both the disparate treatment and disparate impact theories of discrimination. To minimize this exposure to legal liability (and for other reasons), lenders have gradually moved from the subjective “5 C’s of credit” (character, capacity, capital, collateral, and conditions) to more objective factors that are often automated. There was a time when lenders felt they had to meet the applicant in person to make a subjective assessment of “character,” which often disadvantaged women and people of color. Now lenders can offer a mortgage through a simple electronic interface after receiving objective information. These systems are not perfect and can still be based on discriminatory historical data or discriminatory models, but lenders are now much more aware of the interplay between discretion and fair lending risk and actively work toward more objective, equitable systems. Moreover, lenders understand that borrowers of color are the future of the market, and it is in their business interest to treat their customers fairly.¹²⁶

Just as lenders came to understand the risk of discretion in underwriting and pricing mortgage loans, appraisers will similarly need to understand the fair housing risk inherent in each discretionary decision and understand how to manage that risk appropriately. As FHFA recently stated in its recent findings of race-related language in appraisal reports: “Generally, the use of discretion can present fair lending risk because it allows overt or indirect references to race, ethnicity, or other prohibited bases to enter the process and can be applied unequally to favor or disfavor neighborhoods based on race or other prohibited bases.”¹²⁷ In addition, the appraisal process should be reviewed to determine the best methods of monitoring compliance, such as how to compare the outcomes in appraisal reports for similar subject properties that are in White communities vs. communities of color. The current USPAP Standards provide little guidance on how to identify discretionary decisions and manage the fair housing risk. Following is a small sample of USPAP Standards that may benefit from greater clarity with respect to discretion and fair housing risk as well as methods for managing that risk.

¹²⁶ See Laurie Goodman and Jun Zhu, *The Future of Headship and Homeownership*, Urban Institute (Jan. 2021), <https://www.urban.org/sites/default/files/publication/103501/the-future-of-headship-and-homeownership.pdf> (estimating that between 2020 and 2040, there will be 6.9 million net new homeowners comprised of 4.8 million more Latino homeowners, 2.7 million more Asian and other homeowners, and 1.2 million more Black homeowners but 1.8 million fewer White homeowners).

¹²⁷ 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>.

USPAP Standards and Fair Housing Risk

USPAP STANDARD	FAIR HOUSING RISK
<p>Standards Rule 1-2 "In developing a real property appraisal, an appraiser must....(e) identify, from sources the appraiser reasonably believes to be reliable, the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including: (i) its location..." (emphasis added)</p>	<p>-Location and geography are often highly correlated with race. -Here, the risk is that the appraiser may perpetuate segregation by describing the location based on perceptions of racial boundaries rather than objective factors. -The USPAP Standards could manage the fair housing risk by providing examples of the objective methods for identifying the location.</p>
<p>Standards Rule 1-4 "When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion."</p>	<p>-As described above, the sales comparison approach probably represents the highest fair housing risk, but the USPAP Standards do not provide any other guidance or baseline standards for avoiding discriminatory outcomes. -The USPAP Standards could manage the fair housing risk by identifying each facet of the sales comparison approach that contains a discretionary decision that could result in disparate treatment or a disparate impact on a prohibited basis and providing guidance on how to manage the risk.</p>
<p>Standards Rule 2-1(a) "Each written or oral real property appraisal report must (a) clearly and accurately set forth the appraisal in a manner that will not be misleading...."</p>	<p>-Advisory Opinion 16 states that this is one of the standards that supports fair housing. However, the term "misleading" has a special definition adopted by the Appraisal Standards Board for the 2020-22 USPAP. It is wholly unrelated to the subject of discrimination: "Intentionally or unintentionally misrepresenting, misstating, or concealing relevant facts or conclusions." The Appraisal Standards Board current exposure draft for the 2023 USPAP proposes to delete that definition and revert to the "dictionary definition," but even conventional dictionary meanings of "misleading" are associated more with deception than discrimination. -This USPAP Standard could be revised to more clearly state that the report must set forth the appraisal in a way that is not discriminatory and provide examples of best practices.</p>
<p>Standards 2-3(a) Regarding the signed certification: "I certify that, to the best of my knowledge and belief...I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment."</p>	<p>-This certification may speak to ensuring that the appraiser has not engaged in a fair housing violation, but the statement is not clear and appraisers interviewed for this study indicated that "bias" also refers to other concepts such as avoiding advocacy or favoring the cause of the appraiser's client. -The USPAP Standards could add a comment to clarify the circumstances under which an appraiser could make such a certification and the consequences for a false statement.</p>

With respect to setting baseline standards for managing fair housing risk, it should be noted that ensuring fair housing protects consumers as well as the safety and soundness of financial institutions and the housing market. FIRREA, which The Appraisal Foundation cites as the basis for its authority, states its purpose is to:

“Provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.”¹²⁸

Title XI of FIRREA was passed in response to the Savings and Loan Crisis and was later amended by the Dodd-Frank Act in response to the Great Recession. Each time, incorrectly appraised values for residential homes had adverse consequences for the housing market and the economy as a whole. And each time, the adverse effects were disproportionately felt by homeowners of color. Moreover, many other players in the mortgage market have undergone the process of scrutinizing their procedures for discretion and fair lending risk in order to ensure fair outcomes. Accordingly, ensuring that appraisers follow the letter and spirit of fair housing laws is important not just for homeowners of color but for the health of the market overall.

Recommendation

Consistent with other aspects of the housing finance market, the appraisal process should be thoroughly reviewed for fair housing risk, particularly in the exercise of discretion, and the USPAP Standards should be amended accordingly in order to provide a baseline standard for fair and equitable outcomes.

Gap: Lack of Clear Fair Housing Training Requirements

Until recently, the Appraiser Criteria did not include a requirement for any fair housing training. Beginning in 2022, however, the Appraiser Criteria will be updated to require that the course on “Basic Appraisal Principles” required for all credentials must include the topic of “Valuation Bias, Fair Housing, and/or Equal Opportunity.”¹²⁹ In addition, continuing education credit may be granted for this same topic.

The Appraiser Criteria’s new requirement is a welcome addition in concept, but falls short on a number of levels. First, the topic of “Valuation Bias, Fair Housing, and/or Equal Opportunity” is imprecise. The term “valuation bias” is not defined and the “and/or” suggests that any one of the three topics will suffice. Second, there is no guidance as to the required content for such an important topic or the time that must be devoted to it. Third, there is no requirement for the appraiser to learn the fundamentals of the state and local fair housing laws for the geographic area in which they operate. In some areas, the state and local fair housing laws can be much broader than the federal law. Finally, the requirement only applies to the initial credential for the

¹²⁸ 12 U.S.C. § 1331.

¹²⁹ Appraiser Qualifications Board, *Guide Note 1* (effective Jan. 1, 2022), <https://appraisalfoundation.sharefile.com/share/view/s63f99dc2b9f241e0b3fd1645f7b63680>.

course on “Basic Appraisal Principles.” There is no requirement for ongoing fair housing training once the credential is obtained. Significantly, the current version of the initial 15-hour USPAP course that must be taken for initial appraiser credentialing does not contain any instruction or discussion about fair housing issues or discrimination.

Several members of appraisal organizations interviewed for this report believed that appraisers in general do not have a good understanding of the fair housing laws that apply to residential appraising. It was also noted that several states have extensive fair housing education requirements for real estate brokers. For example, the state of California requires real estate agents to complete a three-hour course that must include federal and state fair housing laws; how to avoid practices that could be considered discriminatory; and specific topics, such as redlining, advertising, refusing to show property, and block busting.¹³⁰ Similarly, the state of New York requires education on federal and state fair housing laws, including the Fair Housing Act and the Civil Rights Act of 1866; specific cases; and specific discriminatory acts, such as unequal treatment, steering, and block busting.¹³¹ New York requires an initial four-hour fair housing course as well as a three-hour fair housing continuing education requirement.

Following are some examples of state laws that articulate clear requirements with respect to comprehensive fair housing training for appraisers.

¹³⁰ Cal. Bus. & Prof. Code § 10170.5(a)(4). The Department of Real Estate's Course Guidelines are available at <https://www.dre.ca.gov/files/pdf/forms/re329.pdf>.

¹³¹ New York Real Estate Salesperson Curriculum, available at: <https://dos.ny.gov/system/files/documents/2019/09/2018RESalespersonCurriculum.pdf>.

Fair Housing Training Requirements for Appraisers

SOURCE	TEXT
California	<p>"The director shall adopt regulations governing the process and procedures for renewal of a license or restoration of a license to active status that shall include, but not be limited to, continuing education requirements, which shall be reported on the basis of a four-year continuing education cycle, and, for each licensee renewing on or after January 1, 2023, include at least two hours of elimination of bias training, either individually or as part of a broader course."</p> <p>"Beginning January 1, 2023, as part of the continuing education required by this section, a licensee shall complete at least one hour of instruction in cultural competency every four years. For purposes of this section, 'cultural competency' means understanding and applying cultural and ethnic data to the process of care that includes, but is not limited to, information on the appropriate treatment of, and provision of care to, the lesbian, gay, bisexual, transgender, and intersex communities, ethnic communities, and religious communities." Cal. Business and Professions Code § 11360.</p>
Minnesota	<p>"Education. Within two years of receiving a license under this chapter and as required by the Appraiser Qualifications Board, a real property appraiser shall provide to the commissioner evidence of satisfactory completion of a continuing education course on the valuation bias of real property."</p> <p>"For the purposes of this section, 'valuation bias' means to explicitly, implicitly, or structurally select and apply data to an appraisal methodology or technique in a biased manner that harms a protected class, as defined by the Fair Housing Act of 1968, as amended." Minn. Stat. § 82B.021.</p>
New York	<p>"For State license and certification periods that commence on or after January 1, 2022, real estate appraisers and real estate appraiser assistants who hold State licenses or certifications must successfully complete an approved course of study in Fair Housing and Fair Lending, every two years, or its equivalent, as required in subdivisions (b) or (c) of this section, in order to renew their licenses or certifications." Tit. 19 NYCRR § 1107.33.</p>
Ohio	<p>Applicants for residential real estate appraiser license, residential real estate appraiser certification, or general real estate appraiser certification must include in their hours of education instruction "at least one course devoted exclusively to federal, state, and municipal fair housing law." Ohio Admin. Code 1301:11-3-03.</p>

Recommendation

Quality fair housing training for appraisers is critically important and should be a requirement for every appraiser to obtain and maintain their credentials. The Appraiser Criteria should be revised to clearly require comprehensive fair housing training on federal, state, and local fair housing laws at every stage of the credentialing process and at renewal.

Gap: Lack of Effective Fair Housing Training

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. To address this gap, The Appraisal Foundation has just recently added a module seeking to address the subject of fair housing in the 7-hour continuing education course that appraisers must complete every two years regarding USPAP Standards.

The new fair housing module contained in the 7-hour continuing education course reflects welcome effort, but fails to provide accurate and effective guidance to appraisers. The module provides an inaccurate summary of fair housing law, while failing to include any content from the applicable statutes themselves (namely, the federal Fair Housing Act) or its implementing regulations. It also fails to provide specific guidance and examples of what is prohibited by law.

This outcome is consistent with views expressed in interviews conducted with members of national appraisal organizations. They observed that The Appraisal Foundation has not produced accurate and effective guidance with respect to fair housing issues (and other topics of a legal nature, such as privacy laws). This results from the organization's insular approach. Interviewees familiar with The Appraisal Foundation's operations noted a hesitancy of the organization to consult with subject matter experts outside the field of appraising, such as fair housing and civil rights experts. The misleading training could lead to detrimental results for consumers including inappropriate property devaluations, improper loan denials, loss of housing opportunities, and other harms. It could also contribute to appraisers failing to realize the extent of their legal obligations which could expose them to liability. Finally, it could result in harm to communities of color, contributing to the racial wealth and homeownership gaps, disinvestment, and the perpetuation of segregation. Below is a list of the general recommendations followed by detailed recommendations and examples of areas for improvement from the training.

Recommendations for the Training Requirements:

- **There should be comprehensive fair housing training included in the initial 15-hour USPAP course (not just in the 7-hour USPAP continuing education course).**
- **The fair housing training module in the current 2022-2023 7-hour USPAP continuing education course for credentialed appraisers should be revised immediately and developed with the participation of fair housing experts to ensure the training is comprehensive and contains important elements needed to educate professionals about how to comply with the letter and spirit of applicable federal, state, and local fair housing laws.**
- **At a minimum, the fair housing training should include:**
 - **The history of discrimination and segregation and the role of the appraisal industry in establishing and perpetuating both;**
 - **Information about the costs of appraisal bias for families, communities, the housing industry, and the nation, including the impact on the homeownership and wealth gap;**
 - **An in-depth explanation of the federal fair housing laws and implementing regulations as well as the role of state and local fair housing laws;**
 - **Recent case examples of appraisal discrimination;**
 - **The appropriate use of the free-form text sections of the appraisal report, including a reminder that the racial and ethnic composition of the neighborhood should never be a factor that influences the value of a home;**
 - **An explanation of how compliance with fair housing laws and standards benefits the appraisal and housing industry, consumers, communities, and the greater society; and**
 - **Best practices to ensure compliance with the letter and spirit of the fair housing laws.**
- **The Appraisal Foundation should collaborate with HUD, DOJ, the Federal Housing Finance Agency ("FHFA"), and other regulators and enforcement agencies to develop, improve, and implement fair housing training. In addition, The Appraisal Foundation should consider inviting civil rights experts to provide the fair housing training for appraisers.**

Recommendations for Improvements to the Fair Housing Module in the 7-Hour Training

Below are excerpts from the new fair housing module in the 7-hour continuing education training required by The Appraisal Foundation. Below each excerpt is a recommendation for improvement.

Recommendation for the Introduction

Excerpt from the Training

Introduction

“Black Homeowners Face Discrimination in Appraisals”

(Headline from *New York Times*, August 25, 2020, and updated August 27, 2020.)

This is a shocking headline, but it does get our attention! What could have taken place that resulted in such a headline? Is the headline accurate? Does it have merit? Is its conclusion based on perception or facts?

Recommendation

The introduction to the existing training should be revised to focus on fair housing laws and their requirements. Similarly, the overall tone of the module should be revised from one of raising questions about perception and reputational risk for appraisers to clearly identifying fact patterns that represent illegal discrimination and avoiding harm to consumers.

Recommendation for the Background Section

Excerpt from the Training

Background

The first Advisory Opinions (AOs) appeared in the 1992 edition of the USPAP publication. AO-16 was not added, however, until the 1997 edition. Since that time, the AO has undergone some minor changes, although the overall content has remained largely unchanged. And, while most of the information in the 2020-2022 version of AO-16 remains the same as when it was originally written, it is as relevant today as it was then.

Recommendation

The background section should be revised to focus on the history of appraisal discrimination and its impact on borrowers and communities of color.

Recommendation for the Legal Discussion

Excerpt from the Training

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)

Intentional Bias

Our research shows that of the number of verifiable complaints filed with regulatory agencies, those that comprise intentional bias have been extremely rare in appraisal work. However, that does not mean intentional bias is nonexistent.

Unintentional Bias

Unintentional bias comes in many forms. Not all bias in appraisals is based on racial, ethnic, or other discrimination. Appraising to meet the sale price is an example of a bias. All bias is prohibited by USPAP, whether or not it is based on illegal discriminatory factors. An example of a built-in unintentional bias an appraiser could have (which is one we are unaware we have until it is called to our attention) includes the following:

You personally do not like bi-level (or "split-level") homes. And you have heard from two real estate agents that split-level style homes are "always" less marketable than two-story style homes.

Could these built-in biases affect the adjustments that an appraiser makes to split-level style houses when compared to similar utility two-story style homes in the area? It might. Thus, regardless of how you personally feel about split-levels, you need to ensure you are deriving your adjustments using factual, market supported evidence. This might help to eliminate a built-in unintentional bias.

Recommendation

The legal discussion should be revised to accurately state the law. Currently, the module inaccurately focuses on intentional bias and unintentional bias rather than disparate treatment and disparate impact. The definitions and commentary also require revision to explain what constitutes disparate treatment and disparate impact and how appraisers can comply with legal requirements and follow best practices.

Recommendation for the Illustrations and Case Studies

Excerpt from the Training

Illustrations

There are four illustrations presented in AO-16. These illustrations have been posed as questions for discussion purposes here. However, each of them should be read in its entirety. Any experiences you have had regarding any of the illustrations may prove helpful to you and to the class as a whole.

Recommendation

The illustrations and case studies should be revised to clearly identify fact patterns that represent illegal discrimination. The fact patterns should focus on situations that are common and clearly covered by the Fair Housing Act.

Recommendation for the Instructor's Manual

Excerpt from the Training

Relevant Definitions

As you can imagine these topics may get some passionate responses from your class members, so a discussion of the relevant definitions that are used in the section may help bring the focus back to USPAP.

Recommendation

The instructor's manual should be revised to provide more explicit guidance. Also, in connection with fair housing topics, the instructor's focus should be on the law first and USPAP and other guidelines second.