

## Valuation Bias and Fair Housing Laws and Regulations

Course provided to satisfy requirements for the AQB's  
7-Hour Valuation Bias and Fair Housing Laws and Regulations  
education requirement in the 2026 Real Property Appraiser Qualification Criteria

Class Materials (Optional):  
<https://www.valuationlegal.com/bias/>

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## About Your Instructor

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I'm an attorney. For 20+ years, my legal practice has been focused on valuation services. My clients primarily have been appraisers, appraisal firms, AMCs and financial institutions.

Of relevance to the topics we'll be discussing in this class, I've represented appraisers, firms and AMCs in matters alleging discrimination before HUD, the Consumer Financial Protection Bureau (CFPB) and state appraiser regulatory agencies.

To listen and learn from different viewpoints, 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) and have provided discrimination investigation training to state appraiser regulators and fair housing investigators.

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

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## Content Outline for Valuation Bias and Fair Housing Laws and Regulations Course

The Appraiser Qualifications Board's outline for this course specifies four interconnected topics:

- A. Understanding real estate bias.
- B. Fair housing and antidiscrimination laws and regulations.
- C. Valuation bias – recognizing and avoiding bias.
- D. Case studies.

In the presentation today, we'll be mixing in our "case studies" throughout the topics. For example, we'll consider real-world situations, investigations and lawsuits as we address the key laws and regulations.

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## Where Are We Going?



- We're going to address the topics of "valuation bias" and "fair housing laws and regulations" in the AQB's outline.
- We'll start more generally with a discussion of bias and discrimination in general, then move to more specific issues concern real estate appraisal.
- Although we'll be focused on appraisers, it's important and maybe comforting to recognize that the laws and regulations we'll cover relate to all forms of real estate valuation and related services – appraisals, BPOs, evaluations, "property data collections," etc. – whether performed by appraisers, agents/brokers, "property data collectors" or other parties.

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## Where Are We Going?

- It's also important to realize that the current focus on valuation bias arises after a long history of discriminatory practices in other real estate services.
- So, for example, in the beginning part of this class, we'll look at historic issues regarding the sales practices of agents/brokers, as well as mortgage redlining by government agencies and lenders.
- We'll also look at the roles of property insurance providers, lenders, Government Sponsored Enterprises, and federal, state and local agencies.

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## Where Are We Going?

- Because the law weighs heavily on matters concerning discrimination, we'll specifically address:
  - ✓ Relevant fair housing and lending laws, such as the **Fair Housing Act** and **Equal Credit Opportunity Act**.
  - ✓ Investigations and lawsuits relating to alleged discrimination - 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 important).
- The topics discussed are relevant to both residential and commercial appraisers – the issues we'll be talking about aren't just a residential appraiser's problem. I've handled plenty of matters concerning alleged discrimination in commercial appraisal work.

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## Why Do These Subjects Matter?

- Increasing trust in the appraisal profession and appraisals – among clients, financial institutions and the public.
- Even a perception of bias erodes that trust.
- Valuation inaccuracies, whether caused by bias or negligence, can interfere with homeownership and building wealth:
  - Low values can prevent people from obtaining loans to purchase property and interfere with sales transactions.
  - High values can lead to underwater loans, overpaying, and predatory lending.
- Yes, some appraisers are actually unaware of the relevant laws and regulations.
- Avoiding legal claims and regulatory investigations is itself a worthy aim.

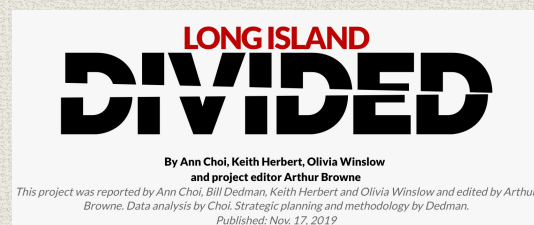
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## Redlining Continues to Exist in Real Estate Transactions and Mortgage Lending

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/>

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## 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.



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## Redlining is not Only an Issue in or near Urban Centers

### 2024 Montana Tribal Reservation Redlining Case

- In May 2024, HUD announced a settlement of redlining allegations against a national mortgage lender on the Flathead Reservation in Montana.
- The complaint was filed by a couple applying for a mortgage to purchase a single-family home within the reservation.
- The mortgage underwriter had denied the application because their home was located on a reservation, even though ownership the property was fee-simple.
- This was alleged to violate the Fair Housing Act's prohibitions against racial discrimination.
- In the settlement, the lender agreed to pay the couple \$65,000 and agreed to educate its personnel about fair lending practices specifically relating to properties located on reservations.



\* Settlement Agreement [link](#).

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## An Introduction to Bias – What Are the Components of Potential Valuation Bias? (Section C of AQB Outline)

Before we get into the details of laws, regulations, investigations and cases, let's look the nature of bias and discrimination which underlay the overall subject.

Let's talk here about about:

- Explicit versus implicit bias.
- Structural and institutional bias.
- Bias versus discrimination.
- How bias may affect professional judgment.
- Whether appraisers are being singled out for alleged bias in their work?

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## Defining Some Basic Terms



**Bias:** Let's use USPAP's definition of bias as a starting point. USPAP defines "bias" as "a preference or inclination that precludes an appraiser's impartiality, independence, or objectivity in an assignment." (2024 USPAP lines 89-90.)

That's a broad definition of bias encompassing facets of bias that we're not focused on in this class today – such as an appraiser slanting appraisal testimony in favor of a client in litigation rather than being impartial, or an appraiser trashing another appraiser's appraisal in a review assignment because of personal animosity.

In the context of this class, bias has a more specific application: a preference or inclination that leads an appraiser to provide appraisal services without impartiality or objectivity with regard to characteristics like race, national origin, religion, sex or age (which are examples of categories that we generally recognize as legally protected by law prohibiting discrimination).\*

\* U.S. Department of Justice, ["Understanding Bias: A Resource Guide."](#)

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## Let's Consider Some Key Terms We'll be Using: Explicit and Implicit Bias

**Explicit Bias** is where 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 an appraiser knowingly selecting comparable sales based on the race or ethnicity of the home's occupants or predominant race in the neighborhood.

Overt racism and racist comments, of course, are also examples of explicit biases.

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

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## Explicit versus Implicit Bias

**Implicit or Unconscious Bias**, on the other hand, involves subconscious feelings, attitudes and **stereotypes** that have developed as a result of prior influences and imprints. It's 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.

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

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### Examples of Potential Impacts of Implicit Bias

- A **real estate agent's** implicit biases may lead the agent to suggest and show only properties in communities to a home purchaser more associated with a certain race, ethnicity or national origin.
- An **appraiser's** implicit bias might lead the appraiser valuing a home owned and occupied by a Hispanic person to select comparable sales from areas with higher Hispanic populations.

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### Different Types of Implicit Bias

More specific types of implicit bias (just two)

- **Affinity Bias** – generally trusting people who are more similar.
- **Confirmation Bias** – looking only at information which confirms what we already believe.
  - For example, with confirmation bias, an appraiser may get tunnel vision and look for comparable sales only in a specific price range that confirm a preconceived idea of the subject property's value. The appraiser may then overlook good comparable sales because the prices fell outside the appraiser's preconceived value range.

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## Discrimination

- Implicit bias and explicit bias are 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 might be able to check the impact.

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

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## Structural or Institutional Bias

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

**Structural/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 – did supervised experience requirements create an institutional bias against particular groups of people entering the profession, more than others?

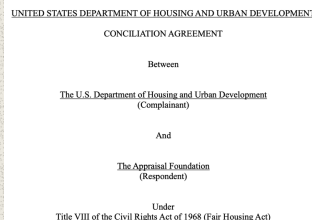
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## Appraisal Foundation HUD 2024 “Conciliation Agreement”

On December 3, 2021, the Office of Systemic Investigations (“OSI”) opened an investigation to determine whether the Respondent’s policies and practices, including the Real Property Appraiser Qualification Criteria (“Appraiser Qualification Criteria”), have resulted in violations of Section 806 of Fair Housing Act, 42 U.S.C. § 3606 (“Investigation”). Specifically, OSI investigated whether the Respondent’s Appraiser Qualification Criteria established by the Appraiser Qualification Board (“AQB”) of the Respondent has resulted in a disparate racial impact on entry into the appraiser profession. The Investigation focused on requirements for a supervisor, an amount of experience, and education. The Respondent has cooperated with the Investigation and HUD has issued no findings or conclusions as a result of this Investigation. Respondent denies that the Appraiser Qualification Criteria has caused or resulted in any violation of the Fair Housing Act, but agrees to enter into this Conciliation Agreement to conclude the Investigation.



and will continue to invest substantial resources and efforts to promote diversity and inclusion in the appraiser profession. To promote ease of entry into the appraiser profession while maintaining public trust in the competency of the profession, Respondent and the AQB established PAREA to provide additional avenues to comply with the experience requirements contained in the Appraiser Qualification Criteria. In connection with this, The Appraisal Foundation provided a grant to the Appraisal Institute and the National Society of Real Estate Appraisers, the nation’s largest and oldest professional association of black real estate appraisers, for use in creating a PAREA program. Respondent enters into this Conciliation Agreement

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## Appraisal Foundation HUD 2024 “Conciliation Agreement”

a. Amend the AQB’s PAREA implementation policies to provide that:

- i. Prior to working with trainees, mentors shall complete a course which meets the content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline as adopted by the AQB.

21. Within ninety (90) days of the effective date of this Agreement, Respondent shall:

- a. Communicate with each U.S. state and territory appraiser regulatory agency that has not yet fully approved PAREA, to recommend that each adopt licensing criteria that provide 100 percent credit towards the experience requirement for a Licensed Appraiser and Certified Residential Appraiser for the successful completion of the respective AQB-approved PAREA program for Licensed Appraisers and/or Certified Residential Appraisers.
- b. Meet with state and territory appraiser regulatory agencies virtually or by phone to advise of the importance of PAREA in opening doors to the appraiser profession for states and territories that have not yet already fully adopted PAREA, or that have adopted PAREA, but imposed additional state- or territory-specific experience requirements.

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## Let's be Frank: the Topics in This Class Understandably Can be Upsetting



- The reaction among appraisers to the topics of bias and discrimination can be mixed.

- It's unsettling to have your profession accused of delivering biased – even racist – appraisals.
- Some appraisers dismiss the need for discussion or learning.



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## The Topics Are Upsetting

- 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:** J. [redacted] [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.

J. [redacted]  
 [redacted]@hotmail.com

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

From: [Michael.Henry@kellerwilliams.com](mailto:Michael.Henry@kellerwilliams.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 legally 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.

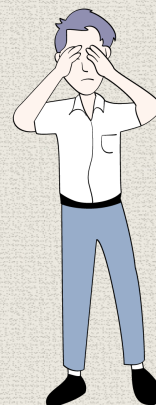
An appraiser's commentary about this class.

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## Are Appraisers Being Unfairly Singled Out?

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

- Appraisers aren't the only professionals who've faced allegations about bias in their professional services.
- Other professionals like real estate agents/broker lawyers, nurses and doctors have all faced similar allegations – and are generally required to take education on the subject and subject to potential discipline.
- Let's learn and think about some details regarding bias by taking a closer look at doctors in particular.



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## 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 agents/brokers and appraisers are saying when asked about whether bias affects their work?



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## 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/>.

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## Bias Study – Doctors

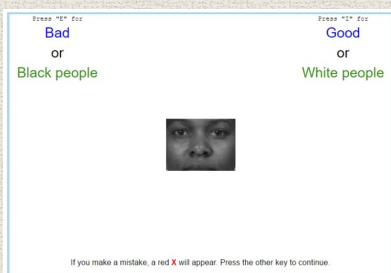


- On completing medical school, they take a version of the historic Hippocratic oath.
- Here's an example of part of one such oath (the oaths vary from one medical school to the next):  
 "I will not permit considerations of gender, race, religion, political affiliation, sexual orientation, nationality, or social standing to influence my duty of care."
- That sounds a lot like part of the Ethics Rule in USPAP (as of the current 2020 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. . . ."

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## 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.

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## 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.



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## Bias Study – Doctors



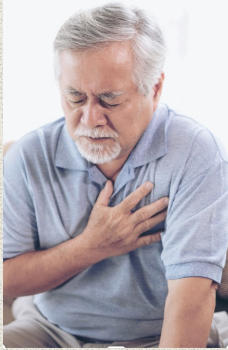
- With the testing done, the researchers then gave each doctor a clinical case study regarding a heart patient.
- The case study involved a fictional 50-year old patient reporting chest pain.
- The study included medical test information from an electrocardiogram and additional detailed medical information.
- 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.

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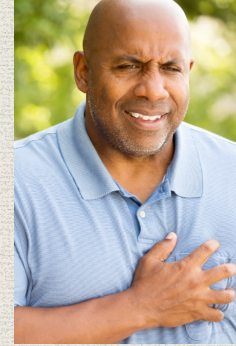
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## Bias Study – Doctors



- 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?**

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## 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 the doctors did on the IAT implicit test and the questionnaire with respect to explicit Black or White bias?**

- Doctors, overall, showed 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.



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## Did the 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.



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## 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 . . .

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## An Additional Key Causes 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.

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## Additional Key Causes 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.

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## What About Implicit Bias and Perceptions of Price or 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.



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

Other interesting findings:

- African-American sellers were more disadvantaged with less experienced bidders, while “expert” bidders paid less heed to the seller’s race.
- The baseball card auctions were likely “low on deliberation” – *i.e.*, faster than if the cards were more significantly collectible. “In the quick moment in which a bidder decides how much to bid on a card, implicit attitudes may hold strong sway.”

**2004 Topps Retired Rolie Fingers Autograph**

✓ This item has been paid for through PayPal. Payment was sent to: kbd131@hotmail.com on May-16-06.  
Buyer's Postal Code: 95969

[Make Second Chance Offer >](#)

If you have more than one of these items, you can send a non-winning bidder a Second Chance Offer.

**Other actions for this item:**

You can manage all your items in [My eBay](#) and do the following:

- [View payment details](#)
- [View PayPal payment](#) for this item.
- [Contact buyer](#), [cobalt\\_kid\\_al](#), about this item.

**Additional Options:**

- To list another item like this one, use the [Sell Similar](#) option.
- To list this specific item again, use the [Relist](#) option.
- Customize your seller settings by updating [seller preferences](#).

[View larger picture](#)

Winning bid:	US \$6.28
Ended:	May-16-06 19:12:34 PDT
Shipping costs:	US \$1.50
	US Postal Service First Class Mail®
Ships to:	United States
Item location:	New Haven, CT, United States
History:	<a href="#">8 bids</a>
Winning bidder:	<a href="#">cobalt_kid_al</a> (199 ★)

You can also: [Email to a friend](#) | [Sell one like this](#)

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[https://ianayres.yale.edu/sites/default/files/files/Race\\_effects\\_on\\_ebay.pdf](https://ianayres.yale.edu/sites/default/files/files/Race_effects_on_ebay.pdf)

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## Implicit Bias Can Affect Whether a Person Trusts Another Person and Information Being Provided

In a recent case, the plaintiff a black woman described how two white appraisers interacted with her during the inspection:

- The property was a rental. The white tenants were present with the owner. The plaintiff described the appraisers as assuming the tenants were the owners.
- When that was sorted out, she then described the appraisers as not listening to information she provided.

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## Treating a Person Differently Based on Bias – Implicit or Conscious?

### Allegations from a Maryland case alleging fair housing violations

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.

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## 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?



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## Understanding Real Estate Bias – Historical and Contemporary Contexts (Section A of AQB Outline)

In this section of the course, we'll look at how bias in real estate has affected and continues to affect people:

- Historical matters concerning discrimination in housing, mortgage financing and real estate in general.
- Current concerns regarding real estate valuation.

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## We're Focused on Appraisers Today – But Let's Recognize the Historic "Contributions" of Other Professions and Organizations to Real Estate Bias in General

**Real Estate Agents/Brokers:** There are thousands of instances and cases involving discrimination by agents and brokers. They are a primary focus of a majority of Fair Housing legal actions. Examples of their discriminatory conduct may include steering clients away from certain neighborhoods based on race or providing unequal service to clients based on their background. Another example would be discriminatory language in listings.

**Lenders:** Discrimination in lending still occurs and is the subject of frequent litigation. It can take various forms, including charging higher interest rates or fees based on race or ethnicity, denying loans to qualified applicants from certain neighborhoods, or steering borrowers into predatory loans with unfavorable terms. It's not just in making loans.

Also, following the mortgage crisis, fair housing organizations accused lenders of discrimination in property maintenance in predominantly African American and Latino neighborhoods. They accused lenders of neglecting foreclosed properties in minority communities, leading to blight and decreased property values.

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## We're Focused on Appraisers Today – But Let's Recognize the Historic "Contributions" of Other Professions and Organizations to Real Estate Bias in General

**Property Insurance:** Discrimination in property insurance has occurred when insurers charge higher premiums or deny coverage based on factors such as the racial or national origin composition of a neighborhood. Some insurance companies have engaged in their own "redlining."

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## We're Focused on Appraisers Today – But Let's Recognize the Historic “Contributions” of Other Professions and Organizations to Real Estate Bias in General

**Government Sponsored Enterprises (GSEs):** GSEs like Fannie Mae and Freddie Mac have had their own histories with regard to alleged real estate-related discrimination.

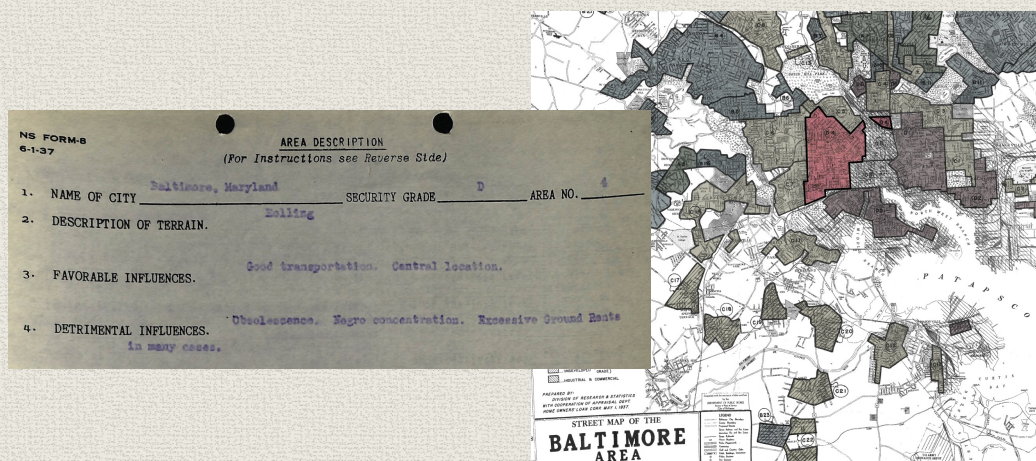
**Federal, State, and Local Agencies:** Various government agencies at the federal, state, and local levels also historically have contributed significantly to discrimination in real estates. We'll be looking closely at historical redlining practices established by government agencies like the Federal Housing Administration (FHA) in a moment.

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## Let's Look at Historical “Redlining”

### Baltimore, MD Redlining Example



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## Sacramento, CA Redlining Example

*Mapping Inequality Redlining in New Deal America* Introduction Downloads & Data About Contact Us American

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)

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## Sacramento, CA Redlining 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.

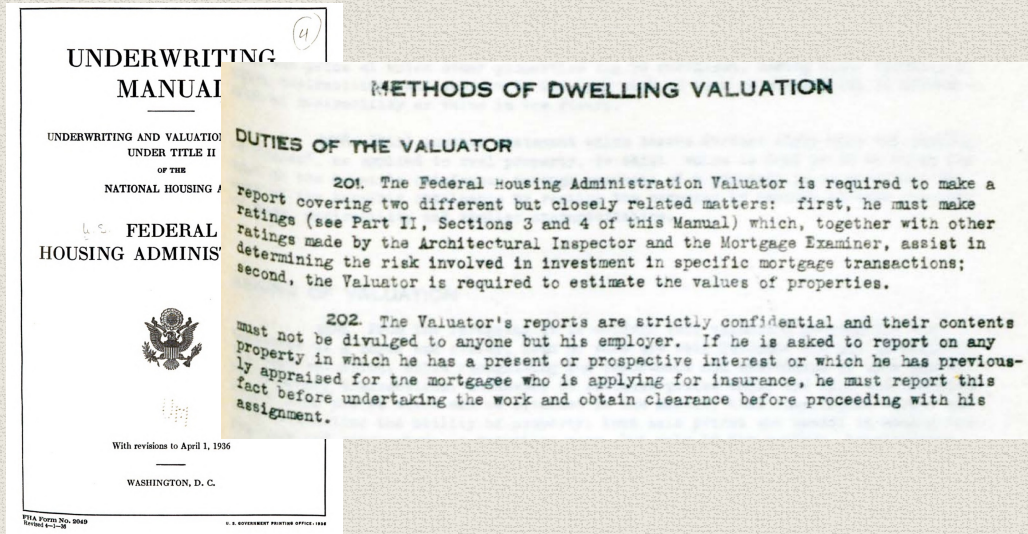
6. NAME AND LOCATION Part of Old City SECURITY GRADE D AREA NO. 4

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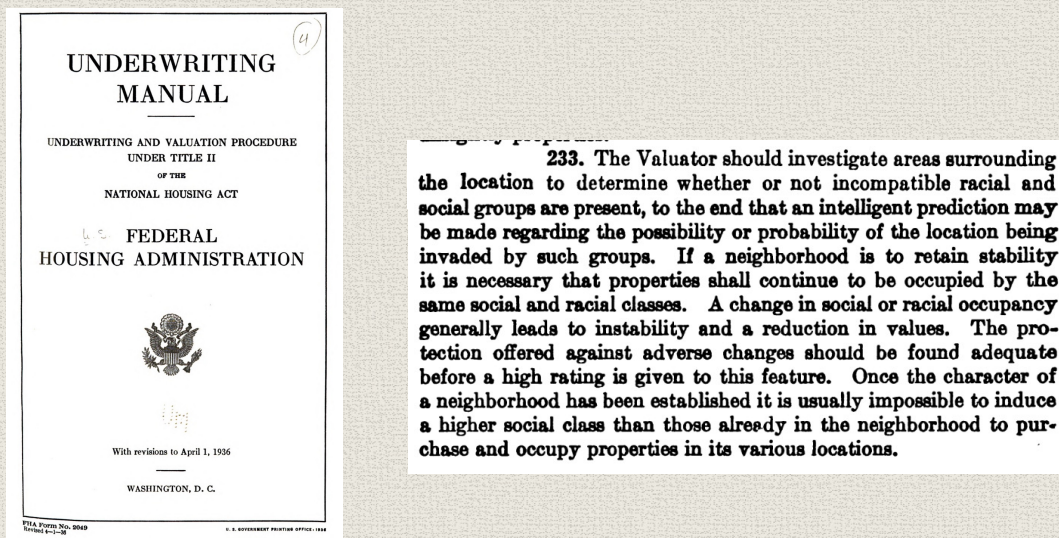
48



## FHA 1936 Manual

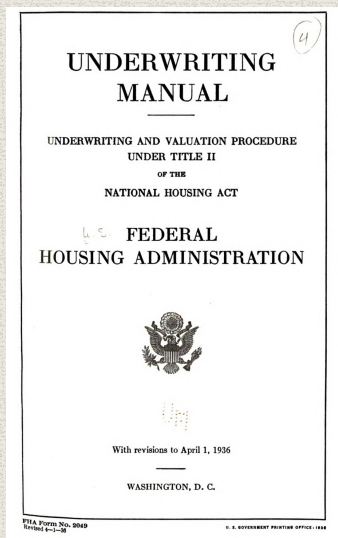


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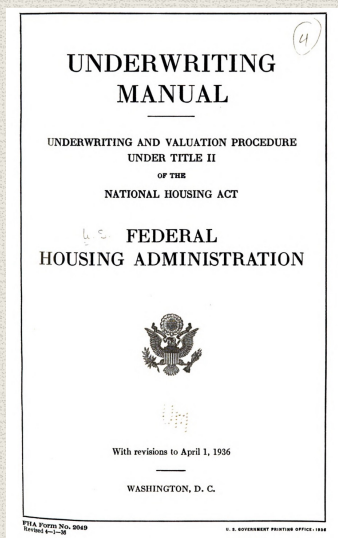


**PART I**  
**SECTION 3**  
**METHODS OF DWELLING VALUATION**  
**VALUATION PRINCIPLES**

**306 (2).** It is, therefore, especially important to search diligently for the presence of any adverse influences which lessen or destroy desirability or utility, and to discover the absence of safeguards which are intended to protect against declines in value or desirability. In such categories are included the following:

- (a) A declining population in the neighborhood or community or region;
- (b) A decline, or danger of decline, of the desirability of the neighborhood through the influx of people of lower living standards;
- (c) A decline, or danger of decline, of the desirability of the neighborhood as a place of residence through the introduction into it of commercial, industrial, or manufacturing enterprises, or nuisances or inharmonious uses of any kind;
- (d) Lack of appropriate and adequate deed restrictions and effective provisions for the enforcement thereof;
- (e) Lack of appropriate and adequate zoning regulations.

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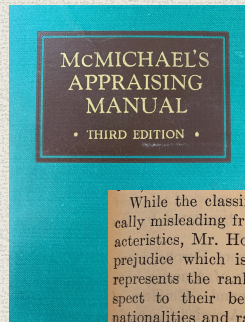
**METHODS OF DWELLING VALUATION** **Part I**  
**326**

**326 (5).** Obsolescence results from such occurrences as these:

- (a) New inventions and discoveries;
- (b) Changes in the preferences and tastes of the public, as, for example, with regard to styles of architecture, geographical locations as places of residence, the extent of plumbing facilities provided in residences, sizes of rooms, and heights of ceilings;
- (c) The encroachment of nonconforming uses, as when commercial and industrial enterprises are introduced into residential neighborhoods;
- (d) The infiltration into residential districts of people whose living standards are lower than those of the people who already inhabit these districts;
- (e) The failure of substantial numbers of property owners in the district to maintain their properties in good condition;
- (f) To increases in land values which result in changes in the highest and best uses for which land is suited.

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## The FHA's Requirements Unfortunately Made Their Way Into Early Appraisal Education

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.

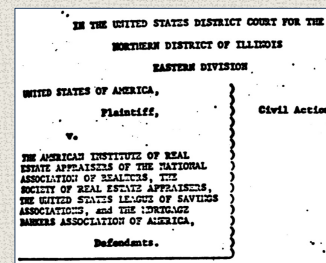
- This is a ranking of nationalities and races in the Chicago area in 1930s, ranking them based on their "favorable influence" on land value.
- The ranking was created by Dr. Homer Hoyt, the Chief Land Economist at the Federal Housing Administration from 1934-40.
- It's reproduced here in an appraisal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

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## Court Rulings Most Significant Litigation Under Fair Housing Act in Relation to Appraising

- The most significant appraisal-related case under the Fair Housing Act was filed in 1976 by the United States against four national appraiser/real estate and lending organizations.
- The complaint challenged specific principles and instructional materials which allegedly caused appraisers to treat race and national origin as negative value factors.
- The organizations ultimately agreed to settle and to amend the challenged principles and materials, as well as adopt new education.



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## Most Significant Litigation Under Fair Housing Act in Relation to Appraising

- Before settlements were reached, examples of discriminatory principles were offered by the government in support of its case and included certain then-accepted “principles of real property value.”
- One was called the “principle of conformity,” which a key appraisal text defined then as:  
*The principle of conformity holds that maximum value is realized when a reasonable degree of sociological and economic homogeneity is present. ...*
- Another section of the text stated:  
*The highest and best use is generally realized under circumstances of conformity . . . [and] is the result of a reasonable degree of architectural, social and economic homogeneity.*
- These descriptions of the principle were holdovers from early materials containing more blatantly discriminatory instruction.
- The principle of conformity no longer refers to social or human homogeneity – and it’s difficult to find at all.

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## What Does an Appraisal Discrimination Lawsuit Look Like? 2009 District Court Ruling on a Case of Alleged Appraisal Discrimination

- In 2009, Gloria Swanson, who is black, believed she had been racially discriminated against in the valuation of her home for a home equity loan.
- She filed suit – *pro se* – against the appraiser, his firm and the bank, contending illegal discrimination under the Fair Housing Act.
- The bank was represented by the one of the largest law firms in the United States.
- The appraiser was represented by a well-qualified Chicago law firm.
- The federal district court initially dismissed her lawsuit for failing to sufficiently allege a claim.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

GLORIA E. SWANSON and  
CHARLES M. ROUTEN, )  
Plaintiffs, ) Civil No. 09 C 2344  
v. ) Judge Zagel  
CITI, d/b/a CITIBANK, a member of )  
CITIGROUP, [REDACTED], Appraiser ) Magistrate Judge Mason  
and [REDACTED] APPRAISAL SERVICES, )  
Defendants. )

AMENDED COMPLAINT

NOW COME, Gloria E. Swanson and Charles M. Routen, husband and wife, on their own behalf, as pro se plaintiffs, for their Amended Complaint, by order of this Court, against Defendants CITI, d/b/a CITIBANK (hereinafter referred to as, "Citibank"), [REDACTED] appraiser, (hereinafter referred to as "Lanier") and [REDACTED] Appraisal Services (hereinafter referred to as "PCI").

**FILED**  
JUN 29 2009  
MICHAEL W. DOBSON  
CLERK, U.S. DISTRICT COURT

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## What Does an Appraisal Discrimination Lawsuit Look Like? 2009 District Court Ruling on a Case of Alleged Appraisal Discrimination

- Ms. Swanson then appealed – again *pro se* – to the Seventh Circuit Court of Appeals.
- The appellate court's task here was to determine what level of detail does a plaintiff alleging discrimination under the Fair Housing Act need to have in their complaint to have a sufficient claim to go forward?
- The court was basically setting the table for evaluating future cases. The court held:

*[Ms.] Swanson's complaint identifies the type of discrimination that she thinks occurs (racial), by whom (Citibank, through [loan officer], the manager, and the outside appraisers it used), and when (in connection with her effort in early 2009 to obtain a home-equity loan). This is all that she needed to put in the complaint.*

- So, the answer is that it doesn't take too much to allege a claim that will survive a motion to dismiss, meaning that the lender/appraiser/appraisal firm will often have to defend the case on the merits.

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## Contemporary Context Regarding Bias in Real Estate Including Appraisal Services

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## **“Modern” Roadblocks to Fair Housing and Fair Lending**

### **“Digital Redlining”**

Example current case: **In re Wells Fargo Mortgage Discrimination Litigation**, U.S. District Court, N.D. Cal., Case No. 3:22-cv-00990.

- In March 2022, Bloomberg News published an article entitled “Wells Fargo Rejected Half Its Black Applicants in Mortgage Refinancing Boom” (registration required).
- Bloomberg’s researchers had combed through the data for 8 million conventional loan refinance applications in 2020 reported by lenders under the Home Mortgage Disclosure Act.
- The researchers saw stark differences in Wells Fargo’s approval rates for White, Black and Hispanic refinance applicants.

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### **Alleged “Digital Redlining”**

- The researchers found that Wells Fargo approved 72% of applications from White applicants but only 47% from Black applicants.
- For Hispanic borrowers, Wells Fargo’s approval rate was 53% versus a 79% industry average for Hispanics.
- After publication of the article, a half-dozen class actions were filed swiftly against Wells Fargo by Black and Hispanic borrowers who had been denied loans.

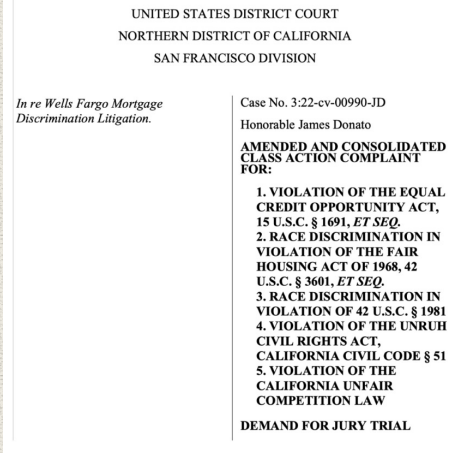
UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION	
<i>In re Wells Fargo Mortgage Discrimination Litigation.</i>	Case No. 3:22-cv-00990-JD Honorable James Donato
AMENDED AND CONSOLIDATED CLASS ACTION COMPLAINT FOR:	
1. VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT, 15 U.S.C. § 1691, <i>ET SEQ.</i>	
2. RACE DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT OF 1968, 42 U.S.C. § 3601, <i>ET SEQ.</i>	
3. RACE DISCRIMINATION IN VIOLATION OF 42 U.S.C. § 1981	
4. VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL CODE § 51	
5. VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW	
DEMAND FOR JURY TRIAL	

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## Alleged “Digital Redlining”

- The primary legal claims in the consolidated case are brought under the federal Fair Housing Act and Equal Credit Opportunity Act.
- The complaint in the case principally alleges a story about disparate treatment and impact in Wells Fargo’s mortgage determinations, including the bank’s use of flawed “centralized, universal, race-infected lending algorithms” or “**digital redlining**.”
- But part of the plaintiffs’ theory is also based on alleged bias in the appraisals relied on by the bank.



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## What Does the Complaint Say about Appraisals Used by the Bank?

- Here’s a key allegation pertaining to appraisals:

*Wells Fargo knowingly incorporates, without adjustment, appraisals that have been shaped by years of race-based valuation standards or appraisals affected by race-based criteria. Homes in majority Black neighborhoods are worth an average of 23% less than homes in neighborhoods with “very few or no Black residents” and of similar home quality.*

- As a result, the plaintiffs allege that “Wells Fargo’s discrimination . . . has forced those who received below-market appraisals from Wells Fargo to abandon the process with Wells Fargo and turn elsewhere.”

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## 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.

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## 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.”

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## Researchers and Fair Housing Advocates Have Pointed to Specific Negative Impacts from Alleged Appraisal Bias on Groups Protected by Anti-Discrimination Laws

- Some researchers have suggested the existence of persistent valuation differences in communities of color versus more white communities.
- For example, in 2021, Freddie Mac released a report based on a 5-year study of 12 million appraisals. The report offers two significant findings:
  - An appraiser's estimated home value was more likely to fall below the sale contract price in Black and Latin census tracts than in White census tracts.
  - Appraisers chose comparable sales located significantly closer to the subject property when that property was located in a Black or Latin census tract than if the property was in a White census tract.
- Other researchers have stated stronger conclusions:

"[M]y data indicate that appraisers' ongoing use of the sales comparison approach recycles home values that were initially determined under the explicitly racist appraisal criteria used prior to the 1960s and 1970s. . . . My data suggest that appraisers have contributed to this growing inequality through their use of racist, if unofficial, appraisal logic and methods."\*)

We'll look at such studies again and acknowledge that other points of view exist.

\* Korver-Glenn, Race Brokers: Housing Markets and Segregation in 21<sup>st</sup> Century Urban American, at p.117 (2021).

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## 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:

- Appraisers' opinions of value are more likely to fall below the contract price in Black and Latino census tracts.
- 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%

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## 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:

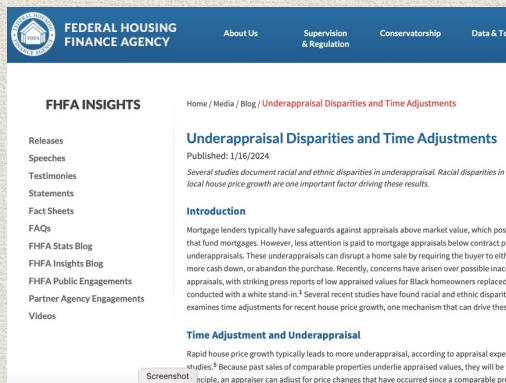
##### Appraisal gaps for minority applicants

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%

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## FHFA Study Regarding Underappraisal Disparities and Time Adjustments



- 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 adjusted these appraisal 67% of the time in white tracts, but only at a 45% of the time in Black tracts.

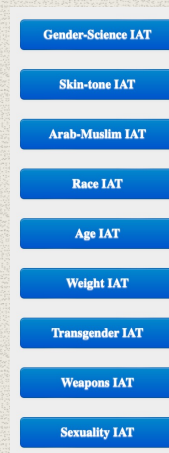
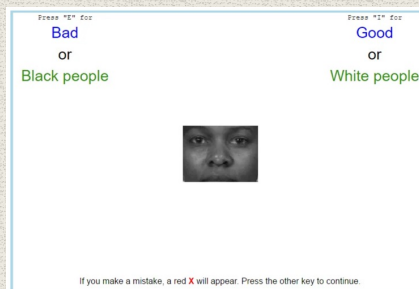
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## A Few Strategies to Work on Potential Implicit Bias

**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.



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## A Few Strategies to Work on Potential Implicit Bias

**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 their tribal heritage or their neighborhood will impact their ability to obtain the loan?

*"It sinks in that what was devaluing my home was me."*

– Carlette Duffy, Indianapolis, IN (HUD Complainant)\*\*

*"I was devaluing the home just by sitting in it, just by living my life, just by paying my mortgage, just by raising my son there."*

– Abena Horton, Jacksonville, FL (HUD Complainant)\*\*

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

\*\* Source: Abraham, Heather R., Appraisal Discrimination: Five Lessons for Litigators (July 20, 2023). SMU Law Review, Vol. 26, No. 2, 2023, Available at SSRN: <https://ssrn.com/abstract=4516700>

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## 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?

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Slide 72

## The Legal Side: Fair Housing and Antidiscrimination Laws and Regulations (Section B of AQB Outline)

In this part of the class, we'll be looking at the details and application of key laws and regulations concerning potential discrimination in appraisal services:

- a. Fair Housing Act
- b. Equal Credit Opportunity Act (ECOA)
- c. Civil Rights Act of 1866 (Section 1981 and Section 1982)
- d. Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)
- e. Unfair and Deceptive Acts and Practices (UDAP)
- f. Unfair, Deceptive or Abusive Acts and Practices (UDAAP)
- g. Example state laws specific to appraisers

- We'll also look at how these antidiscrimination laws differ from professional liability/professional negligence laws.

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## Things I've Personally Observed from Handling and Communicating with Parties About Appraisal Discrimination Cases

- I've not spoken with a consumer who has filed a case or who is thinking about a case – where I did not think the consumer actually believed in their claims about bias or discrimination by the appraiser.
- I've not represented a responding appraiser who I thought engaged in anything close to intentional discrimination – valuing a property differently and knowingly because of race or other protected characteristics.

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## Things I've Personally Observed from Handling and Communicating with Parties About Appraisal Discrimination Cases

- The best appraisal work is almost never at the center of a discrimination complaint.
- How the appraiser communicated with the consumer and other parties significantly affects claims of discrimination, both in the likelihood and content of the allegations.
- Openness and willingness to listen and/or correct errors or misjudgments greatly reduces an appraiser's risk.
- In these cases, I often wish for stronger workfiles with supporting documentation for conclusions (especially large adjustments) and with evidence of how the appraiser selected comparables (initial search results with search parameters).

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

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8	Julia Howard-Gibbon (SBN 321789)	
9	FAIR HOUSING ADVOCATES OF	
10	NORTHERN CALIFORNIA	
11	1314 Lincoln Ave., Suite A	
12	San Rafael, CA 94901	
13	Tel: (415) 483-7516	
14	Fax: (415) 457-6382	
15	julia@fairhousingnorcal.org	
16	Attorneys for Plaintiffs	
17	UNITED STATES DISTRICT COURT	
18	NORTHERN DISTRICT OF CALIFORNIA	
19	TENISHA TATE-AUSTIN; PAUL	Case No.
20	AUSTIN; and FAIR HOUSING	COMPLAINT FOR INJUNCTIVE,
21	ADVOCATES OF NORTHERN	DECLARATORY, AND MONETARY
	CALIFORNIA,	RELIEF; JURY TRIAL DEMAND
	Plaintiffs,	
	v.	
	JANETTE C. MILLER; MILLER AND	
	PEROTTI REAL ESTATE APPRAISALS,	
	INC., AMC LINKS LLC,	
	Defendants.	

Since the appraiser has professional responsibility for the content of an appraisal, a lender can't have liability for the 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).

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## 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."*

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

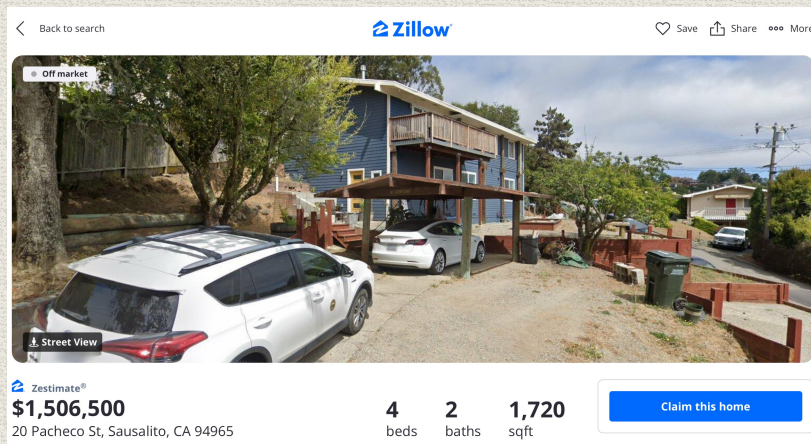
- After purchasing the home, the Austins undertook extensive remodeling of their home – including the addition of a permitted accessory dwelling unit (ADU).
- In March 2019, they refinanced their mortgage.
- The appraisal for that refinance valued their remodeled, expanded home at \$1,450,000.
- In early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



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



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## 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 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."

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

- Before the second appraiser's inspection, the Austins "white-washed" their home and then had a White friend greet the appraiser.
- That inspection took place on February 15, 2020.
- The second appraiser's opinion of value was \$1,482,500.

necessary to use comparable sales which sold in excess of 12 months and to use sales which were located in on the east side of 101. The east side of 101 in Sausalito it typically a **more desirable location** than Marin City and homes tend to sell higher. Therefore location adjustments were made. This adjustment is was determined through paired sales analysis and the appraiser's knowledge of the market area. The subject is also improved with ADU and due to low turnover of comparable sales with an ADU it

**Does either of the appraisers' phrases "distinct marketability" or "desirable location" violate the Fair Housing Act?**

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## 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.

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## 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)
- Negligent Misrepresentation

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

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## 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).)

Who can sue  
for  
discrimination?

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## Fair Housing Act – Basic Theories of Liability

Two key theories of liability "**disparate treatment**" and "**disparate impact**."

### Disparate Treatment:

- A person within a protected group is shown to have been singled out and treated less favorably than others similarly situated. 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 appraiser did something different in the appraisal "because of race" or because of another protected characteristic.

### HUD Manual explanation regarding "intent" or "motive":

The Fair Housing Act prohibits intentional discrimination in a covered housing practice on the basis of race, color, religion, sex, disability, familial status, or national origin. The command of the law is that these seven bases for distinguishing among homeseekers must be irrelevant to a housing decision. A respondent who consciously relies on any one of these illegal factors in discriminating with respect to a covered housing practice violates the Act. And this is so regardless of whether the respondent bears any ill will or hostility towards whatever protected group is involved in the case; proof of the respondent's personal prejudices is not required to establish a violation of the Act.

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## 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.

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## Fair Housing Act – Basic Theories of Liability

### 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.
- For example – hypothetically, a plaintiff could attack an organization's “rule” that appraisers only use comps within a prescribed area or distance.
- Disparate impact – which requires no discriminatory motive – began to be recognized courts routinely in the early 80s for the Fair Housing Act.
- Disparate impact claims would usually be directed at larger businesses or organizations.

➤ The disparate impact method of proof also applies to ECOA, which we will address shortly.

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## Significance of Disparate Impact

- Plaintiff does not need to show intent or knowledge on the part of defendant for a disparate impact claim.
- Claims are based on testing, statistics and expert analyses about whether a challenged policy or practice has a discriminatory effect on a protected group.
- Statistics don't create automatic liability – after a plaintiff makes out a claim, the court then looks to defendant to show there is legitimate non-discriminatory grounds for the policy or practice.

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## Example of Potential Disparate Impact

Example: An appraisal management company has a policy of not conducting any appraisals for homes valued at less than \$100,000. Although this policy does not explicitly mention race or national origin, the loan amount threshold has a disproportionate adverse impact on borrowers of color and on borrowers in neighborhoods of color. Assuming the appraisal management company cannot provide a legitimate, non-discriminatory purpose for the policy, this policy likely would violate the Fair Housing Act's and ECOA's prohibition against discrimination on the basis of race and national origin.\*

\* Source: NFHA Report at page 32:  
[https://nationalfairhousing.org/wp-content/uploads/2022/02/2022-01-28-NFHA-et-al-Analysis-of-Appraisal-Standards-and-Appraiser-Criteria\\_FINAL.pdf](https://nationalfairhousing.org/wp-content/uploads/2022/02/2022-01-28-NFHA-et-al-Analysis-of-Appraisal-Standards-and-Appraiser-Criteria_FINAL.pdf)

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## Fair Housing Act – Basic Theories of Liability

We are focusing on disparate treatment today, however.

Besides this theory of liability being more relevant to cases against individual appraisers, the other consideration is that the extent to which **an individual appraiser's** 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.

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## 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.

Examples of potentially direct evidence:

- The appraiser stated they chose comparable sales based on any protected categories.
- The appraiser’s report contains overt references to a protected category and those statements are related to the appraiser’s conclusions or assignment results (i.e., the remarks are “decisional” – not stray, but “stray remarks” could be taken as circumstantial evidence.
- It’s acknowledged that direct evidence is rare. Most cases regarding housing discrimination are based on a “mosaic” of circumstantial evidence.

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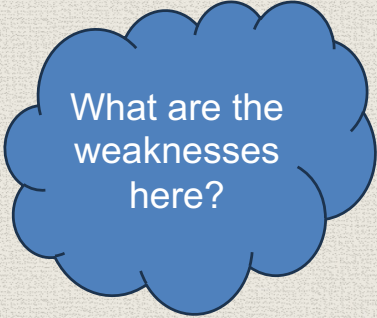


## Fair Housing Act – Evidence of Discrimination

Here are examples of items commonly cited by fair housing advocates as examples of circumstantial evidence:

- Negative comments about the neighborhood;
- Failure to include positive aspects of a neighborhood or incomplete analysis that overemphasizes negative aspects;
- Failure to follow Fannie Mae guidelines or USPAP standards;
- Failure to follow the defendant company's own established appraisal policies;
- Selection of inappropriate comparable properties;
- Questionable adjustments to comparable property values;
- Alternative appraisals estimating a higher value;
- Errors or sloppiness in the appraisal report;
- Differences in appraised values before and after a homeowner removes evidence of their race; and
- Pre-lawsuit communications or conduct.

\* See Abraham, *Appraisal Discrimination: Five Lessons for Litigators*, p.29.



What are the weaknesses here?

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## Fair Housing Act – Evidence of Discrimination

If the complaint concerns alleged discrimination based on the race or other protected category of the owner/borrower, what is likely to be the strongest evidence and most likely to differentiate a discriminatory appraisal from a merely negligent appraisal?

- Comparing the same appraiser's appraisals of comparable properties in the same neighborhood as close in time as possible – with the only material difference being the protected category of the owner/borrower. And, then looking for differences.
- Are the values close? Are different comparables selected? Distance to comparables? Are condition and quality ratings different? Difference in service standards?
- Yes, this means asking the appraiser to produce other appraisals in the neighborhood (or lists) – and obtaining information about the other owners/borrowers.

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## 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.

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## 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.

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## 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).

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## Fair Housing Act, Statute of Limitations

### 3-2 TIMELINESS

#### A. The Importance of Timeliness

A threshold issue for any complaint filed under the Fair Housing Act is that it be timely. Section 810 of the Act provides HUD with jurisdiction to investigate complaints filed within one year--365 calendar days--of the alleged discrimination. Counting of the 365 days begins the day after the discriminatory act. If the one-year period has elapsed, HUD has no jurisdiction to process the complaint. The injured party may, however, retain a private attorney and file a civil suit under the Fair Housing Act up to two years after the last discriminatory action. In addition, the complainant should be advised that he or she may have the right to file under a different federal, State or local statute which may provide a longer time period for filing.

This statutory limitation providing one year within which to file a complaint. and two years for the filing of civil suits, is called a "statute of limitations." When the time has expired, the statute is said to "have run."

How does this compare to a claim for professional negligence?

\* <https://www.hud.gov/sites/documents/80241C3-1FHEH.PDF>

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## One Final Key Section Fair Housing Act, Section 3617

### § 3617. Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, . . . any right granted or protected by [section 3603, 3604, 3605, or 3606](#) of this title.

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## The Austins Also Alleged a Claim Under the 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 between Fair Hair Housing Act 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).

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## Comparison of Potential Liability Under Antidiscrimination Laws with Professional Liability/Negligence

- Who has standing to sue under antidiscrimination laws versus who can sue an appraiser for professional negligence?
- Does the USPAP concept of intended user have any application to defending a claim for alleged discrimination by a borrower?
- A common defense in discrimination cases is – the deficiency in the valuation wasn't the result of discrimination; it was the result of mistake.
- The Fair Housing Act doesn't require that appraisers be good at their profession; it only requires that they not consider unlawful factors.
- Comparison regarding statutes of limitation.

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## Specific 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.”

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## Key Changes in USPAP – Not Complete Here (Which Has the Effect of Either Law or Regulation in Every State)

### **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.<sup>13</sup> This includes the Fair Housing Act (FHA), 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.

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.

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## Key Changes in USPAP (Which Has the Effect of Either Law or Regulation in Every State)

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).
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).

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## 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.



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## 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.

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## This Claim Was Not Alleged by the Austins - Why? Equal Credit Opportunity Act

Another key federal 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.)

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).

- ECOA is not limited to residential; it applies to commercial lending as well.
- Note: The potential application of ECOA is carefully worded in the 2024 USPAP.

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## Rounding out other potentially relevant laws: UDAAPs, UDAPs and FIRREA

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## The Legal Side of Alleged Discrimination in Appraising – Key Laws

Another relevant law emerged 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.”



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## And then we have – “UDAPs”

In recent years, the Federal Trade Commission has likewise asserted that discrimination in lending may constitute prohibited “UDAPs.”

What are UDAPs? They are “unfair or deceptive acts or practices” in commerce under the Federal trade Commission Act.

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## Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)

- FIRREA does not directly address fair housing and discrimination in the same way as specific laws like the Fair Housing Act.
- However, it is the source for the requirements on financial institutions that they used licensed/certified appraisers and that appraisals be performed in accordance with USPAP – which requires independence, impartiality and a lack of bias. (12 U.S.C. § 3331 et seq.).

### Functions of Federal financial institutions regulatory agencies relating to appraisal standards [12 U.S.C. 3339]

Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each such agency or instrumentality. These rules shall require, at a minimum—

(1) that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation;

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## More Case Studies and Investigations and Best Practices for Avoiding Allegations of Bias/Discrimination

(Section D of AQB Outline)

- We've already covered a number of real-world cases.
- In this part, we'll look at the details of some additional cases and investigations.
- We'll see what we can learn from them about avoiding allegations of bias and discrimination.

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**How many appraisers have been sued for discrimination since 2020?**

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Slide 112

## What About Court Actions Since 2020 Involving Alleged Appraisal Discrimination



FHFA Valuation Modernization Summit



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

**"Only" 10 Court Cases 2020-24**

**Beneath the Surface:**  
Non-Public Resolutions  
Fair Housing Organization Investigations  
HUD Investigations to be Resolved  
CFPB Investigations

### 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.

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## How Are the Anti-Discrimination Laws Enforced in the Context of Appraisals?

### 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** (NY Dept. of State, **Division of Licensing**, and NY **Division of Human Rights**).
3. Legal actions in **state or 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.

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## Changes with the Trump Administration?

### Interagency Task Force on Property Appraisal and Valuation Equity (PAVE)

### Safari Can't Find the Server

Safari can't open the page "https://pave.hud.gov" because Safari can't find the server "pave.hud.gov".

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## HUD Changes

FHEO HANDBOOK 8025.1 | HUD.gov / U.S. Department of Housing and Urban Development (HUD)  
[https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/fheo/80251](https://www.hud.gov/program_offices/administration/hudclips/handbooks/fheo/80251)  
 FACT SHEET PDF APPENDIX 25: **CONCILIATION AGREEMENT** PDF APPENDIX 26:  
 CERTIFICATION...VOLUNTARY AFFIRMATIVE MARKETING **AGREEMENTS** PDF Log in to post ...

Enforcement | HUD.gov / U.S. Department of Housing and Urban Development (HUD)  
[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/enforcement](https://www.hud.gov/program_offices/fair_housing_equal_opp/enforcement)

Fair Housing Act Charges 2020-2019 **Conciliation** 2020-2019 Consent Order 2020 Order...Review 2019-2020  
 Voluntary Compliance **Agreement** 2019 Fair Housing ...

19concil326ProjectSentinel.pdf

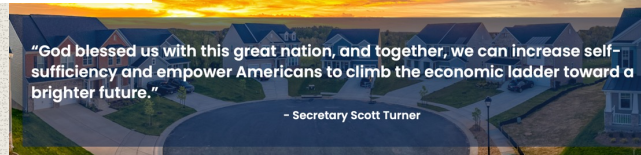
<https://www.hud.gov/sites/dfiles/FHEO/images/19concil326ProjectSentinel.pdf>

...111 111. S'e 4 N DE Vif-P e **CONCILIATION AGREEMENT** Between U.S. Department of...Date of **Agreement**:  
 Expiration Date of **Agreement**: AE J T \* 44 **CONCILIA** ...

2022 Fair Housing Act Charges

[https://www.hud.gov/sites/dfiles/FHEO/documents/2022\\_Charges.pdf](https://www.hud.gov/sites/dfiles/FHEO/documents/2022_Charges.pdf)

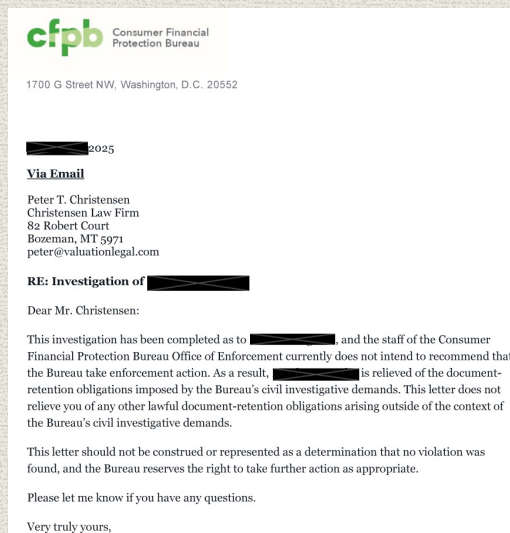
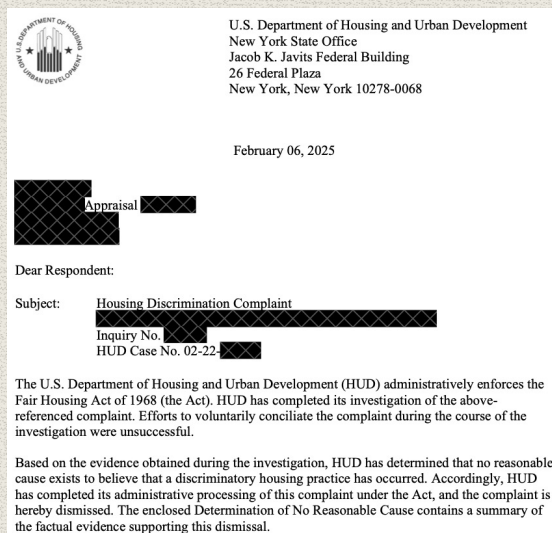
...readers. HUD Announces Racial Equity **Agreement** With Affordable Rental Housing Provider...Provider Read the  
 Voluntary Compliance **Agreement** 12/8/2022 ...



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## HUD and CFPB Dismissals Occurring



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## Case Study #1: HUD's Investigation Process



“Shirley Salmon-Davis decided to conduct an experiment on her way out of Pittsburgh, but hoped the findings wouldn’t be so noteworthy.

Salmon-Davis, who is Black, had her East Liberty house appraised twice. To the first appraiser, she presented as the homeowner and left her masks, drum, wooden sculptures and family photos in place. Three days later, a second appraiser was greeted by a white friend and instead examined a house with all indications of Black ownership removed.”

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## HUD Investigation Process



The former home of Shirley Salmon-Davis, in East Liberty near its border with Highland Park. (Photo by Rich Lord/PublicSource)

### Case Number:

#### 1. Complainants:

[Redacted]  
Pittsburgh, PA [Redacted]

#### 2. Complainant Representatives:

Fair Housing Partnership of Greater Pittsburgh  
c/o Megan Confer-Hammond  
2840 Liberty Avenue, Suite 205  
Pittsburgh, PA 15222  
Representing: [Redacted] (Fair housing partnership of Greater Pittsburgh)

#### 3. Other Aggrieved Parties:

Fair Housing Partnership of Greater Pittsburgh  
c/o Megan Confer-Hammond  
2840 Liberty Avenue, Suite 205  
Pittsburgh, PA 15222

#### 4. The following is alleged to have occurred or is about to occur:

- Discriminatory financing (includes real estate transactions)

#### 5. The alleged violation occurred because of:

- Race (Black)

#### 6. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

716 North Saint Clair Street  
Pittsburgh, PA 15206

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## HUD Investigation Process



Shirley Salmon-Davis, formerly of East Liberty, (Courtesy of the Fair Housing Partnership of Greater Pittsburgh)

**8. The following is a brief and concise statement of the facts regarding the alleged violation:**

Complainant alleges the Respondents violated section 805 of the Fair Housing Amendment Act of 1988 by imposing different terms and conditions in real estate appraisals because of race (Black).

Alleged violation of section 805 Discrimination in the appraising of residential real property because of race

Complainant [REDACTED] alleges on or about early November 2021, she sold her previous single-family home located at 716 North Saint Clair Street, Pittsburgh, PA 15206 (hereinafter "subject property"). Complainant also alleges she resided at the subject property since purchasing it for \$172,500 on or about February 5, 2010.

Complainant alleges on or about May 24, 2021, she and the Respondents met at the subject property and the Respondent's representative (rep) [REDACTED] provided an appraisal value at \$400,000.

Complainant further alleges on May 27, 2021, the subject property was appraised by a separate appraisal company at \$436,000. Complainant alleges a White woman, a family friend, met with the separate appraisal company at the subject property for the appraisal.

Complainant alleges the Respondents' appraisal occurred with the subject property as decorated by her. Whereas the separate appraisal occurred with Complainant removing her decorations. An example of the of the subject property for the separate appraisals are below.

Subject property at Respondents' appraisal verses the subject property at appraisal by a different appraisal company:

Both appraisals were a "Sales Comparison Approach" that used the "Adjusted Sale Price of Comparables" from comparables that were less than 0.5 miles from the subject property. Both appraisals used 608 Mellon Street, Pittsburgh, PA 15206 and 529 North

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## HUD Investigation Process

Euclid Avenue, Pittsburgh, PA 15206 as comparables to the subject property. Respondents determined adjusted sales prices for 608 Mellon Street and 529 North Euclid Avenue of \$403,250 and \$395,750, respectively. However, the separate appraisal company calculated adjusted sale prices of the same comparables as \$435,500 and \$435,700, respectively. Additionally, Respondents' appraisal used comparables.

On or about August 12, 2021, Complainant [REDACTED] listed the subject property for the sale price of \$475,000. On or about November 4, 2021, she sold the subject property for the sale price of \$447,000.

Overall, Respondents' appraisal was \$36,000 less than the different appraisal company's appraisal of the subject property. Further, the sale of the subject property was \$47,000 higher than Respondents' appraisal.

Respondents' appraisal calculated an Above Grade Gross Living Area (hereinafter "GLA") of 2,860 square feet for the subject property whereas the separate appraisal calculated a GLA of 2,735 square feet. Therefore, Respondents' appraisal calculated a \$139.86 price per square foot compared to the \$159.41 calculated by the separate appraisal.

Respondents oversized and undervalued the subject property compared to the separate appraisal and the home's subsequent sales price. The difference between the two appraisals was the race of individual who met with the appraiser and the decorations of the subject property, such as pictures of Black individuals or pictures of white individuals.

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## HUD Investigation Process

The subject property is in East Liberty, a neighborhood in the City of Pittsburgh. Additionally, the subject property is located about a block away from Stanton Avenue which is the boundary to the adjacent neighborhood of Highland Park. Objectively and subjectively, East Liberty is known as a Black neighborhood and Highland Park is known as a white neighborhood. East Liberty is 42.25% Black alone and Highland Park is 15.89% Black alone as per the 2020 U.S. Census.

Respondents' appraisal only used comparables south of Stanton Avenue which are comparables only in East Liberty. Whereas the separate appraisal used comparables north and south of Stanton Avenue which are comparables in both the East Liberty and Highland Park neighborhoods.

Complainants allege discrimination based on the devaluation of the subject property due to the property being inhabited by a readily observable Black family.

**9. The most recent date on which the alleged discrimination occurred:**

May 24, 2021

**11. The acts alleged in this complaint, if proven, may constitute a violation of the following sections:**

805 of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

[Redacted Signature]

[Redacted Date]  
Date

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## 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.

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## 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]
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.

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## 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 trail 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		9/25/2023
<a href="#">Read the Charge</a>		
HUD Charges Landlord with Disability Discrimination		9/18/2023
<a href="#">Read the Charge</a>		
HUD Charges Nevada RV Resort with Discriminating Against Family with Minor Children		9/14/2023
<a href="#">Read the Charge</a>		

### Observations:

- Just 1 charge regarding appraisal discrimination published 2020-24.
- No other substantive conclusions of investigations 2020-24.

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## Case Study #2 – How an Appraiser Created a Claim for Retaliation under the Fair Housing Act

### § 3617. Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, . . . any right granted or protected by [section 3603, 3604, 3605, or 3606](#) of this title.

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## Case Study #2 – How an Appraiser Created a Claim for Retaliation under the Fair Housing Act

From the complaint pending before HUD:

Complainants allege that after Complainant [REDACTED] filed a complaint [REDACTED] with HUD, both which alleged racial discrimination in the appraisal, Respondent [REDACTED] sent Complainants a letter dated [REDACTED] titled "Demand for Restitution and Retraction of Defamatory Statements", wherein he threatened to take legal action against Complainant in response to Complainants' filings with [REDACTED] HUD, which are protected activities. Respondent [REDACTED]'s letter accused Complainants of providing false and fraudulent facts to [REDACTED] claimed that the information was "complete acts of fiction made up by you" and accused Complainants of having a personal vendetta against him. Respondent [REDACTED]'s letter accused Complainants of filing a "racist and discriminatory" complaint with HUD, and asserted that he could report Complainant's to the police for making false statements against him. The letter concluded by threatening to sue Complainants for defamation, slander, civil rights violations and intentional infliction of emotional distress if they do not comply with his demands.

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## Court Actions Since 2020 Involving Alleged Appraisal Discrimination

Additional example real cases for you to consider:

<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**, Complaint 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

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## Avoiding Allegations of Bias/Discrimination Let's Start with Accepting Assignments

The Fair Housing Act prohibits discrimination “in making available” an appraisal or other valuation related to housing.

How might an appraiser violate that prohibition?

- Declining work on a “certain side” of town.
- Charging more for a valuation in communities of color.
- Having different turn times or service standards.

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## Reducing the Risk of Discrimination Claims

My overriding observation:

- The most common trait of appraisals in discrimination claims:
  - basic errors,
  - lack of true analysis and genuine summary,
  - boilerplate work.

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## Importance of Consistency and Support

A frequent complaint registered against appraisals in connection with allegations of bias is that the appraiser made qualitative or discretionary decisions without actual data. The concern here is that potential bias (implicit or explicit) may creep into such judgments.

- Approaching each assignment with the same process.
- Starting a basic comparable search in the same way – not falling back of ad hoc judgment.
- Documentation of the search for comparable sales.
- True support for adjustments.

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## Federal Housing Finance Agency (FHFA) Study



### 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.

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## 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.

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## 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."

➤ 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.<sup>[3]</sup>

Contents [hide]

1 Geography

2 Demographics

2.1 2010

2.2 2000

3 Education

4 Notable people

5 References

6 External links

### Carlisle, Arkansas

**City**

Motto(s): "Land here"

### 2000 census

[ edit ]

As of the **census**<sup>[9]</sup> 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/km<sup>2</sup>). There were 1,029 housing units at an average density of 210.7 per square mile (81.4/km<sup>2</sup>). 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.

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## Where Did These Descriptions Come From?

Examples of problematic words and phrases found in appraisal reports:

"The county was 94.85% white, 0.19% Black or African-American, 0.83% Native American, 0.74% Asian, 0.07% Pacific Islander, 1.36% from other races, and 1.96% from two or more races. 3.73% of the population were Hispanic or Latino of any race. 19.4% were of German, 13.2% English, 11.4% Irish and 9.1% American ancestry."

➤ Where did this come from?



WIKIPEDIA  
The Free Encyclopedia

Main page  
Contents  
Current events  
Random article  
About Wikipedia  
Contact us

Article Talk

## Deschutes County, Oregon

From Wikipedia, the free encyclopedia

### Demographics

[ edit ]

### 2000 census

[ edit ]

As of the **census**<sup>[13]</sup> of 2000, there were 115,367 people, 45,595 households, and 31,962 families living in the county. The **population density** was 38 people per square mile (15/km<sup>2</sup>). There were 54,583 housing units at an average density of 18 per square mile (7/km<sup>2</sup>). The racial makeup of the county was 94.85% **White**, 0.19% **Black or African American**, 0.83% **Native American**, 0.74% **Asian**, 0.07% **Pacific Islander**, 1.36% from **other races**, and 1.96% from two or more races. 3.73% of the population were **Hispanic or Latino** of any race. 19.4% were of **German**, 13.2% **English**, 11.4% **Irish** and 9.1% **American** ancestry.

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## Similar Examples from Commercial Narrative reports

New Britain is a city in Hartford County, Connecticut, United States. It is located approximately 9 miles southwest of Hartford. According to 2010 Census, the population of the city is 73,206 people. There were 29,888 households, out of which 28.3% had **children** under the age of 18 living with them, 39.6% were **married couples** living together, 14.7% had a **female householder** with no **husband** present, and 40.7% were non-**families**. 32.1% of all households were made up of individuals, and 10.7% had someone living alone who was 65 years of age or older. The average household size was 2.50 and the average family size was 3.18.

such as Jean-Michel Basquiat, Shawn Carter, and Christopher Wallace calling the neighborhood home. Presently, Bedford-Stuyvesant is experiencing a wave of **gentrification** and investment, catalyzed by relatively lower prices for rowhouses and the area's well-preserved architectural character. Young professionals, families, and artists have flocked to the neighborhood in recent years. The area has maintained its reputations as a **diverse and culturally vibrant** piece of Brooklyn. Community District 3 is generally well served by all supporting facilities including schools,

Little Ukraine is a sub-neighborhood that lies within East Village in Manhattan. As with many of the cultural enclaves throughout New York City, Little Ukraine used to be a hub for New York's Ukrainian businesses and population. Today, many **Ukrainian residents** still reside in this section of the city, while very few authentic restaurants and stores remain. In order to preserve the historical architecture that is on display in East Village, the Greenwich Village Society

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## Looking for Discriminatory References in Appraisal Reports

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

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## Some Insight from 1995

### Valuation, Full Disclosure, and Discrimination

The Appraisal Journal, October 1995

Words and phrases commonly used in the real estate appraisal industry may inadvertently result in unfair lending practices. An intent to discriminate need not be present for a phrase to be considered a violation of the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act. Sections of the "Fannie Mae" form appraisal that may be potentially discriminatory are noted here, and ways to avoid unwitting discrimination without adversely affecting a valuation are illustrated.

terminology, for business necessity. Words and phrases such as desirable, curb appeal, high-income area, exclusive neighborhood, prestigious neighborhood, well maintained, and pride of ownership are not needed to convey the actual valuation. Yet they can cause a lender to choose one loan over another, which can result in a higher percentage of home loans in one neighborhood over another.

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## 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."

<https://selling-guide.fanniemae.com/sel/b4-1.1-04/unacceptable-appraisal-practices>

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## Use Artificial Intelligence to Write Descriptions?

**Manhattan Beach, CA** (2020 Census: 74% white, 26% non-white)

Manhattan Beach, nestled along the stunning coastline of Southern California, is a prestigious coastal community located in southwestern Los Angeles County. Renowned for its pristine beaches, upscale amenities, and affluent residents, Manhattan Beach offers a coveted coastal lifestyle with easy access to the economic opportunities of the greater Los Angeles metropolitan area.

**Inglewood, CA** (2020 Census: 17% white, 83% non-white)

Inglewood, located in southwestern Los Angeles County, California, is **a diverse and dynamic city with a rich cultural heritage**. Situated just south of downtown Los Angeles and adjacent to the Los Angeles International Airport (LAX), Inglewood offers residents convenient access to major transportation hubs, employment centers, and entertainment destinations.

**Hawaiian Gardens, CA** (2020 Census: 19% white, 81% non-white)

Hawaiian Gardens is a small city located in Los Angeles County, California. Situated in the southeastern part of the county, Hawaiian Gardens **offers residents a diverse urban environment** with easy access to major transportation routes and amenities. Despite its relatively modest size, **Hawaiian Gardens boasts a rich cultural heritage** and a strong sense of community.

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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]

Thank you for your time. If you wish to reply to this notice, please contact us via email at [AQM@freddiemac.com](mailto:AQM@freddiemac.com).

## 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."

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## Guidance from Freddie Mac – Oct. 5, 2022

Freddie Mac Single-Family Seller/Service Guide

Guide Home Seller/Service Relationship **Selling** Servicing Search the Guide View All

5603.4 < Prev Next >

### Unacceptable appraisal practices

Effective 10/05/2022

Guide Home > Selling > Series 5000 Seller Requirements for Appraiser Independent Appraisal Practices

#### Unacceptable appraisal practices

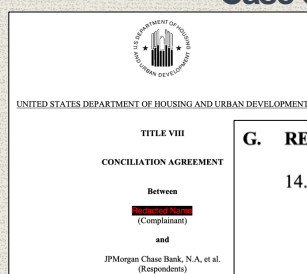
The following are examples of unacceptable appraisal practices. Evidence of any of the practices listed in this section will be a breach of Seller's warranty as to the professional quality of the appraisal.

1. Consideration of the race, color, religion, sex, sexual orientation, gender identity, age, marital status, disability, familial status, exercise of any federally protected civil right, receipt of income derived from any public assistance program, birthplaces of residents at the property or in the neighborhood, national origin of the 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. (See also [Section 1301.2](#) for equal opportunity compliance requirements.)
2. Use of unsupported or subjective terms to assess or rate, such as, but not limited to, "high," "low," "good," "bad," "fair," "poor," "strong," "weak," "rapid," "slow," "fast" or "average" without providing a foundation for analysis and contextual information
3. Incorporating terminology or veiled language that may be code words that could indicate underlying bias that include, but are not limited to, "pride of ownership," "crime-ridden area," "desirable neighborhood or location" or "undesirable neighborhood or location," "gentrified," "preferred community," "up and coming," predominantly Hispanic or Black neighborhood, substantial amount of Black or Hispanic residents at the property, diverse school system, amenities specifically geared to a race, ethnic or religious group or using terms such as Millennials, Generation X or Baby Boomers
4. Inclusion of inaccurate or incomplete data about the subject property, the neighborhood or any comparable sale used in the appraisal analysis

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## Case Study #3: HUD Complaint Settlement March 8, 2021



### G. RELIEF IN THE PUBLIC INTEREST

14. **Training:** All of Respondent Chase's Home Lending Advisors and Client Care Specialists nationwide will receive additional mandatory training on the Reconsideration of Value ("ROV") process and Fair Lending Issues related to appraisals within the calendar year 2021. The training includes specifics regarding how to handle complaints of discrimination in the appraisal process and the process for customers to submit a ROV request, including the requirement Chase will providing
17. **Changes to Notices:**

- a. **Changes to appraisal transmittal letter:** Within ninety (90) days of the effective date of this Agreement, Respondent Chase will release for coding and implementation revised language for the cover letter accompanying all appraisal reports it sends to its customers to include the following language:

*Chase is committed to maintaining appraiser independence and preventing attempts to influence appraisers in the preparation of appraisal reports, as well as avoiding any discrimination or bias in the appraisal process. If you believe that any person has attempted to influence the appraiser in the preparation of the appraisal of your property, or have any concerns with the reliability or credibility of the appraisal, please contact Chase mortgage support by calling 1-855-242-7346 Option "0", Option "0" as soon as possible to report any concerns of discrimination or bias or to discuss your options to contest the reliability of the appraisal.*

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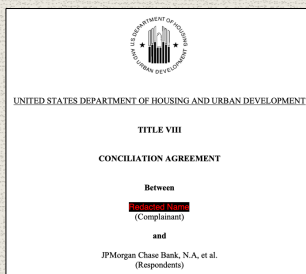
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## HUD Complaint Settlement March 8, 2021

### F. RELIEF FOR COMPLAINANT

13. Within fifteen (15) days of the effective date of this Agreement, Respondent Chase agrees to pay by wire transfer the amount of fifty thousand dollars (\$50,000) to Complainant. The wire shall be made payable to Complainant and sent using the bank and account information provided by Complainant. Respondent Chase will send a confirmation of payment via email to [yana.karnaukhov@hud.gov](mailto:yana.karnaukhov@hud.gov) and [R5FHEOConciliation@hud.gov](mailto:R5FHEOConciliation@hud.gov).



**What's the takeaway?**

**Reconsiderations of value.**

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## 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."
- But ROVs become problematic when the borrower has raised a genuine allegation of discrimination – as here in the recent Denver case:

Its only response was to task Ms. Cheroutes with an appraiser's work by providing her own sales comps for the appraisal, with those suggested sales comps *to be evaluated by Defendant Mykhailyna*, the person who discriminatorily dismissed her, treated her with palpable disdain, and undervalued her home in the first instance. Defendant [Lender's] numerous dismissals and gaslighting directive to revictimize herself caused additional and significant emotional distress.

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## Case Study #4: How Plain Errors and Oversights Contribute to Fair Housing Claims

One of the most common traits of appraisals in discrimination claims observed by me: basic errors – such as measuring and square footage, lack of care.

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.

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## Case Study #5: HUD Update – First Appraiser Charge of Discrimination Issued

- On July 15, 2024, HUD issued its first appraisal-related charge of discrimination in, at least, the last 10 years.
- It names an appraiser, his firm, an AMC and a lender.
- The significance of the issuance of a charge is that means HUD has determined after investigating that reasonable cause exists to conclude that discrimination has occurred in violation of the Fair Housing Act.
- The underlying complaint was filed in April 2021 with a state agency by a borrower in Denver; HUD took over handling the investigation in June 2021.

[www.valuationlegal.com/bias](http://www.valuationlegal.com/bias)

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

The Secretary, United States Department of Housing and Urban Development, on behalf of ■■■■■■■■■■	) HUDOHA No.
Charging Party	) FHCO No. 08-21-3530-8
v.	)
Makym Mykhailyna, Maverick Appraisal Group, Solidifi U.S. Inc. and Rocket Mortgage f/k/a Quicken Loans, LLC	)
Respondents	)

**CHARGE OF DISCRIMINATION**

**I. JURISDICTION**

Complainant ■■■■■■■■■■, who is Black, alleges that Respondents Makym Mykhailyna, Maverick Appraisal Group, Solidifi U.S. Inc. ("Solidifi"), and Rocket Mortgage, LLC f/k/a Quicken Loans, LLC ("Rocket Mortgage") discriminated against her on the basis of race and color in violation of the Fair Housing Act ("the Act"), 42 U.S.C. §§ 3601-3619. Specifically, ■■■■■■■■■■ alleges that Mr. Mykhailyna undervalued her property when he appraised it because she is Black and that Maverick Appraisal Group, Solidifi, and Rocket Mortgage bear responsibility for the discriminatory appraisal for bringing it about and giving it effect, in violation of subsection 804(b) and section 805 of the Act. She also alleges that Rocket Mortgage violated section 818 of the Act by terminating her refinance loan application after insisting she could only proceed with it based on the appraised value that she alleged was discriminatory.

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### Case Study #5: HUD Update – First Appraiser Charge of Discrimination Issued

- The borrower, who is Black and lives in a predominantly White area, alleges that the valuation of her duplex was low based on her race.
- Some of the alleged indicia of discrimination include:
  - The appraiser's use of comparables from areas of higher Black population when the appraiser allegedly used comparables from more White areas in other appraisals of nearby properties owned by White persons;
  - Valuing the property substantially lower than other appraisers in earlier appraisals; and
  - "Incorrectly associat[ing] the Subject Property ... with a local school that had a higher concentration of Black students" but not making that mistake for appraisals of White-owned homes in the same area.
- With regard to the mortgage lender, a separate claim in the Charge alleges that the lender violated the Fair Housing Act's prohibitions against retaliation for reporting a discriminatory housing practice (42 U.S.C. § 3617). This legal allegation stems from the lender's alleged failure to appropriately handle the borrower's concerns about the appraisal and its denial of her loan.

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### Case Study #7: Showing Respect for Homeowners and Borrowers/Occupants

#### Allegations from a Maryland case alleging fair housing violations

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.

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## Case Study #7: Showing Respect for Homeowners and Borrowers/Occupants

Allegations from North Carolina case alleging fair housing violations



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.

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## Thank You

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