

THE REVIEW OF
**BANKING & FINANCIAL
SERVICES**
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS
AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 41 No. 8 August 2025

LIABILITY FOR APPRAISER BIAS AND APPRAISER INDEPENDENCE RULES: A CONUNDRUM FOR HOME MORTGAGE LENDERS

This article is an update of a prior article on the subject of appraisal bias, specifically, appraisal bias that results in undervaluations. It discusses efforts from the beginning of 2024 until the present by federal and state governmental entities and courts to deal with the problem. It explains how these efforts create a conundrum for mortgage lenders faced with complaints of appraiser bias from loan applicants: If they take action with regard to such complaints, they risk violating existing appraiser independence rules (by “directly or indirectly” attempting to influence the third-party appraiser’s “independent judgment”); but if they refuse to take action, they risk violating, or aiding and abetting a violation of, federal and/or state anti-discrimination laws. And it offers some suggestions to lenders on ways they may be able to reduce these risks.

By Bob Jaworski *

This is the second of two articles addressing the problem of undervalued home appraisals resulting from appraiser bias.¹ The first article discussed the harm that biased appraisals can cause to individual homeowners, potential homebuyers, and the communities in which the appraised homes are located. It explained several

initiatives taken by the Biden Administration to deal with the problem. And it pointed out the potential adverse impacts those initiatives can have on home mortgage lenders and some steps they can take to protect themselves from such impacts.

This article addresses more recent developments concerning this topic. It is divided into three sections. The first section repeats some essential background information that was contained in the earlier article, e.g., what is meant by the term “appraiser (or appraisal) bias,” how does it translate into undervaluations, what harm

¹ Jaworski, R. and Schultze, M., “Appraisal Bias: What The Government Is Doing About It And Why Mortgage Lenders Need to Pay Attention,” THE REVIEW OF BANKING AND FINANCIAL SERVICES,” v. 39, no. 12 (Dec. 2023) (“Jaworski/Schultze”).

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can it cause, and what triggered the “all-of-government” effort during the last three years of the Biden Administration to deal with this problem. The second discusses several significant (1) governmental actions taken since the beginning of 2024 as part of this effort and (2) lawsuits brought by, or on behalf of, homeowners (or prospective homebuyers) against appraisers and mortgage lenders in which appraisal bias was alleged as a basis for plaintiffs’ cause of action. The final section highlights an important action taken by the Trump Administration during its first 100 days with respect to appraisal bias and concludes with a forecast of where all of this activity is headed, how it will impact mortgage lenders (and mortgage brokers) in particular, and what steps they may be able to take to protect themselves.

BACKGROUND

Appraisals are a crucial element of the homebuying and lending process. They ensure that lenders have adequate collateral to support their loans, are a risk factor that is taken into account in setting the interest rate and/or points borrowers must pay for their loans, and, coupled with the amount of the loan borrowers desire or need, determine whether or not borrowers must purchase private mortgage insurance.

Appraisal bias is illegal discrimination, conscious or unconscious, that occurs when appraisers consider protected class factors of the owner and/or the neighborhood in which the property is located (e.g., race, ethnicity, religion) in arriving at their opinion of a property’s fair market value. The particular form of appraisal bias addressed in this article is appraiser bias that results in *undervaluations* of the subject property.²

² *Overvalued* appraisals can also contribute to home lending discrimination. During the period leading up to the 2007-2008 subprime mortgage crisis, segregation in certain well-defined neighborhoods made it easy for mortgage brokers to market subprime loans to “underserved, financially unsophisticated, needy minority group members who are used to exploitation in [such] neighborhoods.” Rugh, J. S., & Massey, D. S. (2010), “Racial Segregation and the American Foreclosure Crisis,” *American Sociological Review*, 75(5), pp. 629-651, *available at*: <https://doi.org/10.1177/0003122410380868>. In some cases,

Biased undervaluations can lead to a variety of negative consequences for loan applicants, others in the community, and the community at large. Among other things, they can cause applicants to (1) lose an opportunity to buy a new home, make improvements to an existing home, pay for college, or buy a car, (2) not be able to take advantage of falling interest rates by refinancing their existing home loan, or (3) be required to pay for costly private mortgage insurance because of a higher loan-to-value ratio.

Additionally, if an undervaluation of one home in a community causes the seller to lower his or her sales price to enable the prospective buyer to qualify for financing, that undervaluation can become a “comparable” in a subsequent appraisal of a neighboring property, thereby resulting in harm to the owner or prospective buyer of that property. Repeated over time, individual undervaluations can negatively impact property values in an entire community.

The “all-of-government” effort to deal with this problem began with a Presidential Memorandum issued in January of 2021 that directed the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) to “take any necessary steps, as appropriate and consistent with applicable law, to implement the Fair Housing Act’s requirements that HUD administer its programs in a manner that affirmatively furthers fair housing and HUD’s overall duty to administer the Act . . . including by preventing practices with an

footnote continued from previous column...

when a specific valuation was needed to make the loan work, the broker or lender might pressure the appraiser to arrive at specific valuation rather than one based on the appraiser’s independent judgment. That overvaluation, in combination with (1) declining real estate values and (2) initial monthly loan payments that were by design abnormally low but which increased significantly only a short time later, made it difficult for these borrowers to continue to make their monthly payments or to sell their homes at a price high enough to pay off their mortgage debt. The result — an unprecedented number of home foreclosures, borrowers less well off than they were before, and federal legislation (Dodd-Frank, § 1472) prohibiting mortgage originators from attempting to influence appraiser judgments concerning home values.

unjustified discriminatory effect.”³ Release of this Memorandum quickly led to the creation of the “Interagency Task Force on Property Appraisal and Valuation Equity” (“PAVE”) to “evaluate the causes, extent, and consequences of appraisal bias and to establish a transformative set of recommendations to root out racial and ethnic bias in home valuations.”⁴ It also led to efforts discussed in our first article (Vol. 39, No. 12, December 2023, “Appraisal Bias: What the Government is Doing About it and Why Mortgage Lenders Need to Pay Attention”) during 2021 through 2023 by various federal agencies and government-sponsored entities like Fannie Mae and Freddie Mac (“GSEs”) to study and attempt to find regulatory solutions to the problem of appraisal bias with respect to institutions under their jurisdiction.⁵

KEY GOVERNMENTAL AND PRIVATE ACTIONS (2024 THROUGH JANUARY 2025)

Governmental Actions.

From the beginning of 2024 until the very end of the Biden Administration, federal agencies and the GSEs continued efforts to deal with the problem of appraisal bias. A few of the most significant of these efforts are set forth below, along with efforts by two states to deal with the problem.

Federal Actions

- *May 2024.* The Federal Housing Administration (“FHA”) and the Federal Housing Finance Agency (“FHFA”), acting on a recommendation made by PAVE in its Action Plan, issued Mortgagee Letter 2024-07 announcing new policies allowing borrowers to challenge property appraisals they believe to be inaccurate or biased, and to request

reconsiderations of value (“ROVs”).⁶ Among other things, the Letter (1) revised appraisal material deficiencies that justify the ordering of a second appraisal to include “potential violations of fair housing laws and professional standards related to nondiscrimination,” (2) moved existing ROV provisions into a new section devoted entirely to ROV requirements, and (3) added to that section new quality control standards for ROVs and new “Borrower-Initiated ROV processing requirements” (including an appeal process by which borrowers can seek ROVs and do so without cost). It also added a requirement to provide “an easy-to-understand disclosure at mortgage loan application and upon delivery of the appraisal report to the Borrower with instructions that explain the borrower-initiated ROV process, the expected ROV processing times, and the process for requesting clarifications or corrections unrelated to the value conclusion.”⁷ More about this later.

- *June 2024.* Pursuant to a provision in the Dodd-Frank Act, the FRB, CFPB, FDIC, NCUA (Federal Banking Regulators), and the FHFA adopted an interagency final rule establishing quality control standards for automated valuation models (“AVMs”).⁸ The standards included standards previously set forth in Appendix B to the Interagency Appraisal and Evaluation Guidelines issued by the Federal Banking Regulators in 2010 (Appraisal Guidelines), but with one pertinent and important addition.⁹ The final rule includes a requirement, found in neither Dodd-Frank nor the Appraisal Guidelines, that AVMs “comply with applicable nondiscrimination laws.”¹⁰
- *July 2024.* HUD and The Appraisal Foundation (“TAF”), the organization responsible for setting standards and qualifications and providing voluntary guidance for real estate appraisers, entered into a Conciliation Agreement under which TAF agreed to require its Board that is responsible for establishing appraiser qualification criteria — the Appraiser Qualification Board (“AQB”) — to take specified

³ “Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies” (Jan. 26, 2021), published at 86 Fed. Reg. 7487 (Jan. 29, 2021).

⁴ https://www.hud.gov/sites/dfiles/Main/documents/PAVE_Fact_Sheet.pdf. In March 2022, PAVE released its “Action Plan to Advance Property Appraisal and Valuation Equity,” containing recommendations to “help every American to have a chance to build generational wealth through homeownership.” *Id.*

⁵ For details concerning some of those efforts, *Jaworski/Schultze*, fn. 1.

⁶ Available at: https://www.hud.gov/sites/dfiles/OCHCO/documents/2024-07hsgml.pdf?utm_medium=email&utm_source=govdelivery.

⁷ *Id.* at pp. 4-5.

⁸ 89 Fed. Reg. 64538 (Aug. 7, 2024).

⁹ 75 FR 77450, 77468 (Dec. 10, 2010).

¹⁰ OCC final rule at 12 CFR § 34.222(e).

actions aimed at increasing diversity in the appraisal profession.¹¹ Two of these actions are set forth below:

- Amend its technology-based pathway for aspiring appraisers to obtain experience credit towards fulfilling the experience qualification criteria for becoming an appraiser — the “Practical Applications of Real Estate Appraisal” program (“PAREA”) — to require (1) mentors of appraisal trainees to complete a course that meets the content requirements of the Valuation Bias and Fair Housing Laws and Regulations Outline adopted by the AQB, and (2) PAREA providers to include diverse communities in their outreach and marketing efforts by taking steps to market PAREA programs and solicit applications from persons who are members of diverse communities.
- Include on the AQB website (1) the “Equal Housing Opportunity” logo, (2) a non-discrimination statement that it “does not discriminate based on race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or familial status,” along with contact information for HUD’s Office of Fair Housing and Equal Opportunity for persons who have experienced discrimination and wish to file a complaint, and (3) a survey allowing individuals to indicate reasons they may have had for deciding not to pursue PAREA.
- *July 2024.* The Federal Banking Regulators issued Final Interagency Guidance on ROVs, which (1) highlights “the risks associated with deficient residential real estate valuations,” (2) describes “how financial institutions may incorporate [ROV] processes and controls into established risk management functions,” (3) provides “examples of policies and procedures that a financial institution may choose to implement to help identify, address, and mitigate the risk of discrimination impacting residential real estate valuations,” and (4) discusses how ROVs “intersect with appraisal independence requirements.”¹² Regarding the last item, in response to industry comments questioning how they can manage ROV requests without compromising appraiser independence rules,

particularly in the case of smaller institutions that may have only one or two individuals on staff qualified to perform evaluations, the regulators stated:

[I]nstitutions are responsible for maintaining standards of independence for all real estate lending activity, including ROVs, as required by the agencies’ appraisal regulations. . . . For small institutions or branches, an institution may be able to demonstrate clearly that it has prudent safeguards in place when absolute lines of independence cannot be achieved due to, for example, limited staff.¹³

State Actions

- *May 2024.* The Illinois Department of Financial and Professional Regulation (“IL-DFPR”) adopted Final Community Reinvestment Act (“CRA”) rules applicable to depository institutions and mortgage companies (Covered Institutions). The rules allow the IL-DFPR, when assigning CRA ratings, to take into account evidence of discrimination against applicants on a prohibited basis in violation of the Equal Credit Opportunity Act (“ECOA”) or the FHA, including, for example, “relying on or giving force or effect to discriminatory appraisals to deny loan applications where the covered financial institution *knew or should have known of the discrimination.*”¹⁴
- *August 2024.* The New Jersey Housing and Mortgage Finance Agency issued Lender Bulletin 2024-15, which seems to go a step further than the IL-DFPR. It states that “[The NJ Law Against Discrimination] specifically prohibits discrimination by home appraisers and also by other entities involved in selecting an appraiser or using the appraisal to decide whether and on what terms to

¹¹ Available at: TAF 2024.07.10 Conciliation Agreement Fully Executed.

¹² 89 Fed. Reg. 60549 (July 26, 2024).

¹³ *Id.* at 60554.

¹⁴ 48 Ill. Reg. 7004 (for credit unions), 7095 (for banks), 7172 (for mortgage companies) (May 17, 2024). The associated proposed rules were published in January 2024 at 48 Ill. Reg. 656 (for credit unions), 725 (for banks), 780-781 (for mortgage companies). In April 2024, the Consumer Financial Protection Bureau (“CFPB”) submitted a comment specifically agreeing with the IL-DFPR’s interpretation of ECOA and FHA with regard to discriminatory appraisals. https://files.consumerfinance.gov/f/documents/cfpb_comment-to-il-jcar_2024-04.pdf.

extend a mortgage or other financing to a borrower. All parties included in the appraisal process are considered liable.”¹⁵

Private Actions

Several cases have been filed in the last few years against appraisers and mortgage lenders in which a claim was made that a home appraisal was undervalued because of appraiser bias resulting in a denial of a consumer’s mortgage loan application. Three of these cases, which are in various stages in the litigation process, are discussed below.

The first case involved a complaint filed in the Maryland District Court by a Black couple whose application for a home refinance loan was effectively denied by the lender on the basis of an allegedly undervalued appraisal. The complaint asserted a cause of action against both the appraiser and the lender — the appraiser because the undervaluation, they claimed, was the result of racial bias, and the lender because, they claimed, it denied their loan application based on that appraisal despite evidence demonstrating the undervaluation and the appraiser’s racial bias against them. The lender, after losing its motion to dismiss (discussed in our previous article), eventually entered into a settlement with the plaintiffs. The settlement required the lender to take the following actions (in addition to providing appropriate training to its employees, conducting statistical analyses of appraisal practices by protected class, including certain provision in its appraiser contracts, ensuring that its Fair Lending Policy prohibits discrimination in appraisals, and paying the plaintiffs an undisclosed amount of money):

- Inform applicants that they have a right to request an ROV, how to do so, how the lender handles ROV requests, who reviews them, and the standards that trigger a second appraisal.
- Maintain timelines and protocols for regularly communicating the status of ROV requests and results to applicants, and, if their ROV requests are denied or the valuation is unchanged, provide the reasons for that result in writing.
- Inform applicants of their right to file a complaint with the CFPB and HUD as part of the ROV process.

- Inform applicants how to raise concerns about a valuation early enough so that errors or issues are resolved before a final decision is made on their application.
- Ensure that ROV requests or complaints about potential appraiser bias are identified across all relevant lines of the lender’s business and from various channels and sources (letters, phone calls, in-person contacts, regulators, third-party service providers, e-mails, and social media) and routed to the appropriate business unit.
- Ensure that all complaints or ROV requests alleging appraisal discrimination are escalated to the lender’s appraisal review and fair lending personnel to research and respond.
- Review appraiser responses to ROV requests for completeness, accuracy, and indicia of bias or discrimination.
- Establish clear standards for when it will offer a second appraisal.
- Ensure that applicant’s locked interest rate remains locked during the ROV process.
- Not charge applicants for the cost of an ROV or second appraisal.
- Provide applicants with information about how to read and understand an appraisal report.¹⁶

From the industry’s perspective, the only good news in this settlement is that it provides a judicially approved roadmap of sorts that a lender can use to reduce its risk of being held liable for the sins (real or imagined) of their appraisers.

The second and third cases were both precipitated by a complaint filed with HUD by a Black woman who applied to the lender for a refinance loan on her home. She alleged that the appraiser engaged by the lender undervalued her home (at \$640,000 despite it having been appraised at \$880,000 less than two years earlier) because of racial bias and the lender wrongfully refused her request to obtain a second appraisal. After investigating her complaint, HUD referred the matter to

¹⁵ Available at: <https://myemail.constantcontact.com/-Lender-Bulletin-2024-15--Updated-Appraisal-Discrimination-or-Bias-Information.html?soid=1102203213831&aid=7dTN1NVR2jg>.

¹⁶ *Connolly & Mott v. Lanham*, settlement available at: <https://www.relmanlaw.com/assets/htmldocuments/Connolly%20loanDepot%20-%20Settlement%20Agreement%20-%20fully%20executed.pdf>.

the Department of Justice (“DOJ”) for action. The DOJ filed suit in Colorado District Court against both the appraiser and the lender seeking to enjoin their allegedly discriminatory conduct and to obtain a monetary award in favor of the homeowner/applicant.¹⁷

Subsequently, the lender filed a motion to dismiss the DOJ complaint and at the same time commenced an affirmative action against HUD in the same court. In both filings, it asked the court to “address the government’s misuse of the [FHA] . . . to place [Lender] in conflicting and irreconcilable positions with respect to appraisal independence in the mortgage loan origination process.” It pointed out that:

On the one hand, the government takes the position that statutory and regulatory obligations mandate that [the lender] leave the valuation of a property securing a mortgage loan to the independent judgment of a licensed, third-party appraiser.

On the other hand, [HUD] has now announced and enforced a new interpretation of the FHA that purports to require lenders like [Lender] to interfere in appraisal independence.¹⁸

The lender then asserted that, in taking these positions, the government puts lenders “between the proverbial ‘rock and a hard place,’” observing that:

If it takes action with an appraiser regarding an allegedly discriminatory appraisal, then it faces the prospect of a government enforcement action or private lawsuit alleging violations of statutory-appraiser-independence requirements. But if it complies with those independence requirements by not taking action to “directly or indirectly” attempt to influence the “independent judgment” of a third-party appraiser, then it faces the prospect of government enforcement actions and private lawsuits for alleged violations of the FHA.

Responding to Lender’s motion to dismiss, HUD relied on a provision in its FHA-implementing regulation that makes it unlawful for a lender to “[use] an appraisal of residential real property in connection with the . . . financing of any dwelling where the [lender] *knows or reasonably should know* that the appraisal improperly takes into consideration race.” It asserted that, although Lender acknowledged that “the sharp decrease from the prior appraisal made no sense,” it refused to order a second appraisal or pass the applicant’s concerns to the appraisal management company it engaged to (1) hire the appraiser to do the appraisal and (2) to review, complete, and deliver that appraisal to the lender.¹⁹

These two cases highlight the tension between the Biden Administration’s efforts to deal with the problem of undervaluations resulting from appraisal bias and the pre-existing appraiser-independence rules that essentially prohibit lenders from attempting to influence appraisers’ independent valuation conclusions. That tension is further heightened by the fact that appraisers, by their training and the fact that they have been qualified by state appraisal regulatory bodies as having met all necessary requirements to act as an appraiser, are valuation experts, whereas lenders are not.

The court has yet to render a decision in either of these two actions.

WHAT NOW? NEW ADMINISTRATION/NEW PRIORITIES

On March 19, 2025, HUD issued Mortgagee Letter 2025-08. The Letter rescinded three prior Mortgagee Letters — ML 2021-27, ML 2024-07 (discussed in detail above), and ML 2024-16 (which merely extended the effective date of ML 2024-07 — effective immediately.²⁰ ML-2021-27 added language to the requirement in the FHA Single Family Manual 4000.1 that, when valuing real property as part of an appraisal, the appraiser must comply with all applicable laws. The added language clarified that “all applicable laws” includes “the [FHA] and any other federal, state, or local anti-discrimination law.” ML 2021-27 also stated:

No part of the appraisal analysis or reporting may be based on the race, color, religion, sex, actual or perceived sexual

¹⁷ The DOJ Complaint is *available at*: <https://www.law360.com/articles/1892247/attachments/0>.

¹⁸ The lender’s motion to dismiss and its complaint against HUD are respectively, *available at*: <https://www.law360.com/articles/2269959/attachments/0> and https://assets.inman.com/wp-content/uploads/2024/12/Doc1_COMPLAINT_Rocket_v_HUD_12.4.24.pdf.

¹⁹ *Available at*: <https://www.law360.com/articles/2282444/attachments/0> (italics added).

²⁰ *Available at*: <https://www.hud.gov/sites/default/files/OCHCO/documents/2025-08hsgml.pdf>.

orientation, actual or perceived gender identity, age, actual or perceived marital status, disability, familial status, national origin of either the prospective owners or occupants of the Property, present owners or occupants of the Property, or the present owners or occupants of the properties in the vicinity of the Property, or on any other basis prohibited by federal, state, or local law.²¹

In rescinding these three letters, HUD explained its rationale for doing so:

On January 20, 2025, the President issued Executive Orders aimed at reversing policies that have adversely affected key sectors, including the housing market. As part of this ongoing effort, FHA is focused on eliminating policies that have created barriers, increased regulatory and financial burdens, and deepened disparities in lending practices. Rescinding the policy announced in these MLs is a step in aligning with the Administration's broader goal to reduce unnecessary regulatory burden and foster long-term economic stability for all Americans.²²

This rationale strongly suggests that mortgage lenders may anticipate additional reductions to the regulatory burden the prior Administration has placed on them to help eliminate the problem of appraisal bias.

But mortgage lenders need to be concerned about the present. Most of the actions taken by federal agencies and the GSEs in the wake of the Memorandum are still “on the books.” And even if those agencies choose to relax enforcement in those regards, there is still the risk of enforcement actions being pursued by state agencies

and individual and class actions being pursued by consumers based on claims of appraisal discrimination.

What to do? First and foremost, lenders need to recognize they are walking on a regulatory tightrope and that balance is the key to keep from getting hurt. To achieve balance with respect to both appraisal discrimination and appraisal independence, lenders should be sensitive to complaints of appraisal bias and not simply dismiss them out of hand. They should have written policies and procedures and a regular process to deal with such complaints of appraiser discrimination, including discussing complaints with the appraiser involved and/or with their own review appraiser. They should also be careful to document receipt of such complaints and the fact that the consumers' stated basis for submitting the complaint is an alleged undervaluation caused by appraiser bias, which can become important later on should the lender obtain a new *higher* appraisal or ROV and then be accused of violating the appraiser independence rule. On the other hand, it may be prudent for lenders to refrain from proactively encouraging rejected borrowers to ask for ROVs and they probably should consider utilizing AVMs to help confirm an appraiser's valuation or support a consumer's assertion of an undervaluation. In addition, they should consider adopting many if not most of the remedial measures contained in the Settlement Agreement entered into in the *Connelly* case discussed above.

In the end, common sense should be the lenders' guiding light in this area. If a borrower who is a member of an ECOA- or FHA-protected class produces strong evidence that bias on the part of the appraiser resulted in an undervaluation of the borrower's home, the lender should at least consider that the borrower may be right and investigate further. ■

²¹ Available at: https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-27hsgml.pdf?utm_medium=email&utm_source=govdelivery.

²² ML 2025-08, *supra*. at p. 2.