National Fair Housing TRAINING ACADEMY

September 15, 2021 – 2:00-4:00 PM ET

NATIONAL FAIR HOUSING FORUM

Strategies for Investigating Discriminatory Residential Appraisals

***

Speakers: Cashauna Hill, Executive Director, Louisiana Fair Housing Action Center; Melody Taylor, PAVE Executive Director and Regional Director – Region III, HUD FHEO; Steve Dane, Esq., Dane Law LLC; Lon Meltesen, Regional Director – Region V, HUD FHEO; and Lisa Rice, President and CEO; National Fair Housing Alliance

***

CASHAUNA HILL [0:00:00]: Good afternoon to everyone and welcome to the National Fair Housing Training Academy's National Fair Housing Forum entitled Strategies for Investigating Discriminatory Residential Appraisals.

My name is Cashauna Hill. I'm the Executive Director of the Louisiana Fair Housing Action Center. In that role, I lead a team working to fulfill the organization's mission to end discriminatory housing policies and practices through litigation and policy advocacy as well as by providing fair housing trainings and foreclosure prevention counseling.

It's my pleasure that HUD has invited me to serve as the moderator of today's event. As we get started, I want to note that this forum features information and examples that represent the experiences of the speakers. The comments do not necessarily reflect the policies of HUD.

Before we get started, I would like to take just a moment to review some technical tips and instructions regarding today's event. T.J.?

T.J. WINFIELD [00:01:00]: Thanks, Cashauna. Anyone's having technical difficulties today with audio or video, we recommend you first sign out of the webinar and sign back in. If you're still having trouble after that, you can request help in the Q&A box located in the Zoom panel session at the bottom of your screen. Or send an email to NFHTA@cloudburstgroup.com.

We encourage you to ask questions. You can enter your questions at any time by selecting the Q&A button on the Zoom panel. Please note due to time constraints, we may not be able to respond to every question today. The webinar is scheduled for two hours and is being recorded. The recording and the transcript will be made available on the NFHTA website and HUD Exchange along with resources that supplement today's conversation. Back over to you, Cashauna.

MS. HILL [00:01:56]: Thank you, T.J. I'm now happy to introduce Melody Taylor, Executive Director of the Task Force on Property Appraisal and Valuation Equity, known as PAVE. Melody is also Regional Director of the Office of Fair Housing and Equal Opportunity for Region 3. Melody, thank you so much for taking a few moments to speak with us today.

MELODY TAYLOR [00:02:20]: Thank you, Cashauna. Good afternoon to everyone. Thank you for joining today's forum on Strategies for Investigating Residential Appraisals. Over the past few months, I think we've all seen the uptick in media coverage regarding appraisal discrimination. Most recently, in an article in the *Cincinnati Enquirer* where a black family's appraisal increased $100,000 after they hid their race. The homeowner spoke of spending hours walking through her home with anger and tears. She took her family's pictures and replaced them with borrowed photos of her white neighbor's family. In 2021, this should not be a narrative in an effort to gain equity.

As a result, HUD and our partner agencies continue to see a rise in the number of inquiries and complaint filings related to appraisal bias, which is why this forum and the Biden/Harris Administration's mandate to evaluate the cause, extent, and consequences of appraisal bias, is crucial to the future of our next generation's ability to build wealth.

With that being said, I'd like to spend a few moments to talk to you about the Biden/Harris Administration's new initiative, which is taking new steps to help narrow the racial wealth gap and reinvest in communities that have been left behind by failed policies.

On June 1st, President Biden charged HUD Secretary Marcia Fudge with leading a first of its kind interagency task force on Property Appraisal and Valuation Equity, or PAVE for short, to address inequity in home appraisals. Secretary Fudge quickly recruited the support of the White House Director on Domestic Policy, Ambassador Susan Rice, to co-chair this important initiative.

The task is purposed to quickly utilize the many levers of Federal Government to move forward opportunities to address the issue of inequity in the homebuying process, including potential enforcement under fair housing laws, regulatory action, and development of standards and guidance in close partnership with industry, state and local governments, advocacy, and philanthropic organizations alike.

PAVE is comprised of 15 cabinet-level and independent government agencies who've been working diligently on the task the president directed HUD to lead.

PAVE will deliver a final action report within 180 days. I'll tell you the clock has started ticking and began to tick on August 5th. We're now down to 120 days. And so, it's a pretty intensive effort to produce this report. But the report will be purposed to describe the extent, causes, and consequences of misvaluation or undervaluation which are terms you should take particular attention to pay particular attention to of properties. And to finalize and release a roadmap of consumer facing industry actions and policy implementation strategies.

PAVE is achieving its work at a fast pace. As I mentioned, we have 180 days. We're at day 120. The task force has determined the following priorities as a path forward. Ensuring that government oversight and industry practice further valuation equity. Combat valuation bias through educating the consumer and training the practitioner. Ensure equity and valuation by making available high-quality data. Creating stakeholder engagement to ensure

balanced perspectives and approaches to change. And create a comprehensive approach to combatting valuation bias through enforcement compliance and other efforts.

We fully believe and hope that the public and American people will benefit in a multitude of ways as a result of this effort. One being obtaining estimates of home valuations free of discrimination bias. We hope that the incident in Cincinnati will not be what folks will experience forthcoming as a result of this task force.

By receiving nonbiased appraisals, all homeowners would finally have access to equitable mortgage financing, including when seeking to refinance a loan, listing a home for sale, or securing a loan based on their increased home equity.

And as a result, it is the hope that we will begin to narrow the wealth gap in our society and stem the tide of the persistent and systemic undervaluation or misvaluation of homes within our societies' black and brown communities.

With that being said, each of you have a role to play in combatting bias and discrimination in residential appraisals that perpetuate systemic inequality. We will not be able to achieve success without you as our partners pushing forward toward eliminating systemic racism.

This NFHTA forum today serves as one of many initiatives the department is employing to educate, empower, and increase awareness. The objective of today's forum will provide a deeper dive into fair housing laws and complexities involved in investigating appraisal cases and the tools necessary to carry out investigations and conciliations.

In closing, as a country, we must begin to affirmatively address communities of color and others who have been historically underserved, marginalized, and adversely affectedly policies and practices that perpetuate poverty and inequality, because it is the right course of action.

I appreciate the opportunity to share PAVE's work with you. Stay informed as we move forward the effort. Thank you very much. Now I'll turn it back over to you, Cashauna.

MS. HILL [00:08:26]: Melody, thank you so much for joining us today. Thank you for your work and your leadership. I know we're all really looking forward to seeing the result of PAVE's work. So thank you for being here and for sharing a little bit with us today.

So as we move forward, I would like to share the learning objectives for today's forum in order to help frame and shape the conversation that we'll have today.

Together, we will provide a comprehensive overview of the legal standards for appraisal discrimination cases. Identify intentional and unintentional appraisal discrimination that occurs in the purchase, refinance, or sale of a home. Build FHIP and FHAP investigators' capacity in investigating appraisal cases. And review existing conciliations and settlements.

At this time, I'll go ahead and introduce our panel speakers so that we can get started quickly today. The speakers will share more details about their backgrounds and experience as they talk. I also invite you to review their bios which are available on the

NFHTA website. And we'll go ahead and post a link in the chat so that you can go ahead and review the NFHTA website and look at everyone's bios, if you'd like to do that today.

It's a pleasure to have joining us Steve Dane, Lisa Rice, and Lon Meltesen.

I have two last reminders for you as we get into the conversation. During today's discussion, you'll all have the opportunity to submit questions that we will do our best to address in the question & answer portion of the discussion. However, please note that we may not have time to answer all questions and that we will not be able to address personal questions. You can submit questions at any time via the Q&A box. Also as a reminder, this event is being recorded and materials including the slide deck and event recording will be available on the forum page on HUD Exchange soon after the event.

You should also feel free to check out the NFHTA Forum from May [2021] on the "Consequences of Racial Bias in the Appraisal Process" which is also available on the NFHTA resource page. With that, I'll hand things over to Steve, our first presenter. Steve?

STEVE DANE [00:10:58]: Yes. Thank you, Cashauna, thank you, HUD, and the National Fair Housing Training Academy for letting me participate in this event.

What I'm going to do is cover some of the legal aspects that are relevant to appraisal discrimination cases. I have been involved in mortgage lending discrimination and appraisal discrimination litigation since the 1980s and have quite a bit of experience in analyzing the facts and evidence that might be used to support this type of claim.

In this presentation that I will give, I'm going to cover some of the explicit coverages in law of appraisal discrimination and also we'll discuss some of the evidence that has or could be used to investigate and eventually prove a claim of appraisal discrimination.

First, the Fair Housing Act. The Fair Housing Act prohibits any act of discrimination that might otherwise make unavailable or deny a dwelling because of race. This provision of the Fair Housing Act has been interpreted by the courts to apply to discriminatory appraisal practices, even though the word "appraisal" is not mentioned in Section 3604.

Nevertheless, in another section of the Fair Housing Act, Section 3605, which prohibits discrimination in any aspect of a residential real estate related transaction, appraising of properties is explicitly covered by that section.

There is in Section 3605 what is called an appraisal exemption. I find this interesting because it doesn't say anything except the exact opposite of what was said earlier in 3605. In other words, that nothing in this section prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

Now, the Fair Housing Act is not the only law that applies to discrimination in appraisal practices. We also have the Equal Credit Opportunity Act which makes it unlawful for any credit tor to discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race. Where does this say appraisal? It doesn't. However, the

Federal Financial Regulatory agencies have implemented regulations that explicitly cover appraisal practices.

The Comptroller of the Currency, for example, in 12 CFR Section 128.11 talks about appraisals. Indicating that no regulated lender, that is regulated by the comptroller, may use or rely upon an appraisal of a dwelling which the lender knows or reasonably should know is discriminatory on the basis of age or location of the dwelling. Or is discriminatory, per se, or in effect, under the Fair Housing Act or the Equal Credit Opportunity Act.

I'm going to have a few things to say later on about discrimination in effect, or what's also called disparate impact.

Another regulation of the Comptroller of the Currency, which is quite explicit, expressly mentions age and location factors that are prohibited. I highlighted a few of the sections of this regulation that seem to be most apropos to this discussion. The restrictions are intended to prohibit the use of unfounded or unsubstantiated assumptions regarding the location or age of a dwelling or the physical or economic characteristics of an area. That, for example, would preclude an appraiser from filling out on appraisal form, making comments about the neighborhood that cannot be substantiated by concrete facts, data, or evidence.

In addition, there are specific factors which may negatively affect the short term. Future value should be clearly documented by the appraiser. Factors which in some cases cause the market value of a property to decline or recent zoning changes, for example, or a significant number of abandoned homes in the immediate vicinity of the property however the comptroller cautions. Not all zoning changes cause a decline in property values and proximity to abandoned dwellings may not affect the market value of the property because of rehabilitation programs or affirmative lending programs going on in the community. Or because abandonment that is unrelated to risk.

Whatever is said about short term future values would have to be documented by the appraiser in order to avoid any kind of scrutiny.

And finally on the regulatory side, the National Credit Union Administration has an explicit regulation that discusses appraisal practices. National Credit Union Administration says consideration of any of the following factors in connection with real estate related transactions are not necessary to a federal credit union's business and generally have a discriminatory effect and are, therefore, prohibited. This may come as a surprise to some. The age or location of the dwelling. The zip code of the applicant's residence. Previous home ownership. The age or location of dwellings in the neighborhood of the dwelling. Or the income level of residents in the neighborhood of the dwelling.

Now, you might be asking why are the regulators - why are the laws so concerned about appraisal discrimination? What evidence is there that this has to be a problem? Or that this was a problem that has to be addressed, I should say.

Well, let me walk you through a little bit of history on this point. The 1931 edition of McMichael's Appraising Manual which was pretty much the Bible of appraisal practices in that era said, "Appraisers are advised to determine whether there were undesirable racial elements in the area being appraised." The 1932 edition of The Valuation of Real Estate, another nationally recognized appraisal training document, stated, "There is only one difference in people, namely race, which can result in a very rapid decline in real estate values."

The 1935 edition of the American Institute of Real Estate Appraisers Manual said, "To have the attributes of a good residential area, it is essential that protection be afforded against the infiltration of inharmonious racial groups."

Now, the FHA, that is the Federal Government, got in on the bandwagon. In 1938, its Underwriting Manual cautioned, "Areas surrounding a location are investigated to determine whether incompatible racial and social groups are present for the purpose of making a prediction regarding the probability of the locations being invaded by such groups. If a neighborhood is to retain stability," the FHA said, "It is necessary that properties continue to be occupied by the same social and racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values."

In the 1950s, the McMichael's Appraising Manual got very specific on what constituted inharmonious racial and ethnic groups. In that booklet which was also a training manual used in the appraising industry, the different nationalities or ethnic backgrounds were ranked according to their impact on real estate values. You read this chart going down the left column first, then going down to the right column. So you can generally see that Western Europeans were more favored than Eastern Europeans which were more favored than Southern Europeans which were more favored than anybody with brown or black skin.

Moving on to the 1960s, the American Institute of Real Estate Appraisers manual, the Appraisal of Real Estate, continued to say racial composition of neighborhoods is important to the appraisal process. "The value levels in a residential neighborhood are influenced more by the social characteristics of its present and prospective occupants than any other factor. Therefore, the appraiser must give major consideration it the importance of social data. The causes of racial and ethnic conflicts are not the appraiser's responsibility. However, the appraiser must recognize the fact that values change when people who are different from those presently occupying an area advance into and infiltrate a neighborhood."

Okay, well, maybe the 60s was a little behind the times. At least when we get into the '70s, we're going to see some enlightenment, but I spoke too soon. The 1973 student outline of the course material states, and I quote, "Ethnological information is also significant to real estate analysis. As a general rule, homogeneity of the population contributes to stability of real estate values. Information on the percentage of native-born whites, foreign whites, and non-white population is important. And the changes in this composition have a significance." "As a general rule, minority groups are found at the bottom of the

socioeconomic ladder and problems associated with minority group segments of the population can hinder community growth."

Well, at some point, finally, the United States Government got tired of this and it ended up suing the American Institute of Real Estate Appraisers [*United States v. Am. Inst. of Real Estate Appraisers, Etc.*, 442 F. Supp. 1072 (N.D. Ill. 1977)]. In that case, the United States alleged that the AIREA had promulgated standards which had caused appraisers and lenders to treat race and national origin as negative factors in determining the value of dwellings and evaluating the soundness of home loans and for failing to take adequate steps to correct the continuing effect of past discrimination. The case was ultimately settled when the AIREA agreed to development three fundamental policy statements. Number 1, agreeing it's improper to base a conclusion or opinion of value upon the premise that the racial, ethnic, or religious homogeneity of inhabitants of an area or property are necessary for maximum value. That the racial, religious, or ethnic factors are deemed unreliable predictors of value trends or price variance. And that it is improper to base a conclusion or opinion of value or conclusion with respect to neighborhood trends upon stereotyped or biased presumptions relating to race, color, religion, sex, or national origin or upon unsupported presumptions relating to the effective age or the remaining life of the property being appraised or the life expectancy of the neighborhood in which it is located.

Now, I'm going to discuss for the next few slides some of the relevant legal standards that apply under the Fair Housing Act and the Equal Credit Opportunity Act. One can prove a violation, that is discrimination, under either of those statutes by either showing that an appraisal or any actor, for that minority, in the housing industry engaged in behavior with discriminatory intent or that a neutral policy and practice has a disparate impact on a group protected by one of those statutes.

Now, before one can start to dig in and think about whether any discrimination has occurred, a little bit of focus is required here. There might be discrimination based upon the characteristics of the homeowner or the borrower. And that seems to be a recurring theme in recent news reports that we've heard about appraisal discrimination. Or it could be discrimination not based upon the characteristics of the homeowner or the buyer but, rather, on the location of the property in the neighborhood.

I recall a case I had back in the 1980s where my clients, who were the plaintiffs in the case, the buyer was a plaintiff. The buyers were White. The sellers were a plaintiff. The sellers were White. The real estate agent involved in the transaction was White. They were all the plaintiffs in an appraising discrimination case. They all had standing to sue because the lender had made assumptions about the neighborhood, which was predominantly Black, in which they were trying to buy the property. Basically, the lender said it had a cap on how much money it would lend in that neighborhood. But the point being all of the victims in that case were White people, but it was a Black neighborhood and the court said that my clients could sue.

So let me run through some examples of circumstantial evidence of what could be used to show an intent to discriminate. Well, any variations from established practices of the appraiser. Variations from best appraisal practices. Any unusual sequence of events in the process that was followed. Negative comments about the neighborhood that are unsubstantiated. A failure to include any positive aspects of the neighborhood. The use of inappropriate comparable properties. Excessive adjustments to comparable properties. And an intent to discriminate can in some instances also be proven solely by a statistical analysis that demonstrates an unusual variation in outcomes.

Other examples of evidence that could give rise to an inference or intent to discriminate would include the following. Looking at the accuracy and completeness of an appraisal. Are all the facts contained in the appraisal true? Does the appraisal contain all relevant facts? Or is important information missing? What comments are made about the neighborhood? Are they accurate? Are they complete? Did the appraisal mention only negative information about the neighborhood and ignore any positive developments going on in the neighborhood?

What about the appraiser's compliance with best appraisal practices? Was there the appropriate use of comparable properties? How has the appraiser or the appraisal company conducted appraisals in different neighborhoods of different racial compositions? Are there any significant differences in how the appraisals are conducted in neighborhoods of different racial composition?

What are the contents of the appraiser's standard file regarding the subject neighborhood? Many appraisers have files they routinely call upon and use to support their appraisals based upon the characteristics of the neighborhoods. Is the information in that file complete? Is it accurate? How does it compare in completeness and accuracy to other neighborhoods as well?

Other circumstantial evidence that can be explored to determine whether there might be a problem with a particular appraiser or appraisal company. What is the reputation of that particular appraiser within the local real estate community? One could check with other realtors. Well, with realtors, often who are the most have the most experience with mortgage lending and appraisals going on in the community. Other banks and credit unions may not deal with certain appraisers because of questionable practices. How about the local community development agencies? What do they know about the appraiser under question? Has the municipal government had any experience with particular appraisers that caused or raised questions? And what is the reputation among other appraisers about the appraiser under investigation?

I wanted to give you an example of an actual case. This is the Steptoe [*Steptoe v. Savings of America*, 800 F. Supp. 1542 (N.D. Ohio 1992)] case litigated back in the 1990s. This case is interesting because the acts of discrimination were expressly focused on the appraisal practices used in that case. In that case, the court eventually found that there was sufficient evidence to support a prima facie inference of discrimination, based upon the

facts in the case. In that case, the policies relating to the creation and review of appraisals was not followed. In that case, there was an expert who testified that the appraisal was defective in various ways. In that case, there was appraisal conducted by another company, a competitor, that supported the property sale value. In that case, there was statistical analysis suggesting there was differing treatment by the appraiser based on the racial composition of neighborhoods in the local community.

I told you I was going to talk a little bit about disparate impact. Let me explain first of all the general basic standards of a disparate impact type of fair housing or civil rights claim. This is a theory in which a facially neutral policy or practice or guideline is uniformly applied to Whites and Blacks, ethnic groups, across all neighborhoods, for example, but nevertheless, has a substantially disparate impact on one of the classes protected by the Fair Housing Act or the Equal Credit Opportunity Act.

Now, the significance of disparate impact theory is that an intent to discriminate against a particular group is not required. If the facially neutral policy has a disparate impact, then it could violate the law, but not necessarily. If a statistical disparate impact is shown, then the defendant can still defend itself by showing that the policy, practice, or guideline being challenged is necessary in order to conduct its business and that there are no less restrictive alternatives available to the defendant to achieve the same purpose.

Now, if a successful case is brought for appraisal discrimination against the responsible parties, what kind of relief is available? Compensatory damages. There are no caps under the law. Punitive damages are available. There are no caps under the law. Attorneys' fees and litigation costs are available. I should have added to the slide there are no caps under the law. In addition, the court could order injunctive relief against the defendants, whether it's a lender or an appraiser or appraisal company or could afford affirmative relief. What kind of affirmative relief are we talking about? That could include require fair housing training. It could include the adoption of certain best practices that are not being followed, if that's the case in the matter. The court could also require the implementation of a quality control procedure or a second review process to make sure that future violations do not occur.

Some courts in the mortgage lending context have ordered or agreed to resolutions that allow the defendant to implement a self-testing program that would include the defendant, for example, hiring a qualified testing agency or organization to come in and evaluate its behavior to make sure on a neutral basis that there is no discrimination occurring.

And it could also include community relief. That is, dollars out to the local community or to the neighborhoods that have been discriminated against. All of those are possibilities. There are probably others out there and the list of affirmative relief is limited only by the creativity of those involved.

Okay. Cashauna, that concludes my presentation. Thank you. And I can answer some questions later on with the other panelists.

MS. HILL [00:34:37]: Thanks so much, Steve. Whenever we have these conversations, we usually get questions about sort of what happens next. Right? We identify the problems and then people want to know or talk about what happens once the problem has been identified. What options are available? What recourse is available? And so thanks very much for providing that really hands on practical information about the way the process would play out on the legal side. So we very much appreciate that clarity. And there will definitely be some follow-up questions for you once we get into that portion of the discussion. They're already coming into the Q&A box. So I just want to remind everyone that if you do have questions, please submit them using the Q&A button. Want to remind everyone as well that all of the materials including all of the slides will be made available shortly after today's conversation. And you can find that on the HUD Exchange. So you will have access to all the information that we are sharing today.

As we continue, our next panelist, Lisa Rice, will speak about key ways that discrimination occurs in appraisals as well as strategies for investigating discriminatory appraisals. Lisa?

LISA RICE [00:36:08]: Thank you so much, Cashauna. And you can advance to the next slide. And I, too, want to echo my thanks and appreciation to HUD and NFHTA for inviting me to participate in this training with such an esteemed group of panelists. This is a really important issue and it's necessary that we're delving into these challenges so that we can stop discrimination in the appraisal sector.

You've heard Melody, Cashauna, and Steve already talk about really the millions of homeowners that have been impacted as a result of the long legacy of appraisal bias in the United States. Brookings Institute and there have been other researchers as well, but I think many people have heard about and seen the research, the stellar research, that Andre Perry and other researchers at Brookings have done to point out the just the deleterious impact of appraisal bias.

According to researchers at Brookings, when comparing predominantly White neighborhoods to majority-Black neighborhoods, where the neighborhood characteristics are met based on things like crime rate, quality of public education, walkability, access to retail, and many, many other amenities. So when you compare those amenities across neighborhoods, homes in majority-Black neighborhoods of similar quality are devalued on average $48,000 or 23%. That amounts to a cumulative loss in the Black community, alone, of about $156 billion. That's pretty steep. That's pretty substantial. And I think it speaks to the importance of why we have to address this issue.

You heard Steve talk about the fact that appraisal bias is not anything new. It has been with us for decades and decades. At one time, it was perpetuated by the Federal Government. So we really have to address these issues so that we can realize racial equity and fair housing in the United States.

Next slide, please. In order to effectively address appraisal bias, of course, we have to have effective enforcement. And, unfortunately, enforcement has been quite lax in this area. And the hope is that with the new actions that are being undertaken by the

Biden/Harris Administration, we're going to see a change in this dynamic. But designing a high-quality investigation is really critical to effective enforcement. So what I'm going to do for the next about 20 minutes is talk about at a very high level because we don't have enough time to go into detail on a lot of these issues, but I'm going to talk at a very high level about some of the elements that are necessary to designing an effective investigation to ferret out appraisal bias and discrimination.

One thing I do want to point out is NFHTA has sponsored previous trainings. Both NFHTA and NFHA have sponsored previous trainings on appraisal bias. So I really encourage you if you have not attended any one of those previous webinars to go back, look at those webinars, because we review additional information in those webinars that I think would be really, really helpful to helping to lay a foundation for some of the things that Steve is already discussing, that we're going to discuss throughout the remainder of this particular training.

In terms of structuring a well put together investigation, the first thing that we would advocate is having folks on your investigative team who are really prepared - who are educated and thoroughly understand the appraisal process.

Whenever we're conducting investigations into any sector of the housing or lending or insurance markets, we always spend a lot of time preparing ourselves, learning about the industry, making sure that we have a good foundation and a good understanding about the industry and about the best practices. Now, you heard Steve talk about that quite a bit. Right? One of the ways that you discern whether or not appraisal bias has occurred is knowing where the appraiser might have deviated from industry standards. Well, if you don't know what the industry standards are, there's no way you're going to be able to gauge whether or not the appraiser has deviated from best practices.

There are a number of resources to help you get prepared, to help you understand what are best practices in the appraisal industry. A lot of those resources are made available by the Appraisal Foundation. I have to say the Appraisal Foundation has stepped up and they are paying attention to appraisal bias issues. And they are making more materials and resources available to folks. So you can actually take the same course that appraisers take. So the same course that people have to take in order to get certified and to get their licenses, you can have somebody on your staff take those courses.

When I was at the Toledo Fair Housing Center, that's exactly what our investigators did. When we were conducting real estate sales cases, we had an investigator who actually went through the real estate sales course so that we knew, these are the practices that are standard in the real estate industry. When we were embarking on appraisal bias cases, we went through the Appraisal Training courses at the University of Toledo so we would know what are the best practices. So those courses are available online. I strongly encourage you to have somebody on your team take those courses.

There's also the Uniform Standards of Professional Appraisal Practices, USPAP. That handbook is available. You can purchase it offline. Online, excuse me. Not offline. Online.

You can get those appraisal standards. There is the Uniform Appraisal form that is generated by the GSEs. The Government Sponsored Enterprises - Fannie Mae and Freddie Mac. They create the Uniform Appraisal Form. Make sure you have that and study that, so you know what is the standard form that appraisers have to use. Again, there are all kinds of resources if you just go to the Appraisal Foundation's website. You can find all kinds of resources.

As you begin to design the investigation, you first have to figure out what is the basis of the issue you're investigating. Is it a race case? Is it a sex case? Is it a disability case? Is it a complaint-based case? Are you doing a complaint-based investigation? In other words, when we say complaint-based, complainant based, is there a bona fide complainant that filed a complaint with your organization and the bona fide complainant allegedly experienced an incident of appraisal bias. Or is it more like an audit-based investigation that you're going to be conducting, where there is no bona fide complainant, but you're putting together an investigation to ferret out whether or not there is bias based on a particular protected class under the Fair Housing Act or the Equal Credit Opportunity Act.

If you're dealing with a complainant-based situation where you have a bona fide individual, okay, you want to be gathering information about the subject property either that the complainant owns or the complainant was trying to purchase. You also want to gather information about that complainant's situation and circumstance. Because if you're designing a test, you have to know what that complainant's situation is so that you can match to the complainant.

If it is an audit-based situation, that's very different, right? Your property selection is going to be based on and your investigative design is going to be more tethered to the protected class status that you're trying to identify.

You also want to figure out what type of issue you're dealing with. So are you going to be conducting an investigation that deals with an applicant-based situation? And you heard Steve give an example of that with the…I'm sorry, no, Steve did not give an example of that. But you've seen examples of that in the media where you have an applicant, you have a bona fide person, who hires an appraiser to have the property evaluated. The husband is Black, the wife is White. When the Black husband shows up, the property is devalued. But when the second appraisal is ordered and the White wife shows up, the property value is elevated. Okay? That's an example of an applicant-based situation.

A neighborhood-based situation is examples of that are the two cases you heard Steve talk about - the *Steptoe v. Savings of America* situation and *Old West End v. Buckeye Federal*.

So in an applicant-based investigation, the investigation is going to be tailored to address the issues that are related to the protected class status of the applicant or tester. It could be based on the applicant's race. Could be based on gender. Could be based on disability. Any one of the protected classes under the law.

If you are looking at a neighborhood-based investigation, you're going to be figuring out if the racial composition of the neighborhood was a determining factor in the valuation of the appraisal process.

So in a neighborhood-based investigation, you want to be looking at and determining the characteristics of the neighborhood. You want to be using census data. You want to you can use other data in order to identify what is the neighborhood you're investigating and what are the characteristics of that neighborhood. If it is an applicant-based investigation, then, of course, you're going to be isolating for the protected class that you are that will be the basis of the investigation.

Okay. Let's talk about testing for a bit. There are a number of ways to conduct testing activities. And I'm going to give you examples of just a few. But I don't want you to get the idea that these are the only methodologies that you can use for testing an appraisal bias case. Please don't get that in your head at all. Because there are different ways to conduct testing and how you design the tests is going to be driven by the elements in the case.

Again, please don't think that these methodologies I'm going to share with you are the only methodologies that exist. And please also don't think that what I'm going to share with you is the only way that you can design this type of testing. Right? There are myriad ways that you can design appraisal tests. And that information that you glean from those tests can be very probative for ferreting out whether or not discrimination has occurred.

Okay. Let's talk about an example where you have a bona fide complainant who's filed a case, who’s filed a complaint of appraisal bias. Let's say the complainant is trying to purchase a property and when the appraisal was conducted, the appraisal came back at a very, very low value.

So the follow-up test that you conduct there, you can use the complainant's subject property, that original property, for which the complainant ordered the original appraisal. You can use that same property to in your follow-up tests. So you don't need to necessarily go out and identify another property that is substantially similar to that original property. You can use that same property for follow-up tests. For different test parts.

The complainant's situation can serve adds one of your test parts. So your complainant presumably is going to serve as your protected class tester. And then your second test part you can utilize your control tester for that second test part. You've seen many examples of this in the media. So if you've been following this issue in the media here lately, you've seen many examples of this. There was a case in San Francisco where an African American family, husband and wife, had purchased a property for about $900,000. They had put substantial investments into the property. Almost $400,000 of renovations into the property. And then they had the property appraised. I think they were going to get a home equity loan or do a refinance. They were going to do a refinance. And when they did the refinance, I think the property value came in at about $1 million or somewhere around there. Then that African American couple asked a White friend of theirs to come in and to pretend that she was the wife. All right. So what the couple what the couple did is what we

call, they shed their personal identifying information. So their personal pictures. Statues. Paintings. Works of art. Anything that might identify or might suggest that an African American couple or person owned that home, they shed the home of that cultural identification.

Sometimes you may have used you may have heard the term used - whitewash. They whitewashed their house. And their friend, their White friend came in and put up her personal pictures. They changed the paintings. They changed the art in the home. And then the second appraisal was ordered and performed, and that second appraisal came back at almost $500,000 more. So that's an example of what I mean when I say complainant-based testing. It was the same subject property. They didn't change the subject property. They just changed out the folks who were in the property. And they used the complainants' original experience as one of the test parts. Hopefully that makes sense.

Now in this instance, the second follow up test part may need not be conducted by the original appraiser. It doesn't need to happen. And, in fact, if an appraisal management firm, an appraisal management company is used, it will be extremely difficult for you to get the exact same appraiser for every leg of your test. It's going to be extremely difficult to do that.

So just like in a real estate sales situation where you do not have to have the exact same real estate agent for every leg of the test, the same thing applies here, right? Just like in a lending situation where you do not necessarily have to have the exact same lender, the exact same loan officer, for every leg of your test, same thing applies here. You don't need to have the exact same appraiser for every leg of your test.

And in this situation, of course, timing is going to be important. You want the two appraisals to be conducted relatively in close proximity to one another in terms of timing.

For your applicant-based testing, and this is a different situation. You're not using a bona fide complainant, but you are testing for the personal attributes or characteristics of the individuals. Right? Applicant-based testing involves ferreting out whether the applicants or the homeowners' race or national origin or some other protected class characteristic is informing or impacting the valuation of the property.

And, again, in this particular testing methodology, you do not have to have a bona fide. But you are ideally using the same subject property for both your protected class tester and your controlled tester.

If you are not using the same subject property, if for some reason you want to use two different properties, you must match your two properties so that they are substantially the same. So you're going to be using property records. You're going to be using tax records. The auditor records. You can use real estate sites. Any site that you can use to make sure that you're matching the property so they're basically identical. They don't have to be in different neighborhoods. They can be in the same neighborhood. Because, again, this is an applicant-based testing situation.

Again, the same appraiser may be requested to perform the appraisal. But it's going to be very difficult, if you're going through an appraisal management company, to get the same appraiser. And I want to emphasize that. It is not necessary in every case for you to have the same appraiser in both tests.

Now, in a neighborhood-based testing scenario, that's going to be somewhat different. You heard Steve give you an example of this when he cited the *Old West End* case in which all of the plaintiffs were white. Remember, he said everybody was white in the case. But the purchasers and the sellers were living in the Old West End, which was a racially very, very diverse neighborhood and at this particular time I think it was a predominantly African American neighborhood where the White seller was living and the White purchaser was trying to purchase a house in this African American neighborhood in Toledo, Ohio.

So in a neighborhood-based testing scenario, the testers are going to be matched based on protected class characteristics. So you're matching your testers. You may want to have both testers be White. You may want to have one tester be White. Another tester be Black. It depends on the situation. And you're matching your properties, but you're matching the properties, again, you want the properties to be identical. But one property is located in a predominantly Black neighborhood. Another property is located in a predominantly White neighborhood. I've given you an example there.

So, for example, neighborhood A is 80% non-Hispanic White. And neighborhood B is 80% African American. Or 80% Latino. Or 80% people of color. In this situation, a neighborhood-based situation, you want to be very careful because the houses have to be identical. The thing that is different is the racial composition of the neighborhood.

Now, there are other investigative activities that you can undertake as well. And I'm going to just build up because Steve gave you some of these as well. But I'm just going to add on to some of the things that Steve said. You want to look at the…if you got an appraisal that you think foul or is suspect, you want to evaluate every single line of that appraisal form for any errors. Is the property address correct? Is the zip code correct? Is the square footage correct? Are the other features and amenities that are listed there on the appraisal form, are they correct? Is the information for the comparables that were used on the appraisal, is the information for the comparables correct?

You want to compare the information on the appraisal form with information that is contained in property records to identify errors. You also want to look at the comparables that were used or that appraisal report and compare them to the available comparables that could have been used at the time that the appraisal was conducted. And you can get comparables from a number of different sources. Online real estate sites. The Multiple Listing Service. You can actually order information from a site like RealQuest, which is powered by CoreLogic. You want to look at a number of different sources to help you determine whether or not that appraisal was conducted properly.

When Steve discussed the *Steptoe v. Savings of America* case, he mentioned the Toledo Fair Housing Center hired an appraisal expert to conduct an independent appraisal to

determine what was the appropriate and true value of that property that Mr. And Mrs. Steptoe were trying to purchase. This is what we call an “As of Date” appraisal. This is a situation where you have trusted appraisers who are very good, high qualified, and they're providing an valuation of the property after the fact. It could be a year later, a year and a half later. Those appraisers are going to go back to an “As of Date” and say as of this date, I would have assessed the property value at X. Okay? And so then once you get those “As of Date” appraisals, you can compare them to the original appraisal that you think may have some errors in it.

These can be very useful, and I can tell you that we have used these “As of Date” appraisals in many, many different appraisal cases and we used them in almost every single predatory lending case, investigation, we ever conducted. Those performing the “As of Date” appraisal can also serve as your expert witnesses, if necessary.

So a couple final comments I'll make and turn it back over to Cashauna. A couple things I strongly encourage you to do. These investigations can be really costly. You want to make sewer you're building into your budget adequate funds so that you can hire the appraisers and you can hire the experts. Because these can be costly. You want to right now establish working relationships with real estate professionals. So you want to reach out to your friends in the National Association of Realtors. National Association of Real Estate Brokers. National Association of Hispanic Real Estate Professionals. Asian American Real Estate Association of America. You want to establish those relationships right now. Before you have to undertake any investigation.

You also want to establish and develop relationships with folks who could be appraisal experts. So reach out to your local university for a professor who's teaching real estate valuation, for example. Then you want to build a network of other fair housing groups who are working on these kinds of cases both FHAP organizations and private fair housing organizations so you can share learnings and best practices. I'll stop there and turn it over to Cashauna.

MS. HILL [01:04:50]: Thank you so much, Lisa. I have what I hope is a very quick follow up question for you and just going to ask it now because I think it fits a little better here since it ties into what you were just discussing.

So we had a question from an attendee who made it very clear that they don't disagree with your statement that a test doesn't need to use the same appraiser. But they're just wondering would it be more challenging to show that race was a factor if a different appraiser was used. Does not having the same appraiser make the case a little harder to prove? And just wanted a little clarity around, you know, whether or why it isn't necessary to have the same appraiser after all.

MS. RICE [01:05:43]: Sure, Cashauna. Thank you for the question. It's a great question. So it's the same kind of scenario that we run into a real estate sales setting or a lending setting or an insurance setting. Now, again, it's going to depend on the elements in the case that you're investigating. Right? So the point I'm making is that it is not necessary for you to

have the same appraiser conducting the appraisal in every leg of the test. That's not necessary.

So you may be investigating the practices in a particular appraisal firm. In fact, at the Toledo Fair Housing Center, one of the first appraisal cases that I ever worked on, we were testing, we were investigating an appraisal firm and every appraisal that we ordered, there was a different appraiser who conducted the appraisal. But the courts agreed with us that this appraisal firm was engaging in discrimination. And we were successful in the case. And ultimately, interestingly enough, that appraisal firm ended up being a really, really good friend and we ended up using once we had trained them and they had gone through, you know, an extensive training process, we actually used them as experts in other cases.

But there are going to be other times when you must get the same appraiser to conduct the test. And I can talk about this a little bit later, but we worked on a sex harassment case in which there was one appraiser who was sexually harassing women. Well, it was imperative in that situation that we test that one appraiser in every single test because we were trying to determine whether or not that particular appraiser was engaging in sexual harassment. I hope that makes sense. I hope that answers the question.

MS. HILL [01:08:00]: Thank you, Lisa. Definitely appreciate you allowing me that quick follow up.

So with that, we are going to move on to our final panelist, Lon Meltesen, who will speak to us about HUD's conciliation agreement with JPMorgan Chase. Then we'll move into the question & answer portion of the event.

Before we get to Lon, do want to remind everyone, please continue to send those questions in using the Q&A button on your screen. We're receiving them and I'm looking forward to asking the panelists your questions in just a few moments. So please do keep them coming in. Lon, we'll turn things over to you.

LON MELTESEN [01:08:45]: Thank you, Cashauna. On behalf of the U.S. HUD, I want to thank the Fair Housing Training Academy for inviting me to participate in today's forum on this very important topic of discriminatory appraisals. I'm the Regional Director for the Office of Fair Housing and Equal Opportunity in Region 5 which covers the Upper Midwest, Great Lakes states. My region is the region that negotiated the settlement I'm going to talk about today involving Chase Bank.

When HUD evaluates appraisal cases, we always keep in mind that the race of the homeowner or any other protected basis for that matter, and the racial composition of the neighborhood, must not influence the valuation of the home. The Fair Housing Act prohibits the consideration of race or any other protected category in being considered into the valuation of appraisal of the home.

Discrimination in home buying, mortgage lending, property valuations deprive qualified individuals of equal opportunity to pursue home ownership as a path of family stability as well as financial security. HUD is committed to ensuring that all housing, whether rental or

sale, is free from discrimination. In accordance with our statutory obligations, HUD investigates and conciliates housing discrimination cases. In the last year or so, as you've been hearing, we've been seeing a large influx in the number of cases filed that involve discriminatory appraisals.

So as with other novel issues, we tailor our approach for handling each new case, and there is no template that is universally used. And this is one of the most important takeaways I hope to leave you with today. When you're handling an appraisal case, it's important to learn as much as you can about the facts of that particular situation. As you're developing your strategy.

Today, I will focus on one example of such a resolution as has been achieved by the department and will go over the allegations of the complaint and terms of the negotiated conciliation agreement. Then I'll talk about the general conciliation strategies that my staff pursues when we try to resolve cases like this. And I'm hopeful that you'll find these techniques helpful and useful in your practice.

So let's talk a little bit about our Chase settlement. So in this case, it was filed by an African American homeowner who lived in a predominantly African American community in the city of Chicago, Illinois. So in her complaint, the complainant alleged that in May of 2020 she sought to refinance her home with Chase Bank. And so she filled out the refinancing forms. Chase began processing the forms. And as part of processing her refinancing, an appraisal was conducted. And when Chase got the appraisal back, they ended up denying her refinancing because of the low home valuation that was contained in the appraisal.

So when the complainant reviewed the appraisal, she noticed that there were several errors that were contained in the appraisal, and she felt that it significantly undervalued her home. So she contacted Chase and she asked Chase if they would either reconsider the valuation contained in the appraisal or whether they would conduct a second appraisal. Unfortunately, Chase declined either of those two options.

So the complainant ended up contacting a different lender and filled out another application for refinancing. But this time, she made it clear that she wasn't going to disclose her race. And so like in the Chase case, when the lender ordered an appraisal, the appraiser came out to the property, she made sure to remove all the pictures of her home, all the pictures of herself and her family, as well as any other personal property which could indicate her race. As Lisa kind of mentioned, she scrubbed or whitewashed her home.

And so this time when the appraisal was done on the property and it came back, the appraisal came back significantly higher than the one that was conducted by Chase Bank. So this new lender approved her application and approved a refinancing under the terms that she was looking for. Then the complainant filed her complaint and alleged that Chase rejected her refinancing based upon the fact that Chase undervalued her property because her home was located in a predominantly African American community, in violation of Section 805 of the Fair Housing Act.

So now I want to talk a little bit about the timeline of the case that we had in our region. So this case was one of the first cases that started to come into our office in what I'll call a wave of these discriminatory appraisal cases. So my office accepted the complaint on October 14, 2020, and within five days we served notice of the complaint on the parties. Then the following day, the case was assigned to an investigator.

On February 19, 2021, we were able to execute a conciliation agreement with Chase Bank. This agreement was executed within 128 days of the filing of complaint.

So moving on the actual terms of the agreement. So first of all, the duration of agreement or term of the agreement is three years from the effective date of the agreement, which was February 19, 2021.

Now, what about the relief we were able to obtain? So in the settlement agreement, Chase agreed to pay the complainant monetary damages in the amount of $50,000. But generally, when we're negotiating settlements, we're looking to obtain not only compensation for the complainant, but also meaningful and effective public interest relief. Public interest relief will take a variety of forms, depending on the circumstances of a given complaint and is generally geared toward remediation and relief for other individuals other than the complainant. These same principles apply for discriminatory appraisals cases.

So in this case, we also negotiated a number of public interest provisions to vindicate the public interest. So the first public interest provision we were able to negotiate was Chase's willingness to have mandatory training for its home lending advisers and client care specialists on both Chase's reconsideration of value process, including what a borrower might need to present with their request for reconsideration. And on fair lending and how to handle complaints about discrimination or undervaluation in the appraisal process.

In other key public interest relief that Chase agreed to during the course of our settlement was to review its ROV policies to ensure home buyers are appropriately informed of ability to raise any concerns regarding the reliability or credibility of their appraisal as well as to raise Chase any bias or discrimination appraisal.

Additionally, Chase agreed to provide reminders to its home lending specialists and its client care specialists regarding best practices regarding the ROV process and how to escalate consumer complaints to Chase regarding either discrimination or bias in the appraisal process.

And so not only did Chase agree to mandatory train all its employees, but throughout the year they agreed to issue alerts to their staff to make sure that they were kept informed of the best practices they should be using when handling these requests for reconsideration of values and appraisals.

And finally, Chase agreed to add language to its Appraisal Transmittal Letter and their Adverse Action notice which provided specific instructions to borrowers regarding how to report suspected bias of the appraiser and other concerns that they might have regarding discrimination or the actual accuracy of the appraisal to Chase.

So on this slide and the next slide, we have the specific language which Chase agreed to put in their settlement agreement. Not going to take the time to read that to you, but you can look at that on your own at your own convenience.

Moving on ahead. If we can move to the next slide. So how did we get the five complaints to an executed settlement agreement within 128 days? We applied our general conciliation strategies and techniques that we use every day.

So I would like to take a moment now to highlight some of those strategies and techniques for you. I'd like to start with sharing key conciliation concepts with you. So, first, keep in mind that under the Fair Housing Act, HUD must engage in conciliation efforts at all housing complaints to the extent feasible. And the period for which conciliation must be attempted commences with the filing of the complaint and continues until either the issuance of a charge on behalf of the complainant or the dismissal of the complaint.

So I can't emphasize enough to you the importance of beginning the conciliation process early. One of the things we did in the Chase case is we made sure to put together a conciliation team from the very beginning. As soon as the complaint was filed, we were able to put the team together and to initiate conciliation right from the start.

Other things to keep in mind is for settlements that are negotiated by HUD staff, they are subject to approval by HUD and they must be made public, unless disclosure is determined not to further the purposes of the act.

Other things to keep in mind are, and I'll touch on this a little bit later, is that when you're transitioning from investigating, starting to initiate the conciliation aspect of the case, make sure to pause the investigation and suspend the fact-finding before you start the conciliation. And then finally, as I mentioned before, in terms of relief, think not only of compensation for the complainant but also in terms of relief that will vindicate the public interest.

So another key point I want to make is when you're conciliating, make sure to understand your role as a conciliator versus your role as an investigator. Because these are two very distinct roles. You need to make every effort to separate those two functions. So as I previously mentioned, when you're transitioning from your investigator hat to your conciliator hat, make sure to take a break. Pause the investigation. And then clearly communicate to the parties that you're transitioning to conciliating. And explain to the parties the differences in rules and functions. And keep a separate and detailed conciliation record. And keep that record confidential. And don't commingle it with the investigative record.

Another thing that we did in our efforts to conciliate the Chase case was when we put together our conciliation team, we made sure that included not only the investigator who was assigned to the case but also a manager who was very experienced in conciliation who wasn't involved in the actual investigation in the case at all.

Moving on. I want to say as a reminder, make sure to keep conciliations confidential. Nothing said or done in the conciliation should be used as part of the investigation. And conciliation information cannot be made public without the consent of the parties.

Now, there is one caveat to that. That's if the information provided is discovered outside of the conciliation process, then it can be permissible to use that. Let me give you an example of that. So, for example, let's say you're conciliating a case and during your conciliation discussions, a party provides you with a document. So normally that document would need to be considered confidential and not made part of the investigation. But later on, if you are not acting in your role as an investigator and you submit a data request to the parties, and this party responds to that request and as part of that response provides that document, then now that document is being tendered as part of the investigation and it can be considered as in the investigation.

Moving on to the next important concept I want to make sure that everyone understands is the importance of identifying the issues and position of the parties. This is an important point that often times makes or breaks complex conciliation. It's very important to flesh out all of the issues - issue by issue - with the parties when you're conducting your conciliation discussions.

Moving parties from merely articulating a stated position to understanding for themselves what their interests are that actually underlie those positions is what allows a conciliation to gain the trust and respect of the parties and it allows the parties to move slowly toward discovering how their interests can be achieved with terms that might look a little different than what their initially stated positions were.

So let me give you an example. So let's say, for example, that an organization states that it has a policy in place and can't amend that policy because that's always been the policy and it's needed to maintain the organization in compliance. The conciliator needs to ask the organization, well, why has a policy been around for so long? What purpose does it serve? When was the last time that it was reexamined? And what is the specific regulation that the organization views the policy satisfied? Then review that organization. Ask the organization to review whether there are other ways to satisfy the organization in such a way that would allow the organization to amend the designed policy.

So a conciliator will be successful when she or she begins to truly be curious about why a party wants something done in a certain way. And rises to the challenge of having the parties understand whether the beliefs that underlie the position actually align with what they're doing in practice.

So moving to the last point that I want to make here today is I want to stress to you the importance of structuring the conciliation. How you structure your conciliation is going to make a difference. A common mistake that conciliators make is that they sometimes begin without a strong framework. And when that happens, the conciliation tends to become a mere shuffling of offers back and forth between the parties. So it's important to establish a clear process in your line because the way you need to approach the conciliation is from

the standpoint that you are the manager of the process. And as such, you need to be confident in the process and make sure that that process is followed.

So there are four general stages to conciliation. So Stage 1 is setting the stage. And in this stage, it's when you want to establish the ground rules for the conciliation and build the rapport with the parties.

In Stage II, you want to identify the issues and understand the parties. So your primary task in this stage is going to be to listen to the parties. Hear their stories. And then help them help guide them to clarifying what the issues are between them. Don't cross-examine the parties. Don't be confrontational. Ask open ended questions. And help the parties understand why it is in their best interest to reach a mutual resolution.

Stage III is problem solving. During this stage, you want to assist the parties in developing a solution in a neutral and unbiased manner. If there are multiple issues, sometimes it can help to start with the easier and less complex issues first. And once you're able to solve that, then move on to the more difficult ones.

And the final stage is writing the agreement. What that means is you put the solution in writing. And you want to make sure that the agreement accurately reflects what was agreed upon by the parties.

So moving on. I would like to conclude that during the Chase settlement, many of these strategies were implemented and resulted in the successful conciliation. I hope that this agreement is helpful as a starting point for you when you're thinking about how to handle your appraisal case.

However, it's important to remember that this isn't a template but rather an example of how it's important to tailor each resolution to the specific matter by using general strategies that you customize for the parties and the situation that you're dealing with. And another thing is to remember that during conciliation, it's essential that the conciliator remains flexible. As new information is learned and as conditions change.

So with that, I appreciate the opportunity to share this information you. I hope that you found it helpful. That concludes my presentation. So at this point, I will turn things back over to Cashauna.

MS. HILL [01:30:24]: Thank you so much, Lon. I have a couple of quick follow up questions for you as well. And then we'll get into the larger Q&A discussion. So one question that came in was just about a little bit of clarity. Someone was asking the case that you discussed has been conciliated involving the lender. Is there a complaint that's still pending against the appraiser? Or has that one been resolved as well?

MR. MELTESEN [01:30:54]: We still have an active investigation pending against the appraiser and appraisal company.

MS. HILL [01:30:59]: Great. Thank you. And then an additional question that comes from someone who runs a private fair housing organization. What she's asking is that in talking

with some of her colleagues, she's wondering whether there's a cohesive investigative plan being used across HUD regions for handling appraisal and lending investigations, which is important in case there are lenders or appraisers being investigated who are working across regions. So the question is, is HUD doing anything to ensure consistency in investigations between and across the regions?

MR. MELTESEN [01:31:44]: Yeah. So the regions are working very closely with our headquarters staff to coordinate the investigation of these investigations.

MR. HILL [01:31:55]: Great. Thank you so much. So we have absolutely no shortage of questions. So we will get through as many as we can. And so I will just throw them out there. And hope that you all can bear with me as we get through this.

So for anyone who would like to answer, I want to start with a question that an attendee has posed about the depth of the problem. The question is, how systemic is appraisal discrimination? How many cases are people aware of? Are they seeing a year? The question asker has provided a little bit of context which is Fannie Mae conducts roughly $7 million to $12 million in appraisals a year. I just want to say that I don't have any independent verification of that number. But that's what's been stated here in the question. And so what percentage do you find that have issues? Does anyone know where people can find data on how widespread the problem is? And where it's occurring?

MS. RICE [01:33:11]: Sure. I can take a stab at it and then lob it over to Lon or Steve to follow up. So I don't think that we have a definitive answer regarding how systemic appraisal bias is, but did I share information about the research that Dr. Andre Perry conducted at Brookings Institute. So I would point I've seen that a couple of people have provided links to some of the analyses that have been done by Brookings. I would encourage people to look at that information.

So one of the things that I think it's important to point out is that appraisal bias is really difficult for consumers to detect. because most consumers are not experts. And so even if there is an issue with the appraisal, most consumers will not be able to identify it. Right? So we don't really know how extensive the problem is.

And I did also want to clarify a point in the question. So Fannie Mae does not conduct - Fannie Mae and Freddie Mac, themselves, do not conduct appraisals, but they do issue appraisal standards. And they do develop the appraisal form, right? And so when the lender - if a lender wants to sell a loan to Fannie or Freddie, then they have to order an appraisal that meets the standards or the guidelines that was set forth by Fannie Mae or Freddie Mac.

MS. HILL [01:34:55]: Thank you, Lisa. Lon or Steve, anything else you wanted to add there? I know we've still got Melody here with us. Melody, you should also please feel free to jump in if there's anything you'd like to share.

MS. TAYLOR [01:35:07]: Sure. I think Lisa was spot on with her analogy that, you know, a consumer may not know this, but I just want to offer that the PAVE Task Force is looking at

literature reviews, thinking through methodologies and ways in which we can evaluate data that will help us drill down on, again, the causes, the extent, and the consequences of the problem. Don't have that data definitively right now, but it is absolutely an area, and it creates an opportunity for us to look at the extent that appraisal discrimination has on our communities around the country.

MR. DANE [01:35:50]: You know, if I could, yeah, I'm not certainly a clearinghouse of complaints, but I would make this observation based on 40 years of work in fair housing. These kinds of issues tend to come in waves in the sense that a particular problem will be addressed by advocates and enforcers. There will be a bit of a cleanup in the industry. And then we don't hear anything about it for 10 or 15 years. And then the same issues start to come back up again.

The lending industry is a good example in the 1970s, that's why we had so much mortgage lending regulatory activity at the federal level because of discrimination going on. In the 1980s, we didn't see much problem or much bad behavior. Then it started to creep back into the process in the early 1990s. And then it went away again. Then it came back during the foreclosure crisis and so forth.

The same thing with homeowners' insurance. Homeowners' insurance, we spent a lot of time in the 1990s taking on the homeowners' insurance industry and their discriminatory practices. And then they all changed their behavior. And then it all dried up. Then in the last probably five or six years, we are now seeing some more discrimination occurring in that space by different insurance companies.

So I would say that the recent popular media descriptions and complaints filed with HUD on the appraisal side is probably just an indication that people are becoming more aware of the situation. And it's probably always been there, but it's going to, like other players in the real estate market, it will probably become more pronounced in the near future.

MS. HILL [01:37:46]: Thanks, Steve. And to everyone for sharing insights. I think a great follow up, then, is a great that an attendee had about how people will know whether or not they have received a discriminatory appraisal. Right? So what are some indications that an appraisal may be discriminatory? And then what steps should someone take if they do have concerns that they received a discriminatory appraisal? If anyone would like to answer.

MS. RICE [01:38:24]: Sure. I can start out. So one of the first indicators is going to be as Steve and I mentioned earlier a deviation from normal practices. So that's why you want to, you know, have a friendly real estate professional at your beck and call. Because a consumer may not recognize what is a deviation from a standard business practice. But one thing you might note is when you're looking at the comparables, the comparables section on the appraisal form, there are a lot of adjustments that are made for each of the comparables.

Typically, lots of adjustments that have to be made in order to match that comparable to the subject property, that could be an indication that the wrong comparable was used from the first beginning. That is one telltale sign.

Another one, of course, is when you see something that's very unusual, and Steve mentioned this in his presentation, something that you've never seen before, and it seems very odd. We had one case this was the case against Huntington Bank in which the appraiser attached every single sheriff's sale that occurred I think in a six-and-a-half-mile radius from the subject property. He appended that to the appraisal form. That's something that we had never seen before. And it was highly unusual. And even though the property appraised out, Huntington used that addendum in order to reject the loan because they said that the property lacked collateral.

MS. HILL [01:40:19]: Thanks, Lisa. Anyone else have thoughts on how people can recognize if they may have received a discriminatory appraisal? Lon, if you want to share some insight. Oh, Lon, you've muted yourself.

MR. MELTESEN [01:40:35]: Sorry. Let me just touch upon the second part of your question, and what should somebody do if they think they were subject to discrimination.

MS. HILL [01:40:44]: Please.

MR. MELTESEN [01:40:45]: And I would say by all means, contact our office at HUD and we can certainly gather information from you to determine whether or not we can accept a housing complaint based on your circumstances. So that is definitely an avenue that everyone has available. So I want to make sure everyone understands that that is available, if someone feels that they were subject to potential discrimination.

MS. RICE [01:41:10]: Of course, I'd be remiss if I didn't say that, you know, your friendly local fair housing agency is there also to provide help, assistance, investigate cases, and we always have wonderful partners like Steve Dane in order to refer cases to. So we're here as a resource, too.

MS. HILL [01:41:31]: And speaking of Steve Dane, we're coming over there to ask some legal questions, Steve. And it's what you're here for. So

MR. DANE [01:41:40]: Okay.

MS. HILL [01:41:41]: I hope you're ready to go. We have a question about disparate impact when it comes to discriminatory appraisals. And the question is who is the liable party for a disparate or an appraisal that may have a disparate impact? Would it be the appraiser? An appraisal management company? Anyone else? Or all of the above. Sort of what is the who’s liable in a case where an appraisal or the policies of an appraiser may have a disparate impact?

MR. DANE [01:42:14]: Yes. I would say that the most likely the one with the highest exposure, let me put it that way is whatever company or division, or agency adapted the policy, itself. It could also extend some exposure to anyone who implements the policy.

There are plenty of cases out there indicating that implementers of discriminatory policies could be held liable even if they did not know that the policy had a disparate impact.

The one actor in this process who probably has the least exposure - I'm not going to say zero - but the least exposure would be the frontline appraiser, who's just following the rules. You know, if there is a policy or practice that the appraiser's boss or employer or lender is saying you must conduct the appraisal this way. And then it turns out that that way or that policy has a disparate impact. Without intent. Frankly, I would probably not try to sue that appraiser. Because the appraiser has no power to change the policy. Has no authority to have influence on what the policy is and so forth. I would want to go after and I think the law would probably tag exposure to liability on the entity or individuals who actually created the policy and insisted that it be followed.

MS. HILL [01:44:06]: Thanks, Steve. Another question that I think is related. In cases where there is bias in the appraisal process, what are the consequences to the appraiser who actually issues the discriminatory appraisal? Steve, if you can start then anyone else feel free to add any insight that you may have.

MR. DANE [01:44:30]: Well, sure. I think I just answered it with respect to a disparate impact claim. If it's an intent claim and there's a case proven that a specific individual appraiser with an appraisal license has consciously and intentionally discriminated on a prohibited basis, then the sanctions, of course, can be damages. It could also lead to revoking or suspension of the real estate - of the appraisal license. Certainly, it would not be unusual because it happens in the real estate license context, that complaints can be filed with licensure authorities in the state, and someone could lose their license.

Another possible consequence for anyone who is eventually found to have violated the antidiscrimination laws other than licensure is being banned from future contracts. For example, with governmental agencies. Or losing business with lenders. Those are all adverse consequences.

CASHAUNA HILL [01:45:45]: Thanks, Steve. Would anyone else like to add anything? Lisa, did you have anything to add? Okay. Great. So I wanted to just go back to something that Lisa mentioned. In your presentation, Lisa, you spoke about taking the training for appraisers and sort of how that might be helpful in investigating appraisal discrimination cases. We got a question about how specifically people can go about finding those trainings, attendee who's asking says that FHAP staff are interested in getting the information. So how can those folks find those trainings?

MS. RICE [01:46:40]: Sure. That's a great question. If you go to the Appraisal Foundation's website, there is a search engine at the top of the website. And if you just type in Appraisal Course or something along those lines, you'll see a litany of responses pop up there. And you should see the link for you to take the courses. Sometimes the Appraisal Foundation will actually advertise course offerings. And you can take those, too. So you can take - they have a bevy of courses that they offer. And you can take the full 15-hour course. You can take the truncated sort of update. I think it's, like, six or seven hours or something like that.

If you want to order the USPAP Guidelines, you can also do it from the Appraisal Foundation's website. I would start there, Cashauna, and then look other places, if necessary. You can also tap into your local universities. There's always a professor or two that are teaching, you know, real estate property valuation. You can also tap those kinds of folks for resources, too.

MS. HILL [01:47:58]: Thanks, Lisa. And so now I'd like to move to a question that I think Lon and Melody will be able to answer. And so the question is what factors or situations will HUD examine in trying to decide whether an appraisal complaint will be treated by FHEO as systemic?

MS. TAYLOR [01:48:31]: I'll jump in. Lon, you can feel free to add or take away. It really will depend on - I think Lisa and Steve spoke about intentional discrimination and whether or not this is an individual home or if it implicates a neighborhood which would render a systemic cause of discrimination or systemic complaint of discrimination that we would evaluate.

And I just want to add, it's not cookie cutter. You know, I heard a question earlier that spoke of, you know, what's HUD doing in terms of creating consistent strategies and investigations. Lon spoke about our Office of Systemic Investigations that's working across the country. And we are doing that. But we are looking at these cases on a case-by-case basis to make sure that the prima facie elements that are being evaluated on the front end from intake, right, making sure that we're capturing and asking the right questions, to the investigation, itself, and making sure that, again, we're looking at the right data and we're evaluating the right circumstances to determine who's liable and the direction that the case should go in.

So as it relates to systemic, I guess to bring it home to whether or not we would consider it a systemic investigation would really be we'd evaluate intent and whether or not this was an individual or actually a neighborhood. And, Lon, if you want to add, please feel free.

MR. MELTESEN [01:50:12]: I think you put it very nicely, so I don't think I can top that. So.

MS. TAYLOR [01:50:16]: Great.

MS. HILL [1:50:17]: Great. Thank you, Melody. So now we've got what is a pretty technical question about the statute of limitations and sort of the clock with appraisal discrimination cases. So when does the clock start to file a complaint for appraisal discrimination? Would it be from denial of a refinance or an or when an undervalued appraisal is received? Or would it be the last correspondence or alleged discriminatory treatment date?

MR. DANE [01:50:54]: Yeah, that's a question there's not going to be a very definitive clear answer to that. Statute of limitations for Federal Court lawsuits under the Fair Housing Act is two years. The statute of limitations for filing an administrative complaint with HUD is one year. Typically, the statute of limitations begins to run from the date that the discriminatory act occurred, regardless of when the damage might occur. There are some cases that suggest that the statute doesn't begin to run until an actual harm is suffered - whenever that

might be. So it might be that the denial of the loan, if that's what's going on, rather than the date that the appraisal was signed, for example. Some courts have struggled with or suggested that in cases where the discrimination is not obvious or known to the victim, then the statute might not become start to run until the victim becomes aware of it. That it has knowledge of it. That's kind of a tricky question.

What happens in an appraisal case where the victim is unaware that they have been discriminated against until it was brought to their attention by a third party, let's say, or a person that worked for the lender, you know, a year or two later after the loan was denied.

So there's no real easy answer other than to say in the statute it's two years, one year. When it starts to run is the subject of much litigation in many different courts. Put it that way.

MS. HILL [01:52:37]: Thanks, Steve. I certainly understand that. So, Lisa, another question for you, which is – and I think this has come up a few times in the Q&A box. Folks are just wondering how to get appraisal discrimination complainants to call fair housing groups in the first place. What kind of outreach should be done to ensure that community members who may have faced discrimination in the appraisal process know that they can reach out to FHIP groups?

MS. RICE [01:53:16] Yeah, so this is where your relationships come in handy. As a fair housing organization, you have to be fully and thoroughly engaged with your local communities and with local stakeholders. The national or your local Urban League, your local NAACP, your local UnidosUS. Your local chapter of REALTIST – that is the National Association of Real Estate Brokers. Your local NAREA chapter [National Association of Real Estate Appraisers]. You have to have these relationships. Your local neighborhood organizations. Your CDCs [community development corporations]. Right? Your CDFIs [Community Development Financial Institutions] in your community. You have to have these relationships because as we've said before, oftentimes, the consumer is not going to recognize instances of discrimination, but the real estate agent is going to know when something is awry. The local CDC is going to recognize, wait a minute, that's a lowball appraisal. Right? And so you want to have these relationships. Steve mentioned that in the 1990s, we did a bevy of insurance redlining cases. I would say at that time I was working with the Toledo Fair Housing Center. I was in Toledo with Steve. 90% of our complainants were referrals from real estate agents, other lenders who recognized redlining was going on, or the local CDCs. So those relationships are critical if you're going to do these kinds of systemic cases.

MS. HILL [01:54:59]: Thanks, Lisa. Then Melody and Lon, I'm just wondering, you know, do you all have any are you aware of any FHAP agencies that are receiving these complaints and, you know, because of any outreach, do you have any tips for FHAP agencies or what can organizations on the other side be doing to ensure that community members are aware that assistance is available, if they have faced discrimination in the appraisal process.

MR. MELTESEN [1:55:35]: Melody, why don't I start, and you can elaborate? In terms of the question regarding the FHAP agencies, so FHAP agencies can get cases like any other discrimination case. There may be circumstances when HUD wants to reactivate that case. But there may be circumstances where the FHAP agency may connect the whole investigation into it. So answer to that question is yes. The FHAP agencies that have the jurisdiction over this issue and may be investigating those issues.

And my suggestion would be is that, you know, these cases may be complicated, but they're still discrimination cases so they should still follow whatever their investigative process is regarding those cases and they could always reach out to us at HUD for guidance as well.

MS. TAYLOR [01:56:29]: So I guess I'll take a stab at the latter part of the question, Cashauna. I just even in you raising it, it's a need. Right? People don't know where to go. And there are different avenues in which one can explore in terms of having a complaint that doesn't necessarily relate to the Fair Housing Act. It could be ECOA [Equal Credit Opportunity Act]. So to reach out to CFPV [Consumer Financial Protection Bureau] may be the answer or a state regulatory agency. So there are a host of different places that one can file a complaint. So I think it's a need that we as a fair housing community have to address to make sure that people are educated and aware of what's happening and how to explore where to file complaints.

And so, you know, again, Lon said our website, our FHAP agencies, our partnerships with FHIP agencies and other civil rights organizations. Part of this PAVE task force to engage philanthropic agencies to start doing that community work is one of the objectives and the goals to start educating people about the consequences of devaluation or misvaluation of communities has so that people are aware and know what to do about it.

MS. HILL [01:57:51]: Well, thanks so much for your answers to that question. And thanks to you all for your answers to all of these questions and for the very insightful and informative presentations that you shared with us.

We are going to have to conclude the question & answer session in order to be respectful of everyone's time. I apologize to all of the attendees for all of the questions that we could not get to. I do want to remind everyone that you can check out our May forum where the conversation was focused on the consequences of racial bias in the appraisal process. And we'll go ahead and post the link to where you can find that forum again in the chat.

Do note that many of these questions were raised during that May conversation. So you may be able to find the answer to a question that you had contained within that previous discussion. Again, I apologize that we just could not get through the list.

But I would like to thank, again, our esteemed panelists for joining us today. I want to thank everyone. Thank you, all, for your participation and for your attendance in today's forum. And we do sincerely hope that you will join the next conversation.

Please check out the NFHTA website for a description and very important information on registration for upcoming forums. And remember that you will be able to find each of today's presentations there as well.

On the NFHTA resource page, you can, again, find the May forum related to this conversation which was focused on the consequences of racial bias in the appraisal process.

Please also connect with the National Fair Housing Training Academy on LinkedIn for insights and information about upcoming events including future forums and courses.

Thanks to everyone who made today's event possible. And a special thank you to our hardworking interpreters and to everyone providing tech support during today's discussion.

Finally, please be on the lookout for a short survey which will pop up when this training concludes. The survey will allow you to provide feedback on today's event.

Thank you, all, again. And we look forward to seeing you at the next NFHTA forum. Take care.