

February 3, 2023

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Chair, Appraisal Standards Board
The Appraisal Foundation
1155 15th Street, NW
Washington, DC 20005
Via: <https://www.surveymonkey.com/r/ASBComments>
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Re: USPAP Fourth Exposure Draft: Nondiscrimination Language

Dear Ms. Bradley,

The National Fair Housing Alliance (“NFHA”) and the undersigned civil rights and consumer advocacy organizations are writing in response to the Appraisal Standards Board’s request for comment on the proposed changes to the Uniform Standards of Professional Appraisal Practice (“USPAP”) (as shown in the Appendix), which would add nondiscrimination language to USPAP’s Ethics Rule.¹ Appraisals are critically important to American communities. The appraisal has the power to determine the value of a borrower’s most important financial asset, which can hold the key to determining whether that family can purchase a permanent home rather than rent, access credit on reasonable terms, and build wealth for generations to come. We applaud the Appraisal Standards Board for proposing language that clearly prohibits discrimination in appraisals. Our organizations believe that the responses below will help the Appraisal Standards Board further strengthen the proposed USPAP revision.

Background: To Address the Long History of Appraisal Bias, USPAP Should Clearly Prohibit Discrimination in Appraisals

The Appraisal System Historically Undervalued Homes for Households of Color

For much of America’s history, households of color were systematically excluded from economic opportunities through explicit policy decisions.² 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 services markets by perpetuating a system that included race as a fundamental factor in determining the desirability and value of neighborhoods.³ This system included Residential Security Survey forms developed by real estate professionals that explicitly captured the percentage of “Negro” populations and other racial groups living in an area and then utilized that race-based data to grade the neighborhood despite the reality that families residing in communities of color could afford a mortgage loan. The HOLC’s policies and

¹ ASB, USPAP Fourth Exposure Draft (Dec. 13, 2022), https://www.appraisalfoundation.org/imis/TAF/Standards/Exposure_Discussion_Drafts/TAF/Exposure_Drafts.aspx?hkey=d6d47266-eca5-4178-8919-2d3e827a5f36.

² 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).

³ 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.*

procedures helped systematize redlining as well as the unfounded association between race and risk in U.S. housing and financial services markets.

The HOLC appraisal system also included the creation of appraisal maps that were color-coded to evaluate, grade, and indicate the desirability 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 a lower value. 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 was not just collected randomly, but was based on the opinions of the leading real estate professionals at the time, including appraisers.

In addition to the mapping system, explicitly discriminatory policies perpetuated the unfounded association between race and risk into the nation’s housing and financial markets. For example, the Federal Housing Administration (“FHA”) adopted the HOLC’s maps and race-based policies as the basis for its mortgage insurance underwriting decisions. The FHA also encouraged the use of racially restrictive covenants and required them in exchange for supporting the new housing developments built throughout the nation’s suburban communities. Even after the Supreme Court declared that racially restrictive covenants were not enforceable,⁴ the FHA gave preferential treatment to developers that adopted them.⁵ From 1934 to 1962, the federal government backed over \$120 billion in mortgages, but the FHA’s race-based policies meant that less than two percent of loans went to Black, Latino, Asian American Pacific Islander (“AAPI”), and Native individuals. The U.S. Department of Veterans Affairs (“VA”) also instituted the use of discrimination in the administration of the GI Bill loan programs enacted by Congress in 1944. In the state of Mississippi alone, just two out of 3,229 VA-insured mortgages went to Black servicemembers seeking to finance a home, business, or farm in the first three years of the program.⁶

Appraisal Practices Perpetuated an Unfounded Association between Race and Risk

In addition to the redlining and mapping system, explicitly discriminatory underwriting and appraisal principles and practices perpetuated an unfounded association between race and default risk in the nation’s housing and financial markets. These practices also promoted the idea that a home should be valued based on its neighborhood composition 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-

⁴ See *Shelley v. Kraemer*, 334 U.S. 1 (1948).

⁵ See Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017).

⁶ Dedrick Asante-Muhammad, et al., *The Road to Zero Wealth: How the Racial Wealth Divide is Hollowing Out America’s Middle Class*, p. 15 (Sept. 2017), https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.

“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.”

Notably, although the Fair Housing Act passed in 1968, the explicitly discriminatory appraisal guidance continued:

- 1973: American Institute of Real Estate Appraisers Course Material –
“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.”

In 1976, after decades of these explicitly discriminatory appraisal practices, 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.⁷ The defendants settled in 1977 and agreed to adopt certain policies, including a policy stating that it is improper to base a

⁷ *United States v. American Institute of Real Estate Appraisers*, 442 F. Supp. 1072 (N.D. Ill. 1977).

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. Thus, appraisal training materials contained explicitly race-based policies until 1977.

Discrimination in Appraisals Continues on an Individual and Systemic Basis

Unfortunately, the appraisal system continues to suffer from bias on an individual and systemic basis. Recent news stories have highlighted anecdotal evidence on an individual basis. An ABC documentary entitled, "Our America: Lowballed," showed how Black and Latino families nationwide are being lowballed on appraisals.⁸ Following are additional summaries of individual instances that have arisen across the country:

- **California.** A Black couple in Marin City, California, seeking to refinance received an initial appraisal of \$995,000. Suspecting that the valuation of their home was unjustifiably low, they 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."⁹
- **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.¹⁰ This time, the home appraised for \$259,000. Upon seeing that amount, the homeowner was first overcome with joy. But then the hurt surfaced because she had had to erase herself from her home in order to get a value that was fair and accurate.
- **Maryland.** Two married Black college professors from Johns Hopkins University received an initial appraisal of \$472,000 of their home in Baltimore, Maryland, and, in turn, the lender denied the couple a refinance loan.¹¹ Suspecting that the valuation of their home was unjustifiably low, they removed family photos and had a white male colleague stand in for them. The second appraisal came in at \$750,000. The homeowner said, "We were clearly aware of appraisal discrimination. But to be told in so many words that our

⁸ Julian Glover and Mark Nichols, *Our America: Lowballed*, ABC (Dec. 2022),

<https://abc7.com/feature/our-america-lowball-home-appraisal-racial-bias-discrimination/12325606/>.

⁹ 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/>.

¹⁰ 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>.

¹¹ Debra Kamin, *Home Appraised with a Black Owner: \$472,000; With a White Owner: \$750,000*, *The New York Times*, (Aug. 25, 2022),

<https://www.nytimes.com/2022/08/18/realestate/housing-discrimination-maryland.html>.

presence and the life we've built in our home brings the property value down? It's an absolute gut punch."

- Colorado. A mixed-race couple in Denver, Colorado, scheduled an appraisal in connection with a home equity loan. 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."¹²
- 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. 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."¹³
- 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. 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."¹⁴

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:

- Appraisal Reports: Federal Housing Finance Agency ("FHFA"). FHFA recently found that thousands of appraisal reports contained potential race-related flags in the "Neighborhood Description" and other free-form text fields.¹⁵ Some examples that FHFA found in its analysis include:
 - Amenities described as a "commercial strip featuring storefronts supplying Jewish households."
 - A town was described as having a "Black race population above state average."

¹² 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.

¹³ See *id.*

¹⁴ 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>.

¹⁵ 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>.

- A neighborhood was described as "predominately Hispanic" and that the residents have "assimilated their cultural heritage" into the neighborhood.
 - A market description noted that "there is more Asian influence of late" buying the market.
 - A property was described as being in a "homogeneous neighborhood with good schools."
- **Purchases: Freddie Mac.** In a groundbreaking study, researchers at Freddie Mac analyzed millions of 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").¹⁶ 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.)
- **Refinancings: Fannie Mae.** In another groundbreaking study, researchers at Fannie Mae analyzed appraisals submitted for refinancing transactions and found that appraisers were more likely to overvalue White-owned homes in majority-Black neighborhoods.¹⁷ 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.
- **Undervaluations for Communities of Color: Howell/Korver-Glenn:** Drs. Junia Howell and Elizabeth Korver-Glenn were able to analyze¹⁸ the appraisal data newly-released by the FHFA to show that homes in White neighborhoods are appraised at values that are significantly higher than similar homes in similar communities of color as follows:
 - Black community: similar home in similar White community is appraised 250% higher.
 - Latino community: similar home in similar White community is appraised 278% higher.

¹⁶ 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>.

¹⁷ Jake Williamson and Mark Palim, *Appraising the Appraisal*, Fannie Mae (Feb. 2022),

<https://www.fanniemae.com/media/42541/display>.

¹⁸ Dr. Junia Howell and Dr. Elizabeth Korver-Glenn, *Appraised: The Persistent Evaluation of White Neighborhoods as More Valuable than Communities of Color*, Eruka (Nov. 2, 2022),

<https://www.eruka.org/appraised>.

- American Indian/Alaska Native community: similar home in similar White community is appraised 338% higher.
- Southeast Asian/Pacific Islander community: similar home in similar White community is appraised 400% higher.
- **Cumulative Cost: The Brookings Institution.** A 2018 Brookings Institution study of American Community Survey homeowner estimates and 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.¹⁹ 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.

These appraisal inequities have contributed to today's racial wealth gap.²⁰ Dr. Junia Howell explained the impact of the appraisal gap on the racial wealth gap as follows:

[C]onsider two families—both of whom bought an averaged size single family home in 1980. However, one family purchased a house in a White neighborhood and the other in a community of color. Despite making comparable investments to maintain the quality of their house and their neighborhoods being identical in their socioeconomic status and available amenities, the family living in the White neighborhood has experienced \$275,000 more appreciation in their home value than the family living in the community of color. A \$275,000 difference in wealth is the equivalent to three children's entire college tuitions, four small businesses' startup costs, ten serious hospital stays or medical procedures, or nine years of living expenses for retirement.²¹

Without meaningful change, the persistent, wide, and increasing racial appraisal gap will continue to perpetuate the racial wealth gap.

¹⁹ 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).

²⁰ The median wealth is \$23,000 for Black households; \$38,000 for Latino households; and \$184,000 for White households. See *Federal Reserve Survey of Consumer Finance* (2019), <https://www.federalreserve.gov/econres/scfindex.htm>.

²¹ Dr. Junia Howell, *Color Coded: The Growing Racial Inequality in Home Appraisals*, Testimony before the Appraisal Subcommittee Public Hearing on Appraisal Bias (Jan. 24, 2023), https://files.consumerfinance.gov/f/documents/cfpb_appraisal-hearing_junia-howell-testimony_2023-01-24.pdf.

Federal Agencies, the NFHA Consortium, and Civil Rights and Fair Housing Organizations Have Raised Concerns that USPAP Lacks a Clear Prohibition on Discriminatory Conduct

Against this backdrop, several organizations answered the call for appraisal reform, particularly as it affects borrowers of color.

- 2020: The Appraisal Foundation began a series of diversity and inclusion efforts.²²
- January 2022: NFHA, Dane Law, and the Christensen Law Firm (the “NFHA Consortium”) released a report commissioned by the Appraisal Subcommittee (the “NFHA Consortium Report”) that reviewed the extent to which the Uniform Standards of Professional Appraisal Practice (“USPAP”) and the Real Property Appraiser Qualification Criteria (“Appraiser Criteria”) encouraged or systematized bias.²³
- February 4, 2022: Eight federal agencies responsible for enforcing nondiscrimination standards under the federal Fair Housing Act and Equal Credit Opportunity Act (“ECOA”) issued a letter to the Appraisal Standards Board raising concerns with draft nondiscrimination provisions of USPAP. These federal agencies are: the Consumer Financial Protection Bureau (“CFPB”), DOJ, Federal Deposit Insurance Corporation (“FDIC”), Federal Housing Finance Agency (“FHFA”), Federal Reserve Board (“FRB”), U.S. Department of Housing and Urban Development (“HUD”), National Credit Union Administration (“NCUA”), and Office of the Comptroller of the Currency (“OCC”).²⁴
- February 4, 2022: The CFPB (which has authority for implementing ECOA through Regulation B) issued a blog post emphasizing that appraisal discrimination is illegal under the federal Fair Housing Act and ECOA.²⁵
- February 14, 2022: The DOJ issued a Statement of Interest in *Austin v. Miller*, a private lawsuit alleging that defendants violated the Fair Housing Act by discriminating on the basis of race in connection with a residential home appraisal. The DOJ explained that appraisers may be liable under the Fair Housing Act and provided guidance on pleading and proof standards.²⁶
- March 2022: The Biden Administration’s Interagency Task Force on Property Appraisal and Valuation Equity (“PAVE”) released an Action Plan to address inequities in home appraisals.²⁷
 - The PAVE Task Force is led by White House Domestic Policy Council (“DPC”) Director Susan Rice and HUD Secretary Marcia Fudge.
 - The 13 PAVE Task Force Agencies are: the White House Domestic Policy Council, HUD, the Appraisal Subcommittee, CFPB, DOJ, FDIC, FHFA, FRB, NCUA, OCC, the

²² The Appraisal Foundation, *Promoting Diversity in the Appraisal Profession*,

<https://appraisalfoundation.sharefile.com/share/view/s07b3d65a193d47e6a626af02a7aad265>.

²³ National Fair Housing Alliance, Dane Law, Christensen Law Firm, *Review of USPAP and AQB Criteria: Focus on Fairness, Equity, Objectivity and Diversity*, (June 4, 2021),

<https://www.asc.gov/Pages/ViewWhatsNew.aspx?ID=164>.

²⁴ CFPB, DOJ, FDIC, FHFA, FRB, HUD, NCUA, OCC Letter to the Chair of the Appraisal Standards Board (Feb. 4, 2022),

https://files.consumerfinance.gov/f/documents/cfpb_appraisal-discrimination_federal-interagency_comment_letter_2022-02.pdf.

²⁵ CFPB, *Appraisal Discrimination Is Illegal under Federal Law* (Feb. 4, 2022),

<https://www.consumerfinance.gov/about-us/blog/appraisal-discrimination-illegal-under-federal-law/>.

²⁶ DOJ, Statement of Interest, *Austin, et al. v. Miller, et al.*, Case No. 3:21-cv-09319-MMC (N.D. Cal. Feb. 14, 2022), <https://www.justice.gov/crt/case-document/file/1472031/download>.

²⁷ See PAVE Interagency Task Force at <https://pave.hud.gov/>.

Department of Agriculture (“USDA”), the Department of Labor (“DOL”), and the Department of Veterans Affairs (“VA”).

- March 24, 2022: The U.S. Senate Committee on Banking, Housing, and Urban Affairs held a hearing entitled, “Strengthening Oversight and Equity in the Appraisal Process.”²⁸
- March 29, 2022: The U.S. House Committee on Financial Services held a hearing entitled, “Devalued, Denied, and Disrespected: How Home Appraisal Bias and Discrimination Are Hurting Homeowners and Communities of Color.”²⁹ NFHA’s President and CEO Lisa Rice provided testimony and NFHA contributed to the discussion draft legislation from Chairwoman Waters entitled, the “Fair Appraisal and Inequity Reform Act of 2022.”³⁰
- June 2022: Fannie Mae and Freddie Mac released their Equitable Housing Finance Plans, which contained detailed plans for addressing appraisal bias.³¹
- July 2022: The Philadelphia Home Appraisal Bias Task Force issued its final report and recommendations.³²
- September 12, 2022: The Appraisal Foundation held a public forum regarding the need for fair housing training for appraisers and updates to the Appraiser Qualifications Criteria. NFHA, the National Consumer Law Center, and the NAACP Legal Defense and Educational Fund, Inc. testified in support of these changes.
- October 24, 2022: FHFA for the first time provided public access to its new Uniform Appraisal Dataset Aggregate Statistics Data File containing information from 47.3 million appraisal records collected from 2013 to 2022.³³
- December 27, 2022: President Biden signed H.R. 7735, the Improving Access to the VA Home Loan Benefit Act of 2022, which requires the Veterans Administration to update its appraisal regulations.³⁴
- January 3, 2023: HUD requested comment on a draft Mortgagee Letter revising the Federal Housing Administration’s (“FHA”) Reconsideration of Value (“ROV”) process.³⁵

²⁸ U.S. Senate Committee on Banking, Housing, and Urban Affairs, *Hearing: Strengthening Oversight and Equity in the Appraisal Process* (March 24, 2022),

<https://www.banking.senate.gov/hearings/strengthening-oversight-and-equity-in-the-appraisal-process>.

²⁹ U.S. House Committee on Financial Services, *Hearing: Devalued, Denied, and Disrespected: How Home Appraisal Bias and Discrimination Are Hurting Homeowners and Communities of Color* (March 29, 2022),

<https://financialservices.house.gov/events/eventsingle.aspx?EventID=409150>.

³⁰ *Hearing: Devalued, Denied, and Disrespected: How Home Appraisal Bias and Discrimination Are Hurting Homeowners and Communities of Color*, before the House Financial Services Committee (March 29, 2022), <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408296>.

³¹ FHFA, *FHFA Announces Equitable Housing Finance Plans for Fannie Mae and Freddie Mac* (June 8, 2022),

<https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Equitable-Housing-Finance-Plans--for-Fannie-Mae-and-Freddie-Mac.aspx>.

³² Philadelphia Home Appraisal Bias Task Force, *Final Report and Recommendations* (July 2022),

<https://phlcouncil.com/philadelphia-home-appraisal-bias-task-force-issues-final-report-and-recommendations/>.

³³ FHFA, *FHFA Publishes New Uniform Appraisal Dataset Aggregate Statistics Data File* (Oct. 24, 2022),

<https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Publishes-New-UAD-Aggregate-Statistics-Data-File.aspx>.

³⁴ *Improving Access to the VA Home Loan Benefit Act*, Pub.L. 117-308 (Dec. 27, 2022),

<https://www.congress.gov/bill/117th-congress/house-bill/7735>.

³⁵ FHA Info, *FHA Seeks Feedback on Draft of Enhanced Policy to Support Requests for Reviews of Appraisal Results* (Jan. 3, 2023), https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_2023-01.pdf.

- January 4, 2023: FHFA released the 2023 Scorecard for Fannie Mae and Freddie Mac, which included continuing efforts to minimize single-family appraisal bias and improve valuation equity.³⁶
- January 18, 2023: The VA issued a Circular to inform the lending industry of enhanced oversight procedures that will better enable VA to identify discriminatory bias in home loan appraisals.³⁷
- January 24, 2023: The Appraisal Subcommittee held a hearing on appraisal bias.

Several of these efforts raised concerns that the current USPAP provisions failed 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,³⁸ the following USPAP provisions are meant to inform appraisers of the prohibition against illegal discrimination in appraisals.

- 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.” (Emphasis added.)
- 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.”
- 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.”
 - 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

³⁶ FHFA, *2023 Scorecard for Fannie Mae, Freddie Mac, and Common Securitization Solutions* (Jan. 4, 2023), <https://www.fhfa.gov/AboutUs/Reports/Pages/2023-Scorecard-for-Fannie-Freddie-and-CSS.aspx>.

³⁷ VA, *Oversight of Appraisal Reports to Promote Fair Housing for all Veterans Obtaining Loans Backed by the Department of Veterans Affairs*, Circular 26-23-05 (Jan. 18, 2023), <https://www.benefits.va.gov/HOMELoANS/documents/circulars/26-23-05.pdf>.

³⁸ 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.

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.”

The NFHA Consortium Report first raised concerns about these provisions, stating:

Although Advisory Opinion 16 provides reference to different sections of USPAP, 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... 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.”³⁹

Similarly, the February 4, 2022 letter⁴⁰ from the eight federal agencies responsible for enforcing nondiscrimination standards under the Fair Housing Act and ECOA raised the following concerns:

[T]he federal ban on discrimination under the FHAct and ECOA is not limited only to “unsupported” conclusions. Any discussion of prohibited appraisal bias should call attention to, and maintain consistency with, all applicable nondiscrimination standards provided in federal law, including the FHAct and ECOA.

The agencies ended the letter by saying: “We believe that a full presentation of these requirements is an essential part of any guidance provided in the Ethics Rule or Advisory Opinion 16 to ensure compliance with fair housing and fair lending laws.”

Finally, the February 4, 2022 blog post from the CFPB⁴¹ noted the following:

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

³⁹ See NFHA Consortium Report at 48-51.

⁴⁰ CFPB, DOJ, FDIC, FHFA, FRB, HUD, NCUA, OCC Letter to the Chair of the Appraisal Standards Board (Feb. 4, 2022), https://files.consumerfinance.gov/f/documents/cfpb_appraisal-discrimination_federal-interagency_comment_letter_2022-02.pdf.

⁴¹ CFPB, Appraisal Discrimination Is Illegal under Federal Law (Feb. 4, 2022), <https://www.consumerfinance.gov/about-us/blog/appraisal-discrimination-illegal-under-federal-law/>.

standards it sets, and in the training it provides for appraisers. TAF is a private, non-governmental organization, and the only entity with the power to set professional standards for appraisers. However, TAF has yet to highlight these important laws even though it frequently revises its standards. These actions undermine a fair and competitive market free of bias and discrimination... The CFPB remains concerned that some appraisers may be unaware of these federal discrimination bans and urges The Appraisal Foundation to provide clear guidance on the existing legal standards as they relate to appraisal bias.

Comments on the Fourth Exposure Draft: The Appraisal Standards Board's Proposal Clearly Prohibits Appraisal Discrimination and Can Be Further Strengthened

We commend the Appraisal Standards Board for proposing clear, strong language prohibiting appraisers from engaging in discrimination on a prohibited basis. However, we think the proposal can be strengthened by streamlining the language. We appreciate the challenge of drafting a robust standard while still using language that is easy for non-attorneys to understand. For this reason, we recommend streamlining the USPAP language to the wording provided below. Further, we recommend moving the nuances of nondiscrimination standards to Advisory Opinions and revised training, including explanations of the meaning of:

- "Discrimination," including the disparate treatment and disparate impact theories of discrimination;
- "Person," including coverage beyond individuals (e.g., neighborhoods and corporations);
- "Protected characteristic," including neighborhoods and proxies;
- Exceptions, including on the basis of age; and
- Retaliation provisions.

Finally, we recommend that the Advisory Opinions and revised training contain a comprehensive explanation of the history of appraisal discrimination and redlining, the federal civil rights laws, and the applicability of state and local civil rights laws.

Ethics Rule: Nondiscrimination Section

We recommend streamlining the USPAP language to the following wording:

An appraiser must not discriminate against any person in any aspect of the appraisal process on the basis of of a protected characteristic, which is defined as race, ethnicity, color, religion, national origin, sex, sexual orientation, gender, gender identity, gender expression, marital status, familial status, age, receipt of public assistance income, or disability.

Comment: The USPAP nondiscrimination requirements may be broader than those mandated by law with respect to the types of covered property. Generally, the civil rights laws (the Fair Housing Act, the Equal Credit Opportunity Act, the Civil Rights Act of 1866, and state and local laws) cover residential real property and property securing a credit transaction. The USPAP nondiscrimination requirements cover any property that is the subject of the appraisal process. Jurisdictions outside of the United States may have similar bodies of antidiscrimination laws that appraisers must follow. It is both a matter of ethical behavior and competent performance that appraisers be knowledgeable about and comply with all antidiscrimination laws and regulations applicable to the appraiser or to the assignment.

Exception: An appraiser may use or rely upon a protected characteristic in the appraisal process only where laws and regulations expressly permit or otherwise allow the consideration of that protected characteristic.

An appraiser must not coerce, intimidate, threaten or interfere with any person on account of that person exercising their rights under nondiscrimination laws or this USPAP Ethics rule, or on account of that person having aided or encouraged any other person exercising their rights under nondiscrimination laws or this USPAP Ethics rule.

Ethics Rule: Conduct Section

We support the changes found at Lines 87-91, which delete the confusing language that appeared to allow “supported” conclusions based on race and other protected characteristics.

Additional Comments: The Appraisal Standards Board Should Further Strengthen USPAP by Addressing the Appraiser’s Nondiscrimination Obligations in Other Areas of the Rules

In addition to the comments above, we note that the following sections of USPAP should be strengthened to address the appraiser’s nondiscrimination obligations.

USPAP Standard 1: Real Property Appraisal, Development
(Also applies to Standard 3: Appraisal Review, Development)

Standards Rule 1-1, General Development Requirements:

We recommend:

- Adding a new subsection (d) to read: “In developing a real property appraisal, an appraiser must:...(d) not render appraisal services in a discriminatory manner.”

Standards Rule 1-4, Approaches to Value:

We recommend:

- Amending subsection (a) to add more information about ways to limit the risk of discretion and fair housing/fair lending risk in the sales comparison approach. For example, a new subsection (a)(i) could be added to read: “An appraiser must not select comparable sales that are influenced by the parties’ or neighborhoods’ race or other protected characteristics.”

USPAP Standard 2: Real Property Appraisal, Reporting
(Also applies to Standard 4: Appraisal Review, Reporting)

Standards Rule 2-1, General Reporting Requirements:

We recommend:

- Adding a new subsection (d) to read: “Each written or oral real property appraisal report must:...(d) clearly and accurately set forth the appraisal in a manner that is not discriminatory.”

Standards Rule 2-3, Certification:

We recommend:

- Adding: "I am aware of and have complied with all applicable laws and regulations, including the Fair Housing Act and the Equal Credit Opportunity Act and their implementing regulations, that apply to the appraiser and to the assignment."
- Coordinating with Fannie Mae and Freddie Mac to ensure that USPAP and the certifications for the Uniform Residential Appraisal Report Redesign are similar and certify that the appraisal is not discriminatory.

Thank you for considering our views.

Sincerely,

National Fair Housing Alliance
Center for Responsible Lending
Consumer Action
Long Island Housing Services, Inc.
Mountain State Justice, Inc.
National Association for Latino Community Asset Builders
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low-income clients)
Neighborhood Housing Services of Chicago
New Jersey Institute for Social Justice
UnidosUS
Woodstock Institute

Cc: James Park, Appraisal Subcommittee
Susan Rice, Assistant to the President for Domestic Policy; Co-Chair, PAVE Task Force
Marcia Fudge, Secretary of the U.S. Department of Housing and Urban Development;
Co-Chair, PAVE Task Force
Melody Taylor, Executive Director, PAVE Task Force
Mayor Keisha Lance Bottoms, Senior Advisor to the President for Public Engagement
The Honorable Sherrod Brown
The Honorable Tim Scott
The Honorable Patrick McHenry
The Honorable Maxine Waters

APPENDIX

FOURTH EXPOSURE DRAFT

ETHICS RULE: NONDISCRIMINATION SECTION

Lines 16-35

Proposal: An appraiser must not engage in unethical discrimination. As part of this prohibition:

- **An appraiser must not develop and/or report an opinion of value that, in whole or in part, is based on the actual or perceived race, national origin, or other protected characteristics of any person(s).**

Proposed Comment: Within the context of the Nondiscrimination section of the ETHICS RULE, "person(s)" includes but is not limited to:

- *A property or asset owner;*
- *A purchaser or potential purchaser of a property or an asset;*
- *An individual who might derive benefit from or use a property or an asset;*
- *A client, representative or agent of a client, or any other intended user; or*
- *The inhabitants of a geographic area. (Footnote: In the real property context, "[i]t 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." United States v. Am. Inst. of Real Estate Appraisers, Etc., 442 F. Supp. 1072, 1077 (N.D. Ill. 1977). "Racial, religious and ethnic factors are deemed unreliable predictors of value trends or price variance." Id.*

Protected characteristics are personal characteristics such as race, ethnicity, color, religion, national origin, sex, sexual orientation, gender, gender identity, gender expression, marital status, familial status, age, receipt of public assistance income, and disability. Protected characteristics also include any other personal characteristic protected by applicable law, including federal, state, and local laws and regulations.

Lines 36-38

Proposal: An appraiser must not perform an assignment with bias with respect to the actual or perceived race, national origin, or other protected characteristics of any person(s).

Lines 39-46

Proposal: Notwithstanding the above, the appraiser may use or rely upon a protected characteristic in an assignment only where:

1. **Laws and regulations expressly permit or otherwise allow the consideration of that characteristic; and**
2. **Use or reliance upon that characteristic is essential to the assignment and necessary for credible assignment results; and**
3. **Consideration of that characteristic is not based on bias, prejudice, or stereotype.**

Lines 47-67

Proposal: An appraiser must not engage in illegal discrimination

Proposed Comment: Illegal discrimination is any discrimination prohibited by applicable laws or regulations. In the United States, antidiscrimination laws and regulations include the Fair Housing Act, the Equal Credit Opportunity Act, and Section 1981 of the Civil Rights Act of 1866, as well as state and local law. The specific laws and regulations that are applicable to an appraiser will vary—for example, the Fair Housing Act prohibits discrimination on the basis of specific protected characteristics in the appraising of residential real property as defined under that law. When performing an assignment that involves the appraisal of residential real property, as defined by the Fair Housing Act, the law will apply. Jurisdictions outside of the United States may have similar bodies of antidiscrimination laws. It is both a matter of ethical behavior and competent performance that appraisers be knowledgeable about and comply with all antidiscrimination laws and regulations applicable to the appraiser or to the assignment.

An appraiser could violate an antidiscrimination law and thereby the Ethics Rule by treating individuals of one protected group differently from and less favorably than others not in that protected group (“disparate treatment”), or by employing neutral policies or practices that disproportionately harm members of a protected group, except when those policies or practices are justified and there are no less disproportionate policies or practices that could be used instead (“disparate impact”).

Lines 68-70

Proposal: An appraiser must not use or rely upon a non-protected characteristics as a pretext to conceal the use of or reliance upon protected characteristics when performing an assignment.