

## Legal and Compliance Report—September 2021<sup>1</sup>

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### RACIAL DISCRIMINATION IN APPRAISALS TAKES CENTER STAGE IN 2021

#### *New Interagency Task Force and Signals Toward Looming Fair Lending Enforcement*

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**Background.** Discrimination in appraisals is not new. Indeed, the National Fair Housing Alliance (NFHA) recently highlighted disparities in home values based on race dating back to federal housing policies that were implemented during the New Deal.<sup>2</sup> Nonetheless, we've all seen this issue garner national attention throughout the year in a seemingly endless barrage of heart-wrenching news stories and reports. As a recap, the below timeline provides a reference for how appraisal discrimination dominated headlines in 2021:

- **March 8, 2021** –The U.S. Department of Housing and Urban Development (HUD) announced that it approved a conciliation agreement between JPMorgan Chase Bank and an African-American woman, resolving claims that the lender, relying on an appraisal, valued her home at a lower amount than its true value because of her race.<sup>3</sup> Among other things, the agreement required JPMorgan Chase to pay \$50,000 to the complainant and provided mandatory training for its employees on the Reconsideration of Value process, fair lending issues in appraisals, and how to handle complaints of appraisal discrimination.<sup>4</sup>
- **May 2021** – Prominent news outlets publish reports of a Black homeowner from Indianapolis that had obtained an appraisal that more than doubled the value of her home compared with previous appraisals, after she removed pictures of her family and had a White person pose as her brother when the appraisal was conducted.<sup>5</sup>

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<sup>1</sup> **DISCLAIMER:** While the information on this page is about legal issues, it is not legal advice. This web page is designed for general information only. The information presented at this site should not be construed to be formal legal advice nor the formation of an attorney/client relationship. Moreover, due to the rapidly changing nature of the law and the reliance on information provided by outside sources, we make no warranty or guarantee concerning the accuracy or reliability of the content at this site or at other sites to which we link.

<sup>2</sup> See NFHA, Letter to Mark A. Calabria, Feb. 26, 2021, [https://nationalfairhousing.org/wp-content/uploads/2021/04/NFHA-Comments\\_FHFA-RFI-re-Appraisals\\_02-26-2021\\_FINAL.pdf](https://nationalfairhousing.org/wp-content/uploads/2021/04/NFHA-Comments_FHFA-RFI-re-Appraisals_02-26-2021_FINAL.pdf) (last visited September 24, 2021).

<sup>3</sup> See HUD Press Releases, Approves Agreement with JPMorgan Chase Resolving Claims of Race Discrimination in Appraisals, March 8, 2021, [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/hud\\_no\\_21\\_037](https://www.hud.gov/press/press_releases_media_advisories/hud_no_21_037) (last visited September 24, 2021);

<sup>4</sup> See The Agreement between JPMorgan Chase and the Complainant, [https://www.hud.gov/sites/dfiles/FHEO/documents/21Chase%20Conciliation%20Agreement\\_Redacted\\_Redacted.pdf](https://www.hud.gov/sites/dfiles/FHEO/documents/21Chase%20Conciliation%20Agreement_Redacted_Redacted.pdf) (last visited September 24, 2021).

<sup>5</sup> See Newsweek, *Black Woman Says House Appraisal Increased After Removing Family Photos*, May 6, 2021, <https://www.newsweek.com/black-woman-says-house-appraisal-increased-after-removing-family-photos-1589098> (last visited September 24, 2021); NPR, *A Black Woman Says She Had To Hide Her Race To Get A Fair Home Appraisal*, May 21,

- **August 2021** – More news reports emerge of a different mixed-race couple in Florida whose house was appraised 40% higher after removing photos of Black relatives and artwork celebrating “African American greats.”<sup>6</sup>
- **September 13, 2021** – News reports are published of yet another homeowner from Cincinnati whose appraisal increased by nearly \$100,000 after removing art celebrating Black art and pictures of their family to hide their race.<sup>7</sup>
- **September 20, 2021** – Freddie Mac publishes a Research Note finding clear evidence of a gap in home purchase appraisals in minority neighborhoods. Freddie Mac examined 12 million appraisals for purchase transactions that were received between 2015 and 2020 through its Uniform Collateral Data Portal. The company found that a large portion of appraisers who completed appraisals in both minority and non-minority areas generated statistically significant gaps.<sup>8</sup>

### **Federal law prohibits discrimination in mortgage appraisals.**

In spite of the headlines above, federal law explicitly prohibits discrimination in mortgage loan appraisals and the use of discriminatory appraisals by lenders. For example, the Fair Housing Act (FHA) prohibits discrimination against any person because of race, color, religion, sex, handicap, familial status, or national origin (“prohibited bases”) in any real estate-related transaction, which is defined to include appraisals. Likewise, regulations implementing the FHA by HUD specifically prohibit “[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 [any prohibited basis].”<sup>9</sup>

### **Biden Administration Forms Interagency Initiative/Taskforce—Signals More Enforcement**

Unsurprisingly, appraisal discrimination has caught the attention of the US President, CFPB, and other federal agencies. On June 1, 2021, the Biden Administration announced that it was convening an Interagency Initiative – comprised of HUD, the CFPB, and other federal agencies – to address inequity in home appraisals.<sup>10</sup> Recently, the White House published a summary of the first meeting of the Interagency Task Force on Property

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2021, <https://www.npr.org/2021/05/21/998536881/a-black-woman-says-she-had-to-hide-her-race-to-get-a-fair-home-appraisal> (last visited September 24, 2021).

<sup>6</sup> The Hill, *Florida couple says home was appraised 40 percent higher after removing Black relatives' photos*, August 26, 2021, <https://thehill.com/policy/finance/housing/513770-florida-couple-says-home-was-appraised-for-40-percent-higher-after> (last visited September 24, 2021).

<sup>7</sup> USA Today, *Home appraisal increased by almost \$100,000 after Black family hid their race*, <https://www.usatoday.com/story/money/nation-now/2021/09/13/home-appraisal-grew-almost-100-000-after-black-family-hid-their-race/8316884002/>, September 13, 2021 (last visited September 24, 2021).

<sup>8</sup> Freddie Mac, *Racial and Ethnic Valuation Gaps In Home Purchase Appraisals*, September 20, 2021, [http://www.freddiemac.com/research/insight/20210920\\_home\\_appraisals.page](http://www.freddiemac.com/research/insight/20210920_home_appraisals.page) (last visited September 24, 2021).

<sup>9</sup> 24 C.F.R. 100.135(d)(1).

<sup>10</sup> The White House, *FACT SHEET: Biden-Harris Administration Announces New Actions to Build Black Wealth and Narrow the Racial Wealth Gap*, June 1, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/01/fact-sheet-biden-harris-administration-announces-new-actions-to-build-black-wealth-and-narrow-the-racial-wealth-gap/> (last visited September 24, 2021).

Valuation Equity (PAVE).<sup>11</sup> The Task Force agreed that its mission shall be to further valuation equity and combat valuation bias by, among other things, “**enforcement** and other efforts” (emphasis added).<sup>12</sup>

### **Key Takeaways and Suggestions for Lenders**

In light of the creation of the Interagency Initiative and Task Force, and recent statements by the CFPB and other regulators emphasizing racial equity initiatives,<sup>13</sup> lenders should expect increased scrutiny of their appraisal compliance practices. Enforcement actions to address discrimination in appraisals are likely to be swift and severe, and lenders who have taken appropriate steps to review and address any weaknesses in their appraisal management systems will be in the best position to withstand the coming regulatory scrutiny and mitigate reputational, regulatory, and litigation risk.

### ***Suggestions for Improving Appraisal Fair Lending Compliance Management***

Prudent lenders should assess the adequacy of their fair lending compliance management systems relating to appraisals. The below not an exhaustive list, but lenders might consider the following:

- Training for underwriters and other relevant personnel regarding fair lending requirements relating to appraisals and indicators of potential discrimination.
- Training for relevant employees regarding how to handle complaints of discrimination in the appraisal process, including the process for customers to submit a Reconsideration of Value request. The conciliation agreement approved by HUD on March 8, 2021, specifically included this as a requirement for JP Morgan Chase. *See supra*, Footnote 4.
- Establishing a formal review process of appraisals that is targeted to identifying language, terms or practices that reflect potential discrimination.
- Confirming appraisal review processes do not vary among majority-minority communities or applicants and creating policies related to the same.
- Periodically reviewing appraisals made in majority-minority communities to assess whether properties are being mis-valued, either within a specific community or by individual appraisers.
- Limiting (or eliminating) discretion by underwriters in deciding whether an appraisal is necessary. For example, lenders may consider requiring underwriters to follow AUS appraisal waivers when permitted.
- Obtaining a second appraisal automatically upon notice by an applicant of concerns relating to potential discrimination or redlining in the appraisal.
- In cases where two appraisals have been obtained, obtaining a third appraisal (at no cost to the applicant) if the appraised values differ by more than a set percentage.
- “Seeking qualified independent fee appraisers from local minority appraisal organizations.” Comptroller’s Handbook for Compliance, Fair Lending (Jan. 2010), at p. 169.

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<sup>11</sup>The White House, *Readout of the First Interagency Task Force Meeting on Property Appraisal and Valuation Equity (PAVE)*, August 5, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/05/readout-of-the-first-interagency-task-force-meeting-on-property-appraisal-and-valuation-equity-pave/>.

<sup>12</sup> *Id.*

<sup>13</sup> *See, e.g.*, CFPB, *CFPB Prioritizing Resources Against Racial Bias in Home Appraisals*, July 2, 2021, <https://www.consumerfinance.gov/about-us/blog/cfpb-prioritizing-resources-against-racial-bias-home-appraisals/> (last visited September 24, 2021).