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1155 15th Street, NW
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Via: <https://www.surveymonkey.com/r/ASBComments>
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Re: USPAP Third Exposure Draft

Dear Ms. Bradley,

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

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

The Appraisal System Historically Undervalued Homes for Households of Color

For much of America’s history, households of color were systematically excluded from economic opportunities through explicit policy decisions.² In particular, the New Deal’s federal Home Owners Loan Corporation (“HOLC”) developed one of the most harmful policy decisions in the housing and financial services markets by perpetuating a system that included race as a fundamental factor in determining the desirability and value of neighborhoods.³ This system included Residential Security Survey forms that explicitly captured the percentage of “Negro”

¹ ASB, USPAP Third Exposure Draft (July 26, 2022), <https://appraisalfoundation.sharefile.com/share/view/sec9abcbbbd3d497ca46ab5ac3e263be1>.

² See Lisa Rice, *The Fair Housing Act: A Tool for Expanding Access to Quality Credit*, *The Fight for Fair Housing: Causes, Consequences, and Future Implications of the 1968 Federal Fair Housing Act* (Gregory Squires, 1st ed. 2017) (providing a detailed explanation of how federal race-based housing and credit policies promoted inequality).

³ The Home Owners’ Loan Act of 1933 established the HOLC as an emergency agency under the Federal Home Loan Bank Board. 12 U.S.C. § 1461 *et seq.*

populations and other racial groups living in an area and then utilized that race-based data to grade the neighborhood despite the reality that families residing in communities of color could afford a mortgage loan. The HOLC's policies and procedures helped systematize redlining as well as the unfounded association between race and risk in U.S. housing and financial services markets.

The HOLC appraisal system also included the creation of appraisal maps that were color-coded to evaluate, grade, and indicate the desirability of neighborhoods. Communities of color – and even neighborhoods with small numbers of Black residents – were coded as “hazardous” as signified by red shading on the map and were assigned a lower value. Moreover, areas that were adjacent to communities with Black residents could be downgraded simply based on their proximity to a community of color. Notably, the data used to create the maps was not just collected randomly, but was based on the opinions of the leading real estate professionals at the time, including appraisers.

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

Appraisal Practices Perpetuated an Unfounded Association between Race and Risk

In addition to the redlining and mapping system, explicitly discriminatory underwriting and appraisal principles and practices perpetuated an unfounded association between race and default risk in the nation's housing and financial markets. These practices also promoted the idea that a home should be valued based on its neighborhood composition and that a homogeneous, all-White neighborhood held the highest value. Following are excerpts from a few appraisal texts and manuals:

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

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

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

- 1932: Valuation of Real Estate –
“There is one difference in people, namely race, which can result in very rapid decline [in real estate values].”
- 1935: American Institute of Real Estate Appraisers Manual, Real Estate Appraisal-
“To have the attributes of a good residential area, it is essential that protection be afforded against the infiltration of inharmonious racial groups....”
- 1938: Federal Housing Administration Underwriting Manual –
“Areas surrounding a location are investigated to determine whether incompatible racial and social groups are present, for the purpose of making a prediction regarding the probability of the locations being invaded by such groups. If a neighborhood is to retain stability, it is necessary that properties continue to be occupied by the same social and racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values.”
- 1946: McMichael’s Appraising Manual, Third Edition –
“Those nationalities and races having the most favorable influence [in Chicago] come first in the list and those exerting detrimental effects come last:
 1. English, Germans, Scotch, Irish, Scandinavians.
 2. North Italians.
 3. Bohemians or Czechs.
 4. Poles.
 5. Lithuanians.
 6. Greeks.
 7. Russian, Jews (lower class)
 8. South Italians.
 9. Negroes.
 10. Mexicans.”
- 1967: American Institute of Real Estate Appraisers Textbook, The Appraisal of Real Estate –
“The causes of racial and ethnic conflicts are not the appraiser’s responsibility. However, he must recognize the fact that values change when people who are different from those presently occupying an area advance into and infiltrate a neighborhood.”

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

- 1973: American Institute of Real Estate Appraisers Course Material –
“Ethnological information also is significant to real estate analysis. As a general rule, homogeneity of the population contributes to stability of real estate values. Information on the percentage of native-born whites, foreign whites, and non-white population is important, and the changes in this composition have a significance.... As a general rule, minority groups are found at the bottom of the socio-economic ladder, and problems associated with minority group segments of the population can hinder community growth.”

In 1976, after decades of these explicitly discriminatory appraisal practices, the U.S. Department of Justice (“DOJ”) filed suit against the American Institute of Real Estate Appraisers and three other defendants for alleged violations of the Fair Housing Act.⁷ The defendants settled and agreed to adopt certain policies, including a policy stating that it is improper to base a conclusion or opinion of value, or a conclusion with respect to neighborhood trends, upon stereotyped or biased presumptions relating to race, color, religion, sex, or national origin.

Discrimination in Appraisals Continues on an Individual and Systemic Basis

Unfortunately, the appraisal system continues to suffer from bias on an individual and systemic basis. Recent news stories have highlighted anecdotal evidence on an individual basis:

- California. A Black couple in Marin City, California, seeking to refinance received an initial appraisal of \$995,000. Suspecting that the valuation of their home was unjustifiably low, they asked a White friend to pose as the homeowner and then received an appraisal of \$1,482,500, which was almost \$500,000 more than the appraisal conducted just weeks earlier. The homeowner said, “There are implications to our ability to create generational wealth or passing things on if our houses appraise for 50 percent less than its value.”⁸
- Indiana. After receiving an initial appraisal of \$110,000, a Black woman in Indianapolis, Indiana, removed all family photos, Black art and books; declined to identify her race on the refinancing application; communicated with the appraiser by email only; and asked a White friend to pose as her brother and meet the appraiser.⁹ This time, the home appraised for \$259,000. Upon seeing that amount, the homeowner was first overcome with joy. But then the hurt surfaced because she had had to erase herself from her home in order to get a value that was fair and accurate.
- Maryland. Two married Black college professors from Johns Hopkins University received an initial appraisal of \$472,000 of their home in Baltimore, Maryland, and, in turn, the lender denied the couple a refinance loan.¹⁰ Suspecting that the valuation of their home was unjustifiably low, they removed family photos and had a white male colleague stand in for them. The second appraisal came in at \$750,000. The homeowner said, “We were clearly aware of appraisal discrimination. But to be told in so many words that our presence and the life we’ve built in our home brings the property value down? It’s an absolute gut punch.”

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

⁸ *Fair Housing Advocates of Northern California, Discrimination Lawsuits Filed Alleging Discrimination in Home Appraisal Process*, Press Release (Dec. 2, 2021), https://www.fairhousingnorcal.org/uploads/1/7/0/5/17051262/press_release_-_austin_case.final.pdf. Julian Glover, *Black California Couple Lowballed by \$500K in Home Appraisal, Believe Race Was a Factor*, ABC7News (Feb. 12, 2021), <https://abc7news.com/black-homeowner-problems-sf-bay-area-housing-discrimination-minority-homeownership-anti-black-policy/10331076/>.

⁹ Fair Housing Center of Central Indiana (“FHCCI”), *FHCCI Announces HUD Complaints Alleging Discrimination in Home Appraisals*, Press Release (May 4, 2021), <https://www.fhcci.org/wp-content/uploads/2021/05/5-4-21-HUD-Appraisal-Filings-Revised.pdf>.

¹⁰ Debra Kamin, *Home Appraised with a Black Owner: \$472,000; With a White Owner: \$750,000*, *The New York Times*, (Aug. 25, 2022), <https://www.nytimes.com/2022/08/18/realestate/housing-discrimination-maryland.html>.

- Colorado. A mixed-race couple in Denver, Colorado, scheduled an appraisal in connection with a home equity loan. When the Black husband greeted the appraiser, the home was valued at \$405,000 based on comparison to homes selected by the appraiser in a Black neighborhood in a different location. When the White wife greeted the second appraiser, the home was valued at \$550,000, which was an increase of \$145,000. The wife stated, "Race obviously played a role in how we were treated. But what's deflating is that this experience put a dollar figure on it."¹¹
- Connecticut. After receiving an initial appraisal of \$340,000, a Black family in Bloomfield, Connecticut, removed all family photos and asked a White neighbor to pose as the homeowner. This time, the home appraised for just over \$400,000. The homeowner stated, "[T]his kind of experience not only robs you of the ability to refinance, but also affects opportunities at building generational wealth."¹²
- Florida. After receiving an initial appraisal of \$330,000, a mixed-race couple in Jacksonville, Florida, removed all photos of the Black wife and her side of the family, books by Black authors, and holiday cards from Black friends. When the White husband greeted the second appraiser, the home appraised at \$465,000, which was an increase of more than 40 percent. After posting the story on Facebook, the homeowners received over 2,000 comments, many of which were from Black homeowners saying that they had a similar experience. The wife stated, "[I]n the Black community, it's just common knowledge that you take your pictures down when you're selling your house."¹³

While the individual stories of discrimination in appraisals are alarming, the analyses of systemic bias are even more stunning and disturbing. Recent studies contain the following findings:

- Appraisal Reports: Federal Housing Finance Agency ("FHFA"). FHFA recently found that thousands of appraisal reports contained potential race-related flags in the "Neighborhood Description" and other free-form text fields.¹⁴ Some examples that FHFA found in its analysis include:
 - Amenities described as a "commercial strip featuring storefronts supplying Jewish households."
 - A town was described as having a "Black race population above state average."
 - A neighborhood was described as "predominately Hispanic" and that the residents have "assimilated their cultural heritage" into the neighborhood.

¹¹ Troy McMullen, *For Black Homeowners, A Common Conundrum with Appraisers*, Washington Post (Jan. 21, 2021), https://www.washingtonpost.com/realestate/for-black-homeowners-a-common-conundrum-with-appraisals/2021/01/20/80fbfb50-543c-11eb-a817-e5e7f8a406d6_story.html.

¹² See *id.*

¹³ Debra Kamin, *Black Homeowners Face Discrimination in Appraisals*, The New York Times (Aug. 25, 2020), <https://www.nytimes.com/2020/08/25/realestate/blacks-minorities-appraisals-discrimination.html>.

¹⁴ FHFA, *Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary*, FHFA Insights Blog (Dec. 14, 2021), <https://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx>.

- A market description noted that "there is more Asian influence of late" buying the market.
- A property was described as being in a "homogeneous neighborhood with good schools."
- **Purchases: Freddie Mac.** In a groundbreaking study, researchers at Freddie Mac analyzed millions of appraisals submitted for purchase transactions and found unexplained racial disparities in the percentage of properties that received an appraisal value lower than the contract price (the "appraisal gap").¹⁵ More specifically, the research showed that:
 - *For Black/Latino neighborhoods.* An appraisal gap is more likely to occur in Black or Latino census tracts than White census tracts.
 - *For Black/Latino individuals.* Similarly, an appraisal gap is more likely to occur for Black or Latino mortgage applicants than White mortgage applicants, regardless of the neighborhood where the property is located.
 - *Across appraisers.* The majority of appraisers reviewed showed an appraisal gap. (That is, the issue was not limited to just "a few bad apples," but rather the majority of appraisers reviewed were more likely to show an appraisal gap for properties in Black or Latino census tracts than for properties in White census tracts.)
- **Refinancings: Fannie Mae.** In another groundbreaking study, researchers at Fannie Mae analyzed appraisals submitted for refinancing transactions and found that appraisers were more likely to overvalue White-owned homes in majority-Black neighborhoods.¹⁶ Moreover, the overvaluation could be attributed to appraisers relying on comparable sales from outside of the subject property's immediate area (i.e., the majority-Black neighborhood) even though potentially more appropriate comparable properties were available closer to the subject property.
- **Cumulative Cost: The Brookings Institution.** A 2018 Brookings Institution study of American Community Survey homeowner estimates and Zillow data found that homes in majority Black neighborhoods had values that were 23 percent less than properties in mostly White neighborhoods, even after controlling for home features and neighborhood amenities.¹⁷ That is, differences in home and neighborhood quality could not fully explain the devaluation of homes in Black neighborhoods, raising questions about whether discrimination was the determining factor. The study estimated that homes in

¹⁵ Melissa Narragon, et al., *Racial and Ethnic Valuation Gaps in Home Purchase Appraisals*, Freddie Mac Economic and Housing Research Note (Sept. 2021), <http://www.freddiemac.com/fmac-resources/research/pdf/202109-Note-Appraisal-Gap.pdf>.

¹⁶ Jake Williamson and Mark Palim, *Appraising the Appraisal*, Fannie Mae (Feb. 2022), <https://www.fanniemae.com/media/42541/display>.

¹⁷ Andre M. Perry, Jonathan Rothwell, and David Harshbarger, *The Devaluation of Assets in Black Neighborhoods*, The Brookings Institution Metropolitan Policy Program (Nov. 2018), https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf; See also Junia Howell and Elizabeth Korver-Glen, *Neighborhoods, Race, and the Twenty-first Century Housing Appraisal Industry*, 4 *Sociology of Race and Ethnicity* 473 (2018), <https://journals.sagepub.com/doi/abs/10.1177/2332649218755178?journalCode=srea> (finding substantial differences in home values in communities of color even after controlling for home features, neighborhood amenities, socioeconomic status and consumer demand).

majority-Black neighborhoods were undervalued by \$48,000 per home on average, leading to a \$156 billion cumulative loss in value nationwide.

Federal Agencies and the NFHA Consortium Have Raised Concerns that USPAP Lacked a Clear Prohibition on Discriminatory Conduct

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

- 2020: The Appraisal Foundation began a series of diversity and inclusion efforts.¹⁸
- January 2022: NFHA, Dane Law, and the Christensen Law Firm (the “NFHA Consortium”) released a report commissioned by the Appraisal Subcommittee (the “NFHA Consortium Report”) that reviewed the extent to which the Uniform Standards of Professional Appraisal Practice (“USPAP”) and the Real Property Appraiser Qualification Criteria (“Appraiser Criteria”) encouraged or systematized bias.¹⁹
- February 4, 2022: Eight federal agencies responsible for enforcing nondiscrimination standards under the federal Fair Housing Act and Equal Credit Opportunity Act (“ECOA”) issued a letter to the Appraisal Standards Board raising concerns with draft nondiscrimination provisions of USPAP. These federal agencies are: the Consumer Financial Protection Bureau (“CFPB”), DOJ, Federal Deposit Insurance Corporation (“FDIC”), Federal Housing Finance Agency (“FHFA”), Federal Reserve Board (“FRB”), U.S. Department of Housing and Urban Development (“HUD”), National Credit Union Administration (“NCUA”), and Office of the Comptroller of the Currency (“OCC”).²⁰
- February 4, 2022: The CFPB (which has authority for implementing ECOA through Regulation B) issued a blog post emphasizing that appraisal discrimination is illegal under the federal Fair Housing Act and ECOA.²¹
- February 14, 2022: The DOJ issued a Statement of Interest in *Austin v. Miller*, a private lawsuit alleging that defendants violated the Fair Housing Act by discriminating on the basis of race in connection with a residential home appraisal. The DOJ explained that appraisers may be liable under the Fair Housing Act and provided guidance on pleading and proof standards.²²
- March 2022: The Biden Administration’s Interagency Task Force on Property Appraisal and Valuation Equity (“PAVE”) released an Action Plan to address inequities in home appraisals.²³
 - The PAVE Task Force is led by White House Domestic Policy Council (“DPC”) Director Susan Rice and HUD Secretary Marcia Fudge.

¹⁸ The Appraisal Foundation, *Promoting Diversity in the Appraisal Profession*,

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

¹⁹ Appraisal Subcommittee, *Review of USPAP and AQB Criteria; Focus on Fairness, Equity, Objectivity and Diversity*, (June 4, 2021), <https://www.asc.gov/Pages/ViewWhatsNew.aspx?ID=164>.

²⁰ CFPB, DOJ, FDIC, FHFA, FRB, HUD, NCUA, OCC Letter to the Chair of the Appraisal Standards Board (Feb. 4, 2022),

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

²¹ CFPB, *Appraisal Discrimination Is Illegal under Federal Law* (Feb. 4, 2022),

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

²² DOJ, Statement of Interest, *Austin, et al. v. Miller, et al.*, Case No. 3:21-cv-09319-MMC (N.D. Cal. Feb. 14, 2022), <https://www.justice.gov/crt/case-document/file/1472031/download>.

²³ See PAVE Interagency Task Force at <https://pave.hud.gov/>.

- The 13 PAVE Task Force Agencies are: the White House Domestic Policy Council, HUD, the Appraisal Subcommittee, CFPB, DOJ, FDIC, FHFA, FRB, NCUA, OCC, the Department of Agriculture (“USDA”), the Department of Labor (“DOL”), and the Department of Veterans Affairs (“VA”).
- March 24, 2022: The U.S. Senate Committee on Banking, Housing, and Urban Affairs held a hearing entitled, “Strengthening Oversight and Equity in the Appraisal Process.”²⁴
- March 29, 2022: The U.S. House Committee on Financial Services held a hearing entitled, “Devalued, Denied, and Disrespected: How Home Appraisal Bias and Discrimination Are Hurting Homeowners and Communities of Color.”²⁵ The hearing included discussion draft legislation from Chairwoman Waters entitled, the “Fair Appraisal and Inequity Reform Act of 2022.”
- June 2022: Fannie Mae and Freddie Mac released their Equitable Housing Finance Plans, which contained detailed plans for addressing appraisal bias.²⁶
- July 2022: The Philadelphia Home Appraisal Bias Task Force issued its final report and recommendations.²⁷

Several of these efforts raised concerns that the current USPAP provisions failed to clearly prohibit discrimination in appraisals in accordance with the federal, state, and local fair housing and fair lending laws. According to the Appraisal Standards Board’s Advisory Opinion 16 on fair housing,²⁸ the following USPAP provisions are meant to inform appraisers of the prohibition against illegal discrimination in appraisals.

- Ethics Rule: Conduct, page 7, lines 198-200
 - “An appraiser must not use or rely on **unsupported** conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.” (Emphasis added.)
- Preamble, page 1, lines 2-4
 - “It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading.”

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

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

²⁵ U.S. House Committee on Financial Services, *Hearing: Devalued, Denied, and Disrespected: How Home Appraisal Bias and Discrimination Are Hurting Homeowners and Communities of Color* (March 29, 2022),

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

²⁶ FHFA, *FHFA Announces Equitable Housing Finance Plans for Fannie Mae and Freddie Mac* (June 8, 2022),

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

²⁷ Philadelphia Home Appraisal Bias Task Force, *Final Report and Recommendations* (July 2022),

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

²⁸ The Appraisal Standards Board issues non-binding advisory opinions that are meant to interpret the USPAP Standards. They are not part of the USPAP Standards and, with only a few exceptions, are not adopted by the states as enforceable requirements. AO-16 was issued in 1997 and has remained relatively unchanged since then.

- Ethics Rule: Conduct, page 7, lines 185-186
 - “An appraiser must not engage in criminal conduct.”
 - “An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.”
- Competency Rule, page 11, lines 298-300, 307-310, 311-313
 - “An appraiser must: (1) be competent to perform the assignment; (2) acquire the necessary competency to perform the assignment; or (3) decline or withdraw from the assignment. In all cases, the appraiser must perform competently when completing the assignment.”
 - “Competency requires (1) the ability to properly identify the problem to be addressed; and (2) the knowledge and experience to complete the assignment competently; and (3) recognition of, and compliance with, laws and regulations that apply to the appraiser or to the assignment.”
 - Comment: “Competency may apply to factors such as, but not limited to, an appraiser’s familiarity with a specific type of property or asset, a market, a geographic area, an intended use, specific laws and regulations, or an analytical method.”
- Standards Rule 1-1(a), page 16, lines 444-449
 - Comment: “Social change has also had an effect on appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and developing new methods and techniques to meet new circumstances. For this reason, it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.”
- Standards Rule 2-1(a), page 20, line 575
 - “Each written or oral real property appraisal report must clearly and accurately set forth the appraisal in a manner that will not be misleading.”

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

Although Advisory Opinion 16 provides reference to different sections of USPAP, it does not clearly demonstrate how these disjointed concepts are meant to prohibit discrimination. These passages only provide vague references to an appraiser’s obligations under laws that are not even identified... This language implies that conclusions on a prohibited basis are permissible as long as they are *supported*, which then raises the question of what is permissible “support.”²⁹

Similarly, the February 4, 2022 letter³⁰ from the eight federal agencies responsible for enforcing nondiscrimination standards under the Fair Housing Act and ECOA raised the following concerns:

²⁹ See NFHA Consortium Report at 48-51.

³⁰ CFPB, DOJ, FDIC, FHFA, FRB, HUD, NCUA, OCC Letter to the Chair of the Appraisal Standards Board (Feb. 4, 2022), https://files.consumerfinance.gov/f/documents/cfpb_appraisal-discrimination_federal-interagency_comment_letter_2022-02.pdf.

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

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

Finally, the February 4, 2022 blog post from the CFPB³¹ noted the following:

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

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

We commend the Appraisal Standards Board for proposing clear, strong language prohibiting appraisers from engaging in discrimination on a prohibited basis. In addition, the proposal provides clear knowledge requirements as well as helpful information about each of the key fair lending laws. Overall, we applaud the Appraisal Standards Board’s efforts in addressing the problem of appraisal bias.

While we strongly support the proposal, we offer the following suggestions to further strengthen the draft.

ETHICS RULE: NONDISCRIMINATION SECTION (new)

Lines 16-27: General Prohibition on Appraisal Discrimination

Proposal: When engaging in appraisal practice, or otherwise acting in their professional capacity, an appraiser must not act with bias, or otherwise discriminate against or treat differently, individuals or groups based on a protected characteristic such as race, color, religion, national origin, sex, sexual orientation, gender, gender identity, gender expression, marital status, familial status, age, receipt of public assistance income, disability, military status, or any other characteristics protected under applicable law or regulation.

Proposed Comment: In the real estate context, protected characteristics include the demographic characteristics of the people who live in the neighborhood where the property is

³¹ CFPB, Appraisal Discrimination Is Illegal under Federal Law (Feb. 4, 2022), <https://www.consumerfinance.gov/about-us/blog/appraisal-discrimination-illegal-under-federal-law/>.

located. It is impermissible to base a conclusion or opinion of value upon the premise that homogeneity of the inhabitants of a neighborhood is relevant for the appraisal.

We recommend:

- Clarifying the term “bias” in the USPAP Definitions. Currently, USPAP defines “bias” to mean “a preference or inclination that precludes an appraiser’s impartiality, independence, or objectivity in an assignment.” For some, the term “bias” refers to a bias in favor of the lender/client. To strengthen this Nondiscrimination provision, we recommend amending the term “bias” to include discriminatory bias, such as bias on the basis of race or other protected characteristic.
- Striking the term “or treat differently” after “discriminate against.” Disparate treatment is a form of discrimination; the current language may suggest that disparate treatment is different from discrimination.
- Adding further clarification that the prohibition extends not only to individuals or groups on the basis of their race or other protected characteristic, but also to the neighborhood. For example, the Official Staff Commentary to Regulation B clarifies that “prohibited basis” includes “the race of other residents in the neighborhood where the property offered as collateral is located.”³² So, for example, an appraiser could not discriminate against a White homeowner because the property is located in a majority-Black neighborhood.
- Clarifying that the fair lending laws also prohibit retaliating because an individual asserted their rights.
- Moving up the following sentence from lines 65-66 to this section to clarify that the prohibition applies broadly: **“A violation of antidiscrimination laws is a violation of the ETHICS RULE.”**

Lines 28-33: Knowledge and Compliance

Proposal: Federal, state, and local laws and regulations create certain legal and ethical duties for appraisers with respect to nondiscrimination principles in a variety of contexts. An appraiser must be knowledgeable about and fully comply with all antidiscrimination laws at the federal, state, and local levels that apply to the appraiser or to the assignment, including the federal Fair Housing Act and the federal Equal Credit Opportunity Act (ECOA).

We commend the Appraisal Standards Board for requiring that the appraiser be “be knowledgeable about and fully comply with” the fair lending laws. As discussed during the Appraiser Qualifications Board Forum to Explore Education Requirements, we also urge the Appraiser Qualifications Board to clearly require comprehensive fair housing training at every stage of the credentialing process and at renewal.

Lines 34-40: The Fair Housing Act

Proposal: The Fair Housing Act prohibits making housing unavailable or discriminating in residential real estate appraisals and other related transactions on the basis of race, color, religion, national origin, sex, disability, or familial status. An appraisal or the development or reporting of assignments results that are subject to the Fair Housing Act may not be based either in whole or in part on information involving any of those protected characteristics, regardless of the appraiser’s intention, unless expressly permitted by law.

³² Regulation B, 12 C.F.R. 1002.2(z), Comment 1.

We recommend:

- Explaining that discrimination on the basis of “sex” includes discrimination on the basis of sexual orientation and gender identity, under *Bostock v. Clayton County*³³ and HUD Guidance.³⁴
- Adding more specificity about the Fair Housing Act’s prohibition on actions that make unavailable or deny housing, (42 U.S.C. § 3604(a)); on retaliation (42 U.S.C. § 3617); and on making, printing, or publishing discriminatory statements (42 U.S.C. § 3604(c)).
- Clarifying that the Fair Housing Act would also prohibit discrimination in appraisal reviews.

Lines 41-54: The Equal Credit Opportunity Act

Proposal: The ECOA applies to appraisal practice in the mortgage lending and credit contexts, including those related to business and personal property. It prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, age, and source of income. An appraisal of the development or reporting of assignment results that are subject to the ECOA may not be based either in whole or in part on information involving any of these protected characteristics, regardless of the appraiser’s intention, unless expressly permitted by law.

Proposed Comment: Laws and regulations such as the Fair Housing Act and ECOA prohibit discriminatory conduct, which can encompass both disparate treatment and disparate impact. Disparate treatment refers to treating people differently in whole or in part because of a protected characteristic; evidence of hate or animus is not required. Disparate impact refers to the use of neutral policies or practices that disproportionately harm a protected group except when justified by business necessity and absent a less discriminatory alternative.

We recommend:

- Explaining that discrimination on the basis of “sex” includes discrimination on the basis of sexual orientation and gender identity, under *Bostock v. Clayton County*³⁵ and CFPB Guidance.³⁶
- Adding more specificity about the ECOA’s prohibition on retaliation (15 U.S.C. § 1691(a)(3)).
- Clarifying that the ECOA would also prohibit discrimination in appraisal reviews.

Lines 55-60: Sections 1981 and 1982 of the Civil Rights Act of 1866

Proposal: Section 1981 of the federal Civil Rights Act of 1866 prohibits many forms of discrimination with respect to the making and enforcement of contracts, and Section 1982 of the same law prohibits discrimination with respect to the purchasing, leasing, selling, holding, and conveyance of real and personal property. These laws create additional risks and

³³ *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020).

³⁴ HUD, *Memorandum re Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act* (Feb. 11, 2021), https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf.

³⁵ *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020).

³⁶ CFPB, *Interpretative Rule re Discrimination on the Bases of Sexual Orientation and Gender Identity*, 86 Fed. Reg. 14363 (March 16, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-clarifies-discrimination-by-lenders-on-basis-of-sexual-orientation-and-gender-identity-is-illegal/#:~:text=%E2%80%9CIn%20issuing%20this%20interpretive%20rule,provided%20equal%20opportunities%20in%20credit.%E2%80%9D>.

obligations across the appraisal industry in how appraisers offer services, accept assignments, and treat clients.

We do not have recommendations for this section.

Lines 61-66: State and Local Laws

Proposal: State and local laws often expand upon federal nondiscrimination requirements to include additional protected characteristics or practices that may create different discrimination risks or liability for appraisers. It is the appraiser's responsibility and duty to be familiar with all applicable state or local antidiscrimination laws that apply to the appraiser's practice. A violation of antidiscrimination laws is a violation of the ETHICS RULE.

We recommend moving up the last sentence to apply more broadly. Above, we suggest moving that sentence up to line 22.

Lines 67-71: Assumptions, Stereotypes, and Proxies

Proposal: An appraiser must not use, rely on, or consider assumptions, stereotypes, or proxies related to protected characteristics in an analysis, opinion, or conclusion. A proxy is a nonprotected characteristic that is intentionally used as a stand-in for a protected characteristic. The concept of "proxy" is also relevant for disparate impact liability.

We recommend:

- Clarifying this section with an example or longer explanation. The meaning of the interplay between a proxy and disparate impact may be confusing as many may not be familiar with the nuances of disparate impact theory at this point.
- Deleting the word "intentionally" as the plaintiff does not need to show conscious intent under either disparate treatment or disparate impact theories.

Lines 72-76: Code Words

Proposal: An appraiser also should avoid the use of "code words" that could be understood to reference the protected characteristics of a client, owner, resident, or neighborhood.

Proposed Comment: For example, references to "pride of ownership" or "crime-ridden areas" may be understood as having a potentially discriminatory meaning.

We recommend:

- Replacing "client" with "prospective or current homeowner" as "client" typically means the lender.
- Explaining that these code words are vague and lack objective references, such as official crime statistics.

Lines 77-79: Discretion

Proposal: The exercise of an appraiser's professional discretion carries with it the potential for actual or perceived illegal discrimination. Reliance on judgmental factors creates an increased risk that illegal bias will affect an appraisal.

We recommend:

- Clarifying the purpose of this section and what is prohibited. For example, it may be helpful to say something like, "The appraisal process provides the appraisal with broad

discretion in many areas, such as the selection of comparable properties and value adjustment. Discretion has long been recognized as a risk factor for housing and lending discrimination. The appraiser should ensure that the discretion is used in a non-discriminatory manner.”

Lines 80-86:

Proposal: A protected characteristic may be considered in certain prescribed and limited instances when applicable law or regulation either required or expressly permits its consideration. In these limited circumstances, consideration must be limited to only those characteristics and purposes expressly permitted under relevant law.

Proposed Comment: For example, the Fair Housing Act’s prohibition against discrimination on the basis of familial status does not apply to housing for older persons.

We do not have recommendations for this section.

ETHICS RULE: CONDUCT SECTION

We support the changes found at Lines 90-92 and Lines 104-108, which state that an appraiser must not perform an assignment in a manner inconsistent with the Nondiscrimination section of the Ethics Rule and which delete the confusing language that appeared to allow “supported” conclusions based on race.

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

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

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

Standards Rule 1-1, General Development Requirements:

We recommend:

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

Standards Rule 1-4, Approaches to Value:

We recommend:

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

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

Standards Rule 2-1, General Reporting Requirements:

We recommend:

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

Standards Rule 2-3, Certification:

We recommend:

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

Thank you for considering our views.

Sincerely,

National Fair Housing Alliance
Americans for Financial Reform Education Fund
Center for Responsible Lending
Disability Rights Advocates
Mountain State Justice, Inc.
NAACP Legal Defense and Education Fund, Inc. (LDF)
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of our low-income clients)
National Disability Rights Network (NDRN)
National Housing Resource Center
UnidosUS

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

APPENDIX A - THIRD EXPOSURE DRAFT

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

15 NONDISCRIMINATION:

16 When engaging in appraisal practice, or otherwise acting in their professional
17 capacity, an appraiser must not act with bias, or otherwise discriminate against
18 or treat differently, individuals or groups based on a protected characteristic
19 such as race, color, religion, national origin, sex, sexual orientation, gender,
20 gender identity, gender expression, marital status, familial status, age, receipt of
21 public assistance income, disability, military status, or any other characteristic
22 protected under applicable law or regulation.

23 Comment: In the real estate context, protected characteristics include the
24 demographic characteristics of the people who live in the neighborhood where
25 the property is located. It is impermissible to base a conclusion or opinion of
26 value upon the premise that homogeneity of the inhabitants of a neighborhood is
27 relevant for the appraisal.

28 Federal, state, and local laws and regulations create certain legal and ethical
29 duties for appraisers with respect to nondiscrimination principles in a variety of
30 contexts. An appraiser must be knowledgeable about and fully comply with all
31 antidiscrimination laws at the federal, state, and local levels that apply to the
32 appraiser or to the assignment, including the federal Fair Housing Act and the
33 federal Equal Credit Opportunity Act (ECOA).

34 The Fair Housing Act prohibits making housing unavailable or discriminating in
35 residential real estate appraisals and other related transactions on the basis of
36 race, color, religion, national origin, sex, disability, or familial status. An appraisal
37 or the development or reporting of assignment results that are subject to the Fair
38 Housing Act may not be based either in whole or in part on information involving
39 any of those protected characteristics, regardless of the appraiser's intention,
40 unless expressly permitted by law.

41 The ECOA applies to appraisal practice in the mortgage lending and credit
42 contexts, including those related to business and personal property. It prohibits
43 discrimination on the basis of race, color, religion, national origin, sex, marital
44 status, age, and source of income. An appraisal or the development or reporting
45 of assignment results that are subject to the ECOA may not be based either in
46 whole or in part on information involving any of these protected characteristics,
47 regardless of the appraiser's intention, unless expressly permitted by law.

48 Comment: Laws and regulations such as the Fair Housing Act and ECOA
49 prohibit discriminatory conduct, which can encompass both *disparate treatment*
50 and *disparate impact*. Disparate treatment refers to treating people differently in
51 whole or in part because of a protected characteristic; evidence of hate or
52 animus is not required. Disparate impact refers to the use of neutral policies or
53 practices that disproportionately harm a protected group except when justified by
54 business necessity and absent a less discriminatory alternative.

55 Section 1981 of the federal Civil Rights Act of 1866 prohibits many forms of
56 discrimination with respect to the making and enforcement of contracts, and
57 Section 1982 of the same law prohibits discrimination with respect to the
58 purchasing, leasing, selling, holding, and conveyance of real and personal
59 property. These laws create additional risks and obligations across the appraisal
60 industry in how appraisers offer services, accept assignments, and treat clients.

61 State and local laws often expand upon federal nondiscrimination requirements
62 to include additional protected characteristics or practices that may create
63 different discrimination risks or liability for appraisers. It is the appraiser's
64 responsibility and duty to be familiar with all applicable state or local
65 antidiscrimination laws that apply to the appraiser's practice. A violation of
66 antidiscrimination laws is a violation of the ETHICS RULE.

67 An appraiser must not use, rely on, or consider assumptions, stereotypes, or
68 proxies related to protected characteristics in an analysis, opinion, or conclusion.
69 A proxy is a nonprotected characteristic that is intentionally used as a stand-in
70 for a protected characteristic. The concept of "proxy" is also relevant for
71 disparate impact liability.

72 An appraiser also should avoid the use of "code words" that could be understood
73 to reference the protected characteristics of a client, owner, resident, or
74 neighborhood.

75 Comment: For example, references to "pride of ownership" or "crime-ridden
76 areas" may be understood as having a potentially discriminatory meaning.

77 The exercise of an appraiser's professional discretion carries with it the potential
78 for actual or perceived illegal discrimination. Reliance on judgmental factors
79 creates an increased risk that illegal bias will affect an appraisal.

80 A protected characteristic may be considered in certain prescribed and limited
81 instances when applicable law or regulation either requires or expressly permits
82 its consideration. In these limited circumstances, consideration must be limited

83 to only those characteristics and purposes expressly permitted under relevant
84 law.

85 Comment: For example, the Fair Housing Act's prohibition against discrimination
86 on the basis of familial status does not apply to housing for older persons.

87 **CONDUCT:**

88 **An appraiser must perform assignments with impartiality, objectivity, and**
89 **independence, and without accommodation of personal interests.**

90 **An appraiser:**

- 91 • **must not perform an assignment with bias, or in a manner inconsistent**
92 **with the Nondiscrimination section of the ETHICS RULE;**
- 93 • **must not advocate the cause or interest of any party or issue;**
- 94 • **must not agree to perform an assignment that includes the reporting of**
95 **predetermined opinions and conclusions;**
- 96 • **must not misrepresent his or her role when providing valuation services**
97 **that are outside of appraisal practice;**
- 98 • **must not communicate assignment results with the intent to mislead or to**
99 **defraud;**
- 100 • **must not use or communicate a report or assignment results known by the**
101 **appraiser to be misleading or fraudulent;**
- 102 • **must not knowingly permit an employee or other person to communicate a**
103 **report or assignment results that are misleading or fraudulent;**
- 104 • ~~**must not use or rely on unsupported conclusions relating to**~~
105 ~~**characteristics such as race, color, religion, national origin, gender, marital**~~
106 ~~**status, familial status, age, receipt of public assistance income, handicap,**~~
107 ~~**or an unsupported conclusion that homogeneity of such characteristic is**~~
108 ~~**necessary to maximize value;**~~
- 109 • **must not engage in criminal conduct;**
- 110 • **must not willfully or knowingly violate the requirements of the RECORD**
111 **KEEPING RULE; and**
- 112 • **must not perform an assignment in a grossly negligent manner.**

113 Comment: Development standards (1-1, 3-1, 5-1, 7-1 and 9-1) address the
114 requirement that "an appraiser must not render appraisal services in a
115 careless or negligent manner." The above requirement deals with an appraiser
116 being grossly negligent in performing an assignment which would be a
117 violation of the Conduct section of the ETHICS RULE.