

FROM AMERICAN NIGHTMARE TO AMERICAN DREAM? A COMPREHENSIVE SOLUTION TO RACIALLY DISCRIMINATORY APPRAISAL PRACTICES

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INTRODUCTION

In March 2020, Carlette Duffy, an African American woman and a resident of Indianapolis, Indiana, began the process of refinancing the mortgage on her home.¹ Between March and July 2020, Ms. Duffy had her home appraised twice, by two different lenders and two different appraisers.² The first appraisal valued her home at \$125,000, while the second valued her home at \$110,000.³ However, at the time, Ms. Duffy believed her home to be worth approximately \$185,000.⁴ Ms. Duffy questioned whether her race or residence in a historically Black neighborhood affected the appraisal values, and she decided to conduct a fair housing test.⁵ In October 2020, she reached out to a new lender and did not disclose her race or gender.⁶ Ms. Duffy never spoke to the new appraiser over the phone, removed all traces of her identity—including family photos, African American art, and books—from her home, and had a white male friend stand in for the appraisal visit.⁷ In November 2021, Ms. Duffy received the valuation of the third appraisal: \$259,000.⁸ The value of her home had more than doubled. Ms. Duffy reported her experiences to the Fair Housing Center of Central Indiana (“FHCCI”), which then opened an investigation and filed a complaint with the United States Department of Housing and Urban Development (“HUD”).⁹

Unfortunately, Ms. Duffy’s story is not unique. Indeed, in December 2021, a lawsuit was filed in the U.S. District Court in San Francisco on behalf of Paul and Tenisha Tate-Austin, African American homeowners in Marin City, California, which is “one of two census tracts in which the majority of Marin

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1. Housing Discrimination Complaint, filed on behalf of Carlette Duffy by the Fair Housing Center of Central Indiana, at *2 (Mar. 2021), <https://www.fhcci.org/wp-content/uploads/2021/05/HUD-Complaints-Freedom-Boston.pdf> [<https://perma.cc/5EVP-E6CZ>] [hereinafter Duffy Complaint].

2. *Id.*; Amended Housing Discrimination Complaint, filed on behalf of Carlette Duffy by the Fair Housing Center of Central Indiana, at *2 (Mar. 29, 2021), <https://www.fhcci.org/wp-content/uploads/2021/05/HUD-Complaints-Citywide-Pierce.pdf> [<https://perma.cc/75PT-9P6R>] [hereinafter Amended Duffy Complaint].

3. Duffy Complaint, *supra* note 1, at *2; Amended Duffy Complaint, *supra* note 2, at *2.

4. Amended Duffy Complaint, *supra* note 2, at *2.

5. Duffy Complaint, *supra* note 1, at *2; Amended Duffy Complaint, *supra* note 2, at *2.

6. Duffy Complaint, *supra* note 1, at *2; Amended Duffy Complaint, *supra* note 2, at *2.

7. Duffy Complaint, *supra* note 1, at *2; Amended Duffy Complaint, *supra* note 2, at *2.

8. Duffy Complaint, *supra* note 1, at *2; Amended Duffy Complaint, *supra* note 2, at *2.

9. Duffy Complaint, *supra* note 1; Amended Duffy Complaint, *supra* note 2.

County's African American residents are concentrated."¹⁰ After receiving an unexpectedly low appraisal value, the Tate-Austins removed all traces of their identity from their home and had a white friend stand in at the appraisal visit.¹¹ The value of their home increased by approximately \$487,000.¹² And in August 2022, a lawsuit was filed in the U.S. District Court in Maryland on behalf of Nathan Connolly and Shani Mott, an African American couple from Baltimore, Maryland, who lived in Homeland, a predominately white neighborhood.¹³ Much like Ms. Duffy and the Tate-Austins, Connolly and Mott received an unsatisfactorily low appraisal value before concealing their racial identities and conducting a fair housing test.¹⁴ The value of their home increased from \$472,000 to \$750,00: a \$278,000 difference.¹⁵ Indeed, these stories are just a small sample—there are more reports of discriminatory appraisal practices across the country, from Jacksonville, Florida and Hartford, Connecticut to Denver, Colorado and Chicago, Illinois, to name a few.¹⁶ Moreover, not every homeowner has the time, resources, or know-how to conduct fair housing tests, and it is likely that many cases of appraisal discrimination go unreported.

Beyond these individual stories of racial discrimination in the appraisal process, recent studies have examined the greater systemic devaluation of homes in predominately Black neighborhoods. A report published in November 2022 by the Weidenbaum Center at Washington University analyzed more than 32 million appraisals.¹⁷ It found that when comparing “identical homes in neighborhoods with the same socioeconomic status and comparable amenities,” homes in predominately white neighborhoods were appraised for \$370,000 more than homes in communities of color.¹⁸ Indeed, “[t]his report, in combination with

10. Tate-Austin v. Miller, No. 21-CV-09319-MMC, 2022 WL 1105072, at *1 (N.D. Cal. Apr. 13, 2022).

11. *Id.* at *2.

12. *Id.*

13. Complaint and Jury Demand, Connolly v. Lanham, No. 1:22-cv-02048-BPG, at *2 (D. Md. Aug. 15, 2022).

14. *Id.* at 3-4.

15. *Id.*

16. Debra Kamin, *Black Homeowners Face Discrimination in Appraisals*, N.Y. TIMES (Jan. 26, 2023), <https://www.nytimes.com/2020/08/25/realestate/blacks-minorities-appraisals-discrimination.html> [<https://perma.cc/F6HR-ZMGW>]; Russell Haythorn, *An Unconscious Bias? Biracial Denver Couple Says They Faced Discrimination on Home Appraisal*, DENVER 7 (Nov. 18, 2020, 10:02 PM), <https://www.denver7.com/news/local-news/an-unconscious-bias-biracial-denver-couple-says-they-faced-discrimination-on-home-appraisal> [<https://perma.cc/34UC-ELLW>]; Elvia Malagón, *Black Homeowner, 2 Appraisals, \$62,000 Difference*, CHI. SUN TIMES (Oct. 7, 2020, 1:14 PM), <https://chicago.suntimes.com/2020/10/7/21493755/chicago-home-appraisal-black-race-homeowners> [<https://perma.cc/MJ28-QMWQ>].

17. Junia Howell & Elizabeth Korver-Glenn, WEIDENBAUM CTR. ON THE ECON., GOV'T, AND PUB. POL'Y AT WASHINGTON UNIV., APPRAISED: THE PERSISTENT EVALUATION OF WHITE NEIGHBORHOODS AS MORE VALUABLE THAN COMMUNITIES OF COLOR 1 (2022).

18. *Id.* at 11-12.

previous scholarship, shows that the persistent and growing neighborhood inequality in home values cannot be explained by differences in property type or quality, neighborhood socioeconomic status or amenities, or even the amount of real estate demand in the area.”¹⁹ Instead, through the use of comparables—the practice of establishing appraisal values on past valuations of similar homes—“racist sale prices from the past are carried into the present” and the racial inequity in home valuation continues to grow.²⁰

Throughout the twentieth century, racially discriminatory appraising policies created an inequitable system that undervalues Black homes as well as predominately Black neighborhoods. What is most troubling, albeit unsurprising, is that these practices continue even in the presence of legislation designed to combat discrimination in housing, namely the Civil Rights Act of 1866, the Civil Rights Act of 1968, the Equal Credit Opportunity Act of 1974, and state and local fair housing laws. Even though “referencing race as a justification for an appraisal value is illegal . . . neighborhood racial composition remains a key factor in how appraisers assign property values[.]”²¹ However, in the 2020 election cycle, grassroots movements, civic action, and local reporting brought newfound attention to the devaluation of African American homes and neighborhoods.²² Now, this action has garnered the attention of officials at both the state and federal levels.

In June 2021, President Biden created a federal interagency task force known as “PAVE” (Property Appraisal and Valuation Equity) to address inequities in home appraisals, and in March 2022, the task force released its findings and recommendations.²³ Subsequently, Maxine Waters, the Democratic representative for California’s 43rd congressional district, proposed legislation in line with PAVE’s recommendations to address discrimination in the appraisal of home values.²⁴ At the state level, in January 2023, Cherrish Pryor, the Democratic representative for Indiana’s 94th district, proposed House Bill 1151.²⁵ This bill would expand the language prohibiting discriminatory appraisal practices, introduce new penalties for violators, and develop community

19. *Id.* at 20.

20. *Id.* at 21.

21. *Id.* at 20.

22. See Andre Perry, *Why Grassroots Action Is the Most Likely Path to Systemic Change*, NONPROFIT Q. (Oct. 12, 2022), <https://nonprofitquarterly.org/why-grassroots-action-is-the-most-likely-path-to-systemic-change/> [<https://perma.cc/77BL-L3HC>] (arguing that grassroots organizing is the force that drove changes to housing policy concerning appraisals).

23. PAVE INTERAGENCY TASK FORCE ON PROPERTY APPRAISAL AND VALUATION EQUITY, Action Plan to Advance Property Appraisal and Valuation Equity *1 (2022) [hereinafter Action Plan].

24. *Devalued, Denied, and Disrespected: How Home Appraisal Bias and Discrimination Are Hurting Homeowners and Communities of Color Before the H. Comm. On Fin. Servs.*, 117th Cong. (2022) (statement of Rep. Maxine Waters, Chairwoman, H. Comm. on Fin. Serv.).

25. H.B. 1151, 123rd Gen. Assemb. (Ind. 2023).

initiatives.²⁶ Additionally, in New York, California, New Jersey, Pennsylvania, Maryland, Illinois, and Virginia, state legislatures have begun the process of introducing and codifying similar statutes that address racial discrimination in housing appraisals.²⁷ Now, there is an emerging patchwork of interagency administrative reports and proposed state and federal legislation, but there is not a clear path forward. Although these governmental solutions are a positive step forward, they cannot, by themselves, unravel decades of discrimination. There will not be a one size fits all solution.

This Note argues that without greater systemic change within the appraisal industry itself, including how appraisals determine value, legislation and administrative regulations will never fully address discrimination and bias in housing appraisals. Part I of this Note describes the history of discrimination in housing appraisals in the United States. Part II examines the patchwork of legislative and administrative solutions that have been proposed and enacted at both the state and federal levels. Part III identifies common themes that are found across the proposed solutions as well as unique nuances. Part IV addresses the shortcomings of the legislative and administrative solutions and proposes changes to the appraisal industry, as well as the appraisal process itself, in order to address inequity and discrimination.

I. OVERVIEW OF DISCRIMINATION IN HOUSING APPRAISALS

A. *What Is a Housing Appraisal?*

A housing appraisal is a critical part of the process for issuing or refinancing a home loan because it establishes the value of the property as the collateral for the loan.²⁸ In essence, “[a]n appraisal is the act or process of developing an opinion of value.”²⁹ An appraiser is contracted by a mortgage lending company to evaluate a home; the process typically involves a scheduled visit to the property to assess the home, as well as an assessment of the value of similar homes in the area.³⁰ One critical piece of the valuation is the selection and use of

26. *Id.*

27. See Assemb.B. 1518, 2022 Legis., 220th Sess. (N.J. 2022); Assemb.B. 1519, 2022 Legis., 220th Sess. (N.J. 2022); H.B. 1097, 2022 Legis., 444th Sess. (Md. 2022); H.B. 284, 2022 Sess. (Va. 2022); H.B. 4410, 102nd Gen. Assemb. (Ill. 2022); Morgan Cephas, *Cephas To Introduce a Bill That Would Protect Homeowners and Address Racial Bias in Real Estate Appraisal*, PA HOUSE DEMOCRATS (Aug. 23, 2022), <https://www.pahouse.com/InTheNews/NewsRelease/?id=125764> [<https://perma.cc/7Q6M-LP4X>].

28. Action Plan, *supra* note 23, at 2.

29. APPRAISAL INSTITUTE, *Frequently Asked Questions 1* (2021), https://www.appraisalinstitute.org/assets/1/7/FAQs_About_Appraisals_and_Real_Estate_Appraisers_10_14_21.pdf [<https://perma.cc/Z7F4-LVED>].

30. Bob Musinki, *How Home Appraisals Work*, FORBES (Sept. 30, 2020, 9:48 AM), <https://www.forbes.com/advisor/mortgages/how-home-appraisals-work/> [<https://perma.cc/2P4X-WFRA>].

“comparables.” Comparables are “similar properties sold in the same neighborhood” or properties in an area close to the home being appraised.³¹ The use of comparable establishes the base value of the property being appraised and from there an appraiser can adjust their valuation based on “differences in size, condition, or amenities.”³² In general, “since [comparables] are previous sales” in comparable neighborhoods, oftentimes “they ensure past appraising practices are carried into the future.”³³ Finally, the characteristics and metrics of the property itself and the valuations of comparable homes in the area are used to determine the final appraisal value of the home, which is detailed in a final appraisal report.³⁴

An appraiser can become licensed through a process that involves the completion of educational courses, the completion of a set amount of hours with a supervisory appraiser, and finally, the completion of a licensing examination.³⁵ Procedures and requirements can vary state to state, but many states require the completion of courses approved by the Appraiser Qualifications Board (“AQB”).³⁶ The AQB, under Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, is tasked with establishing the minimum experience, education, and examination requirements for appraisers to obtain state certification.³⁷ Moreover, the Appraisal Foundation, which is authorized by Congress to set appraisal standards and appraiser qualifications, requires the completion of Uniform Standards of Professional Appraisal Practice (“USPAP”) Courses.³⁸ In 2021, the Appraisal Foundation announced that, as part of these courses, it would require appraisers to take a seven-hour course focused on fair housing laws and bias.³⁹

Additionally, it is noteworthy that in 2022, the U.S. Bureau of Labor Statistics estimated that more than 92% of home appraisers are white and 54.5%

31. Carey Chesney, *Real Estate Comps: What They Are And How To Find Them In Your Area*, ROCKET MORTG. (Jan. 11, 2023), <https://www.rocketmortgage.com/learn/real-estate-comps> [<https://perma.cc/P4U9-2MC4>].

32. Howell & Korver-Glenn, *supra* note 17, at 5.

33. *Id.*

34. Musinki, *supra* note 30.

35. *How to Become a Real Property Appraiser*, THE APPRAISAL FOUND., https://www.appraisalfoundation.org/imis/TAF/Resources/Aspiring_Appraisers/How_to_Become_a_Real_Property_Appraiser/TAF/Copy_of_Become_RP_Appraiser.aspx?hkey=e156deb3-275f-46b6-9775-177c043ca399 [<https://perma.cc/6V5D-L4YP>] (last visited Nov. 25, 2022).

36. *Id.*

37. *Appraiser Qualifications Board*, THE APPRAISAL FOUND., <https://www.appraisalfoundation.org> [<https://perma.cc/2R73-QRUM>] (last visited Mar. 12, 2023).

38. *Uniform Standards of Professional Appraisal Practice (USPAP) Courses*, THE APPRAISAL FOUND., https://www.appraisalfoundation.org/imis/TAF/Resources/Courses/USPAP_Courses/TAF/USPAP_Courses.aspx [<https://perma.cc/9LXJ-TNX3>] (last visited Nov. 27, 2022).

39. Tim Glaze, *Appraisal Foundation: Appraisers Must Take Course on Bias*, HOUS. WIRE (Mar. 3, 2021, 2:19 PM), <https://www.housingwire.com/articles/appraisal-foundation-appraisers-must-take-course-on-bias/> [<https://perma.cc/F4QZ-748K>].

are men.⁴⁰ This lack of diversity within the appraisal profession is often attributed to various barriers to entry such as the relatively high costs of appraiser education and examination as well as the 1,500 to 3,000 hours required to become licensed.⁴¹ Moreover, “[t]he appraiser pipeline relies on the supervisor-trainee model, which often results in white appraisers supervising white trainees from their personal or professional networks.”⁴²

Overall, appraisals are highly subjective and heavily influenced by the appraiser’s experience, expertise, and knowledge of the neighborhood.⁴³ Frederick Babcock, considered to be one of the originators of appraisals, said, “it is obvious that there is no absolute iron-clad method of computing real estate values . . . because values are a social phenomenon dependent on human behavior.”⁴⁴ Thus, housing appraisals are often racially influenced. Throughout American history, “[t]he intensely subjective processes of determining the value of property or a neighborhood . . . was inherently informed by the presence or absence of African Americans.”⁴⁵

Indeed, it has been said that “[t]he contrived sciences of real estate brokerage and appraisal were developed in the shadow of a eugenic pseudoscience in which fatalistic assumptions linked biology, race and ethnicity.”⁴⁶ The values of homes owned by racial minorities and homes in neighborhoods with larger numbers of racial minorities were and are frequently valued less than the homes of white people and homes in predominantly white neighborhoods.⁴⁷ Appraisal practices intensify this inequity through the use of comparables. “[A]ppraisers [are] still required to use past sale prices to determine property values without adjusting for the past injustices” of de jure discrimination and segregation in housing.⁴⁸

B. Discrimination in Housing Appraisals

Homeownership is the key to building wealth for the vast majority of

40. *Labor Force Statistics from the Current Population Survey*, U.S. BUREAU OF LAB. STAT. (Jan. 25, 2023), <https://www.bls.gov/cps/cpsaat11.htm> [<https://perma.cc/Z6ZQ-3UX6>].

41. Michael Neal & Peter J Mattingly, *Increasing Diversity in the Appraisal Profession Combined with Short-Term Solutions Can Help Address Valuation Bias for Homeowners of Color*, URB. INST. (July 1, 2021), <https://www.urban.org/urban-wire/increasing-diversity-appraisal-profession-combined-short-term-solutions-can-help-address-valuation-bias-homeowners-color> [<https://perma.cc/8S7C-6TZQ>].

42. *Id.*

43. ACTION PLAN, *supra* note 23, at 6.

44. FREDERICK BABCOCK, *THE APPRAISAL OF REAL ESTATE* 2 (1924).

45. KEEANGA-YAMAHTTA TAYLOR, *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* 9 (2019).

46. *Id.* at 147.

47. *See generally* Melissa Narragon et al., *Freddie Mac, Racial & Ethnic Valuation Gaps in Home Purchase Appraisals* (2021), www.freddiemac.com/fmacresources/research/pdf/202109-Note-Appraisal-Gap.pdf [<https://perma.cc/QKU5-W37C>]; Howell & Korver-Glenn, *supra* note 17.

48. Howell & Korver-Glenn, *supra* note 17, at 6.

Americans.⁴⁹ However, throughout American history, Black families and individuals have endured discriminatory practices which have resulted in the significant undervaluation of their homes and neighborhoods. Beginning in 1934, the Federal Housing Administration (“FHA”) encouraged long-term, low-interest, low-down-payment, fully amortized loans on homes.⁵⁰ However, “the FHA’s appraisal standards included a whites-only requirement,” meaning “racial segregation . . . became an official requirement of the federal mortgage insurance program.”⁵¹ FHA appraisers “not only gave high rating to mortgage applications if there were no African Americans [or other people of color] living in or nearby the neighborhood but also lowered their risk estimates for individual properties with restrictive deed language.”⁵² The American Institute of Real Estate Appraisers’ (“AIREA”) earliest appraising standards, published in the 1930s, also established a connection between race and value and warned of “the infiltration of inharmonious racial groups.”⁵³

Throughout the 1940s and ‘50s, racially discriminatory appraisal practices continued. It was not until the 1960s, with the enactment of Title VIII of the 1968 Civil Rights Act, that discrimination in housing appraisals was specifically addressed and prohibited.⁵⁴ However, Title VIII did not mark the end of racially discriminatory practices. Throughout the 1970s and ‘80s, Black homebuyers were “granted access to conventional real estate practices and mortgage financing, but on more expensive and comparatively unequal terms.”⁵⁵ Indeed, “despite some legal changes, residential appraisals still rel[ied] on the racist notion that White middle-class neighborhoods [were] more valuable than comparable communities of color.”⁵⁶

In 1977, the United States filed a lawsuit against AIREA and other appraising and lending organizations.⁵⁷ It accused the defendants of engaging in “unlawful discriminatory practices by promulgating standards which have caused appraisers and lenders to treat race and national origin as negative factors in determining the value of dwellings and in evaluating the soundness of home loans.”⁵⁸

49. *Racial Differences in Economic Security: Housing*, U.S. DEP’T OF THE TREAS. (Nov. 4, 2022), https://home.treasury.gov/news/featured-stories/racial-differences-in-economic-security-housing#_ftn23 [<https://perma.cc/4Q42-8JJP>] (stating “[h]ouseholds outside the top wealth decile derive more wealth from housing equity than from financial assets, businesses, or other components of non-retirement wealth.”).

50. RICHARD ROTHSTEIN, *THE COLOR OF LAW* 64 (2017).

51. *Id.* at 64-65.

52. *Id.* at 83 (restrictive deed language, in this case, refers to language within a deed that prohibits property from being rented or sold to certain religious, racial, or ethnic minority groups).

53. TAYLOR, *supra* note 45, at 148.

54. *See* 42 U.S.C. § 3605.

55. TAYLOR, *supra* note 45, at 5.

56. Howell & Korver-Glenn, *supra* note 17, at 6.

57. *United States v. Am. Inst. of Real Est. Appraisers*, 442 F. Supp. 1072, 1076 (N.D. Ill. 1977).

58. *Id.*

Additionally, AIREA was charged with “failing to take adequate steps to correct the continuing effect of past discrimination and ensure non-discrimination by appraisers and lenders.”⁵⁹ As a result of this lawsuit, the two parties reached a settlement agreement that made it improper to base value on racial homogeneity or stereotyped and biased presumptions.⁶⁰

After this settlement, up until 1996, only six cases alleging appraisal discrimination were reported.⁶¹ “[N]one of these . . . resulted in a determination that the defendant violated [Title VIII] after a trial on the merits.”⁶² As of 2022, there are at least four pending cases of appraisal discrimination, including the Tate-Austins in California and Nathan Connolly and Shani Mott in Maryland.⁶³ Moreover, investigators from the United States Department of Housing and Urban Development (“HUD”) estimate they are currently investigating “approximately 100 appraisers, firms and AMCs [Appraisal Management Companies] in response to consumer complaints involving alleged discrimination.”⁶⁴

Furthermore, numerous studies in recent years have not only confirmed the existence of discriminatory appraisal practices but also researched the effect on home and neighborhood valuation. A 2021 report by Freddie Mac demonstrated that, in general, “[a]ppraisers’ opinions of value are more likely to fall below the contract price” in neighborhoods predominantly occupied by minorities.⁶⁵ The report, which examined 12 million appraisals between 2015 and 2020, found that in majority-Black neighborhoods, 12.5% of appraisals resulted in a value below the contract price, compared to only 7.4% of appraisals in predominantly white neighborhoods.⁶⁶ Moreover, in 2021 the Federal Housing Finance Agency (“FHFA”) conducted a search of key words and phrases from millions of appraisals submitted annually and found “thousands of potential race-related flags.”⁶⁷ For example, in one appraisal there was “[a] reference to a neighborhood being originally ‘White-Only,’ before becoming a ‘White-Flight Red-Zone’ to

59. *Id.*

60. *Id.* at 1077.

61. ROBERT SCHWEMM, MORTGAGE LENDING, RACIAL DISCRIMINATION, AND FEDERAL POLICY 390 (John Goering & Ron Wienk, eds., 1996).

62. *Id.*

63. *See* Tate-Austin v. Miller, No. 21-CV-09319-MMC, 2022 WL 1105072 (N.D. Cal. Apr. 13, 2022); Complaint and Jury Demand, *supra* note 13; Peter T. Christensen, *Fair Housing and Discrimination*, VALUATION 10 (Q2, 2022).

64. Christensen, *supra* note 63, at 11.

65. Narragon et al., *supra* note 47, at 2.

66. *Id.* at 3.

67. Chandra Broadnax & James Wylie, *Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary*, FED. HOUS. FIN. AGENCY (Dec. 14, 2021), <https://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx> [<https://perma.cc/VT9S-4LEV>] (noting race-related flags included references to racial makeups of the area, foreign birthplaces of residents, languages spoken by residents, amenities geared toward certain racial, ethnic or religious groups, gentrification, and more).

explain why the neighborhood is mostly ‘Working-Class Black’ now.”⁶⁸

In November 2022, a groundbreaking study from the Weidenbaum Center at Washington University confirmed that many “[h]ome value inequalities are the result of appraisal practices.”⁶⁹ Moreover, a December 2022 study by the Brookings Institution found that “appraisal bias explains 9% to 14% of overall devaluation.”⁷⁰ Indeed, “in 2021, licensed appraisers evaluated homes in White neighborhoods as double the value of homes in communities of color—even when property and other neighborhood characteristics were the same” and “[r]acial inequality in appraised values has increased 75% over the last decade.”⁷¹

As a result of these discriminatory practices, “African Americans experience homeownership in ways that rarely produce the financial benefits typically enjoyed by middle-class White Americans,” namely the ability to build generational wealth.⁷² In 2019, “[t]he median Black household ha[d] only about one-eighth of the wealth held by the median white household,” and “while the median white household has amassed \$188,000, the median Black family has about \$24,000.”⁷³ However, a 2016 study found that “[i]f public policy successfully equalized the return on homeownership, so that Blacks and Latinos saw the same financial gains as whites as a result of being homeowners, median Black wealth would grow \$17,113 and the wealth gap between Black and white households would shrink 16%.”⁷⁴ Thus, it is crucial to address not only the history of discriminatory appraisals but also their effect today because of their proven impact on home values and generational wealth creation.

C. Current Legal Framework

Before examining the proposed legislative and administrative solutions to this crisis of appraisal discrimination, it is important to examine the statutes that currently exist to prohibit this type of discrimination: the Civil Rights Act of 1866, Title VIII of the Civil Rights Act of 1968, the Equal Credit Opportunity Act of 1974 (“ECOA”), and various state and local fair housing laws.

68. *Id.*

69. Howell & Korver-Glenn, *supra* note 17, at 3.

70. Jonathan Rothwell & Andre Perry, *How Racial Bias in Appraisals Affects the Devaluation of Homes in Majority-Black Neighborhoods*, METRO. POL’Y PROGRAM AT BROOKINGS (Dec. 5, 2022), <https://www.brookings.edu/research/how-racial-bias-in-appraisals-affects-the-devaluation-of-homes-in-majority-black-neighborhoods/> [<https://perma.cc/2TFA-N7Q8>].

71. Howell & Korver-Glenn, *supra* note 17, at 2, 12.

72. KEEANGA-YAMAHTTA TAYLOR, *supra* note 45, at 260.

73. Shelley Stewart III et al., *The Economic State of Black America: What Is and What Could Be*, MCKINSEY INST. FOR BLACK ECON. MOBILITY (June 17, 2021), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/the-economic-state-of-Black-america-what-is-and-what-could-be> [<https://perma.cc/D7NM-ZY7Q>].

74. Laura Sullivan et al., *The Racial Wealth Gap: Why Policy Matters*, INST. FOR ASSETS & SOCL. POL’Y, BRANDEIS UNIV. & DEMOS 5 (June 21, 2016), https://www.demos.org/sites/default/files/publications/RacialWealthGap_2.pdf [<https://perma.cc/LJM5-THEM>].

The Civil Rights Act of 1866, codified in part at 42 U.S.C. § 1982, states that “[a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.”⁷⁵ In 1968, the Supreme Court held in *Jones v. Alfred H. Mayer Co.* that § 1982 barred “all racial discrimination, private as well as public, in the sale or rental of property.”⁷⁶ Recently, in *Tate-Austin v. Miller*, the U.S. District Court for the Northern District of California, relying on the Supreme Court’s interpretations as well as the interpretations of other district courts, affirmed the notion that the rights protected by § 1982 can include one’s interests related to home loans, which would include appraisal valuations.⁷⁷ Today, § 1982 is often used in conjunction with Title VIII of the Civil Rights Act of 1968 to challenge discriminatory appraisals.⁷⁸

Title VIII of the Civil Rights Act of 1968 prohibits discrimination in “residential real estate-related transactions,” which includes the “selling, brokering, or appraising of residential real property.”⁷⁹ This language delineates a cause of action based on appraisal discrimination, and this section of Title VIII is often cited along with § 3617 which makes it “unlawful to . . . interfere with any person in the exercise or enjoyment of . . . any right granted or protected by [§ 3605].”⁸⁰ Indeed, “treat[ing] race . . . as a negative factor in determining the value of dwellings . . . may . . . ‘interfere’ with persons in the exercise and enjoyment of rights guaranteed by” § 3605.⁸¹

Moreover, 42 U.S.C. § 3604(a) makes it unlawful “[t]o refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling” to a member of a protected class.⁸² “Because a discriminatory appraisal may lead to the denial of a home loan and thereby make housing ‘unavailable,’ a number of courts have held that this practice would violate” § 3604(a).⁸³ Additionally, 42 U.S.C. § 3604(b) extends to unlawful discrimination based on “the terms, conditions, or privileges of sale . . . of a dwelling.”⁸⁴ “[A]ppraising may be included in the

75. Civil Rights Act of 1866, 42 U.S.C. §§ 1981-1982 (1866); 42 U.S.C. § 1982.

76. 392 U.S. 409, 413 (1968) (second emphasis added).

77. No. 21-CV-09319-MMC, 2022 WL 1105072, at *10 (N.D. Cal. Apr. 13, 2022).

78. For an example of a case using multiple federal laws see *Tate-Austin. Id.*; see also *Devalued, Denied, and Disrespected: How Home Appraisal Bias and Discrimination are Hurting Homeowners and Communities of Color: Before the H. Comm. on Financial Services*, 117th Cong. 5, 6 (2022) (testimony of Lisa Rice, President and CEO, National Fair Housing Alliance) (explaining methods of challenging housing discrimination).

79. § 3605(b)(2).

80. *Id.* § 3617.

81. *United States v. Am. Inst. of Real Est. Appraisers*, 442 F. Supp. 1072, 1079 (N.D. Ill. 1977).

82. § 3604(a).

83. SCHWEMM, *supra* note 61, at 369 (discussing *Hanson v. Veterans Admin.*, 800 F.2d 1381, 1386 (5th Cir. 1986), *Steptoe v. Savings of Am.*, 800 F. Supp. 1542, 1545-47 (N.D. Ohio 1992), and *United States v. Am. Inst. of Real Est. Appraisers*, 442 F. Supp. 1072, 1079 (N.D. Ill. 1977)).

84. § 3604(b).

‘services’ provided in connection with the sale of a home,” and “discrimination in the terms or conditions of an appraisal may violate” § 3604(b).⁸⁵

The Equal Credit Opportunity Act states that “[i]t shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction.”⁸⁶ Indeed, a federal regulation states that lenders are prohibited from relying on discriminatory appraisals.⁸⁷ If a discriminatory appraisal results in the denial of a home loan by a credit institution, this could violate the ECOA, which creates a private right of action for aggrieved parties to hold creditors liable.⁸⁸

Finally, this framework of federal statutes is often supplemented by state or local fair housing laws. Indeed, forty-nine states and Washington D.C. have adopted fair housing statutes to codify protections into state law.⁸⁹ It is likely that the majority of these statutes have language that is substantially similar to the language of Title VIII. For example, Indiana’s Fair Housing Act makes it unlawful to “discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race.”⁹⁰ A real estate related transaction includes “[s]elling, brokering, or appraising residential real property.”⁹¹

II. EXAMINATION OF PROPOSED SOLUTIONS

A. PAVE Task Force

On June 1, 2021, President Biden announced the creation of an interagency initiative on Property Appraisal and Valuation Equity, more frequently called the PAVE Task Force.⁹² The Task Force, co-chaired by U.S. Department of Housing and Urban Development (“HUD”) Secretary Marcia Fudge and White House Domestic Policy Advisor Susan Rice, was called on to “evaluate the causes, extent, and consequences of appraisal bias and to establish a transformative set

85. SCHWEMM, *supra* note 61, at 369.

86. Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691(f) (1974); 15 U.S.C. § 1691(a).

87. See 12 C.F.R. § 128.11(a) (2021) (“No savings association may use or rely upon an appraisal of a dwelling which the savings association knows, or reasonably should know, is discriminatory.”).

88. SCHWEMM, *supra* note 61, at 367; 15 U.S.C. § 1691(a).

89. *State Fair Housing Protections*, THE POL’Y SURVEILLANCE PROGRAM (last updated Aug. 1, 2019), <https://lawatlas.org/datasets/state-fair-housing-protections-1498143743> [<https://perma.cc/39R9-HTH9>]; H.B. 1439, 2023 Reg. Sess. (Miss. 2023) (This bill would have codified a “Mississippi Fair Housing Act” into law, but it died in committee. MISS. CODE ANN. § 43-33-723 prohibits discrimination in “housing developments”, “eligible loans”, or “housing projects receiving assistance,” but Mississippi does not have a set of laws that are substantially similar to the federal fair housing laws).

90. IND. CODE § 22-9.5-5-6(b) (2023).

91. *Id.* § 22-9.5-5-6(a)(2).

92. Action Plan, *supra* note 23, at 1.

of recommendations to root out racial and ethnic bias in home valuations.”⁹³ In March 2022, the Task Force released its “PAVE Action Plan” which discusses the history of discrimination in appraisals, examines the bias that can appear in appraisal valuations, and lays out affirmative steps that agencies plan to make to address the inequities in housing appraisals.⁹⁴

The PAVE Task Force’s commitments, in theory, were designed “to help ensure that every American has a chance to build generational wealth through homeownership” and fit into the following five categories: (1) “[s]trengthening guardrails against unlawful discrimination in all stages of residential valuation,” (2) “[e]nhancing fair housing / fair lending enforcement and driving accountability in the industry,” (3) “[b]uilding a well-trained, accessible, and diverse appraiser workforce,” (4) “[e]mpowering consumers to take action,” and (5) “[g]iving researchers and enforcement agencies better data to study and monitor valuation bias.”⁹⁵

The first category is designed to “[c]larify the application of the Fair Housing Act and the ECOA to the appraisal industry”, update agencies’ appraisal-specific policies, and implement new policies to improve the process of having an appraisal value reconsidered.⁹⁶ Moreover, it hopes to strengthen the dataset and data collection forms used by appraisers to reduce subjective biases, address bias in the use of technology-based valuation tools, and develop a new legislative proposal to improve transparency and public participation in appraisal standards and appraiser qualifications.⁹⁷ The second category hopes to strengthen coordination and collaboration among supervisory and enforcement agencies while also expanding how regulatory agencies can examine the procedures of mortgage lenders.⁹⁸

The third category is focused on updating appraiser qualification criteria including education, experience, and examination requirements, removing barriers to entry and increasing diversity in the appraisal workforce, and requiring fair housing and anti-bias training for appraisers who work for federal programs.⁹⁹ The fourth category centers on updating resources for victims of appraisal discrimination, adding appraisal bias into homebuyer education courses, training housing counselors, funding testing, education, and outreach, and executing a new public awareness campaign, including informing FHA buyers about requesting a reconsideration of a valuation.¹⁰⁰ Finally, the fifth category was created to develop data-sharing arrangements, launch new efforts to identify and fill gaps in research, and better define metrics to help identify and measure

93. *Id.* (emphasis omitted).

94. *Id.*

95. *Id.* at 1, 22.

96. *Id.* at 5, 23-24.

97. *Id.* at 5, 25-27.

98. *Id.*

99. *Id.* at 5-6, 30-34.

100. *Id.* at 6, 34-38.

patterns of mis-valuation.¹⁰¹

Even though the PAVE Action Plan has existed since March 2022, most of the agencies are still in the initial stages of planning and implementation. The Appraisal Subcommittee (ASC), a subcommittee of the Federal Financial Institutions Examination Council charged with federal oversight of state appraiser and appraisal management company regulatory programs, “launched an independent review of the Uniform Standards of Professional Appraisal Practice (USPAP) and qualification criteria for the appraiser industry to understand potential barriers to entry for underrepresented communities.”¹⁰² In January 2023, the ASC held a hearing about appraisal bias that brought together people from HUD, the Consumer Financial Protection Bureau (CFPB), the FHFA, the Appraisal Institute, and the Mortgage Bankers Association to discuss their roles in tackling appraisal discrimination.¹⁰³ The FHA has “issued a Mortgagee Letter to clarify nondiscrimination requirements applicable to appraisers and lenders.”¹⁰⁴ Additionally, the CFPB is purportedly working to “implement legal requirements to limit bias in algorithmic appraisals” and is clarifying the standards for lenders to have home values reconsidered if there is evidence of a discriminatory appraisal.¹⁰⁵

B. A Federal Legislative Solution

In conjunction with the PAVE Action Plan and its recommendations, on March 29, 2022, Maxine Waters, the then chairwoman of the House Committee on Financial Services, proposed new appraisal-focused legislation.¹⁰⁶ The bill, entitled the “Fair Appraisal and Inequity Reform Act of 2022,” would “establish an independent agency to be known as the Federal Valuation Agency” and set “real estate valuation standards and appraiser criteria, including promoting a fair, unbiased, transparent, repeatable valuation process”¹⁰⁷ The proposed legislation is designed to create a “streamlined federal process for reporting

101. *Id.* at 6, 38-42.

102. *About PAVE*, PAVE INTERAGENCY TASK FORCE ON PROP. & VALUATION EQUITY, <https://pave.hud.gov/about#faq> [<https://perma.cc/DZ7Y-JNH3>] (last visited Nov. 26, 2022).

103. *Appraisal Subcommittee Hearing on Appraisal Bias*, CONSUMER FIN. PROT. BUREAU (Jan. 25, 2023), <https://www.consumerfinance.gov/about-us/events/archive-past-events/appraisal-subcommittee-hearing-on-appraisal-bias> [<https://perma.cc/578V-VPKN>].

104. *About PAVE*, *supra* note 102.

105. Patrice Alexander Ficklin et al., *Mortgage Borrowers Can Challenge Inaccurate Appraisals Through Reconsideration of Value Process*, CONSUMER FIN. PROT. BUREAU (Oct. 6, 2022), <https://www.consumerfinance.gov/about-us/blog/mortgage-borrowers-can-challenge-inaccurate-appraisals-through-the-reconsideration-of-value-process/> [<https://perma.cc/9ZHG-3A6M>].

106. *Devalued, Denied, and Disrespected: How Home Appraisal Bias and Discrimination Are Hurting Homeowners and Communities of Color Before the H. Comm. On Fin. Servs.*, 117th Cong. (2022) (statement of Rep. Maxine Waters, Chairwoman, H. Comm. on Fin. Serv.).

107. Fair Appraisal and Inequity Reform Act of 2022, H.R. _____, 117th Cong. (2022).

appraisal discrimination and appraiser misconduct complaints” while also “requir[ing] annual reporting of such complaints to Congress” and “enhanc[ing] statutory penalties for appraisal discrimination.”¹⁰⁸ However, this bill was never formally introduced during the 117th Congress, and it is unlikely to have a future in the 118th Congress. Indeed, there has been no mention of a federal appraisal bill during the 2023 legislative session.

C. Proposed Legislation at the State Level

Throughout the country, various state legislators have proposed new bills specifically concerning appraisal discrimination to add further protections into law. For instance, in New Jersey, A.B. 1518 would permit the “State Real Estate Appraiser Board to revoke, suspend, or fine appraisers or appraisal management companies who knowingly engage in discriminatory appraisals of residential property on the basis of race or national origin.”¹⁰⁹ Additionally, A.B. 1519, entitled the “Fair Appraisal Act,” states that “holders of appraisal licenses or certificates, or appraisal management company registrations, may have their licenses, certificates or registrations revoked or suspended, or be subject to fines, if . . . the holder of the credential has engaged in a discriminatory appraisal of a residential property.”¹¹⁰ Moreover, the Division of Civil Rights is to be notified of any allegations, and the complainant may file a complaint with the Division of Civil Rights.¹¹¹ However, neither of these bills were enacted during the 2022 legislative session, and it remains to be seen if they will be proposed again in 2023.

In Pennsylvania, state representative Morgan Cephas stated in August 2022 that she plans to introduce legislation that would “require real estate appraisers to complete training regarding bias and discrimination” before receiving or renewing their license or certification and would forbid a licensed or certified appraiser from incorporating bias or discrimination into their appraisal.¹¹² However, as of March 2023, no bill has been formally introduced in the Pennsylvania legislature.

D. Enacted Legislation at the State Level

Other states have been more successful in enacting new legislation geared towards appraisal bias and discrimination. In Virginia, H.B. 284 established new continuing education requirements for the renewal of appraiser licenses that would include fair housing courses.¹¹³ In Maryland, H.B. 1097 established a task

108. *Id.*; Memorandum from the FSC Majority Staff to the U.S. House Committee on Financial Services (Mar. 24, 2022), [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.congress.gov/117/meeting/house/114561/documents/HHRG-117-BA00-20220329-SD002-U3.pdf](https://www.congress.gov/117/meeting/house/114561/documents/HHRG-117-BA00-20220329-SD002-U3.pdf)

109. A.B. 1518, 2022 Leg., 220th Sess. (N.J. 2022).

110. A.B. 1519, 2022 Leg., 200th Sess. (N.J. 2022).

111. *Id.*

112. Cephas, *supra* note 27.

113. H.B. 284, 2022 Sess. (Va. 2022).

force to “study the mis-valuation and undervaluation of property owned by minorities” that would then report its findings to the Governor in 2023.¹¹⁴ In Illinois, H.B. 4410 requires the creation of a task force charged with conducting a study about racial disparities in real estate valuation, identifying and recommending changes to address the causes of said racial disparities, and evaluating “whether there are any barriers to entry that are disproportionately preventing minorities from entering into the appraisal profession.”¹¹⁵

California’s Fair Appraisal Act came into effect on January 1, 2022.¹¹⁶ This act requires the Bureau of Real Estate Appraisers to add a box to their complaint forms for home buyers to indicate if they believe their appraisal was below market value and requires the collection of demographic information about complainants.¹¹⁷ Moreover, it requires cultural competency training for appraisers, prohibits the use of race or other protected classes to analyze market value, and requires that each real property purchase must include a notice that states the appraisal of the property was unbiased.¹¹⁸ Finally in New York, 19 NYCRR § 1107.2, a state regulation, has been amended to include a requirement that licensed appraisers must complete a course in fair housing before renewing their license.¹¹⁹

E. Indiana’s Solution

In Indiana, H.B. 1151 was introduced by Representative Cherrish Pryor on January 10, 2023.¹²⁰ H.B. 1151 would prohibit “making an excessively low appraisal” based on the protected characteristics of an applicant or the “residents of the neighborhood in which the real estate is located.”¹²¹ Moreover, it would expand “the duties of the homeowner protection unit . . . of the office of the attorney general” to include “investigating and enforcing” discriminatory appraisal practices.¹²² This unit will also be responsible for amending the form that creditors “provide to mortgage loan applicants to include information about how prospective borrowers can report suspected violations.”¹²³

H.B. 1151 would establish a “fair housing practices fund” consisting of amounts from civil penalties or settlement agreements collected for violations of the bill’s provisions or from gifts, grants, or appropriations.¹²⁴ The fund could be used to provide restitution in cases of discriminatory appraisal practices as well

114. H.B. 1097, 2022 Leg., 444th Sess. (Md. 2022).

115. H.B. 4410, 102nd Gen. Assemb. (Ill. 2022).

116. 2021 Cal. Stat. ch. 352.

117. *Id.*

118. *Id.*

119. N.Y. Comp. Codes R. & Regs. tit. 19, § 1107.2 (2021).

120. H.B. 1151, 123rd Gen. Assemb. (Ind. 2023).

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

as grants for community reinvestment initiatives.¹²⁵ Moreover, the bill requires additional instruction in cultural competency and implicit bias training during the initial licensure or certification of appraisers, calls for policies to foster further diversity in the appraisal industry, and requires investigation and publication of data about discriminatory appraisal practices.¹²⁶

III. EXAMINING THE PROPOSED SOLUTIONS

A. Common Themes

The PAVE Task Force, federal legislation, and state legislation have all proposed different ways to approach discriminatory appraisals. Given the disparate approaches, it is useful to identify common themes. Generally, under the legislative frameworks that exist today, like Title VIII and Indiana's Fair Housing Act, there are private rights of action for individuals to sue or file complaints with administrative agencies against companies or individuals that violate the law. In comparison, many of these new proposed frameworks create stricter, non-discretionary penalties for violations, including fines and suspension or revocation of appraisers' licenses or certification.¹²⁷

Moreover, there is a renewed focus on the creation of a more diverse and better educated appraisal industry. Administrative agencies and legislatures around the country want to require additional anti-bias and fair housing training as a part of the appraiser licensure and certification process.¹²⁸ Additionally, there is a major emphasis on fostering diversity within the appraiser profession.¹²⁹ As stated previously, the appraisal profession is almost exclusively made up of white appraisers, and there are proposed programs and initiatives to encourage more people of color to become licensed appraisers.¹³⁰ Finally, there are recognized gaps in data and data collection stemming from a lack of research into the extent and impact of racial bias in appraisals.¹³¹ Many solutions propose the development of improved methods for collecting, sharing, investigating, and publishing data related to the housing appraisal industry to better study and understand biases and discrimination.¹³²

B. Unique Propositions

Aside from these common themes, some frameworks offer unique ideas that could be useful additions to a more successful solution. For example, the PAVE Task Force hopes to implement a review of the data sets used by appraisers to

125. *Id.*

126. H.B. 1151, 123rd Gen. Assemb. (Ind. 2023).

127. *See* H.B. 1151, 123rd Gen. Assemb. (Ind. 2023).

128. *Id.*

129. *Id.*

130. *Labor Force Statistics from the Current Population Survey*, *supra* note 40.

131. Action Plan, *supra* note 23, at 41.

132. *See id.* at 5-7.

reduce subjectivity in their assessments, strengthen coordination between agencies to identify discriminatory practices and enforce fair housing laws, and educate homebuyers on their rights under the current legislative framework.¹³³ Additionally, the PAVE Action Plan proposes the creation of new resources to educate and inform homebuyers about their rights when it comes to recognizing and reporting appraisal bias and discrimination.¹³⁴

Moreover, in Indiana, H.B. 1151 proposes the creation of a fair housing fund, which would be mainly composed of the penalties paid by those who violate the law.¹³⁵ This fund could be used to provide down payment assistance, financial assistance for closing costs, and restitution for individuals who have been harmed by discriminatory appraising practices.¹³⁶ This fund would also provide grants for community outreach and community reinvestment initiatives.¹³⁷ Indiana's H.B. 1151 would also require creditors "to provide to mortgage loan applicants" information about how to report suspected discriminatory practices.¹³⁸ Finally, under California's Fair Appraisal Act, contracts in real estate transactions require attestation that the appraisal was unbiased and objective.¹³⁹

IV. ANALYSIS ARGUING FOR NON-LEGISLATIVE AND ADMINISTRATIVE SOLUTIONS

A. The Shortcomings of Legislative and Administrative Solutions

Legislation, in theory, has the power to bring about profound change. However, there will always be limitations and disadvantages to legislation and regulation. Indeed, there is already an extensive statutory and regulatory framework of laws at both the state and federal levels that prohibit discrimination in housing appraisals, so it is difficult to conclude, definitively, that a new law would help to solve the problem. Moreover, federal action is "overwhelmingly reactive in nature, both in relation to the broad historical trends . . . and in regard to immediate political pressures."¹⁴⁰ Although laws are crucial to the protection of people's rights and to regulate people's actions, if they are reactive then they cannot be the principal driving force of change. Thus, as transformational as legislation can be on a theoretical level, if the system in which the legislation exists is inherently flawed, there can be no radical change. Indeed, "[o]ur current system is set up for some people to have to jump over hurdles to succeed, while others get to simply run to the finish line without those same racial

133. *Id.* at 5-6.

134. *Id.* at 34.

135. H.B. 1151, 123rd Gen. Assemb. (Ind. 2023).

136. *Id.*

137. *Id.*

138. *Id.*

139. 2021 Cal. Stat. ch. 352.

140. DOUG MCADAM, POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1930-1970 86 (1999).

hurdles.”¹⁴¹

Under our current patchwork of state and federal laws and regulations, “the racial homeownership gap is wider than ever.”¹⁴² In 2021, “the Black homeownership rate reached only 44 percent, while the white homeownership rate reached 74 percent.”¹⁴³ Moreover, “[a]lthough the racial inequality in home values has been increasing since 1980, the rate by which it is increasing has tripled in the last decade.”¹⁴⁴ “[T]he neighborhood racial gap in appraised values increased by \$157,000 from 2013 to 2021” alone.¹⁴⁵ While this ever-widening gap in homeownership cannot solely be attributed to biased appraisals, “the evidence strongly suggests that appraisers introduce systemic bias that favors white neighborhoods at the expense of Black, Latino or Hispanic, and Asian American neighborhoods.”¹⁴⁶

Although the current frameworks of fair housing and fair lending laws are not entirely to blame for these issues, there has been little progress since they were enacted. In recent years, there has been only one reported resolution of a HUD complaint involving appraisal biases, and HUD itself has not concluded any of its investigations with a formal charge of discrimination.¹⁴⁷ Moreover, between 1977 and 1996, no cases alleging appraisal discrimination resulted in relief for the plaintiffs.¹⁴⁸ Of the cases pending today, there have yet to be any positive, final determinations.¹⁴⁹

One could argue that legislation or regulation could bring positive change to the appraisal industry. For example, appraisers could be statutorily required to take courses on fair housing before they are licensed or recertified. Additionally, as a part of all loan applications or real estate contracts, there could be a requirement that mortgage lenders, creditors, realtors, or appraisers include information about fair housing laws and inform homebuyers about their rights and all available avenues of legal recourse in cases of discrimination. Statutory fines for violations of fair appraisal laws could be used to create community investment programs or reimburse victims of appraisal discrimination. Moreover, a statutory requirement of lower application fees or the allocation of state or federal funds to provide scholarships to persons who cannot afford the licensure

141. Rashawn Ray, *Is the United States a Racist Country*, BROOKINGS (May 24, 2021), <https://www.brookings.edu/blog/how-we-rise/2021/05/04/is-the-united-states-a-racist-country/> [<https://perma.cc/JXY4-QGPS>].

142. ACTION PLAN, *supra* note 23, at 4.

143. *Id.*

144. Howell & Korver-Glenn, *supra* note 17, at 13.

145. *Id.*

146. Rothwell & Perry, *supra* note 70.

147. Title VIII Conciliation Agreement Between Redacted and JPMorgan Chase Bank, N.A., et al., U.S. DEP’T OF HOUS. & URBAN DEV. (Mar. 2021), https://www.hud.gov/sites/dfiles/FHEO/documents/21Chase%20Conciliation%20Agreement_Redacted_Redacted.pdf [<https://perma.cc/K7HJ-J86T>]; Christensen, *supra* note 63, at 2.

148. See SCHWEMM, *supra* note 61, at 390.

149. Christensen, *supra* note 63.

courses would allow more people to join the workforce as appraisers. However, many, if not all, of these ideas could be implemented by the appraisal industry itself or other non-governmental organizations. Moreover, with little progress to show from PAVE and countless appraisal bills stuck in state and federal legislatures with little to no chance of becoming laws, solutions must be sought outside of legislation and regulation.

B. Proposed Changes to Appraisals and the Appraisal Industry

“Unjust social laws and patterns do not change because supreme courts deliver just opinions.”¹⁵⁰ Bayard Rustin, a prominent leader in the early Civil Rights Movement, wrote these words in 1947, but they still ring true to this day. Whether it is Supreme Court decisions or legislation, there will always be limitations to what law can accomplish. Laws are crucial to the protection of people’s rights and to regulate people’s actions, but they are, for the most part, reactive. They are not the principal driving force of change. Instead, change must be fueled by proactive forces that propel society forward without waiting for the law to catch up. While many of the laws proposed by states and the federal government, as well PAVE’s plans for federal agencies, could bring about change, it is imperative that they do not become the only source of change. Even without legislation, the appraisal industry could move towards more positive change and re-invent the appraisal profession without being required to do so.

For example, the Appraisal Foundation’s new fair housing training course requirement reflects an affirmative decision on the part of appraisal industry leaders to combat discrimination and biases.¹⁵¹ Appraisers must be educated about their own implicit biases as well as the way discrimination has shaped access to housing in the United States. Otherwise, they will be unable to fully understand how their choices and valuations affect more than just one homebuyer’s experience. A Scientific Workforce Diversity Seminar Series hosted by the National Institute of Health in 2021 found that “well-designed, actionable implicit bias trainings” must be a part of their “comprehensive institutional change strategy” to “eliminate bias from individuals or workplace environments.”¹⁵² Although this seminar looked specifically at scientific industries, its methods and findings could be applied to the real estate industry. In order for there be a more comprehensive, institutional change, implicit bias training is an important step.

Moreover, “[t]he ranks of appraisers are too old, too white and too male . . .

150. RAYMOND ARSENAULT, *FREEDOM RIDERS: 1961 AND THE STRUGGLE FOR RACIAL JUSTICE* 37 (2006).

151. Tim Glaze, *Appraisal Foundation: Appraisers Must Take Course on Bias*, *Hous. Wire* (Mar. 3, 2021, 2:19 PM), <https://www.housingwire.com/articles/appraisal-foundation-appraisers-must-take-course-on-bias/> [<https://perma.cc/F4QZ-748K>].

152. NAT’L INST. OF HEALTH, *SCIENTIFIC WORKFORCE DIVERSITY SEMINAR SERIES SEMINAR PROCEEDINGS: IS IMPLICIT BIAS TRAINING EFFECTIVE 7* (2021), https://diversity.nih.gov/sites/coswd/files/images/NIH_COSWD_SWDSS_Implicit_Bias_Proceedings_508.pdf [<https://perma.cc/KA3T-FZ46>].

[a]nd for banks and other lenders . . . there aren't enough appraisers to keep up with demand."¹⁵³ In 2022, 92% of appraisers were white,¹⁵⁴ and in 2019, the Appraiser Institute estimated that the profession was shrinking by an average rate of 2.6% per year.¹⁵⁵ One way to rectify both of these problems is to foster greater diversity within the appraiser profession. However, to receive a license under current industry standards, an appraiser "must complete several educational courses, pass an entry exam and get 2,000 hours of on-the-job training over two years, often with little to no pay because they cannot legally appraise properties."¹⁵⁶ Additionally, as previously stated, the appraisal industry's reliance on the supervisor-trainee model results in white appraisers supervising more white trainees.¹⁵⁷ This convoluted process, the cost of application fees, and an overwhelmingly white supervisory workforce creates an overwhelming barrier to entry for many.

There are currently programs like the Appraiser Diversity Initiative, led by the Appraisal Institute in collaboration with Fannie Mae, Freddie Mac, and the National Urban League, that provide resources and guidance for diverse candidates to pursue a career as an appraiser, but there could be more.¹⁵⁸ Colleges and universities could fund programs and scholarships designed to allow students, especially students of color and women, to learn about careers in the appraisal industry. Moreover, in 2022, Mississippi piloted a novel program in which appraiser applicants had the opportunity to train for licensure without going through the traditional supervisor-trainee process.¹⁵⁹ By eliminating the supervisor-trainee requirement of appraiser licensure, this cycle of white supervisors assisting white trainees could be eliminated as well.

Furthermore, the appraisal industry must be accountable for its own data collection. The "lack of access to complete data [about appraisals] has been a hindrance to research on appraisal disparities and on the impact of racial and ethnic bias in appraisals."¹⁶⁰ It has impeded the "establish[ment] [of] metrics that

153. Kyle Campbell, *Home Appraisers are Fed Up with How Their Industry is Run*, AMERICAN BANKER (Sept. 7, 2022, 9:20 PM), <https://www.americanbanker.com/news/home-appraisers-are-fed-up-with-how-their-industry-is-run> [https://perma.cc/RX6J-B6B4].

154. *Labor Force Statistics from the Current Population Survey*, U.S. BUREAU OF LAB. STAT. (2022), <https://www.bls.gov/cps/cpsaat11.htm> [https://perma.cc/Z6ZQ-3UX6].

155. *U.S. Valuation Profession Fact Sheet Q1 2019*, APPRAISAL INST. (2019), <https://www.appraisalinstitute.org/file.aspx?DocumentId=2342> [https://perma.cc/2L8Q-YU4V].

156. Campbell, *supra* note 153.

157. Neal & Mattingly, *supra* note 41.

158. *Appraiser Diversity Initiative*, APPRAISAL INST., <https://www.appraisalinstitute.org/the-appraisal-profession/appraiser-diversity-initiative/> [https://perma.cc/B2QZ-EEQP] (last visited Feb. 3, 2023).

159. *In Mississippi Pilot Program Increases Number Of Licensed, Diverse Appraisers*, U.S. DEPT. OF HOUS. & URBAN DEV. (Oct. 13, 2022), <https://www.hud.gov/states/mississippi/stories/2022-10-13> [https://perma.cc/9ART-ZW7M].

160. ACTION PLAN, *supra* note 23, at 38.

can be used to identify appraisal bias where it occurs.”¹⁶¹ Stakeholders within the real estate industry should require that appraisers and creditors submit information on the appraisal and the home loan process, including information on the specific criteria used to determine the home’s value as well as the demographics of the homebuyer. This practice would allow researchers and governmental agencies to better understand discriminatory appraisals and how to combat them. In theory, a law could accomplish this same goal by requiring the industry to comply with agency requests for data. However, if the real estate industry was responsible for its own data collection, the industry itself may become more cognizant of biases and discrimination, rather than relying on or possibly ignoring outside research telling it the same thing. Moreover, appraisals are being digitized, and appraisers have the ability to conduct remote or hybrid appraisals.¹⁶² This digitization increases objectivity and can provide additional levels of anonymity for the buyer.¹⁶³

Finally, even the idea of an appraisal itself could be fundamentally altered. Appraisals are not required for every real estate transaction or home loan, and automation and technology could replace the person-to-person aspect of appraising.¹⁶⁴ Moreover, through the use of comparables in appraisal valuations, “racist sale prices from the past are carried into the present and combined with contemporary racist stereotypes to further exacerbate inequality.”¹⁶⁵ Indeed, “neighborhood racial inequality in appraised values is largely a product of the sales comparison approach . . . [a]ppraisers are explicitly and implicitly trained to conceptualize similar neighborhoods as those with the same racial demographics.”¹⁶⁶ If the need for an appraisal, or at a minimum, the use of comparables was eliminated, Black homes and neighborhoods would be more likely to be evaluated without using factors rooted in past discrimination and inequity. There are “[n]ew methods, like eruka’s lifespan approach” that would “decouple the value of land from the racial or socioeconomic characteristics of its inhabitants.”¹⁶⁷ This approach would use “cutting-edge technology and trained inspectors to estimate value based on how long the home would last in good condition.”¹⁶⁸ Thus, rather than relying on past sales, new approaches would

161. *Id.* at 39.

162. Marisa Calderon, *Unequal Opportunity: Addressing Appraisal Bias is Another Step Toward Making Housing More Equitable*, SCOTSMAN GUIDE (Oct. 2022), <https://www.scotsmanguide.com/residential/unequal-opportunity/> [perma.cc/GA7G-7PKJ].

163. *Id.*

164. Peter Miller, *How Can I Avoid a Home Appraisal When I Apply for a Mortgage*, THE MORTGAGE REPORTS (Mar. 27, 2017), <https://themortgagereports.com/24596/how-can-i-avoid-a-home-appraisal-when-i-apply-for-a-mortgage> [https://perma.cc/LJH4-S94H].

165. Howell & Korver-Glenn, *supra* note 17, at 21.

166. *Id.* at 20-21.

167. *Id.* at 21.

168. Elizabeth Korver-Glenn, *Opinion: The 1936 Manual that Enshrined Racism in America’s Housing*, CNN (Aug. 24, 2022, 4:01 PM), <https://www.cnn.com/2022/08/24/opinions/racism-in-home-appraisal-real-estate-korver-glenn/index.html> [https://perma.cc/9VX6-STLA].

examine and “evaluate the property’s cost and societal contribution.”¹⁶⁹

C. Solutions Outside of the Appraisal Industry

Beyond solutions within the appraisal industry or legislation, there must be initiatives to financially support Black communities and Black homeowners. There must be reparations. Homeownership was the key for generations of Americans to build and maintain wealth, but racially discriminatory policies and practices left African Americans without the same opportunities for homeownership, and in turn, the same opportunities to build generational wealth. Today, as these problems persist, the wealth and homeownership gaps will continue to increase, even if the appraisal industry or state and federal government take decisive action.

Indeed, the 2022 study from the Weidenbaum Center at Washington University has suggested that with the “Uniform Appraisal Dataset and other federal data sources, we can estimate the cost of the racialized appraisal process on specific neighborhoods.”¹⁷⁰ With this information, “targeted tax credits or stimulus programs can redirect wealth from communities that have experienced excessive appreciation to those that have suffered from persistent racism.”¹⁷¹ Through a program like this, the real estate industry and the federal government could invest money into communities and neighborhoods that have suffered from predatory and discriminatory housing practices.

Furthermore, if new legislation is enacted with statutory fines for violations of fair appraisal laws, this money could be directed into community funds, like Indiana’s H.B. 1151 suggests, to revitalize communities that have been disproportionately affected by discriminatory appraisal policies.¹⁷² However, without greater systemic changes within the appraisal industry as whole, reparations will not allow Black homeowners and neighborhoods to recover from decades of inequity. Thus, there must be a comprehensive approach that seeks to change not only the way we value and appraise homes, but also provides the tools and financial support to communities that have suffered past injustices.

CONCLUSION

In 1968, the Kerner Commission, established by President Johnson to examine the causes of civil and racial unrest during the summers of 1964 to 1967, concluded that the United States was “moving toward two societies, one black, one white—separate and unequal.”¹⁷³ Now, more than 50 years after those words were written, the society we live in is still marked by discriminatory practices that keep African Americans from buying homes and building generational wealth on the same terms as white homeowners. There are two societies, and the American

169. Howell & Korver-Glenn, *supra* note 17, at 13.

170. *Id.* at 21.

171. *Id.*

172. See H.B. 1151, 123rd Gen. Assemb. (Ind. 2023).

173. THE ESSENTIAL KERNER COMMISSION REPORT 7 (Cobb with Guariglia, eds., 2021).

ideal of homeownership exists in only one. A white family can have their home appraised at a reasonable value, obtain a loan on favorable terms, and build equity and wealth through homeownership. Conversely, African American homeowners like Carlette Duffy, the Black homeowner from Indianapolis whose appraisal value more than doubled when she hid her racial identity, have their homes appraised for less than their worth. Accordingly, their chances to obtain satisfactory loans and build equity through homeownership slip away.

The United States government and various state governments have recognized discrimination in the appraisal process as a significant barrier to African American homeownership and wealth creation. However, under the current legislative and administrative framework, discriminatory practices have continued unabated, and no new frameworks have proven to be effective, yet. Moreover, federal and state governments have played a significant role in perpetuating discriminatory housing practices, and many of their practices and policies have led us to this moment. Although new legislation or administrative regulations will undoubtedly play an important role in reversing the inequities and injustices of the past, they will not be able to effect change alone. Without a significant, practical change to combat the systemic racial discrimination that exists in the appraisal industry, this country will become further divided into two separate realities: one an American dream and the other an American nightmare.