

Eliminating Bias and Developing Cultural Competency - with Real World Relevance

(3 Appraiser CE Hours)

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About Your Instructor



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I'm an attorney. My legal practice is entirely focused on real estate valuation services. My clients are primarily appraisal firms, AMCs and financial institutions.

Of relevance to the topics we'll be discussing, I've represented clients in matters alleging discrimination before HUD, the Consumer Financial Protection Bureau (CFPB) and state appraiser regulatory agencies. I also assisted the National Fair Housing Alliance in its report to the Appraisal Subcommittee entitled ***Identifying Bias and Barriers, Promoting Equity: An Analysis of the USPAP Standards and Appraiser Qualifications Criteria*** (January 2022).

In October last year, I provided a training called ***Appraisal Discrimination Investigation Training*** for state appraiser board investigators and legal counsel.

I'm located in Bozeman, Montana and serve as a public member of the Montana Board of Real Estate Appraisers.

Elimination of Bias and Cultural Competency

We have two subjects to discuss today



For California appraisers, these subjects cover the separate continuing education requirements under Business and Professions Code section 11360: (a) Elimination of Bias (2 hours) and (b) Cultural Competency (1 hour).

McMICHAEL'S
APPRAISING
MANUAL
• THIRD EDITION •

A Glimpse into Appraisal History

While the classification which follows may be scientifically misleading from a standpoint of inherent racial characteristics, Mr. Hoyt avers that it registers an opinion or prejudice which is reflected in land values. Likewise it represents the ranking of races and nationalities with respect to their beneficial effect on land values. Those nationalities and races having the most favorable influence come first in the list and those exerting detrimental effects come last:

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

No mention of Japanese and Chinese was made in the above classifications, probably because there were not very large colonies of these Orientals in Chicago at the time the survey was made. In Pacific coast States, however, these races create a host of problems. San Francisco has a so-

* Published by the University of Chicago Press, Chicago, Ill.

- This is a ranking of nationalities and races in the Chicago area in 1930s, ranking them based on their “favorable influence” on land value.
- The ranking was created by Dr. Homer Hoyt, the Chief Land Economist at the Federal Housing Administration from 1934-40.
- It’s reproduced here in an appraisal handbook.

Elimination of Bias

Where Are We Going with this Class?

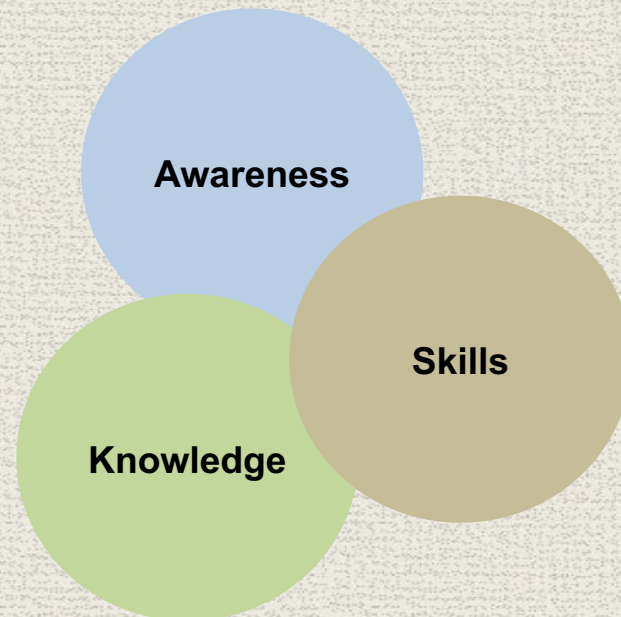
- We're going to address issues concerning bias and discrimination in appraising and ways to eliminate or reduce bias.
- We'll learn about:
 - ✓ Implicit/unconscious bias.
 - ✓ Explicit bias and intentional discrimination.
 - ✓ We'll look at real-world situations where members of the public believed there was bias by appraisers.

Elimination of Bias

Where Are We Going with this Class?

- Because the law weighs heavily on matters concerning discrimination, we'll also address:
 - ✓ Relevant federal laws such as the **Fair Housing Act** and **ECOA**.
 - ✓ State laws with additional anti-discrimination protections, like the **California Fair Employment and Housing Act** which adds protections against housing discrimination based on sexual orientation, gender identity, and gender expression.
 - ✓ Professional standards.
 - ✓ Investigations and lawsuits relating to alleged discrimination in appraisals - for example, you'll hear how one appraiser ended up having to produce 1,400 appraisals and work files to a government agency (this will certainly provide one reason why this course is relevant in the real world).
- The topics discussed will be relevant to both residential and commercial appraising – it's important to realize that these issues are not just a “residential appraiser problem.”

Cultural Competency – Our Second Subject



- What is it?
- How does it relate to bias?
- Why is it important and relevant to appraisers?
- How can cultural incompetence cause you, as an appraiser, a real-world problem?

Defining Bias – as Addressed in the Class



- Before we begin, let's make sure we understand a few key definitions. There will be more terms to come, as we go along, but here are some central ones:

Bias: In the context of this class, bias has a fairly specific meaning: an inclination to treat people differently or process information differently based on social groupings, like race, national origin, gender or age (which are examples of categories that we generally recognize as legally protected from discrimination).*

This is a more specific meaning than the general definition of bias in USPAP – which is presently “a preference or inclination that precludes an appraiser’s impartiality, independence, or objectivity in an assignment.”

Here, we’re talking about bias as it relates to inclinations regarding people – we’re not really talking about other biases such as slanting appraisal testimony in favor of a client in litigation rather than being impartial, or trashing another appraiser’s appraisal in a review assignment because of personal animosity. Those are certainly prohibited forms of bias under USPAP too, but they’re not the subject of this class.

- This definition comes from the U.S. Department of Justice’s [“Understanding Bias: A Resource Guide.”](#)

Another More Key Definition

While we're concentrating on biases that relate to our services as individual professions, there's another form of bias to be aware of in this course:

Systemic/Institutional bias: A tendency for the procedures and practices of particular organizations/institutions to operate in ways which result in certain social groups being advantaged or favored and others being disadvantaged or devalued.

- For example – do supervised experience requirements create an institutional bias against particular groups of people entering the profession, more than others?

Let's be Frank: the Topics in This Class Upset Some People



- The reaction among appraisers to the topics in this class can be mixed.
- It's unsettling to have your profession accused of delivering biased – even racist – appraisals.

“I’m not biased. I just report the market.”

The Topic of This Class Upsets Some People

- When the **Appraisal Standards Board** proposed adding a non-discrimination section to the Ethics Rule in USPAP, some of the public comments included:

From: Anonymous
Sent: 7/26/2022 12:54:24 PM

This is absurd! This woke culture Crap! Nobody, cares about the people who own the home, who lives in it, or anything discriminatory. To give into any of this, undermines the whole industry. absolutely ridiculous!

From: [REDACTED]@hotmail.com>
Sent: 8/1/2022 12:20:20 PM

I oppose the amendments in their entirety as an obscene violation of human freedom, particularly against the users of appraisal services but also against appraisers. The ethics requirements should be wholly separated from governmental legislation because the latter themselves are prone to unethical tendencies and are in many jurisdictions grossly unethical. The authors of the currently adopted standards understood the need for regulation to be the least restrictive as possible for human flourishing. This exposure draft is profoundly evil and I condemn it.

[REDACTED]
[REDACTED]@hotmail.com

Some Appraisers Also Demonstrated a Lack of Knowledge of the Key Laws that We'll be Discussing

From: Michael Kurechat <kurechat@kurechat.com>
Sent: 8/2/2022 11:17:22 AM

66 "An appraiser must not USE, rely on, or consider assumptions, stereotypes, or proxies related to protected characteristics in an analysis, opinion, or conclusion."

Every demographics study I get USES and reports in detail all kinds of information regarding protected classes of people (especially the US Census). Does this mean I can no longer USE the census data in my report, or do I need to censor/redact the stats on protected characteristics?



Yes, there are demographic facts you can't consider or report in an appraisal.

We are professionals and do not need to be treated like children. Stifling and promoting censorship of certain "buzz terms" is unacceptable, and potentially a violation of our 1st Amendment right to Freedom of Speech. How can we continue to instill public trust in the appraisal profession if we do not trust ourselves?



Freedom of speech in an appraisal?

"Elimination of Bias and Developing Cultural Competency" (3 CE Hours) will be January 18, 2024.

In other words, learning how to ignore property location and condition in order to satisfy the woke mob.

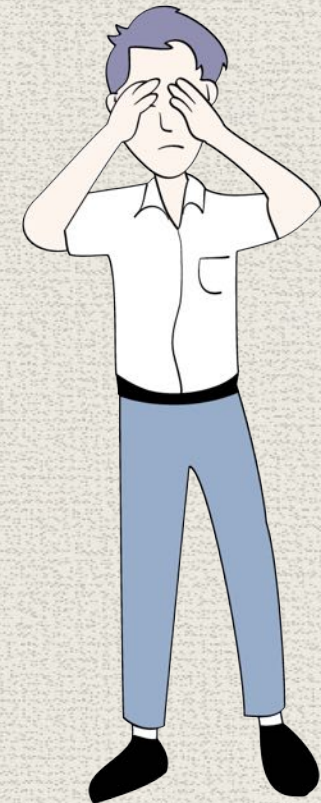


An appraiser's commentary about this class.

Are Appraisers Being Unfairly Singled Out?

Is the appraisal profession being unfairly singled out with accusations of bias in appraising?

- Appraisers aren't the only professionals who've faced allegations about bias in their professional services.
- Professions like lawyers, therapists, nurses and doctors have all faced similar allegations – and they also are required to take education on the subject.
- Let's take a closer look at bias concerns regarding doctors.



Learning about Bias

Let's Talk about Doctors

- Doctors are accepted as well-educated professionals.
- Relying on their education and experience, they often engage in complex analyses and decision-making that impact patients' lives and families.
- If you ask doctors about whether racial or other biases affect their analyses and decisions, most will likely say something like "no, my work is unbiased and objective."
- Some doctors might admit that there are a few bad apples in their profession.
- Does that sound familiar to what appraisers are saying when asked about whether bias affects their work?



Bias Study – Doctors

- A research project at Harvard University looked at whether doctors (specifically, emergency medicine residents) and whether they held biases that impact their professional opinions about how to treat patients.*
- **Specifically, would doctors reach different opinions based on whether their patient was White or Black?**
- Doctors are an interesting group to study.
- Like appraisers, they are professionally obligated to be objective and impartial in their work.

* The findings of this study were presented in a medical journal article: “Implicit Bias Among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients.” Journal of General Internal Medicine (2007). It’s available here: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2219763/>.

Bias Study – Doctors



- On completing medical school, they take a version of the historic Hippocratic oath.
- Here's an example of part of one such oath (the oaths vary from one medical school to the next):

“I will not permit considerations of gender, race, religion, political affiliation, sexual orientation, nationality, or social standing to influence my duty of care.”
- That sounds a bit like part of the Ethics Rule in USPAP (as of the 2020-21 version):

“An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests. . . . An appraiser: must not perform an assignment with bias. . . .”

Let's Define Some Key Terms as We Get into the Study of Doctors: Explicit and Implicit Bias

Explicit Bias is the traditional notion of bias. With explicit bias, individuals are aware of their prejudices and attitudes toward certain groups. These positive or negative preferences for a particular group are conscious.

An example of explicit bias in an appraisal would be the appraiser selecting comparable sales based on the race of the home's occupants or predominant race in the neighborhood.

Overt racism and racist comments are also examples of explicit biases – an accepted **definition of racism** is: treating people unfairly because of their race based on a belief that some races of people are better or worse than others.

- The definitions in this section come from the U.S. Department of Justice's "[Understanding Bias: A Resource Guide.](#)"

Explicit and Implicit Bias

Implicit or Unconscious Bias involves subconscious feelings, attitudes and **stereotypes** that have developed as a result of prior influences and imprints. It is an automatic positive or negative preference for a group, based on one's subconscious thoughts.



- Implicit bias does not require “animus” – in other words, it doesn’t require that a person dislike certain groups; it only requires an internal **stereotype** to produce the discriminatory action.

Stereotype – a widely held but oversimplified image or idea of a particular type of person or thing.

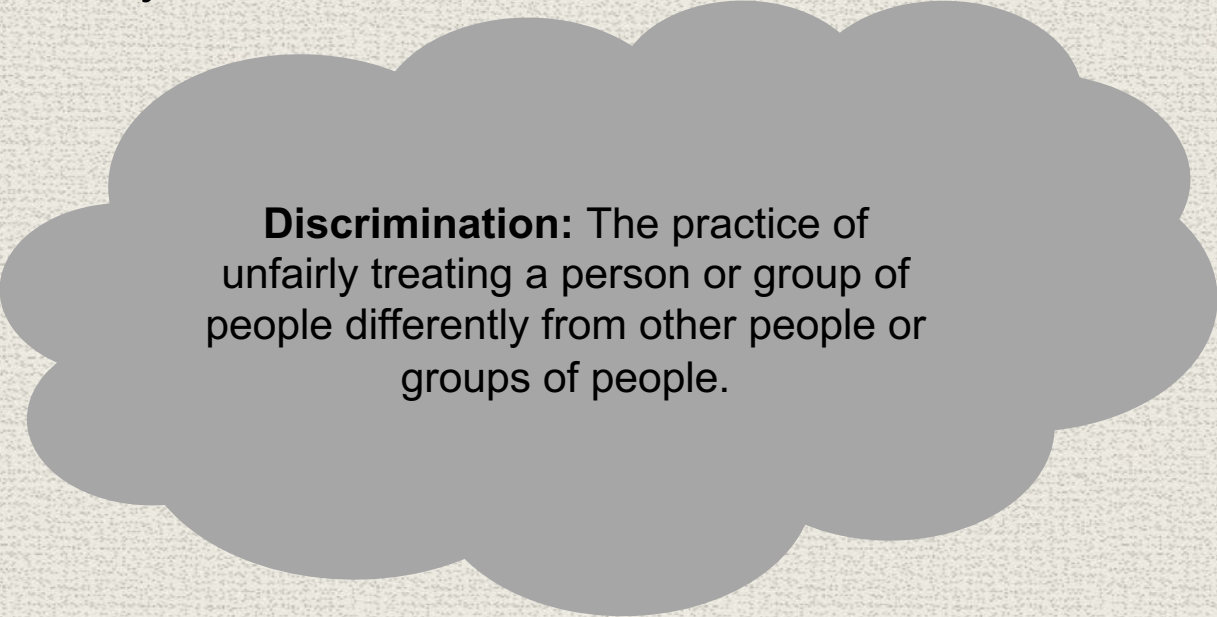
Potential Impacts of Implicit Bias

- Appraising: An appraiser's implicit bias might, for example, potentially lead the appraiser valuing a home owned and occupied by a Hispanic person to select comparable sales from areas with higher Hispanic populations.

- The definitions in this section come from the U.S. Department of Justice's "Understanding Bias: A Resource Guide."

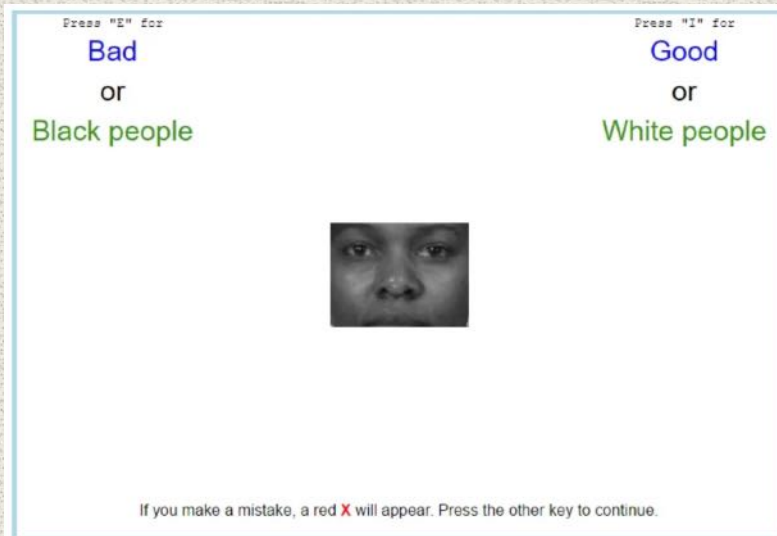
Discrimination

- Implicit bias and explicit bias may be equally problematic because both can produce **discrimination**.
- But the challenge with implicit bias is that the person discriminating is not aware of it – whereas, if a person is aware that they may harbor a stereotype, that person may be able to check the impact more easily.



Discrimination: The practice of unfairly treating a person or group of people differently from other people or groups of people.

Back to the Bias Study about Doctors



- As part of the study, in 2005, the researchers had 220 doctors at four Boston and Atlanta hospitals take a test called the Implicit Association Test (IAT).
- What is the IAT? Implicit Association Test.
- It's an online test that shows photos to test subjects of people from different social groups (for example: different races, ages or genders) and measures the time it takes the test subject to match the people in the photos to particular attributes (such as good or bad, honest or dishonest).
- The IAT is based on research showing that a test subject will match a person to an attribute more quickly if they connect the attribute in their mind, regardless of their awareness of this connection.

Bias Study – Doctors

- The researchers also presented each of the same 220 doctors with a questionnaire about their beliefs and feelings:
- “Do you feel less warm toward Black patients?”
- “Are White patients more cooperative?”
- This questionnaire was aimed at evaluating their explicit biases – meaning conscious beliefs.

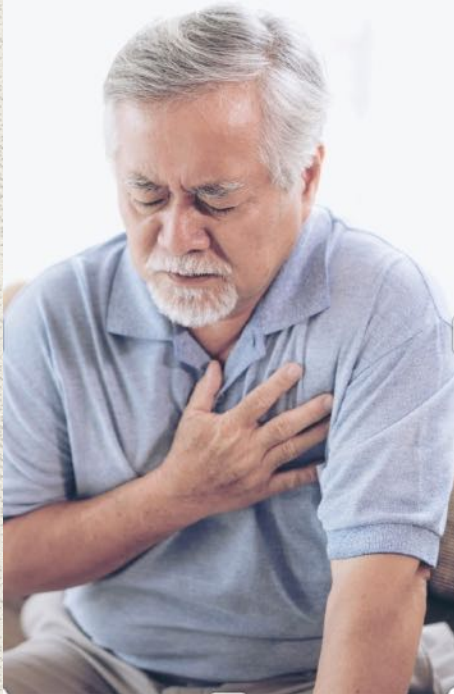


Bias Study – Doctors

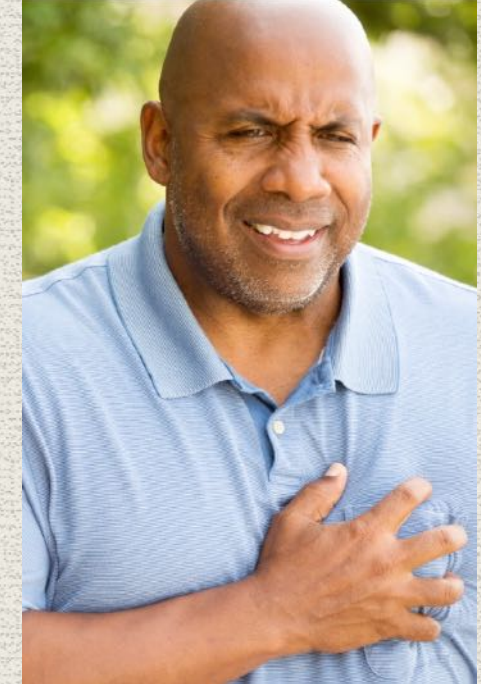


- With the testing done, the researchers then gave each doctor a clinical case study regarding a heart patient.
- The case study involved a fictional 50-year old patient reporting chest pain.
- The study included medical test information from an electrocardiogram and additional detailed medical information.
- The information pointed to a condition called “myocardial infarction” and asked whether the condition should be treated with “thrombolysis.” (Other treatments were ruled out for the study.)
- But . . . there were two versions of the case study.

Bias Study – Doctors



- Each version was identical except:
 - One version included photos of **White** patients.
 - The other version included photos of **Black** patients.
- Half of the doctors received a study with a photo of a White patient.
- The other half received a study with a Black patient's photo.



Did the doctors give different professional opinions regarding treatment based on the patient's race?

Did Doctors in Give Different Opinions Regarding Treatment Based on Whether the Patient Was White or Black?

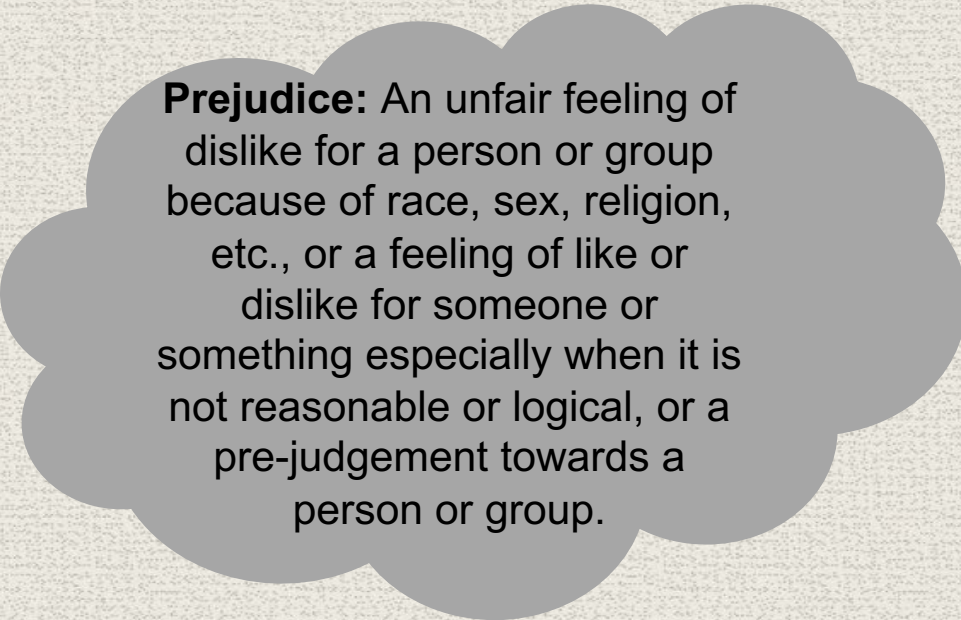
Before we answer that, let's look at how did the doctors did on the IAT implicit test and the questionnaire with respect to explicit Black or White bias?

- Doctors, other than Black doctors, showed a White bias on the IAT. Overall, they had an implicit bias in favor of Whites.
- On the questionnaire the doctors as a whole showed no explicit bias. The doctors reported, for example, feeling equally “warm” to both White and Black patients.
- Thus, other than the Black doctors, the doctors appeared to have implicit bias in favor of Whites, but as is the case with implicit biases, they had no awareness (or admission) of such bias.



Implicit Bias v. Awareness of Bias

People who harbor implicit biases generally do not think of themselves as prejudiced, and in fact, usually consider **prejudice** to be abhorrent.



Prejudice: An unfair feeling of dislike for a person or group because of race, sex, religion, etc., or a feeling of like or dislike for someone or something especially when it is not reasonable or logical, or a pre-judgement towards a person or group.

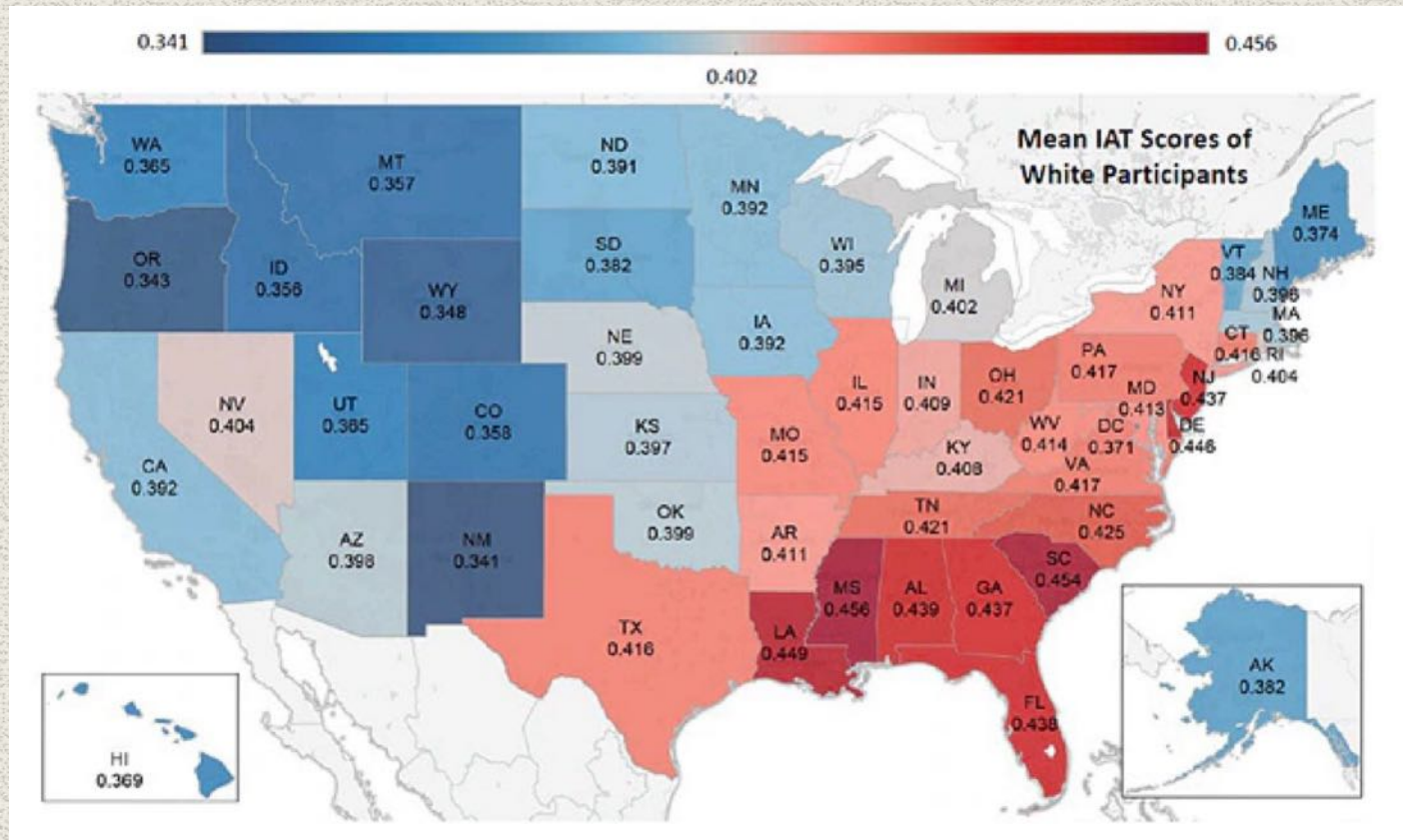
Did Doctors Have Different Opinions Regarding Treatment Based on Whether the Patient Was White or Black?

So, did the doctors give different professional opinions based on a patient's race? Yes.

- Doctors prescribed more aggressive treatment for the White patients over the Black patients.
- Doctors recommended thrombolysis 58.2% of the time for a White patient, but only 42.7% of the time for a Black patient.
- That's significant – 15% fewer Black patients would be recommended for treatment than Whites.



Implicit Racial Bias Across the United States – As Measured by the Race IAT



* The map reflects the scores of 1.51 million individuals, ranging from a high of 99,660 test takers from California to a low of 1,722 test takers from Hawaii.

Causes of Bias – Whether Implicit or Explicit?

What may cause biases?

- Personal experience/upbringing, leading to the formation of stereotypes.
- The influence of others (family/friends).
- The culture in which a person lives in (what is considered normal).
- Information we process (media).
- Our educational system.

With respect to implicit bias, there's another key cause: our development as humans . . .

An Additional Key Cause of Implicit Bias

Our development as humans has led us to rely on implicit biases:

- Our brains, on average, receive 11 million bits of information every second, but we can only consciously process 40-50 bits of information per second.
- Biases are shortcuts that our brains create to make sense of all this information in an easy way – though sometimes deeply flawed and unfair.
- So, we make associations, and based on these associations, we have feelings and preferences towards some individuals or groups over others.

* From State Bar of California: “Disrupting Implicit Bias” citing the book *Sway: Unravelling Unconscious Bias* by Pragma Agarwal.

An Additional Key Cause of Implicit Bias

The evolutionary component of bias means that it's most likely to show up when we are:

- stressed,
- constrained by time,
- uncertain,
- fatigued,
- or anxious.

In these situations, we may be more susceptible to leaning into our unconscious biases.*

* From State Bar of California course: "Disrupting Implicit Bias" and based on the book *Sway: Unravelling Unconscious Bias* by Pragma Agarwal.

What About Implicit Bias and Perceptions of Value? Could implicit biases impact opinions about value?

Let's start with the eBay baseball card study:

- Cards held in Black hands in eBay auctions sold for 20% less on average than the same cards held in White hands.
- The race effect was more pronounced in sales of Black player cards.



An Example of How Implicit Bias May Affect Some Appraisers' Judgment

Is this house a Q4: “Dwellings with this quality rating meet or exceed the requirements of applicable building codes. Standard or modified standard building plans are utilized . . .”

Or is it a Q5: “Dwellings with this quality rating feature economy of construction and basic functionality as main considerations. Such dwellings feature a plain design using readily available or basic floor plans featuring minimal fenestration and basic finishes with minimal exterior ornamentation . . .”

How do the non-discrimination laws we'll discuss address implicit bias?



This type of impact from bias is being looked at closely now

Examples of Allegations of Implicit (and/or Explicit) Bias in Appraising

Individual Stories in the News Jacksonville Appraisal Situation Alleged Racial Bias

- A situation in Jacksonville, FL is representational of more than two dozen recent similar stories concerning alleged discrimination in appraisals around the country.
- Originally some argued “these are just anecdotes . . .”
- But, when you are the person who believes they have been discriminated against – or when your firm is accused in the anecdote, it doesn’t matter so much to you whether “it’s just anecdotal.”
- No one wants to be a discrimination anecdote.



Jacksonville Appraisal Situation Alleged Racial Bias

- A mixed race Black/White couple – she's Black, he's White - - was seeking to refinance. She's an HR attorney and he's an artist
- After receiving an initial appraisal of \$330,000, the couple removed all photos of the Black wife and her side of the family, books by Black authors, and holiday cards from Black friends.
- The home was then re-appraised.
- 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.”



Freddie Mac Study About Differences in Appraisals Potentially Based on Race and Ethnicity

“Racial and Ethnic Valuation Gaps in Home Purchase Appraisals,” September 2021

For purchase transactions, Freddie Mac’s researchers concluded:

1. Appraisers’ opinions of value are more likely to fall below the contract price in Black and Latino census tracts.
2. The size of the gap increases as the percentage of Black or Latino people in the tract increases.

EXHIBIT 1:

Appraisal gaps for minority tracts

Appraisals for the purchase of single-family one-unit homes, Jan. 1, 2015-Dec. 31, 2020

Property Tract	Count	% Lower Than Contract Price	Gap vs. White
Overall	12,752,779	8.3%	-
White	10,632,616	7.4%	-
Latino [50% -100%]	553,470	15.4%	8.0%
Latino [50%-80%]	443,218	15.0%	7.7%
Latino [80%-100%]	110,252	16.7%	9.4%
Black [50%-100%]	373,747	12.5%	5.2%
Black [50%-80%]	245,428	12.1%	4.8%
Black [80%-100%]	128,319	13.3%	5.9%

Freddie Mac Study About Differences in Appraisals Potentially Based on Race and Ethnicity

“Racial and Ethnic Valuation Gaps in Home Purchase Appraisals,” September 2021

- Black and Latino loan applicants receive lower appraisal values than the contract price more often than White applicants.

EXHIBIT 2:

Appraisal gaps for minority applicants

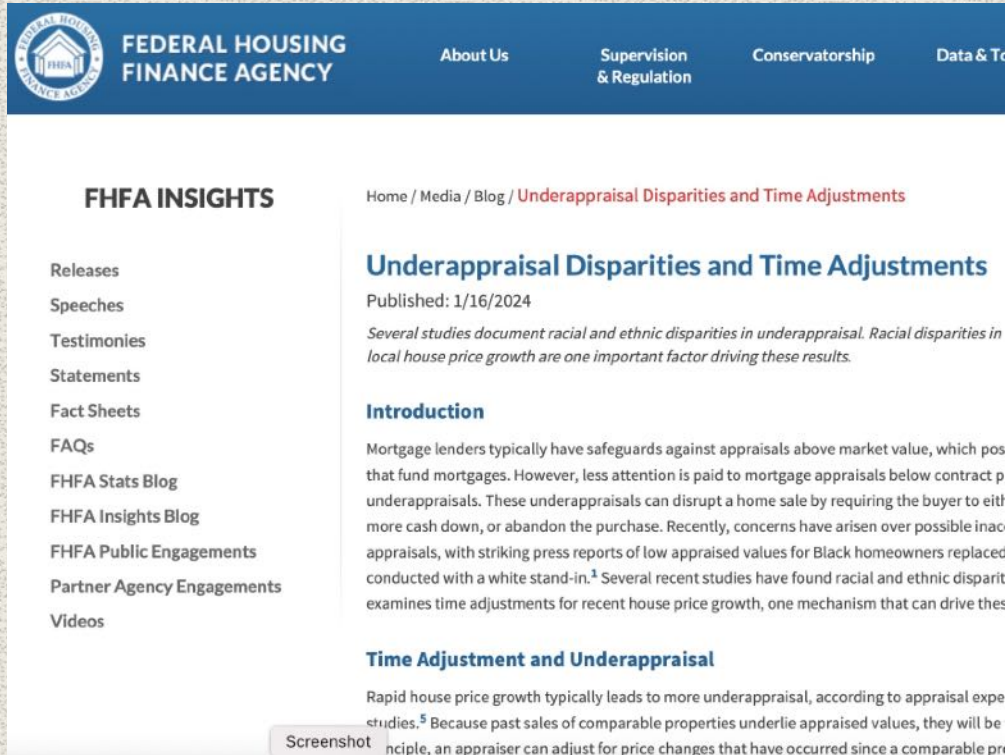
Appraisals for the purchase of single-family one-unit homes, Jan. 1, 2016-Dec. 31, 2020

Race/Ethnicity Applicants	Count	% Lower Than Contract Price	Gap vs. White
Overall	1,711,961	7.1%	-
White	1,043,557	6.5%	-
Latino	155,965	9.5%	2.9%
Black	73,287	8.6%	2.1%

Criticisms of the study?

American Enterprise Institute

FHFA Study Regarding Underappraisal Disparities and Time Adjustments



The screenshot shows the FHFA website header with the logo and navigation links: About Us, Supervision & Regulation, Conservatorship, and Data & Transparency. Below the header is a sidebar menu under 'FHFA INSIGHTS' with categories: Releases, Speeches, Testimonies, Statements, Fact Sheets, FAQs, FHFA Stats Blog, FHFA Insights Blog, FHFA Public Engagements, Partner Agency Engagements, and Videos. The main content area displays the article title 'Underappraisal Disparities and Time Adjustments', published on 1/16/2024. The article text begins with 'Several studies document racial and ethnic disparities in underappraisal. Racial disparities in local house price growth are one important factor driving these results.' It includes sections for 'Introduction' and 'Time Adjustment and Underappraisal'.

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Underappraisal Disparities and Time Adjustments

Published: 1/16/2024

Several studies document racial and ethnic disparities in underappraisal. Racial disparities in local house price growth are one important factor driving these results.

Introduction

Mortgage lenders typically have safeguards against appraisals above market value, which pose risks that fund mortgages. However, less attention is paid to mortgage appraisals below contract price, which can result in underappraisals. These underappraisals can disrupt a home sale by requiring the buyer to either provide more cash down, or abandon the purchase. Recently, concerns have arisen over possible inaccurate appraisals, with striking press reports of low appraised values for Black homeowners replaced by appraisals conducted with a white stand-in.³ Several recent studies have found racial and ethnic disparities in appraisals. This study examines time adjustments for recent house price growth, one mechanism that can drive these disparities.

Time Adjustment and Underappraisal

Rapid house price growth typically leads to more underappraisal, according to appraisal expert studies.⁵ Because past sales of comparable properties underlie appraised values, they will be adjusted for price changes. In principle, an appraiser can adjust for price changes that have occurred since a comparable property was sold.

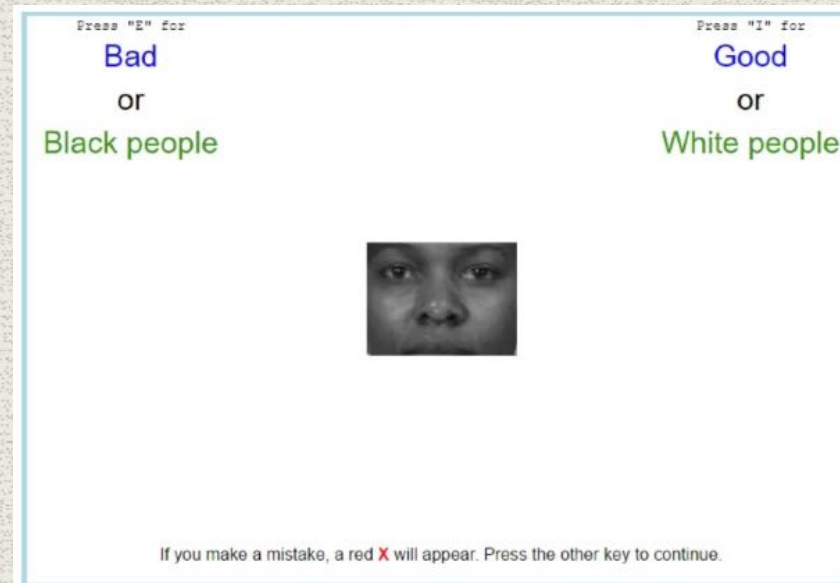
- Looked at appraisals for purchase loans.
- Focusing on appraisals below the purchase contract price before time adjustments, FHFA found significant disparities.
- FHFA found appraisers ultimately time adjust these appraisals 67% of the time in white tracts, but only at a 45% of the time in Black tracts.

5 Strategies to Reduce Implicit Bias

This section presents strategies for short and long-term reduction of implicit bias. The suggestions are based on training for attorneys, medical professionals and law enforcement.

#1 Take an Implicit Association Test. They are free:
<https://implicit.harvard.edu>

- The IAT is open to the public. Millions of people have completed IATs. The data recorded anonymously (except for studies such as the doctor study).
- There are IATs on different subjects of potential bias – race is just one.



5 Strategies to Reduce Implicit Bias

#2 Work on Replacing Stereotypes.* Stereotype replacement involves replacing automatic stereotypical responses with new, automatic, non-stereotypical responses. This process involves:

- a. Recognize a response as stereotypical;
- b. Label the response as stereotypical and identify why the response may have occurred; and
- c. Consider alternate responses for use in the future to avoid the stereotypical response. Use these alternatives as unbiased replacement responses.³

For example, imagine you're talking to a real estate agent who says "This street is changing – two Mexican families moved in this summer."

Now, if the remark was intended as clearly critical, you may want to have a serious discussion about that.

If you're not sure about that – or don't have the gumption – you might challenge any unconscious stereotypes lingering in your own mind by consciously picturing the wife in each family as a successful appraiser and the husband in each family as an accountant. Perhaps you can do better in a real-world scenario. The idea is to consistently break any stereotypes you might hold.

5 Strategies to Reduce Implicit Bias

#3 Take Perspective.* The idea behind perspective taking is to lessen automatic group-based judgments. This strategy involves taking a first-person perspective of a member of the group, which helps one to empathize and understand their point of view.

For example, if you are appraising the home of a Native American person on a tribal reservation, place yourselves in their position. What concerns might they be feeling about the appraisal? Are they concerned that the color of their skin or of the neighborhood will impact the value and their ability to obtain the loan?

- Source: U.S. Department of Justice's "Understanding Bias: A Resource Guide."

5 Strategies to Reduce Implicit Bias

#4 Individuation. Individuation is a strategy that relies on preventing stereotypic influences and inferences by thinking about the person you are interacting with as a truly individual person, apart from any group identity.

What do you share in common with the person? Hobbies, interests in similar art? Are you both having a good day - or not so good?

- Source: U.S. Department of Justice's "Understanding Bias: A Resource Guide."

5 Strategies to Reduce Implicit Bias

#5 Increasing Increasing opportunities for contact.

Engaging and getting to know people from different groups and having positive interactions in those settings can help us break down biases. Our biases have developed partly from past experiences – having new experiences can help break down biased expectations.

➤ **What are your ideas for breaking down bias?**

Discrimination in Appraising – the Legal Side

Let's Use a Real Case to Learn About the Key Laws

1 Liza Cristol-Deman (SBN 190516)
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 2 Post Office Box 686
 Pescadero, CA 94060
 3 Tel: (650) 879-0141
 4 Fax: (650) 879-1103
 lcristoldeman@brancart.com

5
 6 Julia Howard-Gibbon (SBN 321789)
 FAIR HOUSING ADVOCATES OF
 NORTHERN CALIFORNIA
 7 1314 Lincoln Ave., Suite A
 8 San Rafael, CA 94901
 Tel: (415) 483-7516
 9 Fax: (415) 457-6382
 julia@fairhousingnorcal.org

10
 11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
 13
 14 NORTHERN DISTRICT OF CALIFORNIA

15 TENISHA TATE-AUSTIN; PAUL
 16 AUSTIN; and FAIR HOUSING
 ADVOCATES OF NORTHERN
 17 CALIFORNIA,

18 Plaintiffs,

19 v.

20 JANETTE C. MILLER; MILLER AND
 PEROTTI REAL ESTATE APPRAISALS,
 INC., AMC LINKS LLC;
 21 Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE,
 DECLARATORY, AND MONETARY
 RELIEF; JURY TRIAL DEMAND**

Poll #2: Since the appraiser has professional responsibility for the content of an appraisal, a lender cannot have liability for alleged discrimination by the appraiser. True or false?

- Tenisha Tate-Austin and Paul Austin, who are Black, purchased a house in a community called Marin City in Marin County, California in 2016. Marin City has a Sausalito mailing address and shares the same school district.
- Marin County's population is approximately 70% White ("non-Latino White"), 3% Black, 7% Asian and 17% Latino.
- Historically, a large portion of the Black population lives in Marin City (partly, because of former racially restrictive covenants in other areas of the county).

We'll Use a Real Case to Learn About the Key Laws



- Marin City was about 36% Black as of 2019 – in contrast, the adjacent City of Sausalito was 92% White and less than 1% Black.
- Marin City has had very few sales transactions in recent years – just 3 in 2019 and 3 in 2018.

- One of the plaintiffs' assertions was:

“The sample size of annual sales is too small to be reliable. Using Marin City sales as the primary source of comps is evidence of racial bias – i.e., that the appraiser believes that Marin City’s demographics make it so much less “desirable” than surrounding areas that property in those areas cannot be used as comps.”

We'll Use a Real Case to Learn About the Key Laws

- After purchasing the home, the Austins undertook extensive remodeling of their home – including the addition of a permitted accessory dwelling unit (ADU).
- In March 2019, they refinanced their mortgage.
- The appraisal for that refinance valued their remodeled, expanded home at \$1,450,000.
- In early 2020, the Austins sought to refinance again because of the decreased interest rates and a desire for additional funding to complete the ADU.

Morning Mix

A Black couple says an appraiser lowballed them. So, they 'whitewashed' their home and say the value shot up.

By Jonathan Edwards
December 6, 2021 at 7:22 a.m. EST

 Listen to article 4 min



RACE & SOCIAL JUSTICE BUILDING A BETTER BAY AREA
SYSTEMIC RACISM SUPPRESSES BLACK HOME OWNERSHIP
ABC7 NEWS abc7

Paul Austin and Tenisha Tate-Austin talk to a reporter in February about how they believe an appraiser lowballed their home's value because they're Black. (KGO)

Let's Use a Real Case to Learn About the Key Laws

- The lender engaged an appraiser through an AMC.
- The appraiser inspected the home at the end of January 2020 – while Paul Austin was home. He introduced himself by name as the owner.
- The appraisal reported reported an opinion of value of \$995,000.
- Shocked by that valuation (and after an ROV attempt), the Austins' mortgage broker ordered a second appraisal.

“The subject is located in a neighborhood known as Marin City which has a distinct marketability which differs from the surrounding areas.”

Let's Use a Real Case to Learn About the Key Laws

In their court complaint against the appraiser and AMC, the Austins alleged the following indicia of race being a "motivating factor" in the first appraiser's lower valuation:

52. Race was a motivating factor in Miller's unreasonably low valuation of the Austins' house, in violation of the Fair Housing Act and related federal and state laws. There are at least five indicia of racial bias in the Miller Appraisal: (1) unreasonably and inexplicably low market value ascribed to the Pacheco Street House; (2) unsupportable adjustments to value made based solely on the Pacheco Street House's location in Marin City; (3) the selection of properties as "comparable" based on racial demographics; (4) comments regarding the "distinct marketability" of Marin City; and (5) the race or perceived race of the homeowners.

Let's Use a Real Case to Learn About the Key Laws

What were the primary legal claims in Austin v. Miller?

- Fair Housing Act
- Civil Rights Act of 1866 (42 U.S.C. 1981 and 1982)
- California Fair Employment and Housing Act
- Negligent Misrepresentation

What potentially relevant claim is not on the list?
Equal Credit Opportunity Act (ECOA).

Fair Housing Act, Section 3605(a)

- Section 3605(a) is perhaps the key section of the federal Fair Housing Act pertaining to appraisal services and reads:

“It shall be 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 a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.” (42 U.S.C. § 3605(a).)

- The FHA defines the term “residential real estate-related transaction” as:
 - (1) The making or purchasing of loans or providing other financial assistance —
 - (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - (B) secured by residential real estate.
 - (2) The selling, brokering, or **appraising** of residential real property. (42 U.S.C. § 3605(a).)

Fair Housing Act – Basic Theories of Liability

Two different theories of liability:

Disparate Treatment:

- A person within a protected group is shown to have been treated differently based on their protected category – *e.g.*, their appraisal is lower or their treatment was different because of race. This is often simplistically framed as “intentional discrimination” but that’s not quite it.
- It’s “discriminatory motive” that needs to be shown – that the defendant acted in a way “because of race.”
- It doesn’t require proving “animus” or that a defendant is a racist.

Disparate impact:

- This is where a more general policy or practice which may be neutral on its face has a statistically significant negative effect on a protected group.
- Disparate impact – which requires no discriminatory motive.
- Disparate impact claims are usually be directed at larger businesses or organizations that create policies or practices followed by employees, staff, professionals, etc.

Fair Housing Act – Basic Theories of Liability

We are focusing on disparate treatment today.

But you – or your legal counsel – should be aware that the extent to which appraisal practices may be challenged under a disparate impact theory is legally unresolved.

Some scholars have questioned whether disparate impact liability is available in appraisal discrimination cases. See, e.g., Schwemm, supra note 152, § 18:8 (“Whether appraisal practices may be challenged under a discriminatory-effect theory is unclear.”). The basis for this question is largely rooted in dicta in Inclusive Communities, which addresses the appraisal exception provision in 42 U.S.C. 3605(c). See 576 U.S. at 539 (“If a real-estate appraiser took into account a neighborhood’s schools, one could not say the appraiser acted because of race. And by embedding [§ 3605(c)’s] exemption in the statutory text, Congress ensured that disparate-impact liability would not be allowed either.”).

Section 3605(c) “APPRAISAL EXEMPTION. Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.”

* Abraham, *Appraisal Discrimination: Five Lessons for Litigators*, footnote 59.

Fair Housing Act, Section 3604 – broad prohibitions

“[I]t shall be unlawful —

...

a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or **otherwise make unavailable or deny**, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

...

- Courts have held 3604 applies to appraisals:

Hanson v. Veterans Admin., 800 F.2d 1381 (5th Cir. 1986)
 (“Discriminatory appraisal may effectively prevent blacks from purchasing or selling a home for its fair market value.”)

- But courts have held it does not apply to appraisals for **refinances**.

Tate-Austin v. Miller, No. 21-cv-09319, 2022 WL 1105072, at *6–7 (N.D. Cal. Apr. 13, 2022)
 (citing multiple cases)

Fair Housing Act, Section 3604(c)

“[I]t shall be unlawful —

...

c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.”

The test is whether the statement indicates discrimination to an "ordinary reader" or "ordinary listener.”

This prohibition has been applied to appraisals.

Real-world example: “The neighborhood is a barrio.”

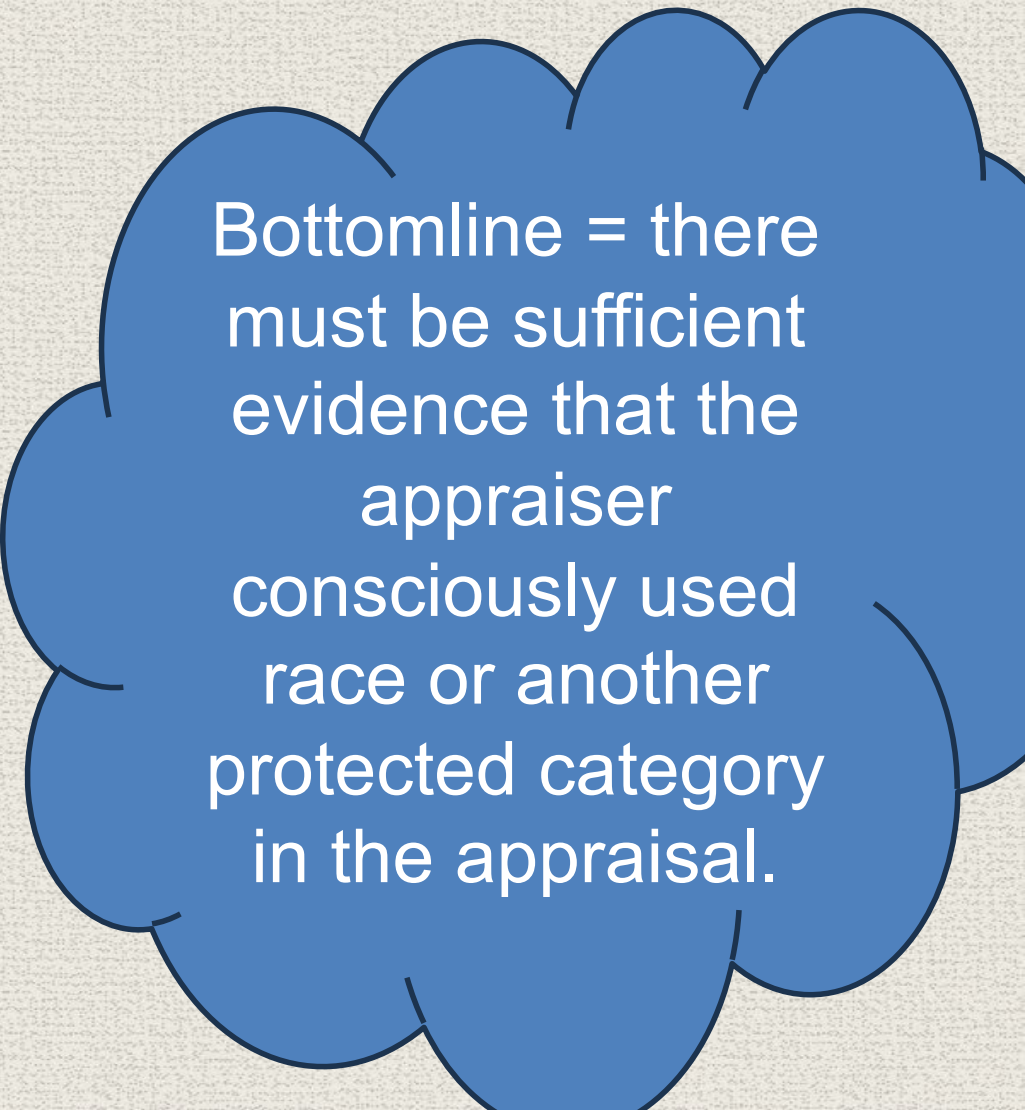
Case law indicates the statement must be related to the “**decisional process**” — no liability for just a “stray” remark.

Fair Housing Act – Evidence of Discrimination

In cases that rely on disparate treatment theory, the evidence must show that the respondent acted with a “discriminatory motive.”

A discriminatory treatment claim is most likely to concern whether the appraiser took into account: (1) a homeowner or buyer’s race or other protected characteristic, or (2) the neighborhood’s or location’s racial or other protected characteristics, or (3) both.

Evidence of the discriminatory motive may be direct or circumstantial.



Bottomline = there must be sufficient evidence that the appraiser consciously used race or another protected category in the appraisal.

Notable Regulations under Fair Housing Act

- Implementing regulations under the Fair Housing Act, promulgated by HUD, broadly define the term “appraisal.”
- Under the regulations, appraisal means:
 - “an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.” 24 C.F.R. § 100.135(b).
- The definition includes not just appraisals, but also BPOs and AVMs.

Notable Regulations under Fair Housing Act

- The regulations also make clear it's not just the appraising that may violate the law but it's also "using" a discriminatory appraisal.
- Under the regulations, prohibited practices include:
 - “[u]sing an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.” 24 C.F.R. § 100.135(d)(1).

Equal Credit Opportunity Act

A second key law often referred to in the context of alleged appraisal discrimination is the federal **Equal Credit Opportunity Act (ECOA)**, which makes it “unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction ... on the basis of race, color, religion, national origin, sex or marital status, or age...” (15 U.S.C. § 1691.)

- ECOA is not limited to residential; it applies to commercial lending as well.

Robinson v. JPMorgan Chase Bank, No. CV-22-00687-PHX-SMB (D. Ariz. July 14, 2023) (dismissing ECOA claim against appraiser because he was not a creditor).

The Legal Side of Alleged Discrimination in Appraising – Key Laws

A third key federal law is emerging with CFPB investigations:

- Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any **Unfair, Deceptive, or Abusive Acts or Practices (UDAAPs)**.
- CFPB February 2022 news release: “The CFPB is deeply troubled by the discriminatory statements the Federal Housing Finance Agency recently identified in some home appraisals, and the appraisal disparities for communities and borrowers of color recently found in both Freddie Mac and Fannie Mae studies.”



Civil Rights Act of 1866

- Racial discrimination in the appraisal of housing may also violate the **Civil Rights Act of 1866**.*
- Section 1981 of this law, among other things, guarantees to all persons within the jurisdiction of the United States the same right as White citizens to make and enforce contracts.
- Section 1982 of this law provides all citizens with the same right as is enjoyed by White citizens to purchase, lease, sell, hold, and convey real and personal property.
- The Civil Rights Act of 1866 generally applies only to intentional racial and ethnic discrimination.

What's the main difference from FHA and ECOA?

To prevail on claims under Civil Rights Act of 1866, the plaintiff must prove **intentional discrimination** by the defendants. *Phillips v. Hunter Trails Community Ass'n*, 685 F.2d 184, 187 (7th Cir. 1982). In contrast, under FHA and the ECOA, the plaintiff "must show that `race was **a motivating consideration** in the [defendants'] decision' not to make the loan." *Thomas v. First Fed. Sav. Bank*, 653 F. Supp. 1330, 1338-39 (N.D.Ind. 1987).

* 42 U.S.C. §§ 1981-1982; See, e.g., *Steptoe v. Savings of America*.

State Laws Regarding Discrimination in Appraising

- In addition to such federal laws, most states and some localities have statutes prohibiting discrimination in housing-related transactions, including home appraisals.
- The prohibited bases may be broader.
- For example, California prohibits discrimination in appraisals on the basis of gender expression and other additional categories.

California Fair Employment and Housing Act – Cal. Gov. Code § 12955:
It is unlawful . . . “For any person or other entity whose business includes performing appraisals, . . . of residential real property to discriminate against any person in making available those services, or in the performance of those services, because of race, color, religion, sex, **gender, gender identity, gender expression, sexual orientation,** familial status, **source of income,** disability, **genetic information,** **veteran or military status,** or national origin.”

California Appraiser Law – Cal. Bus. & Prof. Code § 11424:
“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.”

2024 USPAP

This ETHICS RULE is divided into four sections: **Nondiscrimination**, **Conduct**, **Management**, and **Confidentiality**, which apply to all appraisal practice.

NONDISCRIMINATION:

An appraiser must not act in a manner that violates or contributes to a violation of federal, state, or local antidiscrimination laws or regulations.³ This includes the Fair Housing Act (FHAct), the Equal Credit Opportunity Act (ECOA), and the Civil Rights Act of 1866.

An appraiser must have knowledge of antidiscrimination laws and regulations and when those laws or regulations apply to the appraiser or to the assignment. An appraiser must complete an assignment in full compliance with applicable laws and regulations.

- 1. An appraiser, when completing a residential real property assignment, must not base their opinion of value in whole or in part on race, color, religion, national origin, sex, disability, or familial status.**

Comment: The FHAct prohibits discrimination in residential real estate appraisals on the basis of race, color, religion, national origin, sex, disability, or familial status. Under the FHAct, an appraiser may not use or rely upon information relating to these protected characteristics, with limited exceptions.

The FHAct can be violated through disparate treatment (treating individuals of one protected group differently from and less favorably than others not in that protected group) and disparate impact (employing

2024 USPAP

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).

Section 1981 of the federal Civil Rights Act of 1866 prohibits many forms of discrimination with respect to the making and enforcement of contracts, and Section 1982 of the same law prohibits discrimination with respect to the purchasing, leasing, selling, holding, and conveyance of real and personal property. The Civil Rights Act of 1866 applies to real property appraisals, in addition to personal property and other appraisals.

- 2. An appraiser, when completing an assignment where the intended use is in connection with a credit transaction, not limited to credit secured by real property, must not base their opinion of value in whole or in part on race, color, religion, national origin, sex, marital status, age, source of income, or the good-faith exercise of rights under the Consumer Credit Protection Act.**

Comment: ECOA prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, source of income, or the good-faith exercise of any right under the Consumer Credit Protection Act in any aspect of a credit transaction, with limited exceptions. An appraisal used in connection with a credit transaction is an aspect of the credit transaction.

2024 USPAP

3. An appraiser must not violate any state or local antidiscrimination laws or regulations applicable to the appraiser or to their assignment.

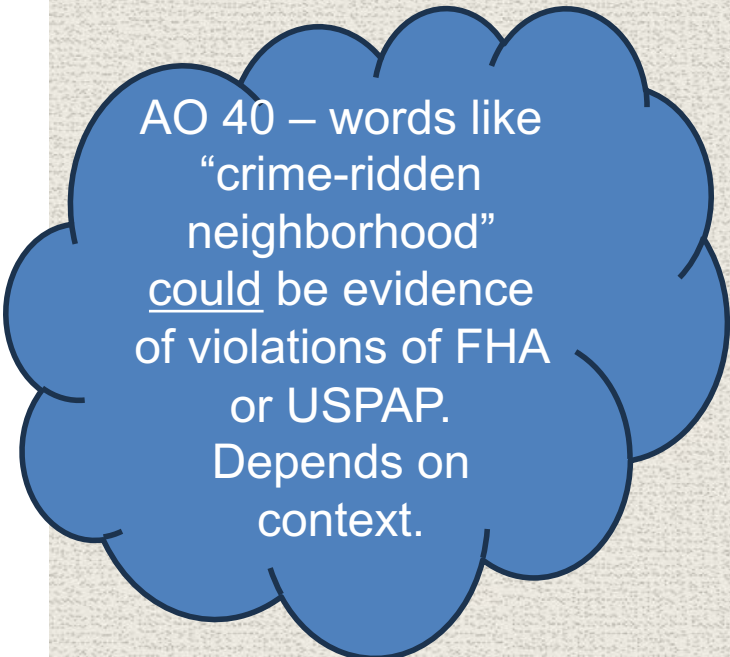
Comment: State and local laws may expand upon federal antidiscrimination requirements to protect additional characteristics and/or prohibit additional practices. The specific laws and regulations that are applicable to an appraiser or an assignment will vary.

Whether or not any antidiscrimination law or regulation applies:

1. 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, 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 of any person(s).

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.

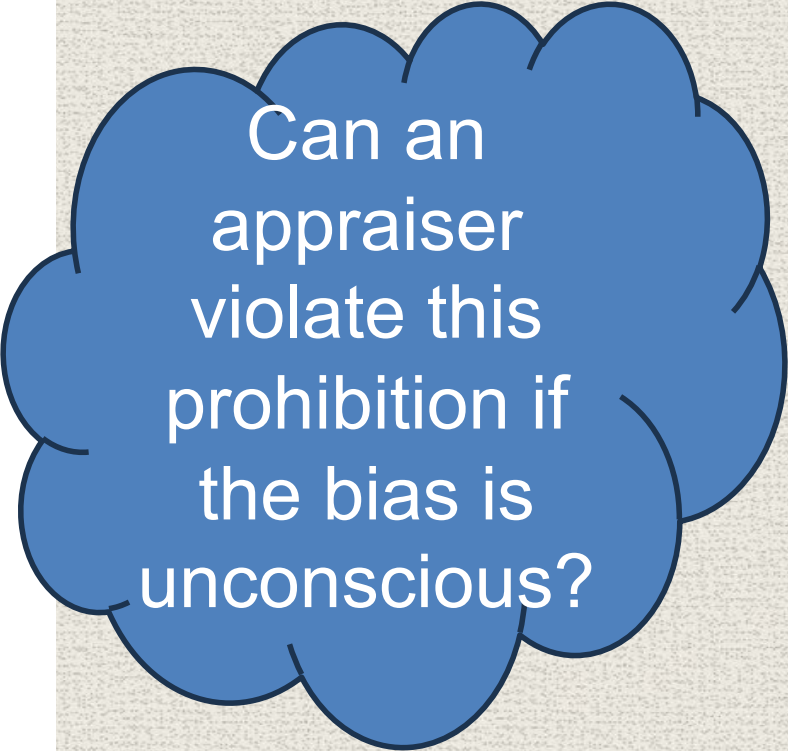


AO 40 – words like “crime-ridden neighborhood” could be evidence of violations of FHA or USPAP. Depends on context.

2024 USPAP

2. An appraiser must not base an opinion of value upon the premise that homogeneity of the inhabitants of a geographic area is relevant for the appraisal.⁴
3. An appraiser must not perform an assignment with bias with respect to the actual or perceived 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 of any person(s).
4. An appraiser must not use or rely upon another characteristic as a pretext to conceal the use of or reliance upon 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 of any person(s), when performing an assignment.

Comment: Where an antidiscrimination law or regulation applies to the appraiser or the appraiser's assignment, the practices described in 1-4 immediately above may also be prohibited by applicable antidiscrimination law, including the FHAct, ECOA, and the Civil Rights Act of 1866. Any practice prohibited by an applicable antidiscrimination law or regulation is also prohibited by the preceding requirements of the Nondiscrimination section.



Can an appraiser violate this prohibition if the bias is unconscious?

Fair Housing Claims/Investigations

Four Primary Pathways for Fair Housing and Discrimination Complaints and Claims:

1. Complaint to HUD – Office of Fair Housing and Equal Opportunity.
2. Complaint to a state agency.
3. Legal action in court, asserting Fair Housing Act, ECOA and related legal claims.
4. And CFPB investigations.

United States of America
Consumer Financial Protection Bureau

Civil Investigative Demand

This demand is issued pursuant to Section 1052 of the Consumer Financial Protection Act of 2010 and 12 C.F.R. Part 1080 to determine whether there is or has been a violation of any laws enforced by the Consumer Financial Protection Bureau.

Notification of Purpose Pursuant to 12 C.F.R. § 1080.5

The purpose of this investigation is to determine whether appraisers, and the lenders that rely on their appraisals, or associated persons, in connection with origination of home mortgages, have: (1) improperly relied on race, ethnicity, or national origin in their appraisals in a manner that is unfair, deceptive, or abusive in violation of Sections 1031 and 1036 of the Consumer Financial Protection Act, 12 U.S.C. §§ 5531, 5536; or (2) engaged in unlawful discrimination in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691, and Regulation B, 12 C.F.R. Part 1002. The purpose of this investigation is also to determine whether Bureau action to obtain legal or equitable relief would be in the public interest.

HUD Investigations

- HUD's Office of Fair Housing and Equal Opportunity (FHEO) handles the investigations.
- HUD provides notice of the complaint to the appraiser or other respondent and solicits a response (answer).
- Seeks to have the parties engage in a conciliation (settlement) process.
- HUD proceeds with the investigation and will generally issue a "Data Request."
- As the investigation proceeds, HUD may issue additional requests for information.
- The purpose is to determine whether reasonable cause exists to believe that discrimination occurred.
- 200+ complaints have been filed to HUD since 2020 alleging discrimination in appraisals.



U.S. Department of Housing and Urban Development
 New York State Office
 Jacob K. Javits Federal Building
 26 Federal Plaza, Rm 3532
 New York, New York 10278-0068
<http://www.hud.gov/local/nyn/>

INSTRUCTIONS

The response given to each of the below inquiries must be verified through the submission of supporting documentary, testimonial, electronic and/or any other available evidentiary means.

Whenever a provided response relies on witness testimony, Respondent must provide the name, address, telephone and/or cellphone number(s) and email(s) of that person. The evidence produced should not be redacted or altered in any way that modifies its content. Under no circumstances may Respondent withhold or fail to produce a piece of evidence that is in any way relevant to a HUD inquiry.

If Respondent is unable to fully answer any of the below-listed inquiries, please describe the nature of the information and explain the reason for being unable to do so while answering the inquiry to the fullest extent possible. In such instance, Respondent must still produce the requested information and documents through alternative protective measures or safeguards.

DATA REQUEST

1. Identify the person(s) answering this Data Request and/or who contributed information that was used to answer any of its inquiries. If more than one person provided the answers or contributed information, identify the specific inquiries answered by each person and the information provided.
2. Provide a detailed response to the allegations made in the housing discrimination complaint, along with any supporting documentation.



**Poll #4: How many appraisers
have been sued for discrimination
since 2020?**

Example Data Request from HUD

10. Provide all written communication between you and Complainant from [REDACTED] to the present that pertains to the appraisal at the subject property. Include the following:
- (a) all communication (such as, but not limited to email messages, call logs, text messages, letters, etc.) to/from you or any person, or third party acting on your behalf from/to Complainant or anyone acting on her behalf from [REDACTED] to the present, including any communication pertaining to the appraisal at the subject property; and
 - (b) any internal and/or external communication between you or any person, agent or third party acting on your behalf, (such as, but not limited to emails, letters, memos, text messages, notices, call logs, etc.), from [REDACTED] through the present that mentions or makes a direct or indirect reference to Complainant and the appraisal at the subject property.
11. For all residential appraisals completed by Respondent [REDACTED] between the period of [REDACTED] (including the appraisal of the subject property), provide:
- a) Property address
 - b) Race/National origin of the property owners
 - c) An indication as to whether or not the property owners were home at the time of the appraisal
 - d) Appraised value
 - e) Name of lender that ordered the appraisal
 - f) Whether the appraisal was for a refinance loan or the purchase of mortgage
 - g) Whether the property was a single-family home/detached dwelling, condominium unit, or townhome
 - h) [REDACTED]
[REDACTED]
12. Provide a list of all appraisals completed by Respondent [REDACTED] between the period of [REDACTED] that were revised after the initial report was given to the client. Include the race/national origin of the property owners, the reason for the revision, when the client was notified, and a copy of their initial and revised appraisals.

14. Describe the policy, procedures and process/steps in conducting an appraisal. Provide documentation.
15. If you are being represented by an attorney in this matter, please provide his/her point of contact information to include business address, phone number and email.

Examples from other HUD data requests:

2. Provide appraisal reports (Uniform Residential Appraisal Reports; Form 1004) you completed between January 1, 2020- December 31, 2021.

5. Provide appraisal reports completed for African Americans between January 1, 2020 through December 31, 2021.

Results of HUD Investigations?

What is supposed to happen next in HUD's investigation process:

- At the conclusion of the investigation, HUD issues a determination about whether reasonable cause exists to believe discrimination has occurred and may then issue a "Charge of Discrimination."
- If a charge is issued, either side may decide to have the charge litigated in U.S. District Court. If neither party seeks that, then a trial may occur before a HUD administrative judge.
- Actual damages and civil penalties are available; punitive damages may only be awarded in federal court.

All HUD Charges of Discrimination are published on its website:

All Charges 2023	
Basis of Discrimination	
WARNING: The attached documents may contain graphic and explicit language that may be offensive to some readers.	
HUD Charges Landlord with Disability Discrimination Read the Charge	9/25/2023
HUD Charges Landlord with Disability Discrimination Read the Charge	9/18/2023
HUD Charges Nevada RV Resort with Discriminating Against Family with Minor Children Read the Charge	9/14/2023

Observations:

- No charges regarding appraisal discrimination published 2020-23.
- No substantive conclusions of investigations 2020-23.

What About Court Actions Since 2020 Involving Alleged Appraisal Discrimination



FHFA Valuation Modernization Summit



My slide from the FHFA's Summit in Feb. 2024



Observations Regarding Court Cases

10+/- cases alleging discriminatory appraisals filed since 2020

9 name individual appraisers – none of these involve purchase loans

1 case is commercial

8 cases name lenders, 2 name AMCs

3 cases have borrowers representing themselves (pro se)

6 cases are still pending, 3 have settled, 1 was dismissed

0 have reached any decision on the merits

February 14, 2024 | Washington, D.C.

What About Court Actions Since 2020 Involving Alleged Appraisal Discrimination

Example real cases for you to consideration:

<https://www.valuationlegal.com/bias/>

The following materials are for discussion in connection with the CE class **Elimination of Bias and Developing Cultural Competency – with Real World Relevance.**

Turner v. Henley Appraisals, US Bank, Fair Housing Complaint, 12-14-23

Download

Tisdale v. Commercial Property Appraisers LLC, Compliant Alleging Discrimination re Commercial Appraisal, 12-4-23

Download

Austin v. Miller, AMC Links, Fair Housing Complaint, 12-2-21

Download



4 appraisals
attached to
complaint

It's Not Just About Low Values

- While many of the stories so far have been about allegedly **low values**, that's not the only issue.
- Service standards and pricing of services are at issue too – and they can be lower hanging fruit.
- A complaint filed with HUD on 11-4-22 regarding an appraiser in Baltimore highlights the issue – a Black homeowner (a tester) had to wait 75 days for an appraisal while a White tester waited 17 days for an appraisal (and received a friendly note from the appraiser).
- Differences in ROV treatment are also now being investigated.



It's Also Not Just a Residential Problem – Examples of Recent Allegations of Discrimination Affecting Commercial Appraisers

- HUD complaint filed by owners of multi-family property alleging undervaluation.
- Black farmer alleging undervaluation of his farm for an ag loan based on his race (home on the farm makes it a Fair Housing Act claim).
- State appraiser licensing board complaint relating to appraisal of a school facility.
- Threatened regulatory complaints and lawsuit by owner of national chain restaurant property.

Reducing the Risk of Discrimination Claims

Key Items to consider:

- Most common trait of appraisals in discrimination claims observed by me: basic errors, lack of true analysis and genuine summary, boilerplate work.

From a recent HUD racial bias complaint:

██████████ erroneously reduced the Gross Living Area (sq footage) of my home to 2,874 sq ft, which decreased the value of her home. The assessor's property report card on File that Complainant received from ██████████ Tax Assessors Office on December 13, 2021 has her Gross Living Area (sq footage) recorded as 3,094 sq ft. This report card also provides sketch, site and building information among other things. This Gross Living Area (sq footage) for her home was available to the appraiser and he chose to blatantly ignore it, but he had no problem using the Gross Living Area (sq footage) listed online for the COMP Homes he used, which he didn't physically measure or inspect.

- Let's look at some things to make sure are getting right – most are actually easy.

What Can You Do to Avoid Discrimination and Accusations of Discrimination?

- Recognize the laws, as we are doing.
- Get education, as you are doing.
- Focus on several key areas – which are most controllable:
 - ✓ Key items in appraisal development.
 - ✓ Content of appraisal reports indicative of bias.
 - ✓ Handling of complaints/requests for reconsideration of value.

Federal Housing Finance Agency (FHFA) Study



The screenshot shows the FHFA website header with the logo and navigation links: About Us, Supervision & Regulation, Conservatorship, Data & Tools, Policy, Programs & Research, and More. Below the header is a sidebar with 'FHFA INSIGHTS' and a list of categories: Releases, Speeches, Testimonies, Statements, Fact Sheets, FAQs, FHFA Stats Blog, FHFA Insights Blog, and Public Engagements. The main content area displays a breadcrumb trail: Home / Media / Blog / Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary. The article title is 'Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary', published on 12/14/2021. The 'Key Takeaways' section includes three bullet points:

- Examples of overt references to race, ethnicity, and other prohibited bases under federal fair lending laws in appraisals and other property descriptions persist, indicating the continued presence of valuation bias.
- Ongoing failure to address appraiser consideration of prohibited factors like race, as indicated by prohibited basis commentary within the free-text form fields of appraisals, may result in valuation bias.
- Market participants must ensure that appraisals and other property valuations are compliant with fair lending principles, including in free-form text commentary. Appraisals are to be fair and free of bias, providing a supported value for a family's future or current home that reflects respect and equal treatment of the community and neighborhood in which the home is located.

What We Observed

From millions of appraisals submitted annually, a keyword search resulted in thousands of potential race-related flags. Individual review finds many instances of keywords to be false positives, but the following are examples of references when the appraiser has clearly included race or other protected class references in the appraisal.

The racial and ethnic composition of the neighborhood should never be a factor that influences the value of a family's home. Our observation of appraisals suggests that racial and ethnic compositions of a neighborhood are still sometimes included in commentary, clearly indicating the writer thought it was important to establishing value.

Federal Housing Finance Agency (FHFA) Study

Examples of problematic words and phrases found in appraisal reports:

"The racial makeup of the city was 86.28% White, 12.46% Black or African-American, 0.52% Native American, 0.22% Asian, and 0.52% from two or more races. 0.56% of the population were Hispanic or Latino of any race."

"Commercial strip featuring storefronts supplying Jewish Households."

A town was described as having a "Black race population above state average."

"Koreatown is considered 'highly diverse' ethnically."

"one spicy neighborhood."

A neighborhood described as "predominately Hispanic."

Noting that "there is more Asian influence of late" buying the market.

Noting the area's first Asian mayor.

An area that was "originally founded as a Whites-only city or sundown town" but had become "fairly diverse" with a "diverse school system."

An area that was "'not especially-diverse' ethnically, with a high percentage of White people."

A reference to a neighborhood being originally "White-Only," before becoming a "White-Flight Red-Zone" to explain why the neighborhood is mostly "Working-Class Black" now.

Federal Housing Finance Agency (FHFA) Study

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➤ Where did this come from?


Carlisle, Arkansas

From Wikipedia, the free encyclopedia

Coordinates: 34°47′10″N 91°44′41″W﻿ / ﻿

Carlisle is a city in [Lonoke County, Arkansas](#), United States. It is the easternmost municipality within the [Little Rock–North Little Rock–Conway Metropolitan Statistical Area](#). Carlisle was incorporated in 1878. As of the [2010 census](#) it had a population of 2,214.^[3]

Carlisle, Arkansas
City
Motto(s): "Land here"



Contents [hide]

- 1 Geography
- 2 Demography
 - 2.1 2010
 - 2.2 2000
- 3 Education
- 4 Notable people
- 5 References
- 6 External links

2000 census [edit]

As of the [census](#)^[9] of 2000, there were 2,304 people, 955 households, and 645 families residing in the city. The population density was 471.7 inhabitants per square mile (182.1/km²). There were 1,029 housing units at an average density of 210.7 per square mile (81.4/km²). The racial makeup of the city was 86.28% [White](#), 12.46% [Black or African American](#), 0.52% [Native American](#), 0.22% [Asian](#), and 0.52% from two or more races. 0.56% of the population were [Hispanic or Latino](#) of any race.

Looking for Discriminatory References

Examples words/phrases to be identified - common examples of words found in improper, potentially discriminatory text in appraisal reports.

These are examples only. Any words with similar effect should be identified if they can be understood as referring to the race or ethnicity of persons.

Race/Ethnicity/Color

Black
White
Hispanic
Chicano
Minorities
Culturally diverse
Diverse
Ethnically Diverse
Integrated
Spanish-Speaking

National Origin

Indian
Melting Pot
Migrant Workers
Nationality
Seasonal Workers

“Code Words”

Crime-Ridden Neighborhood
Desirable Neighborhood
Exclusive Neighborhood
High Crime Area
Prestigious Neighborhood
Pride of Ownership
Quality Neighborhood
Traditional Neighborhood

What Does Fannie Mae Say About Describing Neighborhoods – It's Good Advice

The Fannie Mae Selling Guide states:

“Fannie Mae requires the appraiser to perform an objective neighborhood analysis by identifying neighborhood boundaries, neighborhood characteristics, and the factors that affect the value and marketability of properties in the neighborhood.”

“[F]actors that are not appraisal factors, such as the racial or ethnic composition of a neighborhood or the age or sex of the individuals who live in a particular neighborhood, must not be considered in the valuation process.”

Subject: Potential Fair Housing Referral

Attention [REDACTED] State Appraisal Board,

Freddie Mac must conduct business activities in compliance with all applicable fair housing, fair lending, and nondiscrimination laws, regulations, and guidelines (together "Fair Housing Requirements"). This includes refraining from relying on potentially discriminatory appraisal reports. The Freddie Mac *Single-Family Seller/Service Guide* (Guide) section 5603.4 identifies unacceptable appraisal practices, which includes the use of subjective and/or potentially biased words or phrases.

As part of Freddie Mac's risk management activities, we regularly examine appraisal reports. This helps us identify patterns of inconsistency, inaccuracies, and/or noncompliance with applicable Fair Housing Requirements that may represent potential violations of law or otherwise increase Freddie Mac's collateral or legal risk. Such potential violations may also be violations of the Uniform Standards of Professional Appraisal Practice (USPAP). Our examinations include, but are not limited to, analysis of:

- Issues related to Fair Housing Requirements.
- Issues related to unnecessary, inconsistent, and inaccurate information.
- Patterns of appraisal development that may negatively impact report quality.
- Inaccurate reporting of property characteristics.

We write to report potential violations and/or issues related to Fair Housing Requirements and/or USPAP compliance. Specifically, we identified concerning language used in the following appraisal report(s) submitted to Freddie Mac:

Appraiser Name: [REDACTED]

License/Certification Number(s): [REDACTED]

Address(es) of Appraised Property: [REDACTED]

Date of Report(s): [REDACTED] 2019

The report(s) contain the following words or phrases:

[REDACTED]

Example Recent Complaint to a State Appraiser Board

"The racial makeup of the city was 86.28% White, 12.46% Black or African-American, 0.52% Native American, 0.22% Asian, and 0.52% from two or more races. 0.56% of the population were Hispanic or Latino of any race."

Thank you for your time. If you wish to reply to this notice, please contact us via email at AQM@freddiemac.com.

Other Commonalities in Fair Housing Claims

- ROVs - most reported situations of alleged racial bias in residential appraising in 2020-22 began with the ROV process.
- Non-responsive stances create anger, complaints and claims: “The Appraiser’s opinion of value stands.”
- The appraiser’s “inspection-side manner.”

We’ll get to this in Cultural Competency



Kindness
MATTERS

Discussion? Ideas?

- What strategies do you think could be used to reduce potential bias in appraisal reports?
- If a person working at an AMC made negative references to you about the racial makeup of a neighborhood, would you say something?

Shifting Gears: Cultural Competency



Cultural Competency? What is it?

It actually has a legal definition In California for the purpose of this course.

California Business and Profession Code section 11360 – part of California’s appraiser licensing law – states:

“cultural competency” means understanding and applying cultural and ethnic data to the process of providing services that includes, but is not limited to, information on the appropriate services for lesbian, gay, bisexual, transgender, and intersex communities, ethnic communities, and religious communities.

We’re going to have to unpack that a bit, because it’s not all that clear, at least to me. So, let’s look closer at what experts have to say.



Let's Back Up – What's Culture?

Culture is often described by experts as the combination of a body of knowledge, a body of belief, and a body of behavior that may come from elements of different social groups, whether they are races, ethnicities, religions, nationalities or groupings.*

Culture refers not only to the superficial features of a person, such as appearance, but also perhaps more significantly refers to a person's personal identity, language, thoughts, communications, actions, customs, beliefs, values, and institutions, which often are specific to ethnic, racial, religious, geographic, or social groups.**

- When we talk about culture, we have to be careful that we do not misinterpret stereotypes for culture. Stereotypes are often inaccurate or too simplistic. As we discussed in the previous part of this class about bias, stereotypes also may lead us to bias (whether implicit or conscious).

* "Cultural Competency and the Practice of Law in the 21st Century" by Aastha Madaan, ABA Probate and Property Magazine, March/April 2016.

** National Institutes of Health, Cultural Respect ([website material link](#)).

What's Culture? Cultures are not Monolithic

We also have to appreciate that there can be layers to cultures – that cultures can have different impacts for people within different layers of the culture. They are not monolithic but instead are filled with nuances.

Here are some examples of layers that may exist within a culture:

- a. National Level - associated with a nation as a whole.
- b. Regional Level - associated with ethnic, linguistic, or religious differences within a nation that often break down into regional differences.
- c. Gender Level – a culture may impact people differently based on gender differences.
- d. Generation Level – different generations (grandparents, parents, and children) may be impacted differently.
- e. Social Class Level - educational opportunities and differences in occupations may relate to societal class.
- f. Corporate Level - associated with the particular culture of an organization applied to staff.

Components of Cultural Competency

These are the components of cultural competency – and the subjects we'll work on developing during our brief hour.

- ❖ **Awareness and knowledge of cultural differences** and how they may impact our work and the receipt of our services by people. Do not misinterpret culture for stereotypes.
- ❖ **Valuing cultural diversity.** Value and accept diversity and similarities among all people.
- ❖ Having a **positive, learning attitude toward cultural differences.** Be inclusive, sensitive, open minded, fair, and understanding to cultural differences as a consumer and as a professional. Being culturally competent is an ongoing process.
- ❖ **Adapting and changing** as we work with people of different cultures. Adapt and appropriately respond to cultural differences, diversity, and the cultural contexts of the communities we serve as professionals.
- ❖ **Institutionalizing** cultural competence within our work and practices. Develop strategies that promote a high service ethic for diverse populations.

We will be seeking to develop each of these components in our discussion.

Cultural Competency – In the Context of Being a Professional

Cultural competency, in the context of being a professional, refers to a practice of accepting and embracing “principles of equal access and non-discriminatory practices in service delivery.”*

Cultural competence does not require a professional to be an expert in every culture they encounter. It’s more the ability to adapt your individual professional practices to culturally diverse situations, rejecting cultural assumptions and stereotypes, and recognizing that different cultures may impact the receipt of your services.

Cultural competency refers to the ability of all people to serve and work effectively with individuals from a variety of backgrounds, including people from different racial, ethnic, cultural, religious, and socioeconomic backgrounds; individuals with various disabilities; and other groups.**

* American Bar Association (ABA), “Cultural Competency and the Practice of Law in the 21st Century” by Aastha Madaan, available at: americanbar.org/groups/real_property_trust_estate/publications/probate-property-magazine/2016/march_april_2016/2016_aba_rpte_pp_v30_2_article_madaan_cultural_competency_and_the_practice_of_law_in_the_21st_century/.

** “Legally Competent Public Servants: State Statutory and Regulatory Mandated Cultural Competence Provisions” by Shelly L. Pepper (2012).

Cultural Competency is Important Because It:

- Improves service to clients and relations with the public.
- Helps block tendencies that might lead us to bias and making poor decisions.
- Improves trust of the appraisal profession.
- Experts also say: cultural competency within a business organization can increase the bottom line.*

* *"Systemic Discrimination among Large U.S. Employers"* by Patrick Kline, Evan Rose and Christopher Walters, National Bureau of Economic Research (Aug. 2021), <http://www.nber.org/papers/w29053> (finding that racially discriminatory hiring practices among firms negatively correlate with firm profitability); and

"Why Diverse Team Are Smarter" by David Rock and Heidi Grant, Harvard Business Review (Nov. 4, 2016), <https://hbr.org/2016/11/why-diverse-teams-are-smarter> (reporting that companies in the top quartile for ethnic and racial diversity in management were 35% more likely to have financial returns above their industry mean).

Cultural Competency is Important Because:

- And – based on my observation as a lawyer – improved cultural competency can help keep you stay out of legal quagmires. A few cases will emphasize this point.

What Cultural Competency is Not

Cultural competency is not (just):

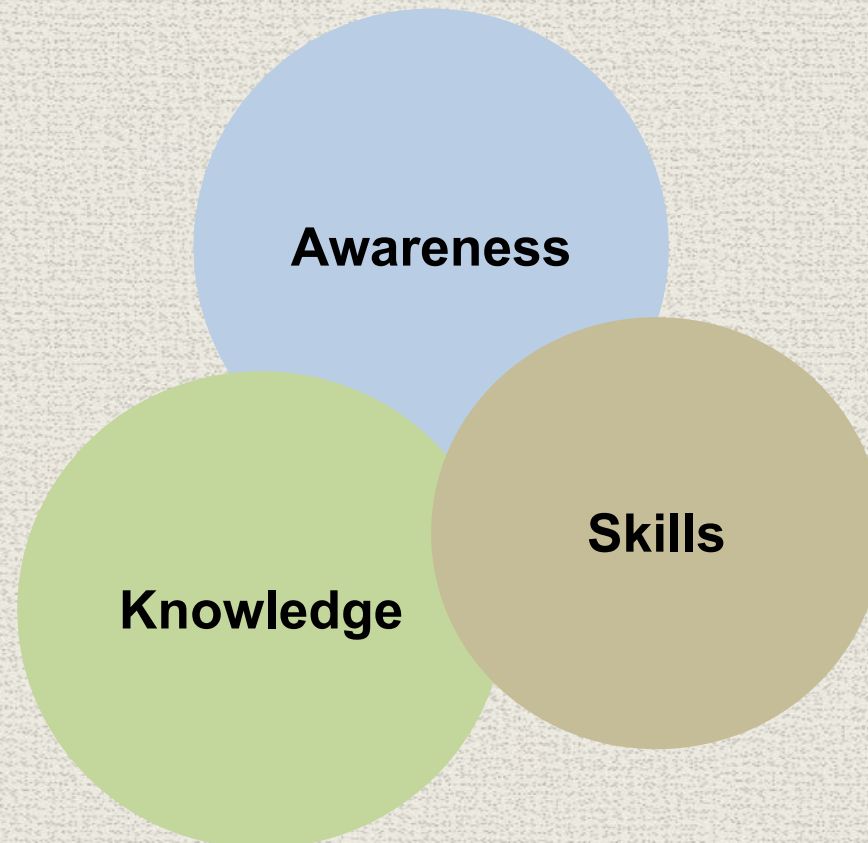
- “I’m not a racist.”
- “I’m color blind”
- “I have Hispanic friends”
- Being within a protected category
- A quick achievement

It’s also not just a a one-hour required CE course every 4 years.

For most of us, we might hope to achieve “pre-competence” today.



To Work on Developing Basic Cultural Competency We're Going to Focus on Three Areas





Awareness

- Being aware of our own biases and reactions to people who are in cultures or have backgrounds different than ours can help us work toward cultural competency.
- Being aware of the perspective that other people may have on our jobs or about us can help us be more culturally competent.
- Let's develop some of awareness of how a borrower, property buyer or seller might feel about your job and task depending on their culture.

Awareness

Challenges Faced by Many Professions with respect to Cultural Competency

A key challenge faced by many professionals is that their professions are dominated numerically by Whites and/or men.

The demographics of professions are only slowly catching up with the demographics of the U.S.

Attorneys, for example:

- In 2000, 89% of attorneys identified as White.
- In 2021, the percentage had declined to 85%. Not much change.*

We don't have as much detail on fee appraisers, but let's look at what the Bureau of Labor Statistics reports.

* ABA National Lawyer Population Survey 10-Year Trend in Lawyer Demographics
Year 2022

Challenges Face by Professions with respect to Cultural Competency



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Bureau of Labor Statistics > Current Population Survey > Home

Labor Force Statistics from the Current Population Survey

Search Labor Force Stat Go

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See also [PDF](#) and [XLSX](#) versions of this table.

HOUSEHOLD DATA
ANNUAL AVERAGES
11. Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity
[Numbers in thousands]

Occupation	2021					
	Total employed	Percent of total employed				
		Women	White	Black or African American	Asian	Hispanic or Latino
Total, 16 years and over	152,581	47.0	77.5	12.3	6.6	18.0
Accountants and auditors	1,630	62.0	76.3	9.8	11.8	9.8
Property appraisers and assessors	80	30.4	97.7	1.1	1.0	4.3





Awareness

Some Causes of the Skewed Appraiser Population

Societal issues, of course. Beyond that . . .

Specific to appraising, the barriers to entry into the profession have been discussed and documented by a number of parties.

A key barrier is the required hours-based, supervised training.

Awareness

Some Causes of the Skewed Appraiser Population

The National Fair Housing Alliance's 2022 report to the Appraisal Subcommittee entitled *Identifying Bias and Barriers, Promoting Equity: An Analysis of the USPAP Standards and Appraiser Qualifications Criteria* made these points:

- The experience hours requirement was cited by interviewees for the reports as the biggest challenge to entering the profession. (E.g., for a certified residential appraiser credential, the candidate needs 1,500 hours of credited work under a Supervisory Appraiser.)
- While the hours themselves are a significant barrier, a real challenge is finding a Supervisory Appraiser.
- Many appraisers report that it is almost impossible to find a Supervisory Appraiser unless they have a friend or family member willing to do it as a favor.
- Many appraisers say, "To be an appraiser, you have to know an appraiser."

Identifying Bias and Barriers, Promoting Equity:

An Analysis of the USPAP Standards
and Appraiser Qualifications Criteria

January 2022

A study commissioned by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council and carried out by the Council on Licensure, Enforcement and Regulation under Cooperative Agreement number TTA2021KY02.

Awareness

- How may borrowers from a different culture feel about having their home appraised?





Awareness

➤ A little valuation history about Baltimore

NS FORM-8
6-1-37

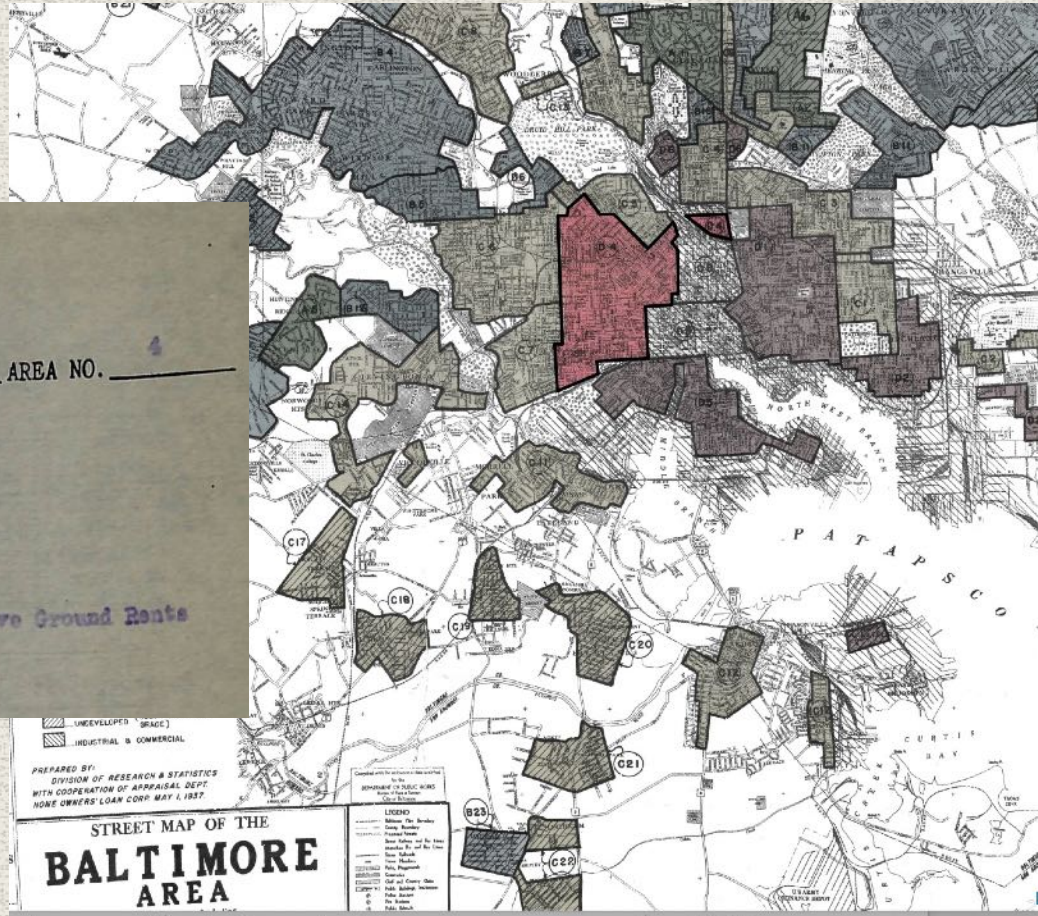
AREA DESCRIPTION
(For Instructions see Reverse Side)

1. NAME OF CITY Baltimore, Maryland SECURITY GRADE D AREA NO. 4

2. DESCRIPTION OF TERRAIN. Holling

3. FAVORABLE INFLUENCES. Good transportation. Central location.

4. DETRIMENTAL INFLUENCES. Obsolescence. Negro concentration. Excessive Ground Rents in many cases.



Awareness

BUSINESS >

Homeowning while Black: Baltimore couple alleges bias in appraisal

CBS NEWS
BALTIMORE

AUGUST 20, 2022 / 8:30 PM / AP



“A couple in Baltimore is suing an appraiser and a mortgage lender, alleging their home was severely undervalued because they are Black, blocking them from refinancing their mortgage. The couple says a separate appraisal, done after ‘Whitewashing’ the place by removing family photos and having a White colleague stand in for them, pegged the home's value higher by \$278,000.”



Knowledge

- We cannot understand other people of other cultures without working on understanding the larger historical context of which we are part.
- Knowledge of the history is important.

Historical Redlining, HOLC (1933-51) – Sacramento, CA Example

Mapping Inequality Redlining in New Deal America

search

Selections from the Area Descriptions

C18

The few Negro families (two known) are said to affect values of only adjacent properties. (Clarifying Remarks)

C9

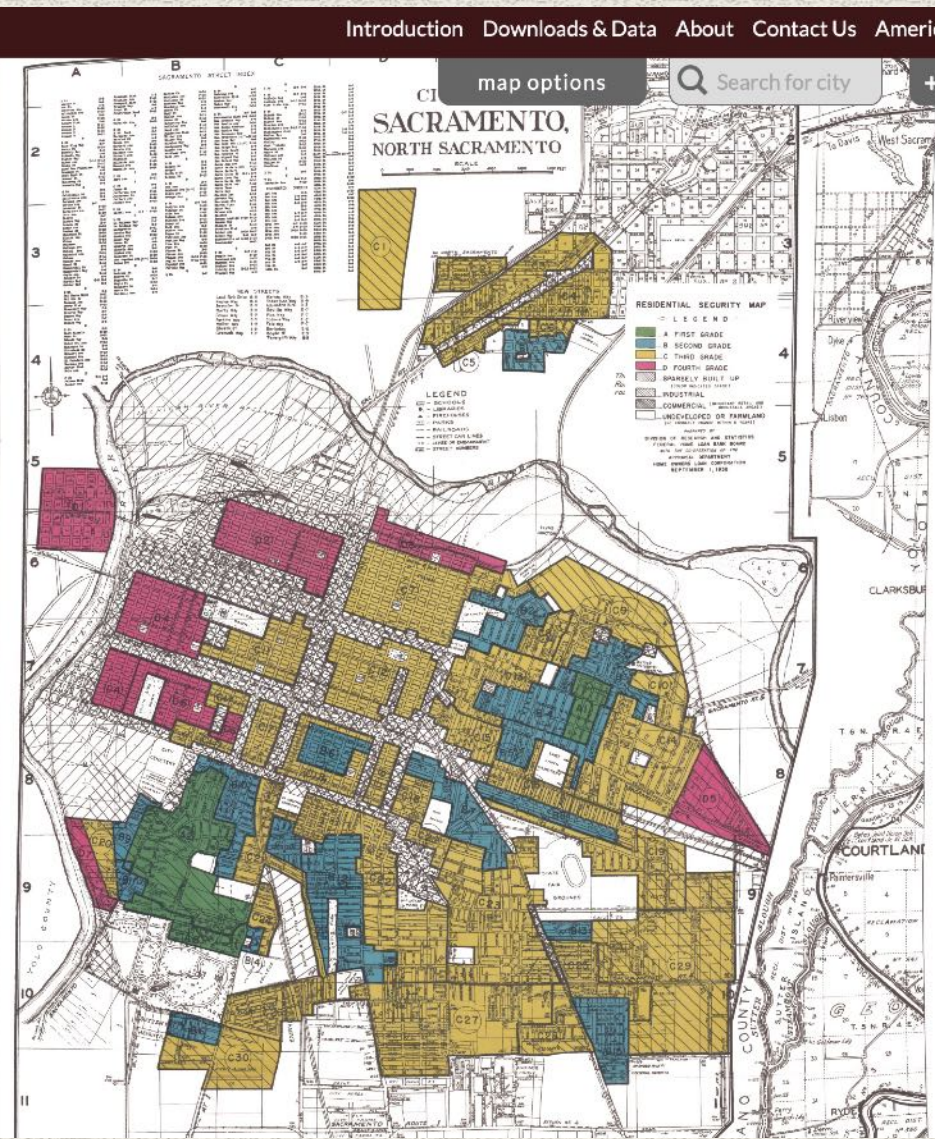
2 negro families live at 32nd and F streets, but realtors aver their presence is not detrimental except to abutting properties. (Clarifying Remarks)

D6

Is the "bon ton" Oriental and Negro residential district of the city. (Clarifying Remarks)

D2

Population is very mixed. Italians predominate but with a sprinkling of Mexicans, Negroes, and Orientals. The subversive character of population constitutes the area's principal hazard. (Clarifying Remarks)



Historical Redlining, HOLC – Sacramento, CA Example

NS FORM 8
10-1-37

AREA DESCRIPTION - SECURITY MAP OF Sacramento, Cal.

1. AREA CHARACTERISTICS:
 - a. Description of Terrain. Level with favorable grade and no construction hazards.
 - b. Favorable Influences. Convenience to transportation, schools, churches, trading and amusement areas. Nearness to city center. Proximity to centers of commercial and industrial employment.
 - c. Detrimental Influences. Highly congested population whose density greatly exceeds city's average. Presence in large numbers of subversive racial elements. Encroachment of commerce and business.

4. AVAILABILITY OF MORTGAGE FUNDS: a. Home purchase Limited; b. Home building Limited

5. CLARIFYING REMARKS: This old area is the "melting pot" of Sacramento. It contains the principal Japanese colony and the greatest concentration of Negroes in the city. There are no deed restrictions, and zoning is for general commercial uses. Dwellings are very cheap to medium construction. The quality of maintenance, for a district of this character, is much above the average. It is stated that many buildings in the area violate the State Housing Act and city housing ordinances, and Grand Jury investigation is under way at the present time. Heterogeneity, age and obsolescence of improvements, and predominance of subversive racial elements are the area's chief hazards. Rated "low red" grade.

6. NAME AND LOCATION Part of Old City SECURITY GRADE D AREA NO. 4

A Look at Examples of Historical Discriminatory Appraisal Principles and Practices

Identifying Bias and Barriers, Promoting Equity:

An Analysis of the USPAP Standards and Appraiser Qualifications Criteria

January 2022

A study commissioned by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council and carried out by the Council on Licensure, Enforcement and Regulation under Cooperative Agreement number TTA2021KY02.

FAIR HOUSING
DANE LAW
LLC, P.C.

NFHA NATIONAL FAIR HOUSING ALLIANCE

CHRISTENSEN LAW FIRM

- 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.”
- 1973: American Institute of Real Estate Appraisers Course Material: “Ethnological information also is significant to real estate analysis. . . . 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.”

It's Important to Understand that Redlining Continues to Exist in Real Estate Transactions and Mortgage Lending

Newsday (NY newspaper) investigation regarding Long Island sales agents/brokers.

- 3-year program of testing agents/brokers on Long Island for racial steering and other fair housing violations.
- 86 “matched pair-tests.”
- Example: two undercover testers – one black and one white – separately solicit an agent’s assistance in buying a house. They present similar financial profiles and request identical terms for houses in the same areas. The agent’s actions are then reviewed for evidence that the agent provided disparate service.



<https://projects.newsday.com/long-island/real-estate-agents-investigation/>

It's Important to Understand that Redlining Continues to Exist in Real Estate Transactions and Mortgage Lending

- Results: Black testers experienced disparate treatment 49 percent of the time, 39 percent for Hispanic and 19 percent for Asian testers.
- Here's an example of the disparate treatment: In 7 cases, agents refused to provide house listings or home tours to minority testers unless they met financial qualifications that weren't imposed on white counterparts – such as requiring a lender's pre-qualification letter.
- Here's another example: In 24% percent of tests, agents directed whites and persons of color into differing communities.



Knowledge

More Current Knowledge: Freddie Mac Study

EXHIBIT 1:

Appraisal gaps for minority tracts

Appraisals for the purchase of single-family one-unit homes,
Jan. 1, 2015-Dec. 31, 2020

Property Tract	Count	% Lower Than Contract Price	Gap vs. White
Overall	12,752,779	8.3%	-
White	10,632,616	7.4%	-
Latino [50% -100%]	553,470	15.4%	8.0%
Latino [50%-80%]	443,218	15.0%	7.7%
Latino [80%-100%]	110,252	16.7%	9.4%
Black [50%-100%]	373,747	12.5%	5.2%
Black [50%-80%]	245,428	12.1%	4.8%
Black [80%-100%]	128,319	13.3%	5.9%

Knowledge

More Current Knowledge: Freddie Mac Study

EXHIBIT 2:

Appraisal gaps for minority applicants

Appraisals for the purchase of single-family one-unit homes,
Jan. 1, 2016-Dec. 31, 2020

Race/Ethnicity Applicants	Count	% Lower Than Contract Price	Gap vs. White
Overall	1,711,961	7.1%	-
White	1,043,557	6.5%	-
Latino	155,965	9.5%	2.9%
Black	73,287	8.6%	2.1%



Skills

To move past basic awareness and knowledge, we need to develop skills to be more culturally competent.

Here are some strategies offered by experts in the field.

Keep in mind – we have only an hour. These are very basic suggestions.

Develop a Habit of Thinking about Cultural Differences and How They May Influence Interactions.*

- In their training on cultural competency, law students are taught to think cultural differences and how they influence their interactions with their client.
- For appraisers, this might be a little different for most assignments: you may have your “client” who is a bank – but then you may interact with borrowers, sellers and buyers.
- Think about these people and whether they may have cultural differences from you and how those differences might impact your interaction.

* “Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World,” 62 UCLA L. Rev. Dis. 140 (2014).

Work on “Microaggressions”

- Microaggressions are everyday verbal, nonverbal, and environmental slights or snubs, whether intentional or unintentional, which communicate derogatory or negative messages to other persons based on their culture/group membership.

Real Life Example: An appraiser is at an inspection. The buyer and her real estate agent are present at the home. The agent’s name is Jesus Olvera. The home is in Los Angeles. While the buyer and agent are talking with the appraiser in the kitchen, the appraiser says to the agent that he appreciates the agent’s fluent English and asks to know where he is from. Jesus replies “I am from Ventura.” Pushing further, the appraiser asks “no, where are you really from?” Jesus again replies that he is from Ventura.

The appraiser’s questions might have had good intentions, but his words were offensive and hurtful to the agent. These subtle actions are called microaggressions.

Other Examples of Microaggressions

- Interrupting or not giving enough speaking opportunities to people from underrepresented groups during meetings, be it virtual or face-to-face.
- Not including people from all different backgrounds and communities in marketing materials, websites.
- Constantly mispronouncing names and then joking about it.
- Misgendering those from the transgender community.

* From State Bar of California: “Disrupting Implicit Bias” and based on the book *Sway: Unravelling Unconscious Bias* by Pragma Agarwal.

Showing Respect for the Borrowers/Occupants

Allegations from a Maryland case against an appraiser

44. When Defendant [REDACTED] arrived, his demeanor was indifferent and aloof. Plaintiffs tried to engage with Defendant [REDACTED] to improve the mood, but their efforts were not reciprocated. [REDACTED] did not smile or make eye contact with Plaintiffs and said little other than noting that the home had a tankless water heater. Defendant [REDACTED]'s demeanor at their home seemed significantly different to Dr. Mott than it was when she spoke to Defendant [REDACTED] on the telephone to schedule the appraisal, which was prior to when he would have had occasion to see Dr. Connolly and Dr. Mott in person.

Showing Respect for the Borrowers/Occupants

Allegations from North Carolina case against an appraiser



31. Plaintiff Brigid Washington was present in her home when the appraisers visited and communicated that she was the homeowner. The home was decorated with proud markers of the family's identity, including family photos, that identified the owners of the home to be Black.

32. The appraisal team was curt, abrupt, and dismissive toward Plaintiff Brigid Washington. The appraisers spent approximately 10 minutes at the Plaintiffs' home.

Reach out to and work with community groups using your expertise as an appraiser.

➤ **One example - appraisals for Habitat for Humanity.**

Did you know? In 2018, a Republican U.S. Senator – Mike Crapo in Idaho – sponsored Senate Bill 2155, which, among other things, amended the Dodd-Frank Act specifically to allow Habitat for Humanity and similar organizations to receive donated appraisals.

Prices of Habitat homes are often set by the appraised value – with loans being provided by Habitat directly or by agencies like the USDA.

Habitat affiliates annually finance about 5,000 mortgage to lower-income families in the United States, each of which requires an appraisal.

➤ **Where and how else can appraisers engage in the communities around them?**

Thank you!

➤ CE Certificates

You'll receive an email with a link. You'll need to login to get your CE certificate.

