

February 5, 2019

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Real Estate Appraisals: 83 Fed. Reg. 63,110 (Dec. 7, 2018)

To the Federal Banking Agencies:

The undersigned consumer, community and civil rights organizations write to urge your agencies to refrain from implementing your appraisal threshold adjustment proposal and to hold public hearings on this matter. We note that when your agencies last asked the Consumer Financial Protection Bureau for its opinion on a similar proposal, in 2017, “CFPB staff shared concerns about potential risks to consumers resulting from an expansion of the number of residential mortgage transactions that would be exempt from the Title XI appraisal requirement.”¹ Subsequently, your agencies declined to implement the 2017 proposal.²

Nothing relevant has changed since 2017. Appraisals remain a bedrock component of safe consumer lending. Mortgaging a home without the benefit of an appraisal that complies with the Uniform Standards of Professional Appraisal Practice (commonly known as USPAP) increases risk for the borrower, the lender, investors, the neighborhood where the home is located, and the economy as a whole. Moreover, it is premature for the banking agencies to raise the appraisal threshold. Congress recently expressed its view on modifications to the existing rule by adopting 12 U.S.C. § 3356, limiting the expansion to rural areas and only after attempting to obtain an appraisal.³ The banking agencies should determine the impact of implementing the more limited modification before creating an even larger exemption. The agencies also should examine exemption programs at the GSEs to determine overall effects as well as impacts on particular types of borrowers. These analyses should be thorough and the results should be made public.

¹ Federal Financial Institutions Examination Council, Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act at 36 (March 2017) (EGRPRA Report), available at https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.

² *Id.* (“Based on considerations of safety and soundness and consumer protection, the agencies do not currently believe that a change to the current \$250,000 threshold for residential mortgage loans would be appropriate.”).

³ See Public Law No. 115-174 § 103 (May 24, 2018), *codified as* 12 U.S.C. § 3356.

The recent foreclosure crisis reinforced the importance of having a good appraisal. The crisis was fed by weak loan origination practices and would not have been possible without shoddy appraisals. Lenders often incentivized appraisers to overstate the value of properties so the lenders could make inflated mortgages and quickly sell them on the secondary market. When borrowers had difficulty paying their loans, they could not sell or refinance because the true value of their homes left them underwater. When lenders foreclosed, they could not sell the properties for enough to cover the unpaid balance, leaving foreclosed borrowers with large deficiency judgments and neighborhoods devastated by blocks of vacant, deteriorating, and unsellable homes. These actions had a disparate impact on communities of color, destroying individual and community wealth, and contributing to trillions in lost wealth and the racial wealth divide.⁴

As a result, Congress amended the Truth in Lending Act and mandated reforms in appraisal practices. As implemented by the Bureau, these measures regulate the supervision of appraisers⁵ and prohibit lenders from extending credit when they know that an appraisal materially misrepresents the value of the consumer's principal dwelling. Creditors and settlement service providers are required to report any material failure to follow the USPAP by an appraiser.⁶ In addition, the regulations limit conflicts of interest and require reasonable compensation of appraisers. In light of the expanding use of automated valuation models (AVMs) to estimate property value, it is notable that the CFPB regulation defines a "valuation" to exclude estimates of value "produced solely by an automated model or system."⁷ The Dodd-Frank Act also included provisions regarding licensure of appraisers and appraisal management companies.⁸

Insufficiently accurate evaluations could particularly do a disservice to communities with more distressed areas. Local developers frequently report that AVMs often overvalue vacant properties that need to be rehabilitated. Other formula-based calculations such as After Rehab/Repair Value provide inaccurately low home valuations for rehabilitated properties in distressed communities. In fact, about a quarter of the National Community Stabilization Trust's developer partners cited this lack of accuracy as their biggest challenge in reselling rehabilitated homes to prospective homeowners. Neighborhoods with multiple vacant or abandoned properties often have depressed values until repairs have been made. Unlike in-person appraisals, non-appraisal evaluations are unable to take nuances and context into account, and their inappropriate use directly impacts community recovery and stability.

⁴ Center for Responsible Lending, 2013 Update: The Spillover Effects of Foreclosures (Aug. 19, 2013), available at <https://www.responsiblelending.org/mortgage-lending/research-analysis/2013-crl-research-update-foreclosure-spillover-effects-final-aug-19-docx.pdf>

⁵ See generally National Consumer Law Center, Truth in Lending § 9.4.2 (9th ed. 2015), updated at www.nclc.org/library (discussing the appraisal regulations issued under the Truth in Lending Act).

⁶ 12 C.F.R. § 1026.42(g)(1).

⁷ 12 C.F.R. § 1026.42(b)(3).

⁸ Pub. L. No. 111-203, § 1473, 124 Stat. 1376 (2010).

Whether overvaluation is caused by appraisal fraud or inaccurate AVMs, it is clear “that consumers may be harmed, sometimes grievously, when they take on more mortgage debt than their homes are worth.”⁹ It is now accepted that self-policing in the mortgage industry pre-2007 simply did not work.¹⁰ Maintenance of high appraisal standards for as many homeowners as possible is a bulwark against another market downturn.

Yet, the banking agencies have proposed replacing professional-quality, federally-regulated appraisals with loosely-defined “evaluations.” The standards for evaluations are weak and vague. They may be conducted by bank employees¹¹ and appear to allow reliance on AVMs so long as the evaluator also visits the property.¹² Bank employees do not have the same specialized training as appraisers. AVMs are also unregulated and lack consistent reliability, especially in certain areas.¹³ The proposal would be a dangerous return to self-policing and would expose thousands more borrowers and investors to shoddy origination practices and increased risk of foreclosure.

Some claim that the proposed change is necessary to alleviate a shortage of appraisers. But in reality, there is no nationwide shortage. According to data from the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, the total number of appraisers has generally kept pace with mortgage originations.¹⁴ While there has been a decline from the 2007 total, that decline mirrored the volume of originations. Closer examination shows that the decline was mostly among licensed appraisers—the lowest skill level. The decline was much smaller among certified residential appraisers and the number of certified general appraisers—the highest skill level—actually increased. Now that the Great Recession has ended, mortgage originations are still well below 2007 levels. But since 2015, the number of first-time exam takers for certified and licensed appraiser jobs has been growing.¹⁵ Additionally, in March 2018, the Appraisal Foundation lowered the requirements to become an appraiser, which should help

⁹ *McFarland v. Wells Fargo Bank, N.A.*, 810 F.3d 273, 280 (4th Cir. 2016) *citing* *McCauley v. Home Loan Inv. Bank, F.S.B.*, 710 F.3d 551, 559 n. 5 (4th Cir.2013) (finding in the context of a fraud claim that a borrower could be injured by an under-collateralized loan).

¹⁰ *See, e.g.*, William K. Black, Neo-Classical Economic Theories, Methodology, and Praxis Optimize Criminogenic Environments and Produce Recurrent, Intensifying Crises, 44 *Creighton L. Rev.* 597, 613-21, 637 (2011) (explaining that use of inflated appraisals by lenders was rampant, notwithstanding recourse through repurchase agreements); Kurt Eggert, The Great Collapse: How Securitization Caused the Subprime Meltdown, 41 *Conn. L. Rev.* 1257, 1283, 1287 (2009) (same).

¹¹ Supervisory Expectations for Evaluations, FDIC FIL-16-2016.

¹² 75 Fed. Reg. 77,449, 77,468 (Dec. 10, 2010) (Interagency Appraisal and Evaluation Guidelines).

¹³ *See* GAO, Residential Appraisals: Opportunities to Enhance Oversight of an Evolving Industry at 16 (GAO-11-653, July 2011) (“AVMs are generally not used as the primary source of information on property value for first-lien mortgage originations, due in part to potential limitations with the quality and completeness of the data AVMs use.”).

¹⁴ *See* Chart of Mortgage Origination Values and Appraiser Credential Trends (1992-2018) (on file with NCLC).

¹⁵ *See* Appraisal Foundation, First-Time Exam Administrations (2015-2018) (showing total of 973 in 2015, 984 in 2016, 1172 in 2017, 1189 through Oct. 2018, and projection of 1427 for 2018) (on file with NCLC).

increase the number of appraisers and the ease of finding one.¹⁶ While some rural areas may have a shortage of appraisers, the recent adoption of 12 U.S.C. § 3356 seeks to address that problem. In contrast, the change proposed by the banking agencies reaches beyond that issue and is more likely to harm consumers.

According to your proposal, the plan would exempt 72% of regulated transactions from the appraisal requirement.¹⁷ It appears that the main impact of the proposal will be on loans held in portfolio. While some lenders will continue to require an appraisal for mortgages up to \$400,000, others will likely opt out and permit an evaluation instead. Many contend that lenders who hold the risk on their balance sheets are less likely to engage in unsound or predatory activity. However, the incentive is inadequate to protect borrowers from the risks in not obtaining an appraisal. Quality appraisals are too important to become optional. Indeed, several large banks held unsafe loans in their portfolio in the lead-up to the housing crisis.¹⁸ The banking agencies should not open the door to the possibility of inflated appraisals re-emerging among segments of the market.

It has also been suggested that eliminating appraisals will benefit consumers by reducing the time and cost to close a loan. But neither of these alleged benefits outweighs the tremendous risk of purchasing a home without a proper appraisal. The average number of days to close a mortgage is 43, down from 48 in 2012.¹⁹ The banking agencies have provided no data showing that a switch from appraisals to evaluations would significantly reduce that average further. The agencies also lack data on the cost of appraisals, but using the range of appraisal fees currently authorized by the VA, the average appraisal costs \$638. That is only 26 basis points of a mortgage under the current threshold of \$250,000 and 16 basis points under the proposed threshold of \$400,000. Given that borrowers may still be required to pay for an evaluation, they would still pay a portion of that amount to get a mortgage. But even if borrowers paid nothing for a valuation, the savings do not justify the increased risk of an inflated valuation. If regulators are concerned about reducing closing costs, there are far more effective methods of doing so.

We urge your agencies to halt this process, hold public hearings and assess the data transparently. Not only do the causes of concern from 2017 remain, but recent Congressional action has favored a cautious approach to changing this threshold—providing exceptions only in limited circumstances, rather than the broad waiver the agencies propose. Your proposal not only

¹⁶ Kelsey Ramirez, HousingWire, Appraisal Foundation drastically reduces requirements to become an appraiser (Mar. 29, 2018) available at <https://www.housingwire.com/articles/42976-appraisal-foundation-drastically-reduces-requirements-to-become-an-appraiser>.

¹⁷ Table 2 of 83 Fed. Reg. 63,110 (Dec. 7, 2018).

¹⁸ See Eric S. Belsky and Nela Richardson, Understanding the Boom and Bust in Nonprime Mortgage Lending, Joint Center for Housing Studies of Harvard University (Sept. 2010), <http://www.jchs.harvard.edu/sites/default/files/ubb10-1.pdf> (stating that one of the roots of the crisis included, “the origination of mortgage loans with unprecedented risks through relaxation of mortgage underwriting standards and the layering of risk, especially in the private-label securities market *and in the portfolios of some large banks and thrifts.*” (emphasis added)).

¹⁹ EllieMae Origination Insights Report (December 2018).

does not provide reasonable protection for consumers, it also creates the potential for market risks.

Sincerely,

Americans for Financial Reform Education Fund
African American Health Alliance
Alaska Public Interest Research Group
Atlanta Legal Aid Society, Inc.
Calvin Bradford & Associates, Ltd.
Center for Responsible Lending
Cleveland Jobs with Justice
Coalition on Homelessness & Housing in Ohio (COHHIO)
Connecticut Fair Housing Center
Consumer Action
Consumer Federation of America
Havenwoods Economic Development Corporation
Housing and Economic Rights Advocates
IDA and Asset Building Collaborative of NC
Legal Services NYC
Local Initiatives Support Corporation
Metcalf Park Community Bridges, Inc.
Miami Valley Fair Housing Center, Inc.
Milwaukee Christian Center
Mountain State Justice, Inc.
NAACP
National Association of Consumer Advocates
National Community Stabilization Trust
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
New Jersey Citizen Action
North Carolina Council of Churches
Northwest Justice Project
Pisgah Legal Services
Prosperity Now
Public Citizen
Public Justice Center
Revolving Door Project
The Leadership Conference on Civil and Human Rights
THE ONE LESS FOUNDATION
U.S. PIRG
Virginia Citizens Consumer Council
Woodstock Institute