



Comments

to the

U.S. Department of Housing & Urban Development

regarding

**A Proposed Mortgagee Letter on Borrower Requests
for Review of Appraisal Results**

FHA INFO 2023-01 (Jan. 3, 2023)

by

**Consumer Action, Long Island Housing Services, Inc., Mountain State Justice, Inc.,
NAACP Legal Defense and Educational Fund, Inc. (LDF), National Coalition for
Asian Pacific American Community Development (National CAPACD), National
Community Reinvestment Coalition, National Community Stabilization Trust,
National Consumer Law Center (on behalf of our low-income clients), National Fair
Housing Alliance, New Jersey Institute for Social Justice, UnidosUS, and Woodstock
Institute**

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Summary: We strongly support HUD’s plan to issue guidance on ROVs, but the proposed Mortgage Letter needs substantial improvement. It should be revised to provide clear, strong standards for mortgagees and a uniform ROV disclosure for borrowers.

1. Introduction

In recent years, it has become clear that the problem of bias in appraisals has not gone away. The 1968 Fair Housing Act barred discrimination in home appraisals and other housing-related transactions on the basis of race, color, religion, national origin, sex, disability, and familial status.² But, as demonstrated by lawsuits in the years after the Act was passed,³ and more recent media reports of bias,⁴ it is clear that the appraisal industry still has a problem with bias.⁵

Fixing the system for handling borrower requests for Reconsideration of Valuation (ROV) is an important step toward making appraisals fairer. A recent report on the Uniform Standards of Professional Appraisal Practice (USPAP) noted that both fair housing organizations *and* appraisal organizations complained about the ROV process as a point of frequent breakdown in the ability of borrowers to obtain fair and accurate appraisals.⁶ This complaint applied to borrowers of color and otherwise.

Parties involved in a lending transaction, most often the borrower, can use the ROV process to express disagreement with an appraiser’s opinion of value (i.e., an appraisal)

¹ Please see the appendix for a description of our organizations. For questions about these comments, please contact NCLC attorney Andrew Pizor (APizor@nclc.org) or NFHA attorney Maureen Yap (MYap@nationalfairhousing.org).

² 42 U.S.C. § 3601, *et seq.*

³ *See, e.g.*, *United States v. American Institute of Real Estate Appraisers*, 442 F. Supp. 1072 (N.D. Ill. 1977).

⁴ *See, e.g.*, Debra Kamin, N.Y. Times, *Widespread Racial Bias Found in Home Appraisals* (Nov. 2, 2022), available at <https://www.nytimes.com/2022/11/02/realestate/racial-bias-home-appraisals.html>.

⁵ *See generally* National Fair Housing Alliance, Dane Law LLC, and the Christensen Law Firm, *Identifying Bias and Barriers, Promoting Equity: An Analysis of the USPAP Standards and Appraiser Qualifications Criteria*.

⁶ *Id.* at 77 (Jan. 2022), available at https://nationalfairhousing.org/wp-content/uploads/2022/02/2022-01-28-NFHA-et-al_Analysis-of-Appraisal-Standards-and-Appraiser-Criteria_FINAL.pdf.

and may submit information for the appraiser to consider. The information is generally given to the lender or appraisal management company. Lenders (and possibly appraisal management companies) screen borrower ROVs and forward the ones they deem appropriate to the appraiser. Borrowers often submit information including other property sales that may be comparable and details about the characteristics of the subject property that differ from the appraisal report. The appraiser then determines whether to revise the original opinion of value.

Appraisal groups noted variations in policies and practices among lenders. Unfortunately, federal law, Fannie Mae, and Freddie Mac provide no real guidance beyond the rules for appraiser independence. And fair housing advocates reported that borrowers raising concerns with respect to discrimination often felt that their efforts to seek correction—or even simply to receive explanations supporting valuations—were not fairly considered and that the results seemed arbitrary and opaque, without transparency into the decision-making process.⁷ For these reasons, we welcome the Federal Housing Administration’s (FHA) recent proposal to issue a Mortgagee Letter on ROVs.

On January 3, 2023, FHA released a draft Mortgagee Letter proposing policy changes intended to strengthen FHA’s requirements for processing and documenting ROV requests, particularly when those requests are initiated by a borrower’s complaint about appraisal results.⁸ As HUD explained in the January 3rd announcement, the proposed Mortgagee Letter is intended to “clarif[y] standards for Borrower-initiated requests for review of an appraisal [by] add[ing] specific guidance to process and document a Borrower-initiated review of the appraisal results.”⁹

We welcome the proposed changes but believe they lack the needed clarity and specificity. These comments recommend improvements that will help borrowers and mortgagees. Borrowers will benefit from guidance that makes it easier for them to understand the process. And mortgagees will benefit from the clarity needed to automate procedures where possible and to avoid ambiguity that could create regulatory or litigation risk.

2. Develop and require mortgagees to use a model form explaining the right to seek an ROV and how.

Borrowers will not be able to ask for an ROV if they do not know they have the right to do so or how to do so. Mortgagees should be required to give borrowers a standardized notice stating the following information:

- that borrowers should carefully read the appraisal report and notify the mortgagee of any errors, such as in the description of the property, or any other problems they find.

⁷ *Id.* at 78.

⁸ FHA INFO 2023-01 (Jan. 3, 2023).

⁹ *Id.*

- that borrowers have the right to ask for a reconsideration of the valuation if they believe it is too high or too low.
- that the appraisal must be free of any bias and must be conducted in a professional manner.
- that borrowers have a right to complain to the mortgagee if they believe the appraiser was biased in any way or acted unprofessionally.
- how to contact the mortgagee about any complaints or to request a reconsideration of valuation, along with a description of supporting information that will help the mortgagee act on the borrower’s complaint or request.
- how to complain to HUD if a borrower believes the mortgagee has not handled a complaint properly.

The timing of the notice is as important as its content. Borrowers should receive the notice *before* an appraiser visits the home so borrowers know they should pay attention to what the appraiser says and does, and not just what the final appraisal report says.

HUD should mandate a uniform notice to ensure that all borrowers are properly notified and to avoid disparities. HUD has greater resources to design a user-friendly notice.

According to the draft mortgagee letter, it sounds like HUD may already be working on such a project. The draft says, “FHA is adding a disclosure to the Homebuyer’s Copy of form HUD-92800.5B Conditional Commitment Direct Endorsement Statement of Appraised Value” in order to “increase consumer awareness of the option to request a review of the results of an appraisal[.]” But neither the draft nor the announcement of it includes the text of the disclosure. The current version of form HUD-92800.5B does not appear to include this new disclosure either,¹⁰ so we assume the disclosure is still in development. We urge HUD to give the public an opportunity to comment on the uniform notice before it is finalized. HUD also should use consumer testing and work with the CFPB to ensure the disclosure is accessible to borrowers.

3. Strengthen and clarify the standard for reviewing borrower ROVs.

3.1 The proposed standard is too weak. HUD should require mortgagees to forward all but the barest borrower ROVs to the appraiser.

The draft Mortgagee Letter adds a “standard” for mortgagee consideration of borrower ROVs,¹¹ but it is quite brief and very weak. The standard only states that “[t]he Mortgagee’s underwriter must review all Borrower Requests for Review of Appraisal Results. The underwriter must review the appraisal in accordance with the requirements for Appraisal Review and Quality of Appraisal” This provides no guidance on how

¹⁰ See <https://www.hud.gov/sites/dfiles/OCHCO/documents/928005.B.pdf> (accessed Jan. 18, 2023).

¹¹ Draft Mortgagee Letter § II.A.2.

to decide when a borrower has provided enough information to send the ROV to the appraiser.

Some borrower communications will be more detailed than others. A good borrower notice, as recommended in § 2 of our comments, will maximize the number that contain sufficient detail. But not all borrowers will clearly identify errors in an appraisal and expressly request a revaluation. So, FHA must tell mortgagees how to distinguish between those that should be forwarded to the appraiser and those that require follow-up with the borrower.

The Mortgagee Letter should require mortgagees to forward ROVs to the appraiser if it includes anything beyond a bare assertion of inaccuracy or a bare request for a ROV. The Mortgagee Letter should specifically advise mortgagees: *When in doubt, err on the side of transmitting the ROV.* This is reasonable because the borrower has better information about the property than the mortgagee. The borrower knows the property details, condition, and neighborhood first-hand. So if the borrower asserts that there is an error, the mortgagee should accept that assertion at face value for the purpose of determining whether to send the ROV to the appraiser. The borrower is also more likely to have met the appraiser in person, seen how the appraiser worked, and heard comments the appraiser may have made. A mortgagee has no basis for second-guessing a borrower's complaint about bias or other misconduct.

If a borrower's complaint is merely a bare assertion that the valuation is inaccurate or merely requests an ROV without explaining why or citing any errors, FHA should require the mortgagee to contact the borrower and ask if there is any more information to support the request.

To aid mortgagees, we recommend including examples in the Mortgagee Letter, such as these:

a. Examples of a "bare statement" or "bare request" where mortgagee should request additional information from borrower:

i. "The value on the appraisal is wrong."

ii. "I want a new appraisal."

b. Examples of an ROV that should be forwarded to the appraiser:

i. "The appraisal is wrong. My house has 4 bedrooms, not 3."

ii. "I want a new appraisal because the appraiser only looked at the front yard."

iii. "My neighbor's house is the same as mine, and it sold for more than mine was appraised for."

iv. "I think the appraiser was biased against me because I'm [*insert race, religion, gender, etc.*]."

Note: Such a complaint should *also* be submitted to the bias reporting channel, described in § 6 of these comments.

3.2 If the borrower does not clearly indicate how the borrower wants to proceed, require the mortgagee to ask.

Sometimes a borrower may just want to lodge a complaint but not want to do anything that would delay closing on their loan. For example, we have heard of one borrower who wanted to report errors in the property description and complain that the appraiser was racially biased, but the borrower did not want an ROV because it would delay the mortgage closing. So, if the mortgagee receives such a complaint, and the borrower does not provide enough information for the mortgagee to determine whether the borrower wants an ROV, the mortgagee should follow up with the borrower to ask how to proceed.

Even if the borrower does not want an ROV, the mortgagee should still take these complaints seriously and act on them. The appropriate actions would include notifying the appraiser (as is fair), with a note that the borrower does not want an ROV and sending the bias complaint to the appropriate channel (explained in § 6).

4. Replace the word “unlawful” with “prohibited” in the § II.A.1.a.iii(B)(9)(a) reference to “indications of unlawful bias.”

HUD proposes adding a new example of “material deficiency” to § II.A.1.a.iii(B)(9)(a). As proposed, the new example states: “Material deficiencies include, but are not limited to: . . . indications of unlawful bias in the Appraisal or other violations of applicable local, state, or federal fair housing and nondiscrimination laws.” But bias prohibited by federal and state laws are not the only type of bias that could taint an appraisal. USPAP also prohibits appraisers from showing bias against other characteristics of a homeowner or community, such as membership in a political party. Therefore, we encourage HUD to replace the word “unlawful” with “prohibited” in the proposed addition.

5. Establish a timeline for processing borrower complaints.

Notably absent from the proposed mortgagee letter is any reference to a timeframe for processing borrower complaints about appraisals. We recommend that FHA require mortgagees to take one of the following steps, and notify the borrower, within three business days of receipt:

- a. Transmit the ROV to the appraiser;
- b. Respond to the borrower by requesting more information;
- c. Request a new appraisal from a different appraiser if appropriate;
- d. Notify the borrower if the mortgagee will not transmit the ROV or request a new appraisal, or of any other action taken.

6. Require mortgagees to establish a separate channel for borrower complaints about appraiser bias.

The proposed Mortgagee Letter is intended to address borrower ROVs, regardless of the reason for the request. This is appropriate, but it is important to recognize that allegations of fair housing bias may require extra attention and expertise. For that reason, mortgagees should establish a separate channel for their employees to report complaints of appraiser bias. This channel should be in addition to but separate from the basic process of evaluating ROVs. Bias complaints should be submitted to this channel even if the mortgagee decides against transmitting the borrower's ROV to the appraiser. The Mortgagee Letter should specify that bias complaints must always be reported to the mortgagee's complaint tracking system. The employees responsible for ROVs and appraisal reviews should not exercise any discretion over whether to do so.

The mortgagee should also have employees trained in how to handle bias complaints, including how to respond to the borrower, when to inform the appraiser, and when to report the complaint to appropriate regulatory authorities.

7. Require Appraisal Management Companies (AMCs) to transmit all ROVs to the appraiser.

Many mortgagees source appraisals through AMCs rather than directly contracting with appraisers, but AMCs should not prevent appraisers from seeing ROVs. Therefore, the Mortgagee Letter should make clear that AMCs must forward any ROV they receive from a mortgagee to the appraiser. AMCs should not be allowed to second-guess the mortgagee's decision to send an ROV. If the borrower mistakenly sends an ROV to an AMC rather than the mortgagee, the AMC should be required to send it to the mortgagee.

8. Use the term "mortgagee" rather than "underwriter."

We recommend substituting the term "mortgagee" for "underwriter" in the proposed letter. The mortgagee bears the ultimate responsibility for complying with the Federal Housing Administration's requirements. Furthermore, mortgagees may assign the duties covered by the proposed letter to employees with different roles and job titles, other than underwriters. This is particularly the case at large institutions that separate credit underwriting from collateral review. Therefore, referring to the mortgagee rather than a specific job title will avoid confusion and allow for differences among mortgagee operations.

9. Require mortgagees to collect data on borrower ROVs and bias complaints for submission to FHA.

Under Interagency Task Force on Property Appraisal and Valuation Equity (PAVE) Action #1.3, HUD committed to "require[ing] FHA lenders to track usage and outcomes of ROVs and to report this data to FHA via FHA systems, leveraging insight from VA's

existing ROV process where helpful, so that HUD can better identify patterns of ROV usage and evaluate the impact ROVs might have on possible discrimination.”¹²

Without data collection, it will be difficult to identify appraisers that repeatedly make mistakes or discriminate against protected classes. Collecting data on ROVs will also help identify areas of the appraisal process that may need refinement. The most effective way to identify problems is for mortgagees to collect the data and submit it to FHA for analysis. Meaningful summary data also should be made available to the public at no cost.

The draft Mortgagee Letter appears to indicate that FHA will be doing some data collection. The Letter refers to new “mandatory fields [in] the FHA Connection (FHAC) Insurance Application and HECM Insurance Application screens.” But the Letter provides no details. We recommend that FHA work with mortgagees to collect the following data:

- a. the number of ROVs and bias complaints received;
- b. what action was taken on each;
- c. how long it took for the mortgagee to act on each;
- d. when and whether the borrower or appraiser responded (as appropriate);
- e. whether each ROV or complaint alleged bias or a problem with the accuracy or completeness of the property information, analysis, or market data;
- f. the identity of the appraiser;
- g. the identity of the borrower and any protected class identified by the borrower;
- h. the identity of the mortgagee and underwriter; and
- i. the identity of the AMC.

10. Require mortgagees to adopt tiered consequences for problem appraisers.

FHA should adopt an official process for reviewing complaints and the data submitted to identify problematic appraisers. FHA should require mortgagees to adopt tiered consequences for appraisers who have exhibited bias or otherwise show a pattern of mistakes. Consequences should include required training, suspension, and removal from the FHA Appraiser Roster. FHA should also coordinate with other housing agencies to share information about bad actors.

¹² PAVE, Action Plan to Advance Property Appraisal and Valuation Equity (March 2022), <https://pave.hud.gov/actionplan>.

11. Require anyone reviewing appraisals and consumer complaints for a mortgagee to be trained on fair housing bias.

The Letter provides no guidance on how to identify indications of bias. This is a serious weakness. To fill this gap, FHA should specify the training topics and hours of training required. Otherwise, there is no reason to believe that mortgagees will improve their current review practices. Ideally, FHA should provide specific training that all of its appraisers and mortgagee collateral reviewers should take.

12. Make a second appraisal mandatory if the mortgagee determines that the first appraisal is materially deficient, and the appraiser is unable or uncooperative in resolving the deficiency.

As proposed, section II.A.1.a.iii(B)(9)(a) of the Mortgagee Letter says “[a] second appraisal may only be ordered if the Direct Endorsement . . . underwriter . . . determines that the first appraisal is materially deficient, and the Appraiser is unable or uncooperative in resolving the deficiency.” Using the word “may” implies that ordering a second appraisal is optional under such circumstances. We are unaware of any such situation that would justify failing to do so. Therefore, we recommend replacing “may only” with “must.”

13. Coordinate with the other PAVE Task Force Agencies to issue consistent, industry-wide guidance on ROVs.

Finally, we urge FHA to coordinate with the other agencies in the PAVE Task Force to ensure a consistent whole-of-government approach to addressing appraisal bias. By working together on fair housing oversight, Reconsideration of Valuation policies, and other important actions to prevent appraisal bias, the PAVE Task Force agencies can send a strong message about the importance of promoting fair housing opportunities and building wealth for all consumers.

Appendix

Consumer Action: [Consumer Action](#) has been a champion of underrepresented consumers nationwide since 1971. A nonprofit 501(c)3 organization, Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change. By providing financial education materials in multiple languages, a free national hotline and regular financial product surveys, Consumer Action helps consumers assert their rights in the marketplace and make financially savvy choices. More than 8,000 community and grassroots organizations benefit annually from its extensive outreach programs, training materials, and support.

Long Island Housing Services, Inc.: [Long Island Housing Services, Inc.](#) is an over 50-year-old civil rights organization focused on fair housing.

Mountain State Justice, Inc.: [Mountain State Justice, Inc.](#) (MSJ) is a non-profit legal services organization dedicated to redressing systemic social, political, and economic imbalances of power for underserved West Virginians. MSJ has provided legal representation to thousands of homeowners combating predatory mortgage lending practices, including fraudulent appraisals, which threatened them with the loss of their homes.

NAACP Legal Defense and Educational Fund, Inc. (LDF): Founded in 1940 by Thurgood Marshall, [LDF](#) is the nation's oldest civil rights law organization.¹³ LDF was launched at a time when America's aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality. For more than 80 years, LDF has relied on the Constitution and federal and state civil rights laws to pursue equality and justice for Black Americans and other people of color. LDF's mission has always been transformative: to achieve racial justice, equality, and an inclusive society.

Since its inception, LDF has worked to increase fair housing opportunities for Black Americans. Some of LDF's early victories in the Supreme Court came in *Shelley v. Kramer*, 334 U.S. 1 (1948), and *McGhee v. Sipes*, 334 U.S. 1 (1948), which held that the state enforcement of racially restrictive covenants violated the Equal Protection Clause. In the decades since those victories, LDF has continued to challenge public and private policies and practices that deny Black people housing opportunities.

National CAPACD: [National CAPACD](#) (National Coalition for Asian Pacific American Community Development) is a coalition of more than 100 member organizations with a mission to build a powerful coalition of Asian American, Native Hawaiian, and Pacific Islander (AA & NHPI) community-based organizations working with low-income

¹³ LDF has been fully separate from the National Association for the Advancement of Colored People (NAACP) since 1957.

populations. We utilize a comprehensive set of community development strategies to advance equity and create vibrant, healthy communities.

National Community Reinvestment Coalition: The [National Community Reinvestment Coalition \(NCRC\)](#) is an association of more than 600 community-based organizations that work to promote access to basic banking services including credit and savings. Our members, including community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, and minority and women-owned business associations help create and sustain affordable housing, job development and vibrant communities for America's working families.

National Community Stabilization Trust: The [National Community Stabilization Trust](#) combats blight and vacancy through the rehabilitation of vacant and foreclosed single family homes. NCST serves as a bridge between financial institutions and community-based housing providers to ensure that distressed properties are responsibly redeveloped as affordable homes.

National Consumer Law Center: Since 1969, the nonprofit [National Consumer Law Center](#)[®] (NCLC[®]) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

National Fair Housing Alliance: The [National Fair Housing Alliance](#) (NFHA) is the voice of fair housing. NFHA works to eliminate housing discrimination and to ensure equal housing opportunity for all people through leadership, education, outreach, membership services, public policy initiatives, community development, advocacy, and enforcement.

New Jersey Institute for Social Justice: [The Institute's](#) cutting-edge racial and social justice advocacy seeks to empower people of color by building reparative systems that create wealth, transform justice and harness democratic power—from the ground up—in New Jersey. Known for its dynamic and independent advocacy aimed at toppling load-bearing walls of structural inequality to create just, vibrant and healthy communities, the Institute is committed to exposing and repairing the cracks of structural racism in our foundation that erupt into earthquakes in communities of color.

UnidosUS: UnidosUS is a nonprofit, nonpartisan organization that serves as the nation's largest Hispanic civil rights and advocacy organization. Since 1968, we have challenged the social, economic, and political barriers that affect Latinos through our unique combination of expert research, advocacy, programs, and an [Affiliate Network](#) of nearly

300 community-based organizations across the United States and Puerto Rico. We believe in an America where economic, political, and social progress is a reality for all Latinos, and we collaborate across communities to achieve it. For more information on UnidosUS, visit unidosus.org or follow us on [Facebook](#), [Instagram](#), and [Twitter](#).

Woodstock Institute: [Woodstock Institute](#) advances economic and racial justice within financial systems through research and advocacy at the local, state, and national levels. Among our areas of focus are predatory lending, access to banking, debt collection, and municipal fines and fees.