

February 4, 2022

David Bunton, President
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Dear David,

We wanted to thank you and your colleagues again for providing valuable insights for the [“Appraisal Standards and Appraiser Criteria Report”](#) (the “Report”), which was conducted and authored by the National Fair Housing Alliance (“NFHA”), Dane Law LLC, and the Christensen Law Firm (collectively, the “NFHA Consortium”). Your team responded promptly and thoroughly to every information request, which made for a richer, more fulsome Report. We appreciate your team’s efforts to work toward a fairer and more equitable appraisal system.

To that end, we wanted to clear up a few troubling criticisms that we’ve recently heard based on a statement that The Appraisal Foundation (“TAF”) shared with a HousingWire reporter and based on comments that you shared with The Appraisal Foundation Advisory Council (“TAFAC”) on January 28, 2022. There have been incorrect assertions regarding both the procedure and substance related to the Report. We will address each in turn. As mentioned in our last communication, we are happy to make ourselves available at any time to discuss any aspect of the Report or thoughts on appraisal reform.

Communications between NFHA and The Appraisal Foundation

TAF has stated that it is “disappointed that none of our board members who develop these standards and qualifications were interviewed as part of NFHA’s assessment.” Separately, you stated at the TAFAC meeting on January 28, 2022, that “no one from the Board of Trustees was interviewed.”

That statement appears to be misleading as we left it up to TAF to determine whom to include in the discussions. Moreover, NFHA Consortium staff did conduct discussions with board members. Below please find the sequence of NFHA’s interactions with TAF prior to the Report’s release on January 19, 2022.

- 10/25/2021-NFHA Consortium staff met with the following to discuss the scope of the project:
 - Kelly Davids, TAF SVP
 - Lisa Desmarais, TAF VP of Appraisal Issues.

- 10/26/2021-TAF was provided with a complete copy of the Request for Proposal to further understand the scope of the request.
- 10/26/2021-NFHA Consortium staff e-mailed TAF staff to set up a time for the interview, stating: “Of course, please feel free to invite any of your colleagues.”
- 11/1/2021-NFHA Consortium staff conducted an interview with the following TAF staff and board members, who were selected by TAF senior management:
 - David Bunton, TAF CEO, Board of Trustees President
 - Kelly Davids, TAF SVP
 - Lisa Desmarais, TAF VP of Appraisal Issues
 - Jeff Dickstein, Board of Trustees
 - Leigh Lester, Board of Trustees, Co-chair of the Special Committee on Diversity, Equity, and Inclusion
 - Jalin Debeuneure, Liaison for Diversity, Equity, and Inclusion Initiative
- 12/22/2021-NFHA Consortium staff briefed the following TAF staff and board members on the study (who were again selected by TAF senior management) and provided an opportunity for comment. A copy of the Report’s Executive Summary was provided in advance of the meeting. NFHA Consortium staff stated that they would be open to a conversation any time.
 - Board of Trustees:
 - David Bunton, TAF President
 - Jeremy Gray, 2021 Chair
 - Randall Kopfer, 2022 Chair
 - Dayton Nordin, 2022 Vice Chair
 - Appraisal Standards Board (which promulgates the Uniform Standards of Professional Appraisal Practice, also known as “USPAP” or the “Appraisal Standards”)
 - Tim Luke, 2022 Vice Chair
 - Appraisal Qualifications Board (which promulgates the Appraiser Qualifications Criteria, which is the criteria for entry to the profession; also known as the “Appraiser Criteria”)
 - Mark Lewis, 2021 Chair
 - John Ryan, 2022 Chair
 - Brad Swinney, 2022 Vice Chair
 - TAF Staff:
 - Kelly Davids, TAF SVP
 - Lisa Desmarais, TAF VP of Appraisal Issues
 - Amy Timmerman, Director of Communications
 - Aida Dedajic, Director of Engagement
 - JoEllen Alberts, Engagement Coordinator

NFHA Consortium staff did not receive any requests for follow up discussions or questions after the briefing on December 22, 2021.

Questions about The Appraisal Foundation's Legal Authority

In remarks to TAFAC on January 28, 2022, you stated that you “strongly disagree” with the Report’s questions about legal authority and that TAF’s authority is “clear.” There are definitely reasonable discussions to be had about the extent of TAF’s legal authority, but we do want to correct and distinguish two examples that you cited: the regulation of auditors under the Sarbanes-Oxley Act and the regulation of mortgage brokers under the SAFE Act. It appears that you mentioned these to provide support for the idea that there is precedent for Congress delegating rulemaking authority or industry oversight to private-sector entities. However, these two situations can be easily distinguished from TAF’s role in setting appraisal standards and appraiser criteria in several important ways.

The Sarbanes-Oxley Act and the Public Company Accounting Oversight Board

In 2002, Congress passed the Sarbanes-Oxley Act, which established the Public Company Accounting Oversight Board (“PCAOB”). 15 U.S.C. §§ 7211-7220. Prior to that, the accounting profession was self-regulated by its trade group, the American Institute of Certified Public Accountants. In response to mounting frustration with well-publicized accounting “restatements” of public companies (including Enron), Congress established the PCAOB as a non-profit corporation with the authority to oversee auditors in four areas: registration, inspection, standard-setting, and enforcement.

Although the PCAOB and TAF are both non-profit corporations with standard-setting responsibilities, the PCAOB and TAF are clearly distinguishable with respect to the extent of government oversight to which they are subject and the restraints on industry participation. For example:

- The U.S. Securities and Exchange Commission (“SEC”) appoints all five of the PCAOB’s board members, after consultation with the Chair of the Board of Governors of the Federal Reserve and the Secretary of the Treasury. 15 U.S.C. § 7211(e)(4).
 - Two board members, and only two board members, must be certified public accountants (“CPAs”). 15 U.S.C. § 7211(e)(2).
 - If the Chair of the PCAOB is one of the CPAs, he or she must not have been a practicing CPA for at least five years prior to appointment to the board. *Id.*
 - Each board member must serve on a full-time basis and may not be employed by any other person or engage in any other professional or business activity. 15 U.S.C. § 7211(e)(3).
- The SEC approves the budget, which is funded by fees paid by the companies and broker-dealers who rely on the audit firms overseen by the PCAOB. 15 U.S.C. § 7219(b).
- All rules require prior SEC approval. 15 U.S.C. § 7217(b)(2). The SEC can modify or overturn any PCAOB rule. 15 U.S.C. § 7217(b)(5).
- The SEC may enhance, modify, cancel, reduce, or require the remission of any sanction that the PCAOB imposes on a registered public accounting firm. 15 U.S.C. § 7217(c).
- The SEC may censure or impose limitations on the authorities of the PCAOB. 15 U.S.C. § 7217(d). The SEC may censure or remove any board member. *Id.*

By contrast, TAF's oversight by the Appraisal Subcommittee ("ASC") is limited to the ability to "monitor" or "review" TAF's activities. 12 U.S.C. § 3332(b). The ASC does not have the authority to appoint TAF's board members or limit any of TAF's functions. Moreover, TAF does not have any restrictions on industry participation. Indeed, TAF's bylaws require that a majority of its Board of Trustees be active industry appraisers. This industry majority then has the power to appoint those who write the Appraisal Standards and the Appraiser Criteria, which must be adopted by the 50 states.

The SAFE Act and the Conference of State Bank Supervisors

It is not clear why TAF would want to compare itself to the regulation of mortgage brokers under the SAFE Act, unless TAF is referencing the non-profit Conference of State Bank Supervisors ("CSBS"). The CSBS is a national organization composed of state bank supervisors dedicated to maintaining the state banking system and state regulation of financial services. Although the CSBS and TAF are both non-profit corporations, TAF's powers over appraisers can be easily distinguished from the powers of the CSBS in relation to mortgage brokers.

In 2008, in response to the financial crisis, Congress passed the Housing and Economic Recovery Act ("HERA"), which included the Secure and Fair Enforcement for Mortgage Licensing Act, also known as the "SAFE Act." 12 U.S.C. §§ 5101-5117. The SAFE Act was later amended by Sections 1061 and 1100 of the Dodd-Frank Act to transfer rulemaking authority to the Consumer Financial Protection Bureau ("CFPB").

The SAFE Act imposes certain licensing and registration requirements on "mortgage loan originators," which includes mortgage brokers. Under the SAFE Act, a mortgage loan originator who is employed by a covered financial institution must register and obtain a unique identifier. 12 U.S.C. § 5103(a). All other mortgage loan originators must obtain a state license as well as register and obtain a unique identifier. *Id.* The SAFE Act also sets forth the minimum criteria for obtaining a state license, which must be adopted by the states. 12 U.S.C. § 5104. Finally, the SAFE Act provides the CSBS with the authority to develop and maintain a "Nationwide Mortgage Licensing System and Registry" ("NMLS" or "Registry"). 12 U.S.C. § 5102.

TAF's role can easily be distinguished from the role of the CSBS. Unlike TAF, the CSBS does not set the minimum criteria for entry into the mortgage profession. The SAFE Act provides the minimum criteria and the CFPB has the authority to promulgate implementing regulations. *See* Regulation G (for registered mortgage loan originators, 12 C.F.R. Part 1007) and Regulation H (for state-licensed mortgage loan originators, 12 C.F.R. Part 1008). By contrast, TAF's Appraiser Qualifications Board sets the minimum criteria for entry into the appraisal profession without any federal government oversight. Moreover, although the CSBS has the authority to develop the Registry, the SAFE Act provides the CFPB with the backup authority to establish a new system if the Registry fails to meet the statutory requirements. 12 U.S.C. § 5108. For appraisers, the ASC (not TAF) maintains the national registry of state licensed and certified appraisers. 12 U.S.C. § 3332(a)(3).

In summary, while we encourage a broader discussion of TAF's legal authority, we do not think that the regulation of auditors or the regulation of mortgage brokers provides comparable

precedent for TAF's legal authority or structure. In conducting the research for the Report, the NFHA Consortium was unable to find any entity similar to TAF in terms of its broad, unregulated power and lack of restraints on industry participation.

Diverse Viewpoints for Drafting the Standards and Criteria

In remarks to TAFAC on January 28, 2022, you stated that TAF would try to recruit more civil rights, fair housing, and consumer groups to TAFAC and would continue to pursue its diversity and inclusion initiative. Both are laudable goals, but may miss the Report's broader recommendation to include more diverse viewpoints and carefully consider the impact on consumers when drafting the standards and criteria. While having more advocates on TAFAC may be helpful, their voices may be diluted by the presence of the 60 or so other industry trade associations and government entities already on that council. Moreover, TAFAC only has the power to appoint one trustee, while other industry "sponsors" who pay an application fee and make regular donations have the right to appoint one trustee each. Thus, the more significant influence seems to be at the sponsor level rather than at the council level.

Similarly, while increasing racial, ethnic, and gender diversity on the boards is commendable, the Report's recommendations focused on the lack of diverse viewpoints, particularly those of civil rights and consumer advocates. TAF's Board of Trustees has established a Task Force to Promote Board Diversity. At a public meeting of the Board of Trustees on October 21, 2021, the Task Force discussed the findings of a Diversity, Equity, and Inclusion ("DEI") consultant and a motion was passed to adopt the DEI consultant's recommendations. These are all welcome and commendable developments. However, in addition, we encourage TAF to be intentional about ensuring that diverse viewpoints, including those of civil rights and consumer advocates, are represented on TAF's boards in order to promote standards and criteria that serve the public interest.

The following chart (from page 42 of the Report) may help illustrate the concern with industry influence and the lack of diverse viewpoints, particularly those of civil rights and consumer advocates.

Appointment and Election of the Board of Trustees

APPOINTING/ELECTING ENTITY	POWERS	CURRENT MEMBERSHIP
Appraisal Sponsor -Must be an appraiser organization that meets the Appraisal Sponsor Criteria -Must be elected by ¾ of the Board of Trustees -Must pay an application fee of \$2,500 -Must make a financial donation (currently \$3,000)	<ul style="list-style-type: none"> Each Appointing Appraisal Sponsor has the right to appoint one trustee Each Nominating Appraisal Sponsor has the right to nominate one trustee for election at-large to the Board of Trustees 	Appointing Appraisal Sponsors (no more than 6): <ul style="list-style-type: none"> American Society of Appraisers American Society of Farm Managers and Rural Appraisers International Association of Assessing Officers International Right of Way Association Massachusetts Board of Real Estate Appraisers
Affiliate Sponsor -Non-profit with a demonstrable interest in the appraisal profession --Must be elected by ¾ of the Board of Trustees -Must pay an application fee of \$2,500 -Must make a financial donation (currently \$7,500)	<ul style="list-style-type: none"> Each Appointing Affiliate Sponsor has the right to appoint one trustee Each Nominating Affiliate Sponsor has the right to nominate one trustee for election at-large to the Board of Trustees 	Appointing Affiliate Sponsors (no more than 3): <ul style="list-style-type: none"> American Bankers Association Farm Credit Council National Association of Realtors
International Sponsor -Organization that meets the International Sponsor Criteria --Must be elected by ¾ of the Board of Trustees -Must pay an application fee of \$2,500 -Must make a financial donation (currently \$7,500)	<ul style="list-style-type: none"> Has the right to nominate one trustee for election at-large to the Board of Trustees 	Not available
Industry Advisory Council ("IAC") -Recommended by vote of current IAC members, approved by Board of Trustees -For-profit organizations with a demonstrated interest in the practical use of appraisals -Annual membership fee (\$2,500)	<ul style="list-style-type: none"> Has the right to appoint one trustee 	There are currently 38 for-profit organizations on the IAC.
The Appraisal Foundation Advisory Council ("TAFAC") -Selected by Board of Trustees -Not less than 20 organizations with a demonstrated concern regarding sound appraisal practices	<ul style="list-style-type: none"> Has the right to appoint one trustee 	There are currently 60 non-profit and governmental organizations on the TAFAC. The non-profits are industry trade associations; there do not appear to be any consumer advocates.
Board of Trustees	<ul style="list-style-type: none"> Not more than 10 trustees may be elected at-large by the Board of Trustees Of the at-large trustees, at least one must be from each of these categories: academia; consumer interest group; state-certified or licensed appraiser not affiliated with an Appraiser Sponsor 	Board of Trustees

Source: The Appraisal Foundation, Restated Bylaws (Nov. 16, 2019), <https://appraisalfoundation.sharefile.com/share/view/s11d4d879051545738887fa0015cad511>.

Areas of Agreement – with Additional Improvements

We were pleased to hear that The Appraisal Foundation sees several areas of agreement in the Report. That said, we wanted to ensure that The Appraisal Foundation’s upcoming initiatives or ongoing procedures fully consider the Report’s recommendations. Below are some of the areas of agreement and the Report’s recommendations for improvement.

Procedural Standards. TAF has stated that it engages in some procedural safeguards, such as providing public notice of exposure drafts. While this is helpful, we urge TAF to go farther by implementing the standards used by federal regulators such as the CFPB, including following the

mandates of the Administrative Procedures Act, providing free access to all materials, and considering the benefits and costs to consumers. We further urge TAF to codify these standards in the bylaws for both the Appraisal Standards Board and the Appraiser Qualifications Board.

Barriers to Entry. TAF has stated that it has created alternatives to the college degree and experience hour requirements. While helpful, we urge a more comprehensive review of each barrier to entry for potential disparate impact and less discriminatory alternatives. We also encourage TAF to facilitate a broader conversation about whether each current requirement is necessary, and, if so, the extent of each requirement.

Demographic Survey. TAF has stated it is engaged in a demographic survey of the profession. While that is critical to measuring progress, we have concerns that the surveys rely on self-selected responses over the Internet. We recommend that TAF engage in a systematic and scientific survey in order to gather accurate results.

We believe that this Report represents an opportunity for many stakeholders, including The Appraisal Foundation, to move toward a more transparent, repeatable appraisal process that is fairer for the whole of the housing market, including consumers of color. We look forward to collaborating with you on the important process of appraisal reform.

Sincerely,



Lisa Rice
President and CEO
National Fair Housing Alliance

cc: The Appraisal Subcommittee
David Byerman, Lead Consultant, Council on Licensure, Enforcement and Regulation
Susan Rice, Assistant to the President for Domestic Policy; Co-Chair, Interagency Task Force on PAVE
Marcia Fudge, Secretary of the U.S. Department of Housing and Urban Development; Co-Chair, Interagency Task Force on PAVE