

2022 Fair Lending Interagency Webinar

Outlook Live Webinar – December 6, 2022

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Webinar Overview

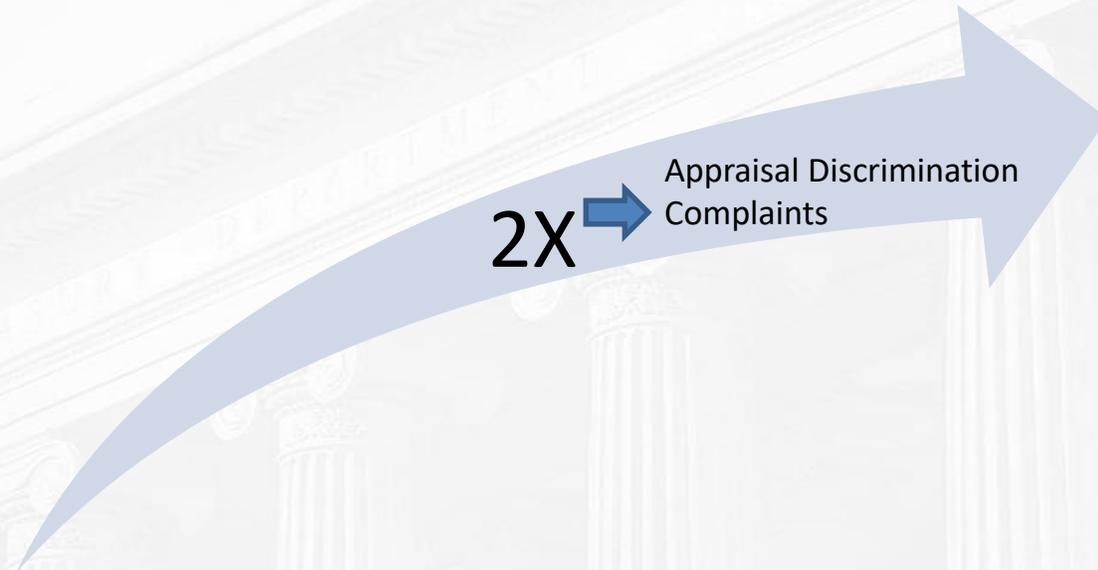
- HUD: Appraisal Discrimination: Trends and Risk Mitigation
- CFPB: Appraisal Bias Action Update
- FHFA: Action on Appraisal Bias
- OCC: A Tool to Expand Access to Credit: Special Purpose Credit Programs
- NCUA: Credit Union Update
- FDIC: Fair Lending Referral Matters
- FRB: Redlining Risk Assessments: Using the 2020 Decennial Census Data
- DOJ: Recent Redlining Enforcement Actions

Appraisal Discrimination: Trends and Risk Mitigation

*Rosanne Avilés, Trial Attorney
Office of General Counsel, Fair Housing Enforcement Division
U.S. Department of Housing & Urban Development*

Rise in Complaints Involving Alleged Violations of 42 U.S.C. § 3605

Twofold increase
in the number of
complaints filed
with HUD
involving
allegations of
Section 805 of
the Fair Housing
Act (42 U.S.C. §
3605)

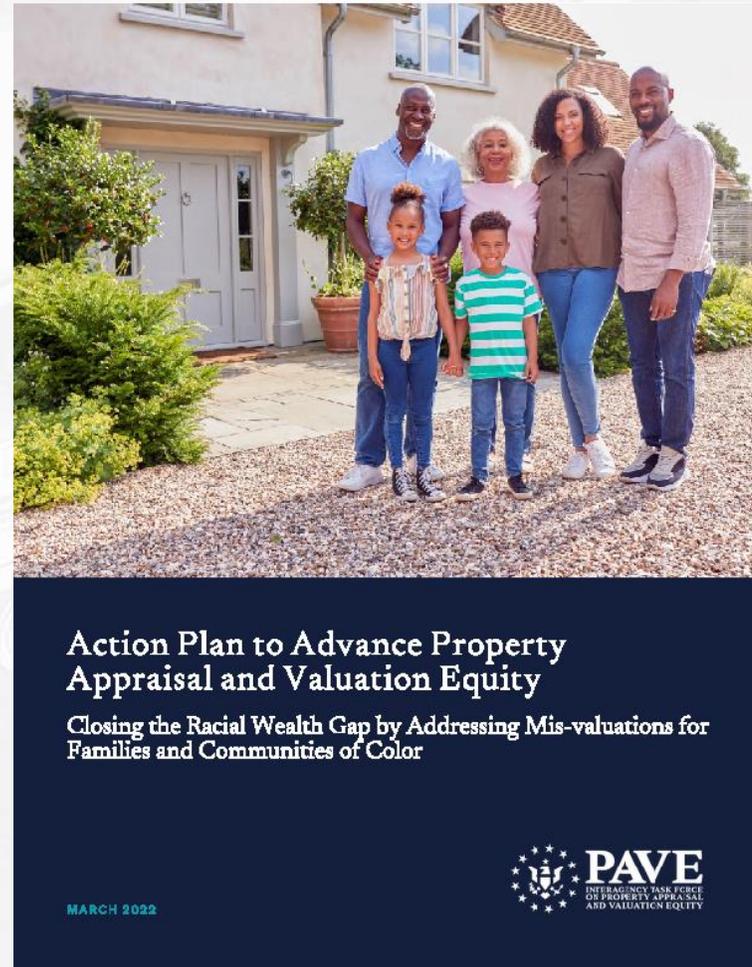


Interagency Task Force on Property Appraisal and Valuation Equity (PAVE)



Action Plan to Advance Property Appraisal and Valuation Equity

The Action Plan can be found at pave.hud.gov



Interagency Task Force on Property Appraisal and Valuation Equity (PAVE)

- Provide guidance to the appraisal industry
- Make the appraisal industry more accountable
- Empower consumers with information and assistance
- Prevent algorithmic bias in home valuations with information and assistance
- Cultivate an appraiser profession that is well-trained and looks like the communities it serves
- Leverage federal data and expertise to inform policy, practice, and research on appraisal bias

Lender Best Practices - Appraisals

- Up-to-Date Fair Lending Policies and Procedures
 - Fair lending complaint process
 - Reconsideration of Value (ROV) Procedures – Publicly Available and Easily Accessible
 - Notice accompanying appraisal explaining the lender’s policies and procedures for contesting an appraisal and requesting a ROV.
 - Prepared to refer consumers to applicable state or federal authorities if there is an allegation of a discriminatory appraisal
- Adequate Personnel Training
- Monitor and Analyze the Full Scope of Appraisal-Related Activities, Including Third Parties

Appraisal Bias Action Update

*Makalia Griffith, Counsel
Office of Fair Lending and Equal Opportunity
Consumer Financial Protection Bureau*

ECOA Background & Scope

The purpose of the Equal Credit Opportunity Act (ECOA) is to promote the availability of credit to all creditworthy applicants without regard to:

1. Race
2. Color
3. Religion
4. National origin
5. Sex (including sexual orientation and gender identity)
6. Marital status
7. Age (provided the applicant has the capacity to contract)
8. The fact that all or part of the applicant's income derives from a public assistance program; or
9. The fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

ECOA Background & Scope: Applicability

ECOA prohibits a **creditor** from discriminating on a prohibited basis regarding any aspect of a **credit transaction**.

“**Creditor**” means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. The term creditor includes a creditor’s assignee, transferee, or subrogee who so participates.

ECOA Background & Scope: Applicability

(continued)

- **“Credit transaction”** means
 - **every aspect** of an applicant’s dealings with a creditor regarding an application for credit or an existing extension of credit.
 - This includes, but is not limited to:
 - information requirements;
 - investigation procedures;
 - standards of creditworthiness;
 - terms of credit;
 - furnishing of credit information;
 - revocation, alteration, or termination of credit; and
 - collection procedures.

ECOA Background & Scope: Applicability

(continued)

- Regulation B covers a **wide range** of credit transactions including:
 - Consumer loans, including home mortgages loans
 - Business loans, including commercial real estate loans
- Regulation B prohibits creditors from acts or practices directed at **prospective applicants** that could discourage a reasonable person, on a prohibited basis, from applying for credit.

ECOA: Applicability to Appraisals

- “Any aspect of a credit transaction” includes:
 - The creditor’s “information requirements,” “investigation procedures” and “standards of creditworthiness” (12 C.F.R. § 1002.2(m)).
 - Appraisals are an aspect of a credit transaction.
 - Discrimination “on a prohibited basis” (e.g., on the basis of race) includes:
 - discrimination against an applicant subject to the appraisal;
 - discrimination against individuals with whom the applicant is affiliated or associated, including other residents in the neighborhood where the property offered as collateral is located (12 C.F.R. § 1002, Supplement I 2(z)).
 - A **creditor**, in certain circumstances, may be liable under ECOA for relying on a discriminatory appraisal.

UDAAP: Applicability to Appraisals

- The CFPB has authority under the Consumer Financial Protection Act (CFPA) to identify, prohibit, supervise for and prosecute **unfair acts or practices** committed by any covered person or service provider in connection with any transaction for, or offer of, a consumer financial product or service.
- Discrimination based on group characteristics may be illegal, unfair, and harmful to consumers.

UDAAP: Applicability to Appraisals *(continued)*

An **unfair act or practice** is one that

- 1) causes or is likely to cause substantial injury to consumers;
- 2) is not reasonably avoidable; and
- 3) is not outweighed by countervailing benefits to consumers or competition.

CFPB's Work on Appraisal Bias

- Engaged with other agencies on issues of bias in home appraisals through the Property Appraisal and Valuation Equity (PAVE) Taskforce.
 - CFPB (and other agencies) will issue guidance on the Fair Housing Act's and ECOA's application to the appraisal industry (Action 1.1).
 - CFPB (and other agencies) will, as needed, devise and implement changes to how examinations of mortgage lenders under their purview are conducted, develop examination aides and appropriate examination manual changes, and train staff on enhanced examination and data collection procedures (Action 2.3).
 - Enforcement agencies will collaborate to (a) develop approaches to data analysis that identify discrimination, and (b) identify case studies illustrating facts that agencies have found to support taking action on valuation discrimination (Action 2.1).
- Actively working with our inter-agency partners and relevant stakeholders on issues of bias in home appraisals.
- Providing resources to help ensure that the appraisals used to make lending decisions are accurate and free from bias.

CFPB SBREFA Process: Automated Valuation Model (AVM) Interagency Rulemaking

- Dodd-Frank Act amendments to FIRREA require the CFPB along with certain other agencies to engage in rulemaking.
- To address potential fair lending risk in models, CFPB is considering proposing a requirement that covered institutions establish policies, practices, procedures, and control systems to ensure that their AVMs comply with applicable nondiscrimination laws.
- CFPB is concerned that without proper safeguards, flawed versions of these models could digitally redline certain neighborhoods and further embed and perpetuate historical lending, wealth, and home value disparities.
- CFPB's [SBREFA process](#):
 - Feb 2022: Issued Proposals and Alternatives Under Consideration.
 - March 2022: Convened a Small Business Review Panel to consult with representatives of small entities likely to be affected directly by the AVM rulemaking options under consideration.
 - May 2022: Released the Final Report of the Small Business Review Panel on the CFPB's Proposals and Alternatives Under Consideration for the Automated Valuation Model (AVM) Rulemaking.

Ethics Rule: Interagency Comments 02/04/2022

- Comments were provided on the Appraisal Standards Board Ethics Rule that allowed for appraisals to rely on “supported” conclusions based on protected characteristics such as race or ethnicity.
- Comments (1) noted that the Federal ban on discrimination under the Fair Housing Act (FHAct) and Equal Credit Opportunity Act (ECOA) is not limited to “unsupported” conclusions; (2) outlined relevant FHAct and ECOA provisions; and (3) recalled that FHAct and ECOA prohibit both disparate treatment and disparate impact discrimination.
- Comments were submitted by senior staff at the following agencies: CFPB, DOJ, HUD, FDIC, FRB, OCC, NCUA, and FHFA.

Reconsideration of Value (ROV):

[CFPB Blog 10/06/2022](#)

- Responsible lenders focused on serving their customers typically will provide borrowers with clear, actionable information about how to raise concerns about the accuracy of an appraisal.
- In ROV, borrowers point out errors or omissions, including inadequate comparable properties, or evidence of prohibited bias.
- Process must allow for reconsideration to determine whether appraisal adjustment is appropriate.
- Some lenders inform borrowers of how to request ROV when providing required copies of valuations; other lenders may provide ROV information before an appraisal is conducted.
- Clear, plain-language ROV notices help to ensure process is nondiscriminatory.
- Failure to provide a clear and consistent ROV process may risk violating federal law.

Action on Appraisal Bias

Annalyce Shufelt, Senior Attorney Advisor (Fair Lending)

Office of Fair Lending Oversight

Federal Housing Finance Agency

Who Are We?

- The Federal Housing Finance Agency (FHFA) is the regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.
 - FHFA is also currently conservator for Fannie Mae and Freddie Mac.
- FHFA's Office of Fair Lending Oversight (OFLO) was established in 2018.
- FHFA does not regulate primary mortgage market lenders.
- Public fair lending data about the Enterprises is available at the [FHFA Fair Lending Data Webpage](#).

Appraisal Commentary Blog Post

Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary

Published: 12/14/2021

Key Takeaways

- Examples of overt references to race, ethnicity, and other prohibited bases under federal fair lending laws in appraisals and other property descriptions persist, indicating the continued presence of valuation bias.
- Ongoing failure to address appraiser consideration of prohibited factors like race, as indicated by prohibited basis commentary within the free-text form fields of appraisals, may result in valuation bias.
- Market participants must ensure that appraisals and other property valuations are compliant with fair lending principles, including in free-form text commentary. Appraisals are to be fair and free of bias, providing a supported value for a family's future or current home that reflects respect and equal treatment of the community and neighborhood in which the home is located.

Background

In December 2020, FHFA issued a Request for Information (RFI) on [Appraisal Related Policies, Practices, and Processes](#) to gather input on how the Enterprises can improve the appraisal process. The RFI requested information on:

- Appraisal modernization;
- Uniform Appraisal Dataset (UAD) and the design of appraisal forms;
- Automated Valuation Models (AVMs) and appraisal waivers; and
- Valuation differences by borrower and neighborhood ethnic makeup.

Since the RFI, FHFA's Office of Fair Lending Oversight has engaged in information exchange with industry professionals and other federal stakeholders on valuation bias issues, needs, and best practices. By reviewing data, appraisals, and other property valuations, FHFA can better understand valuation bias.

FHFA is a participant in the interagency [Property Appraisal Valuation and Equity \(PAVE\)](#) taskforce. In our review of appraisals, we have observed references to race and ethnicity in the "Neighborhood Description" and other free-form text fields in the appraisal form.

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Senior Examination Specialist
Office of Fair Lending Oversight
Division of Housing Mission and Goals

By: James Wylie
Associate Director
Office of Fair Lending Oversight
Division of Housing Mission and Goals



A town was described as having a “Black race population above state average.”

Noting that “Koreatown is considered 'highly diverse' ethnically,” listing the percentages of residents from various races and nationalities and describing that the number of foreign-born persons was “considered high compared to the city as a whole.”

The ethnic groups that have immigrated to a neighborhood over the course of many years and noted it was “one spicy neighborhood.”

“The racial makeup of the city was 86.28% white, 12.46% Black or African-American, 0.52% Native American, 0.22% Asian, and 0.52% from two or more races. 0.56% of the population were Hispanic or Latino of any race.”

Noting that “there is more Asian influence of late” buying the market.

Freddie Mac and Fannie Mae Research



Appraising the Appraisal

A closer look at divergent appraisal values for Black and white borrowers refinancing their home

Jake Williamson
Mark Patim
February 2022

This paper, originally published in January 2022, has been updated to provide additional clarification on the research methodology.





SEPTEMBER 2021

Racial and Ethnic Valuation Gaps in Home Purchase Appraisals¹

To follow up on several stories of potential appraisal bias in various news outlets,² Freddie Mac kicked off a study of whether minorities are more likely to receive an appraisal value that is lower than the contract price during purchase transactions.³

First, we examine the raw differences in the percentage of properties that receive an appraisal value lower than the contract price in minority tracts compared to those in White tracts.⁴ We find substantial appraisal valuation gaps⁵ for minority versus White tracts. Second, we examine the raw differences in the percentage of applicants that receive an appraisal value lower than the contract price and find that minority applicants are more likely to receive an appraisal value lower than the contract price.

After observing these gaps, we conduct exploratory research to begin to understand what causes the valuation gaps for minority versus White tracts. In the third section, we test whether the observed gaps are driven by only a few appraisers. Our analysis shows gaps for a large fraction of appraisers who provide valuations in both minority and White tracts. In the fourth section, we explore several possible explanations for the observed appraisal gaps in minority neighborhoods. Our research shows that differences in comparable sale (or comp) distances, comp reconciliation,⁶ variances in sale prices of comps, and possible systematic overpayment for properties by minorities cannot explain the appraisal gaps for minority tracts observed in our data. Finally, in the fifth section we build models to test whether the minority tract flag based on the minority concentration in the tract explains appraisal gaps beyond structural and neighborhood characteristics. Our preliminary modeling results suggest that a property is more likely to receive an appraisal lower than the contract price if it is in a minority tract.

1. A purchase appraisal is one where the "assignment type" on the appraisal form is for a purchase transaction.
2. "Black Homeowners Face Discrimination in Appraisals," August 25, 2020, *The New York Times*.
3. "An Unconscious Bias? Racial Denver Couple Says They Faced Discrimination on Home Appraisal," November 16, 2020, *Denver7*.
4. "Appraisal Industry Leaders Acknowledge Bias in Home Valuations," March 3, 2021, Bloomberg Government.
5. This study focuses on two minority groups, Black and Latino, with the White non-Latino group as the reference. The term "minority" refers to Black or Latino and the term "White" refers to White non-Latino throughout this Research Note.
6. Tracts refer to census tracts. They are small subdivisions within a county typically containing between 1,200 and 5,000 people. In this Research Note, the words "neighborhood" and "tract" are interchangeable.
7. For the purposes of this Research Note, an "appraisal gap" means the percent difference between minority and White groups in the share of properties or applicants receiving "appraisal value lower than contract price."
8. In a residential appraisal, the value is developed primarily by examining other competitive homes that have been sold recently. These sales are called "comparable sales," commonly called "comps."
9. "Reconciliation" refers to the process used by the appraiser to weight the conclusions of the individual comparable sales and derive a final opinion on the home sale.



Economic & Housing Research Note

MAY 2022

Racial & Ethnic Valuation Gaps in Home Purchase Appraisals - A Modeling Approach

Executive summary

This Research Note builds on our previous Note published in September 2021¹ to report on a refined and expanded modeling approach that Freddie Mac adopted in the racial valuation gap context. Our first Note analyzed tract averages as little research existed on this important topic and we wanted to spark a discussion and receive feedback on our approach leading to subsequent work. This note reflects much of the feedback we have received.² Specifically we adopt a modeling approach to study whether properties in predominantly minority (Black and Latino) census tracts are more likely than properties in predominantly White census tracts³ to receive an appraisal value that is lower than the contract price⁴ when homes are appraised for the purpose of obtaining a home loan (home purchase appraisals).⁵ Our model results indicate that, even after controlling for important factors that affect house values and appraisal practices, appraisal outcomes still differ for properties in predominantly Black and Latino tracts relative to those in predominantly White tracts.

This new effort controls for a wider variety of variables, including house characteristics, neighborhood characteristics, housing market dynamics, and fixed effects. It applies multiple modeling techniques to examine three questions: (1) whether properties in minority tracts are more likely to receive "appraisal

1. Link to the first Research Note: [Racial and Ethnic Valuation Gaps in Home Purchase Appraisals](#).
2. We want to thank all the researchers who have provided thoughtful and constructive feedback. Although researchers may have different perspectives in terms of the detailed modeling approach, we appreciate the suggestions and dialogue that help advance the continued research on this important topic.
3. We conduct analyses at the tract level for two reasons: (1) we are assessing whether the racial or ethnic composition of the neighborhood affects appraisal valuation, and (2) there is no data on buyers or sellers' race or ethnicity in appraisals. When individual race and ethnicity data are not available, it is a common practice to use minority share at the tract level to classify tracts and analyze minority tracts. Considering the racial or ethnic composition of the neighborhood in appraisal valuation is an illegal form of discrimination regardless of the race or ethnicity of the buyer or seller. This method meets the objective of this research since it enables researchers to examine the neighborhood-level differences between predominantly minority tracts and predominantly White tracts. It is also interesting to study whether and how buyer (or seller) race/ethnicity plays a role on appraisals, conditional on the racial makeup of the tract. We consider this as an important potential future research task.
4. For the purposes of this research, an "appraisal gap" means the percent difference between minority and White tracts in the share of properties receiving appraised values that are lower than the contract price for home purchases. This measure is called "appraisal value lower than contract price." We acknowledge that the sale price is not always equal to market value, and we expect that in all areas some appraisals will report values lower than the contract price. However, research data indicate that a high percentage of appraisals are at or above the purchase contract price (Cohen, Lambert-Hansen, and Nakamura, 2017).
5. While others have compared appraisal estimates to automated valuation (AVM) estimates, we believe this could confound certain analysis. AVM estimates are statistically based computer programs that use real estate information such as comparable sales, property characteristics, and price trends to provide a current estimate of market value for a specific property. Appraisal estimates may come below the AVM estimate if the AVM estimate is too high because of issues with modeling instead of undervalued effects like potential socioeconomic or racial bias. Those conversations then steer in a different direction detailing the statistical properties of modeled AVM estimates rather than prices agreed upon by willing buyers and willing sellers. With those cautions in mind, we leverage the assumption that market-oriented valuations and negotiations lead to a more appropriate signal and that compares appraisal estimates of value to contract price. Using price as our "north star" limits our comparison, though, to purchase transactions as contractually agreed upon prices by two parties do not exist for reference transactions. We acknowledge and recognize that recent studies have pursued a different focus because they tried to estimate potential bias of at least one of these participating parties, but such was not our approach.

Uniform Appraisal Dataset (UAD): Aggregate Statistics

Home / Data & Tools / FHFA Uniform Appraisal Dataset Aggregate Statistics

FHFA Uniform Appraisal Dataset Aggregate Statistics

FHFA Uniform Appraisal Dataset (UAD) Aggregate Statistics Data File and Dashboards are the nation's first publicly available datasets of aggregate statistics on appraisal records, giving the public new access to a broad set of data points and trends found in appraisal reports. Appraisal statistics may be grouped by neighborhood characteristics, property characteristics and geographic levels (national, state plus the District of Columbia and Puerto Rico, Metropolitan Statistical Areas (MSAs) or Metropolitan Divisions, county, and tract). The UAD Aggregate Statistics Data File is a resource for users capable of using statistical software to extract and analyze data. The UAD Aggregate Statistics Dashboards are for users of all types and are designed to provide user-friendly access through customized maps and charts.

Datasets

UAD Aggregate Statistics	Format	Release Date
Quarterly Data (2013 Q1-2022 Q2)		
All Geographic Areas	[CSV]	10/24/2022
National	[CSV]	10/24/2022
States	[CSV]	10/24/2022

UAD Aggregate Statistics

- ✓ Published October 2022
- ✓ Quarterly data covering 2013 – 2022 Q2
- ✓ Neighborhood characteristics, including demographic composition
- ✓ Multiple geographic levels
- ✓ Use FHFA mapping and graphing tools in the browser, or download the data for your own use

[Dashboards, data, graphs, maps, and other reports are available here](#)

UAD Aggregate Statistics Dashboards

Metro Area 1

Washington-Arlington-Alexandria, D.C.

Metro Area 2

Richmond, VA MSA

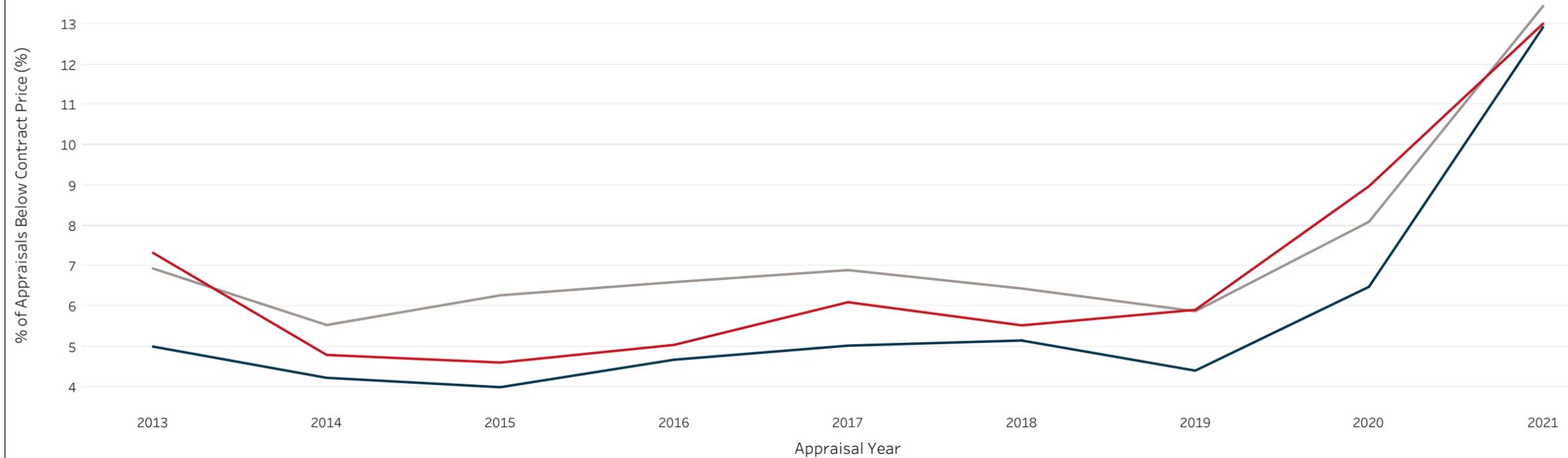
Tract Percent Minority Population Category

0% to 50%

Appraisal Statistic

% of Appraisals Below Contract Price

Tract Percent Minority Population for Purchase Appraisals | Washington-Arlington-Alexandria, DC-VA-MD-WV MSAD | Richmond, VA MSA | National



*Single-family properties appraised using Fannie Mae Form 1004/Freddie Mac Form 70 are included in the UAD Aggregate Statistics. Condominiums, manufactured homes, small multifamily rental properties, and other appraisals are excluded.

Source: Federal Housing Finance Agency, Uniform Appraisal Dataset Aggregate Statistics. Annual Data: 2013-2021, Quarterly Data: 1Q2013-2Q2022

UAD Aggregate Statistics Dashboards

Metro Area 1

Washington-Arlington-Alexandria, D.C.

Metro Area 2

Richmond, VA MSA

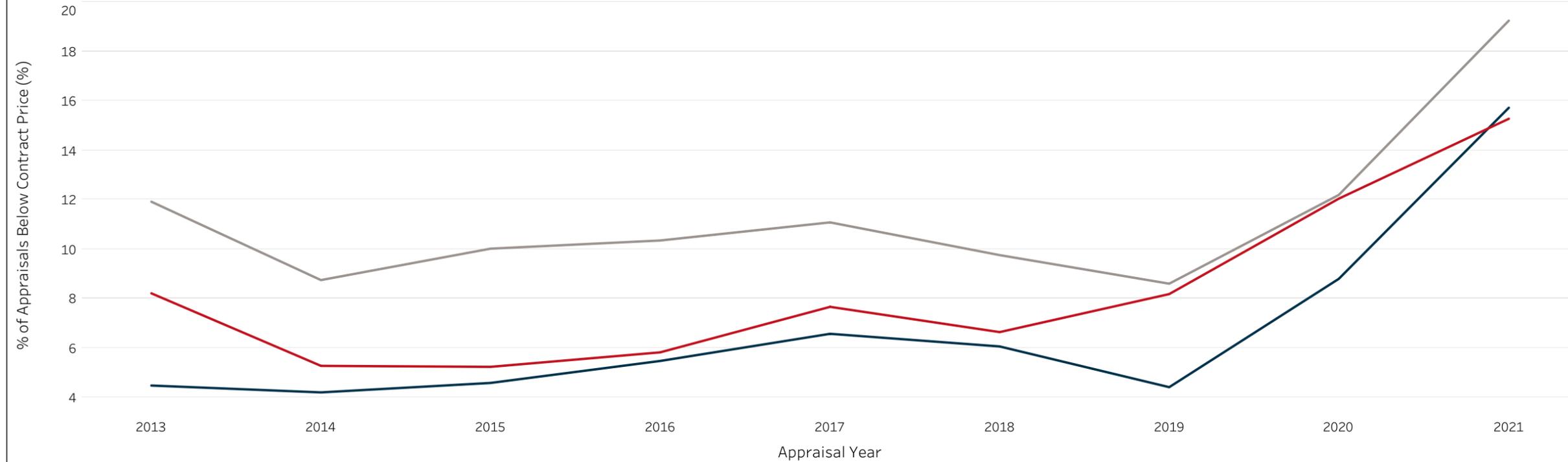
Tract Percent Minority Population Category

50.1% to 80%

Appraisal Statistic

% of Appraisals Below Contract Price

Tract Percent Minority Population for Purchase Appraisals | Washington-Arlington-Alexandria, DC-VA-MD-WV MSAD | Richmond, VA MSA | National



*Single-family properties appraised using Fannie Mae Form 1004/Freddie Mac Form 70 are included in the UAD Aggregate Statistics. Condominiums, manufactured homes, small multifamily rental properties, and other appraisals are excluded.
Source: Federal Housing Finance Agency, Uniform Appraisal Dataset Aggregate Statistics. Annual Data: 2013-2021, Quarterly Data: 1Q2013-2Q2022

UAD Aggregate Statistics Dashboards

Metro Area 1

Washington-Arlington-Alexandria, D.C.

Metro Area 2

Richmond, VA MSA

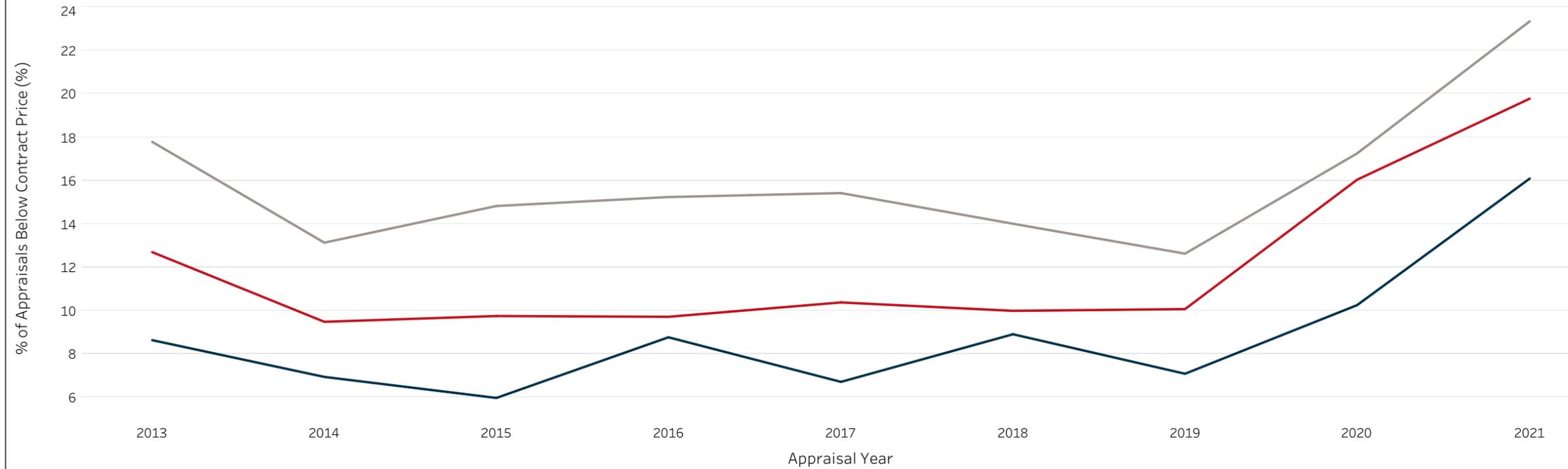
Tract Percent Minority Population Category

80.1% to 100%

Appraisal Statistic

% of Appraisals Below Contract Price

Tract Percent Minority Population for Purchase Appraisals | Washington-Arlington-Alexandria, DC-VA-MD-WV MSAD | Richmond, VA MSA | National



*Single-family properties appraised using Fannie Mae Form 1004/Freddie Mac Form 70 are included in the UAD Aggregate Statistics. Condominiums, manufactured homes, small multifamily rental properties, and other appraisals are excluded.
Source: Federal Housing Finance Agency, Uniform Appraisal Dataset Aggregate Statistics. Annual Data: 2013-2021, Quarterly Data: 1Q2013-2Q2022

UAD Aggregate Statistics: Appraisal Bias Blog Post

Exploring Appraisal Bias Using UAD Aggregate Statistics

Published: 11/2/2022

FHFA recently published its Uniform Appraisal Data (UAD) [Aggregate Statistics Data File and Dashboards](#). The aggregate statistics in the Data File and Dashboards are derived from more than 47 million appraisals conducted between 2013 and June 30, 2022. This blog highlights how the new statistical tools can provide key insights into potential appraisal bias concerns.

Background

Today, Black and Latino families have considerably less wealth than White families. The 2019 Survey of Consumer Finances finds that White families on average hold \$983,400 in wealth, compared to \$142,500 for Black and \$165,500 for Latino families on average, respectively.[1] For most Americans, the largest driver of wealth is their home. This makes it critically important to have accurate, unbiased home valuations.

Recent research, however, suggests that there are racial and ethnic differences in home valuations. The Brookings Institute showed a robust relationship between lower valuations and Black neighborhoods.[2] FHFA's Chandra Broadnax highlighted examples of overt references to race in appraisals and the importance of appraisals in the discussion of wealth inequality.[3] Freddie Mac's research showed that properties in minority tracts are more likely than properties in White tracts to receive an appraisal lower than the contract price.[4] Fannie Mae's publication concluded that White borrowers' homes were overvalued at higher rates across all neighborhoods, but stronger effects were present for White borrowers in Black neighborhoods.[5]

Undervaluation Metric

By: Jonathan Liles
Senior Financial Analyst
Division of Housing Mission and Goals
Office of Fair Lending Oversight

- ✓ Properties located in minority census tracts have a higher proportion of appraised values less than the contract price.
- ✓ 23.3% of homes in high minority tracts (80.1-100% minority concentration) experienced appraised value less than contract price, compared with 13.4% of homes in white tracts (0-50%) and 19.2% in minority tracts (50.1-80%).

A Tool to Expand Access to Credit: Special Purpose Credit Programs

*David Adkins, CRA/FL Compliance Policy Specialist
Office of the Comptroller of the Currency*

OCC and Special Purpose Credit Programs

“I encourage national banks and federal savings associations to explore the opportunities available through special purpose credit programs. The special purpose credit program provisions of ECOA and Regulation B are one mechanism that banks can use to open the door to homeownership to communities that have been historically shut out or otherwise disadvantaged. Doing so can be a significant step in addressing the racial and ethnic homeownership and wealth gaps that persist in the United States.”

- Acting Comptroller Hsu, [December 9, 2021 News Release](#)

Equal Credit Opportunity Act (ECOA)

- Prohibits creditor from discriminating against any applicant, with respect to any aspect of a credit transaction based on race, color, religion, national origin, sex, age, and receipt of public assistance
- Applies to any extension of credit, including those to small businesses, corporations, partnerships, and trusts.

SPCP Statutory and Regulatory Authority

- ECOA, 15 USC §1691(c)(3)
 - Provides that the prohibitions against discrimination are not violated when a creditor refuses to extend credit offered pursuant to certain special purpose credit programs (SPCPs) satisfying Regulation B-prescribed standards
- Regulation B, 12 CFR §1002.8
 - Programs must meet standards prescribed by CFPB

Fair Housing Act—HUD Guidance

“A non-profit organization’s Special Purpose Credit Program established to serve an economically disadvantaged class of persons or a for-profit institution’s Special Purpose Credit Program designed and implemented in compliance with ECOA and Regulation B generally do not violate the [Fair Housing] Act.”

-- HUD’s Office of General Counsel Guidance on the Fair Housing Act’s Treatment of Certain Special Purpose Credit Programs, December 6, 2021

HUD's Office of Fair Housing and Equal Opportunity Statement

“[Housing-related special purpose credit] programs, if constructed thoughtfully and in accordance with the CFPB’s regulations and guidance, can be a significant step towards bridging the racial and ethnic homeownership and wealth gaps that exist throughout the United States.”

-- FHEO’s Statement by HUD’s Office of Fair Housing and Equal Opportunity on Special Purpose Credit Programs as a Remedy for Disparities in Access to Homeownership, December 7, 2021

Agencies' Role

- The CFPB, OCC or other agencies do not determine whether individual programs qualify for special purpose credit status.
 - The creditor administering or offering the loan program must make that determination.
 - A creditor may initiate a special purpose credit program without the approval of the CFPB, OCC or any other regulator.
- Banks considering SPCPs are encouraged to discuss their plans with the regulator(s).

Regulation B's For-Profit SPCPs Standards

- Written plan
 - Class of people
 - Procedures and standards
 - Time period
 - Description of analysis the organization conducted to determine need for the program
- Creditors' determination that the program will benefit a class of people who would otherwise be denied credit or would receive it on less favorable terms

CFPB Advisory Opinion December 2020

- Written Plan Guidance
 - Must explain whether the class of persons will be required to demonstrate a financial need and/or share a common characteristic
 - Procedures and standards must be designed to increase the likelihood that the targeted class of persons will receive credit that otherwise would be denied or will receive credit on more favorable terms than they otherwise would have
 - Plan must explain how the procedures and standards will increase credit availability for the targeted class of people

CFPB Advisory Opinion December 2020

- Determination of Need for a Special Purpose Credit Program
 - Can be based on:
 - Organization's own research
 - Data from outside sources
 - Analysis must have a nexus to the organization's customary credit standards
 - Creditor cannot request demographic information from applicants that it is otherwise prohibited under ECOA, in order to collect data to support a future SPCP

Supervisory Experience

- Used sparingly, but there are longstanding programs that are successful
- Compliance with regulatory standards can be challenging
 - Many technical requirements
- Additional considerations
- Opportunities have been identified and new programs are starting

References

- Equal Credit Opportunity Act (ECOA), 15 USC §1691(c)(3)
- Regulation B, 12 CFR§1002.8
- [HUD's Office of General Counsel Guidance on the Fair Housing Act's Treatment of Certain Special Purpose Credit Programs That Are Designed and Implemented in Compliance with the Equal Credit Opportunity Act and Regulation, December 6, 2021](#)
- [FHEO's Statement by HUD's Office of Fair Housing and Equal Opportunity on Special Purpose Credit Programs as a Remedy for Disparities in Access to Homeownership, December 7, 2021](#)
- [CFPB Advisory Opinion on Special Purpose Credit Programs, December 21, 2020](#)
- [OCC Advisory Letter 2003-8, Financing Minority Businesses](#)
- [Comptroller's Handbook, *Fair Lending*](#)
- [P. Ficklin and C. Nier, *The Use of Special Purpose Credit Programs to Promote Racial and Economic Equity*, Racial Justice in Housing Finance](#)

Credit Union Update

*Matthew Nixon, Program Officer
Office of Consumer Financial Protection
National Credit Union Administration*

Agenda

- Regulation B – Federal Credit Union Violation Statistics and Trends
- 2022 Fair Lending Guidance
 - NCUA Letter to Credit Unions 22-CU-04, Equal Credit Opportunity Act Nondiscrimination Requirements
 - NCUA Letter to Credit Unions 22-CU-03, Special Purpose Credit Programs
- 2023 Exam Scope Activities – Fair Lending

Regulation B Violations in Federal Credit Unions

Section	Description	2018		2019		2020		2021		2022	
		#	% of Total	#	% of Total	#	% of Total	#	% of Total	#	% of Total
1002.4	General Rules	13	15%	25	5%	13	10%	34	28%	17	15%
1002.5	Requests for Information	1	1%	2	0%	1	1%	1	1%	2	2%
1002.6	Evaluation of Applications	14	16%	14	3%	5	4%	27	22%	24	22%
1002.7	Extensions of Credit	2	2%	2	0%	5	4%	1	1%	1	1%
1002.9	Notifications	39	45%	389	84%	104	76%	47	39%	57	52%
1002.12	Record Retention	3	3%	20	4%	5	4%	4	3%	2	2%
1002.13	Information for Monitoring Purposes	2	2%	5	1%	2	1%	2	2%	2	2%
1002.14	Providing Appraisals and Other Valuations	12	14%	4	1%	0	0%	2	2%	5	5%
	Other	1	1%	2	0%	1	1%	4	3%	0	0%
	Total	87	100%	463	100%	136	100%	122	100%	110	100%

- Chart includes data on federal credit unions with assets less than or equal to \$10 billion
- 2022 reflects partial-year data (January 1, 2022 through October 21, 2022)
- Chart counts each violated provision of a regulation once during an examination, regardless of the number of individual violations found during review of that provision

Regulation B Violations in Federal Credit Unions

(continued)

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Total		87	100%	463	100%	136	100%	122	100%	110	100%

- Section 1002.9 violations are the most cited Regulation B violations by NCUA examiners
- Include Adverse Action Notice and Notice of Incompleteness content, and notification deadlines
- NCUA examiners performed Section 1002.9 transaction testing in 2019

Regulation B Violations in Federal Credit Unions

(continued)

Section	Description	2018		2019		2020		2021		2022	
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	Other	1	1%	2	0%	1	1%	4	3%	0	0%
	Total	87	100%	463	100%	136	100%	122	100%	110	100%

- In 2021, NCUA shifted examiner efforts toward the broad nondiscrimination requirements of ECOA and Regulation B
- Since 2021, NCUA examiners have reviewed Interagency Fair Lending Examination Procedures Risk Factors

NCUA Letter 22-CU-04

NCUA LETTER TO CREDIT UNIONS

NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street, Alexandria, VA 22314

DATE: February 2022

LETTER NO: 22-CU-04

TO: Federally Insured Credit Unions

SUBJ: Equal Credit Opportunity Act Nondiscrimination Requirements

Dear Boards of Directors and Chief Executive Officers:

The [Equal Credit Opportunity Act](#) (ECOA) promotes the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age

NCUA Letter 22-CU-04

- Defines discriminatory credit practices
- Addresses risk areas related to:
 - Applicant marital status
 - Applicant age
 - Income consideration
 - Redlining
 - Indirect lending

NCUA Letter 22-CU-03

- Includes the *Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B*
- Explains the role a SPCP can play in achieving a credit union's financial inclusion mission

NCUA 2023 Exam Scope Activities

- 2022 Fair Lending Supervisory Priorities
 - Overt indicators of discrimination risk factors
 - Underwriting discrimination risk factors
 - Appraisal bias
- 2023 Fair Lending Supervisory Priorities
 - Pricing discrimination risk factors
 - Steering discrimination risk factors
 - Appraisal bias

Fair Lending Referral Matters

*David Evans, Senior Fair Lending Specialist
Federal Deposit Insurance Corporation*

FDIC Fair Lending Referrals – 2021/2022

- Discuss recent fair lending referrals to the Department of Justice
 - Highlight general fact patterns for matters involving redlining, third party activity, indirect automobile lending, and underwriting discrimination in student lending
 - Provide information and resources to help mitigate fair lending risk

Redlining

- Issues identified based on a lack of lending in majority-Black census tracts
- Violation support based on policies that led to a lack of lending:
 - Branching
 - Marketing/Outreach
 - CRA assessment area delineation
- Reasonably Expected Market Area
 - “where the institution actually marketed and provided credit and where it could reasonably be expected to have marketed and provided credit.”

Third Party Activity

- Fair lending risk when the institution relies on a third party to underwrite or price credit
- Online platforms where customers apply for credit:
 - Required consumers to remove fraud alert
 - Overt policy that assigned higher-risk rating for “non-spouse”
- The bank is ultimately responsible for managing risks that arise through third-party relationships and activities (includes any activities that violate laws and regulations)

Indirect Automobile Lending

- Unmonitored discretion in setting loan rates led to borrowers being priced differently on a prohibited basis
- Statistical analysis controlling for pricing criteria used to determine if the rate disparities are statistically significant
- Bank considered creditor for these transactions and can be held responsible for any buy rate, mark-up, or contract rate disparities

Underwriting Discrimination – Student Lending

- Cohort Default Rate (CDR) – published by the U.S. Department of Education
- CDR shows the percentage of a school’s borrowers who default on certain loans
- Bank used CDR as an eligibility threshold to determine which applicants could apply for credit
- Disproportionate exclusion of people who attended Historically Black Colleges and Universities (HBCUs) from applying for credit, as certain HBCUs had CDRs that exceeded the cutoff

Mitigating Fair Lending Risk

- Review of written policies and procedures, including those of any third parties
- Monitor the actions of the third party to the same extent as if the activity were handled within the bank itself
- Identify potential redlining risk:
 - Understand the bank's market area, and the demographics of the geographies within that area
 - Evaluate the methods by which the bank obtains loan applications, including any marketing or outreach efforts and branches
 - Assess the bank's lending performance within the market area

Resources

- [FDIC Banker Resources – Fair Lending](#)
- [FDIC Technical Assistance Videos – Fair Lending](#)
- [FDIC – Identifying and Mitigating Potential Redlining Risks](#)
- [Interagency Fair Lending Examination Procedures](#)
- [Guidance for Managing Third-Party Risk](#)

Redlining Risk Assessments: Using the 2020 Decennial Census Data

*Susan Torzilli, Managing Counsel
Fair Lending Enforcement Section
Division of Consumer and Community Affairs
Federal Reserve Board*

Overview

- The Federal Reserve's Fair Lending Authority
- Overview of Key Redlining Risk Factors
- Updated Census Data
- New Federal Reserve Resource: Census Reports by MSA
- Applying the Updated Census Data
- Other Federal Reserve Resources

The Federal Reserve's Fair Lending Authority

- The Federal Reserve Board supervises:
 - Over 700 state member banks (SMBs)
 - SMBs above \$10B for compliance with the Fair Housing Act
 - SMBs of \$10B or less for compliance with the Fair Housing Act, the ECOA, and Regulation B
- The CFPB supervises institutions above \$10B for compliance with the ECOA and Regulation B
- Thus, the Federal Reserve and the CFPB share supervision authority for fair lending in mortgages for SMBs above \$10B

Overview of Key Redlining Risk Factors

- Based on the 2009 Interagency Fair Lending Examination Procedures, examiners generally will review the following risk factors for redlining:
 - Assessment Areas *
 - Lending Disparities *
 - Branching *
 - Marketing and Outreach *
 - Overt Statements and Complaints

* Decennial Census Data impacts analysis of risk factor

Updated Census Data

- For loan data collected in 2022, Federal Reserve will use updated 2020 Decennial Census data for supervisory activities
- Key changes relevant to redlining analyses and risk assessments:
 - Census tract boundaries changes (number of tracts, physical boundaries)
 - Demographic composition changes
- It is important for lenders to understand the changes in their market(s) and any redlining risk that may arise from those changes

New Federal Reserve Resource: Census Reports by MSA

- Federal Reserve developed and is publishing materials to help lenders and the public understand the boundary and demographic composition changes
- The report consists of maps to show boundary and demographic changes by MSA and tables to show changes in volume of majority minority census tracts (MMCTs) in an MSA
- Report allows side-by-side comparison of 2011 - 2015 ACS 5-Year Data (2015 ACS 5-Year) and 2020 Decennial Census data

Maps for All 384 MSAs

- Maps show revised geographic dimensions of census tracts
- Maps show racial and national origin composition changes:
 - Tracts are shaded based on the percentage minority group compared to the total tract population

0% - 25%

> 25% - 50%

> 50% - 75%

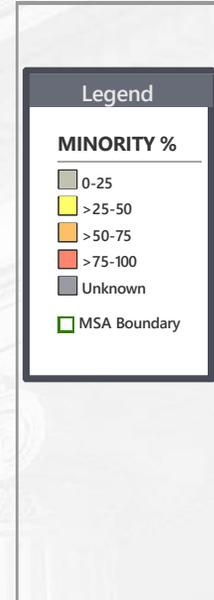
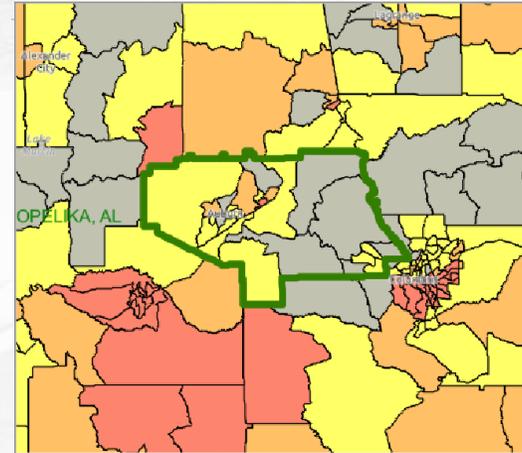
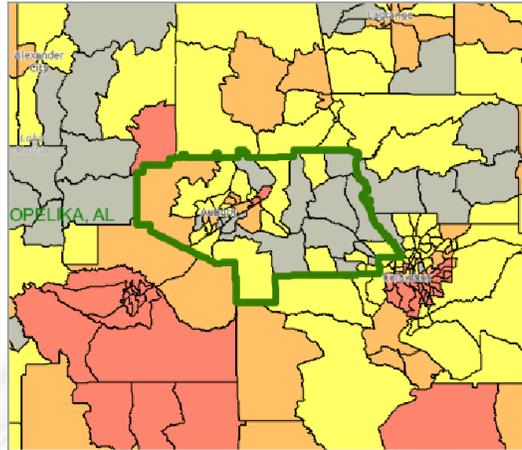
> 75% - 100%

- Maps visualize racial and national origin composition in two ways:
 - Census tracts which are majority Black/Hispanic
 - Census tracts which are majority minority using all minority group

2020 Decennial Census

2015 ACS 5-Year

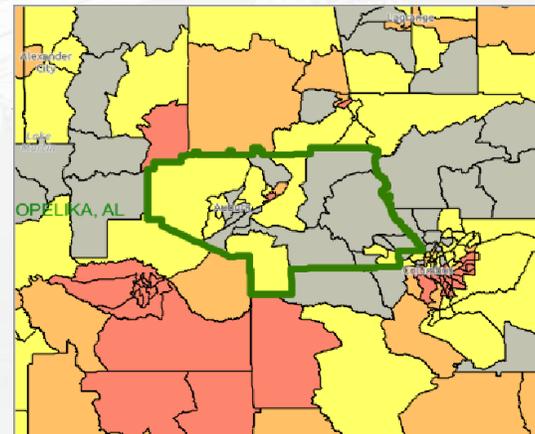
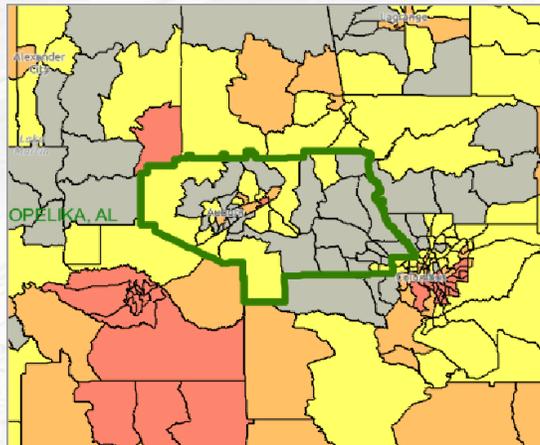
All Minority



2020 Decennial Census

2015 ACS 5-Year

Black/Hispanic



Tables for All 384 MSAs

- Tables show:
 - Total number of census tracts within the MSA using the 2015 ACS 5-Year and the 2020 Decennial Census
 - Number of MMCTs using the 2015 ACS 5-Year and the 2020 Decennial Census
 - Presented showing the Black/Hispanic definition and the all-minority definition

Tables: Illustrative Example

Majority Minority Tracts (2020 Decennial Census)					
	Total Tracts	Tracts <= 50% All Minority	Tracts > 50% All Minority	Tracts <=50% B/H Minority	Tracts > 50% B/H Minority
Number	48	39	9	43	5
Percentage	100%	81%	19%	90%	10%

Majority Minority Tracts (2015 ACS 5-Year)					
	Total Tracts	Tracts <= 50% All Minority	Tracts >50% All Minority	Tracts <= 50% B/H Minority	Tracts > 50% B/H Minority
Number	27	23	4	25	2
Percentage	100%	85%	15%	93%	7%

Applying the Updated Census Data: Assessment Area

- Federal Reserve examiners review whether the bank's assessment areas appear to inappropriately exclude MMCTs
- *Managing redlining risk*: review whether demographics changed in the bank's assessment area, and whether MMCTs appear to be inappropriately excluded
 - Such reviews in light of new census data may be contemplated by established policies and procedures to regularly review CRA assessment areas
 - Document reasons for selecting or changing the assessment area delineations

Applying the Updated Census Data: Lending Disparities

- Federal Reserve examiners review whether the bank's record of HMDA lending and/or CRA small business lending shows statistically significant disparities in MMCTs when compared with comparable lenders
- *Managing redlining risk*: review lending in the relevant market in light of new tract boundaries and MMCT designations
 - Monitor by comparing lending activity against lenders in relevant assessment areas or credit markets that have lending activity between 50-200 percent of the lender's volume

Applying the Updated Census Data: Branching

- Federal Reserve examiners review whether the bank's strategy for branch or loan production office (LPO) locations appears to exclude MMCTs, or whether the branches or LPOs in MMCTs do not offer the same products or services as those offered in nonminority neighborhoods
- *Managing redlining risk*: review branching patterns in the relevant market in light of new tract boundaries and MMCT designations
 - Evaluate whether existing branches are serving MMCTs
 - If not, consider reassessing branching strategies

Applying the Updated Census Data: Marketing and Outreach

- Federal Reserve examiners review whether the bank's marketing and outreach strategy appears to treat MMCTs less favorably
- *Managing redlining risk*: review marketing reach in the relevant market in light of new tract boundaries and MMCT designations
 - Evaluate whether marketing and outreach activities are reaching the whole of the credit market area, including the MMCTs
 - If not, consider whether marketing strategies need to be reassessed

Other Federal Reserve Resources

- **Consumer Compliance Outlook** – Federal Reserve publication dedicated to consumer compliance
 - [Consumer Compliance Outlook](#)
- **Outlook Live** – Federal Reserve webinars on consumer compliance topics
 - [Archives \(consumercomplianceoutlook.org\)](#)
- **Community Banking Connections** – Federal Reserve publication and website dedicated to providing guidance, resources and tools for community banks
 - <http://www.communitybankingconnections.org/>
- **Interagency Fair Lending Examination Procedures**
 - <http://www.ffiec.gov/PDF/fairlend.pdf>
 - <http://www.ffiec.gov/PDF/fairappx.pdf>
- **Federal Reserve Consumer Help**
 - <https://www.federalreserveconsumerhelp.gov/>

Recent Redlining Enforcement Actions

Jennifer A. Slagle Peck, Trial Attorney / Detailee from the OCC

Civil Rights Division

U.S. Department of Justice

Combating Redlining Initiative

- On October 22, 2021, the Department of Justice announced an unprecedented, coordinated enforcement effort to combat redlining
- Since then, the Department has opened numerous redlining investigations, and settled four matters.
 - Cadence – Houston, TX
 - Trustmark – Memphis, TN
 - Trident Mortgage – Philadelphia, PA
 - Lakeland Bank – Newark, NJ
- The Department is working with US Attorneys' Offices and focused on building strong partnerships with regulators

Defining Redlining

- Redlining: an illegal practice whereby lenders discourage loan applications, or deny equal access to home loans and other credit services, or avoid providing home loans and other credit services to neighborhoods based on the race, color, or national origin of the residents of those neighborhoods
- Violates both the Fair Housing Act and the Equal Credit Opportunity Act
- Areas of focus to determine if a lender has redlined an area can include:
 - CRA assessment area / lender's service area
 - Statistical analyses
 - Branch locations and placement of mortgage loan officers
 - Marketing and advertising

Recent Redlining Enforcement Resolutions

- *CFPB & United States v. Trident Mortgage Company* (E.D. Pa.)
 - Complaint filed on July 27, 2022, available [here](#)
 - Consent Order entered on September 14, 2022, available [here](#)
- *United States v. Lakeland Bank* (D. NJ.)
 - Complaint filed on September 28, 2022, available [here](#)
 - Consent Order entered on September 29, 2022, available [here](#)

Trident

- Referral from the CFPB
- First DOJ redlining case against a non-depository institution
- Investigation was conducted jointly by DOJ, CFPB, and three state Attorneys General
- The state AGs also made allegations against Trident's affiliated real estate company, Fox and Roach
- Investigation uncovered emails circulated within the company that contained racial slurs and racist content

Trident – Statistics

- Application disparities
 - Statistically significant disparities in each year from 2015 through 2019 and across all years combined
 - Peers generated applications in high-minority census tracts (HMCTs) at a rate 2.5 times that of Trident
 - Trident’s applications in MMCTs and HMCTs were disproportionately from white borrowers
- Origination disparities
 - Peers generated loans in HMCTs at a rate twice that of Trident
- Trident knew of disparities but did not take meaningful action prior to the CFPB exam

Trident – Geography & Offices

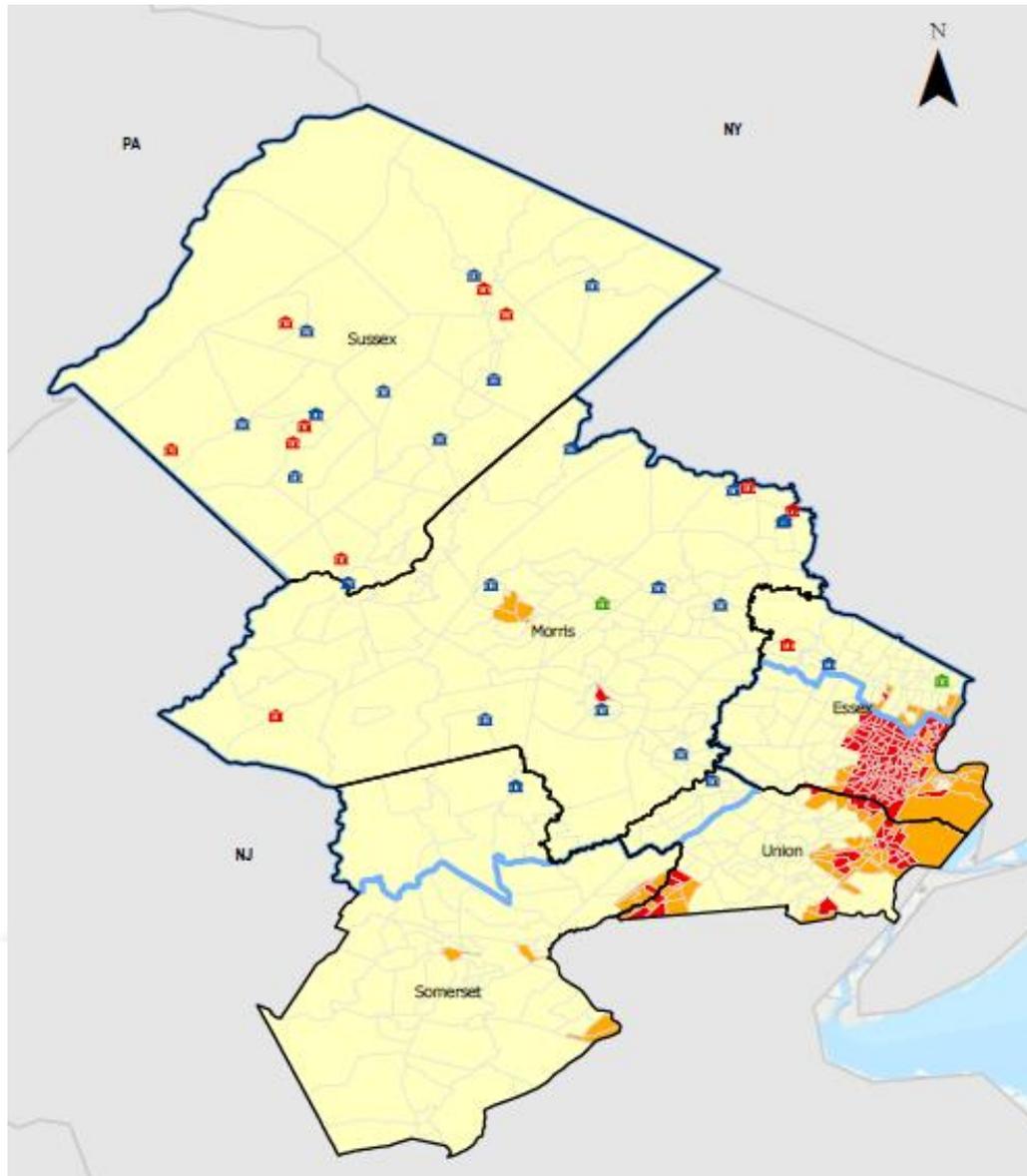
- 80% of Trident's lending was in the Philadelphia MSA
- Physical offices co-located with affiliated real estate company throughout the MSA
- 53 offices
 - 51 in majority-white areas
 - 2 in majority-minority areas
 - 0 in high-minority areas
- Trident did not assign any loan officers to solicit applications in MMCTs or incentivize the development of business in MMCTs
- No efforts to hire loan officers with ties to MMCTs

Trident – Terms of Resolution

- \$18.4 million in a loan subsidy fund targeted at majority-minority neighborhoods
- \$875,000 toward advertising and community outreach
- \$750,000 toward community development partnerships
- \$375,000 toward consumer financial education
- At least four office locations in majority-minority neighborhoods
- At least four loan officers assigned to majority-minority neighborhoods
- \$4 million civil money penalty to CFPB

Lakeland

- Independent investigation based on Attorney General's pattern-or-practice authority under the Fair Housing Act
- Allegations focused on a lending area based on geographical boundaries, Lakeland's Assessment Area, and the reasonably expected market area
- Statistical evidence demonstrated Lakeland's peers generated applications – and loan originations – in majority-Black and Hispanic areas at a rate 5 times that of Lakeland for the Relevant Time Period



Lakeland – Geography & Offices

- Lakeland's Assessment Area did not include the entire Newark MD
- Counties with MBHCTs were only included in part; MBHCTs were excluded
- No branches in an MBHCT

Lakeland - Marketing

- Lakeland relied on loan officers to develop referral sources and distribute marketing materials
- When Lakeland finally directed marketing efforts to MBHCTs, efforts were minimal and inadequate
- Lakeland knew of its redlining risk based on internal assessments but still failed to conduct meaningful outreach or marketing to potential applicants within MBHCTs

Lakeland – Terms of Resolution

- \$12 million in a loan subsidy fund targeted at majority-Black and Hispanic areas
- \$750,000 toward advertising, community outreach, and consumer financial education
- \$400,000 toward community development partnerships
- At least two new branches (including one in Newark)
- At least four loan officers assigned to majority-Black and Hispanic neighborhoods

Where to find us

www.usdoj.gov/fairhousing

For speeches, complaints, settlements, press releases, and ECOA reports to Congress visit:

<http://www.justice.gov/crt/housing-and-civil-enforcement-section>



Questions?