COMMENTS

to the

Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation

regarding

OCC Docket No. OCC–2018–0038, RIN 1557–AE57
FRB Docket No. R–1639, RIN 7100–AF30
FDIC RIN 3064–AE87

83 Fed. Reg. 63,110 (December 7, 2019)

Real Estate Appraisals

by the

National Consumer Law Center
on behalf of its low-income clients

and

Americans for Financial Reform Education Fund, Connecticut Fair Housing Center, Mountain State Justice, National Association of Consumer Advocates, National Community Stabilization Trust, National Fair Housing Alliance & National Housing Law Project

February 5, 2019

Table of Contents

Comments

> The enterprises, FHA, and lenders require and obtain appraisals for most mortgages because appraising is considered by mortgage industry participants to be the most credible and reliable valuation method. According to mortgage industry participants, appraisals have certain advantages that set them apart from other valuation methods. Most notably, appraisals and appraisers are subject to specific requirements and standards.
>
> Source: Government Accountability Office[1]

The National Consumer Law Center (NCLC) submits the following comments, on behalf of its low-income clients, along with the Americans for Financial Reform Education Fund, Connecticut Fair Housing Center, Mountain State Justice, National Association of Consumer Advocates, National Community Stabilization Trust, National Fair Housing Alliance, and National Housing Law Project.[2] These comments address the joint proposal by the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency (collectively, the agencies") to raise from $250,000 to $400,000 the threshold at which lenders must obtain an appraisal when originating residential mortgages.

---

[1] Gov't Accountability Offc., Residential Appraisals: Opportunities to Enhance Oversight of an Evolving Industry at 15 (GAO-11-653, July 2011).

[2] A description of these signatories is provided in the Appendix.

Summary: The agencies should not adopt the proposed threshold increase. Among other issues, the agencies have not obtained the information needed to properly evaluate the proposal; the proposal would eliminate important consumer protections; and the proposal is contrary to Congressional intent.

1. Introduction

Thank you for the opportunity to comment on the proposal to change the agencies' mortgage appraisal regulations. As discussed further below, we urge the agencies not to adopt the proposed increase and instead to work with the CFPB to collect needed data and hold public hearings before considering further changes.

Valuation of collateral is an important part of the mortgage loan origination process. Since Congress adopted Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) in 1989, appraisals have been a matter of federal regulation and they remain a topic of national importance. Although FIRREA allows the agencies to set a threshold below which lenders are not required to obtain a USPAP-compliant appraisal, the Act emphasizes that the threshold must not threaten bank safety and soundness and must give consumers reasonable protection.[3]

The proposal at issue, published on December 7, 2018, would increase from $250,000 to $400,000 the threshold level at or below which appraisals would not be required for residential real estate-related transactions.[4] The proposal also included related changes: It would require "evaluations" for transactions exempt under the threshold, and it would add

[3] *See* 12 U.S.C. 3341(b).

[4] 83 Fed. Reg. 63,110 (Dec. 7, 2018).

newly enacted 12 U.S.C. § 3356 to the list of transactions exempt from the appraisal requirement.

FIRREA's appraisal requirements apply to lenders regulated by the agencies and the National Credit Union Administration[5] (which has not joined this proposal). Under FIRREA, these regulators must require a real estate appraisal for certain transactions originated by a regulated entity.[6]

Each of the agencies has adopted rules implementing this FIRREA requirement.[7] The agencies' current rules exclude, *inter alia*, transactions insured or guaranteed by a U.S. government agency or U.S. government sponsored agency; transactions that qualify for sale to such agencies; and transactions in which the appraisal conforms to relevant Fannie Mae or Freddie Mac appraisal standard.[8] As a result, the rules predominantly apply to bank loans held in portfolio or sold to private investors.

The regulators may also exempt loans below a dollar-value threshold.[9] However, they must determine in writing that the threshold level does not pose a threat to the safety and soundness of financial institutions, and—since 2010—the Consumer Financial Protection Bureau must concur that the threshold provides reasonable protection for consumers buying 1–4 unit single-family residences.[10] The current threshold for institutions regulated by the agencies has been $250,000

---

[5] 12 U.S.C. § 3350(6).

[6] 12 U.S.C. § 3341(a).

[7] 12 C.F.R. Parts 34, 225, and 323.

[8] *See, e.g.,* 12 C.F.R. § 323.3(a)(9), (10).

[9] 12 U.S.C. § 3341(b).

[10] 12 U.S.C. § 3341(b), as amended by Dodd-Frank Act, § 1473(a), Public Law 111-203, 124 Stat. 2190.

since 1994.[11] The NCUA, however, decided in 1995 to retain the previous $100,000 threshold.[12]

In 2017 the agencies evaluated a similar proposal to raise the threshold to $400,000 but rejected it. According to their report to Congress, they did so for three reasons: a limited impact on burden reduction due to appraisals still being required for the vast majority of these transactions pursuant to the rules of other federal government agencies and the GSEs; safety and soundness concerns; and consumer protection concerns.[13]

Today those factors remain largely unchanged. In addition, given the importance of appraisals and the Congressional mandate to exercise caution, the agencies should not adopt the proposed increase because there is insufficient data to properly evaluate it. There has also been insufficient time to assess the recent changes Congress made to appraisal standards, including section 3356. The agencies and the Consumer Financial Protection Bureau should jointly implement a process to collect the needed data and then hold public hearings on setting the appropriate threshold.

2. The agencies lack the data needed to properly evaluate the proposed threshold increase.

The agencies propose exempting an estimated 214,000 additional mortgage transactions—$68 billion in volume—from the appraisal requirement.[14] Such an expansion should not be

---

[11] 59 Fed. Reg. 29,482 (June 7, 1994).

[12] 60 Fed. Reg. 51,889 (October 4, 1995).

[13] Federal Financial Institutions Examination Council, Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act at 35 (March 2017) (2017 EGRPRA Report), available at https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.

[14] 83 Fed. Reg. at 63,118.

made without adequate data showing that it will not pose a threat to the safety and soundness of financial institutions and will not expose consumers to unreasonable risks.[15] Based on the agencies' Federal Register notice, they lack sufficient data to properly evaluate the proposed increase.

In their notice, the agencies ask important questions. For example, they ask institutions about the cost of evaluations and appraisals;[16] about the time spent reviewing evaluations and appraisals;[17] and how often internal staff are used to prepare evaluations.[18] But, as explained in the following sections, there are many other important questions that are not asked or are inadequately discussed.

2.1 There is no discussion of which borrowers and communities will be most affected by the higher threshold.

Will there be a disproportionate impact on some parts of the country, some neighborhoods, or some racial groups? This information is important to ensure that no single group or region disproportionately bears the risk of a higher threshold, especially if accuracy is sacrificed. If the impact is limited to a small number of specific groups or regions, the risk concentration will be much higher than if the impact is spread evenly across the nation. HMDA data is not complete because it omits certain low-volume originators in rural areas.[19] Neither we nor the agencies were able to find more complete data.[20] And we were concerned to see that the agencies do not

---

[15] *See* 12 U.S.C. § 3341(b).

[16] 83 Fed. Reg. at 63,114.

[17] *Id*.

[18] *Id.* at 63,116.

[19] *Id.* at 63,113.

[20] *Id*.

discuss the question of whether there will be an unequal impact.

Experience in the field highlights potential concerns for low-income, urban homeowners. Advocates in the field have found that automated valuation models (AVMs) too often overvalue a property because the home is adjacent to gentrifying areas. In rural areas, advocates have found that comparable properties are often hard to identify and thus that AVMs are unlikely to be accurate. For homeowners with lower-value properties, the risk of overvaluation is heightened.

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 an outsized impact on communities of color, destroying individual and community wealth, and contributing to trillions in lost wealth and the racial wealth divide.[21]

The proposal would disproportionately affect borrowers of color, since homes in communities of color— especially

[21] 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.

African American communities—have tended to be of lower value than homes in white communities.[22]

2.2 The agencies appear to lack data on foreclosures and losses by loan amount.

The impact of this rule change will most directly affect loans with a principal balance between $250,000 and $400,000. But "the agencies do not regularly collect data on rates of loss for residential real estate by the size of loans. . . ."[23] This is critical data. Without it we are concerned that the agencies cannot reliably determine whether the proposed threshold will represent a threat to the safety and soundness of financial institutions.[24]

According to the agencies' proposal, they attempted to assess the rate of loss based on aggregate net charge-off data from call reports.[25] But such data is inadequate because it lacks the specificity needed to assess the proposed threshold. A net charge-off amount based on aggregate data could easily be skewed by the impact of loans not eligible for an appraisal exemption or exempt under other grounds.

---

[22] *See, e.g,* Andre Perry et al., The Devaluation of Assets in Black Neighborhoods (Brookings, Nov. 2018), available at https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf (homes in neighborhoods with 50% or more black population are valued at roughly half the price of neighborhoods with no black residents); Sarah Mikhitarian, Home Value*s Remain Low in Vast Majority of Formerly Redlined Neighborhoods* (Zillow Apr. 25, 2018), *available at* https://www.zillow.com/research/home-values-redlined-areas-19674/.

[23] *Id.* at 63,118.

[24] *See* 12 U.S.C.§ 3341(b).

[25] 83 Fed. Reg. at 63,118.

2.3 The agencies lack data on how often lenders currently use evaluations when permitted.

We are not aware of any reliable data on how often lenders avail themselves of the current exemption threshold. In support of their proposal, the agencies rely on the absence of losses under the current threshold.[26] But it appears that they are mistakenly assuming lenders now use evaluations where permitted.[27] If, on the other hand, most lenders use compliant appraisals even when not required by the agencies, that would mask the risk posed by increasing the threshold.

Notably, the FHFA Inspector General found, in a March 2018 sample of Fannie Mae appraisal waivers, that more than 90% of waivers offered were not accepted because the lender obtained an appraisal anyway.[28] It is not known whether lenders covered by the agencies' rule behave in a similar fashion. But if they do and later decide to maximize their use of the appraisal exemption by switching en masse to evaluations over appraisals, the rate of bank losses could increase sharply.

2.4 The agencies need data comparing the foreclosure rate for loans originated with appraisals versus evaluations.

Even if the proposed threshold does not threaten safety and soundness, it could still harm consumers through higher foreclosure rates. That is probably one reason that Congress amended FIRREA to require the agencies to obtain

---

[26] *See id*.

[27] *See id.* at 63,115 (stating "the agencies have long required evaluations in lieu of appraisals" but failing to include data on how many loans are actually made with an evaluation instead of an appraisal).

[28] FHFA, Office of Inspector General, An Overview of Enterprise Appraisal Waivers at 9 (WPR-2018-006 September 14, 2018). For Freddie Mac, that number was approximately 75%. *Id.* at 10.

concurrence from the CFPB that the threshold will adequately protect consumers. But if the foreclosure rate is higher for loans made with evaluations, that will show increased risk to consumers. Disreputable lenders have used inflated valuations to make larger loans—with larger percentage-based fees—in the belief that rising values will shield them or their investors from foreclosure losses.[29] As the last crisis showed, however, when values stop rising, borrowers are then trapped underwater and cannot refinance or sell. The agencies need to determine whether there is a correlation between the use of evaluations and foreclosures before considering any increase in the threshold.

2.5 Without independent data on the actual cost of appraisals and evaluations, cost savings cannot be a rationale for increasing the threshold.

The agencies cite cost as a factor in their decision,[30] but they cite no data on the cost of evaluations and only use a broad range of approved appraisal fees for VA loans.[31] In fact, the agencies admit that there is "limited information available on the cost of evaluations and appraisals . . . ."

The agencies' discussion of cost as a factor is also somewhat contradictory. One part of the notice says the "limited information available . . . suggests that there could be material cost savings in connection with the valuation of the property for regulated institutions and consumers where an evaluation, as opposed to an appraisal, is obtained."[32] But

---

[29] *See* James R. Hagerty & Ruth Simon, Inflated Appraisals Affecting Sales, Refi's, Chicago Tribune (Aug. 27, 2006) ("Inflated appraisals didn't matter much when home prices were rising at double-digit rates, since market values would quickly catch up."), available at http://www.chicagotribune.com/news/ct-xpm-2006-08-27-0608270282-story.htm.

[30] *See, e.g.,* 83 Fed. Reg. at 63,111, 63,114.

[31] *Id.* at 63,114.

[32] *Id*.

elsewhere the FDIC predicts that "the potential cost savings of using an evaluation rather than an appraisal" is unlikely to cause more than a negligible increase in lending activity for small institutions because the "potential cost savings of using an evaluation rather than an appraisal, represents between 0.05-0.15 percent of the median home price.[33]

We support the agencies' request for information about the cost of appraisals and evaluations. But if they cannot obtain independent and statistically reliable data supporting the anticipated cost-savings, the rule should not be adopted.

2.6 There is a dearth of independent data on how often appraisals delay mortgage transactions and whether using an evaluation instead would have eliminated the delay.

Because the agencies also cite delays and time-savings as a basis for raising the threshold,[34] the change should be supported by data substantiating the comments cited in the proposal. If the delays are limited to certain regions or transaction types, the agencies could tailor their regulation to meet those needs, as Congress did in 12 U.S.C. § 3356.

2.7 There is no data comparing the accuracy of appraisals, AVMs, and evaluations.

The agencies' proposal is clearly based on the idea that an evaluation is just as reliable as an appraisal, but they cite no research confirming that hypothesis. In reality, it is likely that evaluations will be primarily based on AVMs supplemented by a visit to the property. According to a 2011 report by the Government Accountability Office, "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

---

[33] *Id.* at 63,124.

[34] *See, e.g.*, 83 Fed. Reg. at 63,111, 63,114, 63,116.

use."[35] Insufficiently accurate evaluations could also do a disservice to communities with more distressed areas. According to the National Community Stabilization Trust (NCST), 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 NCST'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.

The Dodd-Frank Act directed the agencies, the NCUA, FHFA, CFPB, and the Appraisal Foundation to issue quality control standards for AVMs and regulations to implement them.[36] But they have not yet done so. Given the important role that AVMs likely play in the development of evaluations, the agencies should not expand the number of transactions using evaluations without first conducting a scientifically valid assessment of AVM reliability and issuing the quality control regulations mandated by Congress.

---

[35] Gov't Accountability Offc., Residential Appraisals: Opportunities to Enhance Oversight of an Evolving Industry at 16 (GAO-11-653, July 2011).

[36] 12 U.S.C. § 3354. These standards must be designed to (1) ensure a high level of confidence in the estimates produced by automated valuation models; (2) protect against the manipulation of data; (3) seek to avoid conflicts of interest; (4) require random sample testing and reviews; and (5) account for any other such factor that the agencies listed in § 3354(b) determine to be appropriate. *Id.*

2.8 There is no data on the impact of the recent adoption of 12 U.S.C. § 3356.

A 2018 amendment to FIRREA created a new exception to the appraisal requirement for loans of $400,000 or less. It applies only to properties in rural areas if the originator cannot obtain a timely appraisal after contacting at least three appraisers in the area. The agencies cite an appraiser shortage in rural areas as one reason for the threshold change,[37] and the new statutory threshold matches the threshold proposed by the agencies. Therefore the impact of section 3356 will be directly relevant to the proposed rule. The agencies should collect data on the loans made under section 3356 before granting a broader exemption to all regulated lenders.

3. Reliable appraisals are important for consumers and the economy.

An inaccurate valuation poses very real harm to residential mortgage borrowers. As the agencies themselves state "appraisals can provide protection to consumers by helping to ensure that the estimated value of the property supports the purchase price and the mortgage amount."[38] The typical consumer lacks the experience to accurately determine what a home is worth. One article from a lender website suggests that homeowners consistently think their homes are worth more than appraisers do.[39] An individual borrower who signs a mortgage that is based on an inflated valuation will immediately be "upside down"—owing more than the home is worth and in jeopardy of foreclosure or an inability to sell or refinance the home should the need arise later. For that reason, expanding permission to use lightly regulated

---

[37] *See, e.g.,* 83 Fed. Reg. at 63,121.

[38] *Id*. at 63,114.

[39] *See* Kevin Graham, Gap Between Homeowner Estimates and Appraisal Values Continues to Widen (Apr. 11, 2017), available at https://www.quickenloans.com/blog/gap-homeowner-estimates-appraisal-values-continues-widen.

evaluations instead of USPAP compliant appraisals presents an unreasonable risk for consumers.

We believe the agencies reached the right conclusion in 2017 when they decided against increasing the threshold.[40] Any decision to change that conclusion faces a high barrier, especially in light of the damage caused to consumers, lenders, and the national economy by shoddy underwriting practices a decade ago.

Inflating or falsifying real estate valuations is part of mortgage fraud and contributed to a national crisis of home foreclosures, reduced home prices, and widespread destabilization of the financial services sector.[41] These very real harms have been widely acknowledged by industry analysts, lawmakers, and law enforcement, and each of these players has made significant efforts to eradicate appraisal fraud in recent years via industry change, the Dodd-Frank Act, and an increased focus on investigation and prosecution of mortgage fraud.

The lending industry has a financial incentive to make big loans and to close them quickly. Even before the mortgage meltdown that led to the Great Recession, observers noted that, as a result, "property appraisals, perhaps the most critical step in the mortgage process, are not always conducted honestly."[42] Indeed, one expert described

---

[40] *See id.* ("Consumer protection considerations contributed to the agencies' reluctance to propose increasing the appraisal threshold . . . after the EGRPRA process.").

[41] *See* Hon. Benjamin B. Wagner, *Why Mortgage Fraud Matters,* U.S. Attorneys' Bulletin Vol. 58, No. 3 (May 2010), *available at* http://www.justice.gov/sites/default/files/usao/legacy/2010/05/27/usab5803.pdf

[42] David Callahan, Home Insecurity: How Widespread Appraisal Fraud Puts Homeowners at Risk (Mar. 2005), available at www.demos.org/publication/home-insecurity-how-widespread-appraisal-fraud-puts-homeowners-risk.

"[o]riginator sanctioned appraisal inflation" as "the dirty little secret of the lending industry."[43]

Lenders that hold their loans in portfolio are not immune from this problem. As a 2010 paper published by the Harvard Joint Center for Housing Studies observed, the roots of the last foreclosure crisis included, "the origination of mortgage loans with unprecedented risks through relaxation of mortgage underwriting standards and the layering of risk, especially in . . . the portfolios of some large banks and thrifts."[44]

Appraisal fraud can take various forms: a lender may ask an appraiser to value a home at the desired value;[45] a lender may commission several appraisals and use the one that confirms the desired price; a lender may pressure an appraiser to adjust an appraisal upward; or a lender may withhold payment

---

[43] Testimony of National Community Reinvestment Coalition Executive Vice President David Berenbaum before the Senate Committee on Banking, Sub-Committee on Housing, Transportation and Community Development at 10 (June 26, 2007), available at https://web.archive.org/web/20090103135213/http://www.banking.senate.gov/public/_files/berenbaum.pdf. *See also* McCauley v. Home Loan Investment Bank, F.S.B., 710 F.3d 551, 558-60, 559 n.5 (4th Cir. 2013) ("[l]enders have incentives to inflate the value of a home because the larger the loan, the larger the proceeds to the lender." (quoting appellant's brief with approval).

[44] 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.

[45] Federal regulators have expressly stated that banks should not provide information that "in any way suggest(s)" the property's value. Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions, OCC 2006-6 (March 22, 2005). Available at http://www.occ.gov/news-issuances/bulletins/2005/bulletin-2005-6a.pdf.

for an appraisal until its demand is met.[46] Fraudulent appraisals also often include superior comparable properties, which are used to bootstrap the value of the subject property.[47] Appraisal fraud during the housing bubble was widespread; the 2003 National Appraisal Survey reported that 55 percent of appraisers felt pressured to inflate property values. A 2007 report from Demos—a nonpartisan, public-policy group—indicated that, based on studies of appraisal fraud and inflation, "the deliberate manipulation of property values is pervasive."[48]

Borrowers who owe more than their homes are worth are unable to refinance or sell their homes. Some have suggested that struggling homeowners, who were unable to take advantage of low interest rates through refinancing or unable to sell and relocate, were forced to "strategically default" on their mortgages because it was the only way out.[49] Indeed, negative equity—even more than unemployment—is the most important predictor of default.[50]

---

[46] *Id*.

[47] FBI 2010 Mortgage Fraud Report, available at http://www.fbi.gov/stats-services/publications/mortgage-fraud-2010.

[48] Creola Johnson, Stealing the American Dream: Can Foreclosure-Rescue Companies Circumvent New Laws Designed to Protect Homeowners from Equity Theft?, 2007 Wis. L. Rev. 649, 679 (2007).

[49] Aleatra P. Williams, Foreclosing Foreclosure: Escaping the Yawning Abyss of the Deep Mortgage & Housing Crisis, 7 NW J.L. & Soc. Pol'y 455, 473 (Spring 2012).

[50] Testimony of Laurie S. Goodman, Senior Managing Director of Amherst Securities, before the House Financial Services Committee (Dec. 8, 2009), available at https://web.archive.org/web/20161227075744/http://www.financialservices.house.gov/media/file/hearings/111/goodman.pdf.

Compounding the problem is that appraisal fraud is one of the predatory lending practices that generally occurs in the subprime mortgage market, where many borrowers are encouraged by lenders to use the collateral in their homes for debt consolidation or other consumer credit purposes.[51] The vulnerability of borrowers with weaker credit histories in acquiring negative equity through a subprime loan is particularly severe; it may be very difficult, or impossible, for them to refinance their loans or to afford escalating monthly payments.

Inflated appraisals were at the root of the subprime mortgage crisis. As explained by the Honorable Benjamin B. Wagner in a bulletin to United States Attorneys, mortgage fraud led to a decline in real estate values, and as a result—

> securities backed by fraudulently obtained mortgages lost value. Foreclosures left houses empty and ill-kept, while their artificially inflated prices kept new buyers from buying them. Neighbors, who had seen their real estate tax bills increase steeply due to the inflated sales prices of the fraudulently mortgaged homes, found themselves surrounded by empty, decaying houses that invited crime. *In sum, the financial and human costs of the mortgage fraud crisis have been enormous.*[52]

The problem of widespread appraisal fraud led to the inclusion of appraiser independence requirements in the Dodd-Frank

---

[51] Allen Fishbein & Harold Bunce, *Subprime Market Growth & Predatory Lending,* part of "Housing Policy in the New Millennium Conference Proceedings" (2001), *available at* http://www.huduser.org/publications/pdf/brd/13fishbein.pdf. *See also* Creola Johnson, Fight Blight: Cities Sue to Hold Lenders Responsible for the Rise in Foreclosures and Abandoned Properties, 2008 Utah L. Rev. 1169, 1175 (2008).

[52] *See* Wagner, *supra* n.41 (emphasis added).

Act.[53] That provision of the Act made it unlawful to influence an appraiser to cause the appraised value of a property to be based on any factor other than the independent judgment of the appraiser, to mischaracterize the appraised value of property securing the extension of credit, to seek to influence an appraiser in order to facilitate the making or pricing of the transaction, or to withhold payment for an appraisal report or appraisal services when the report or services are provided in accordance with the contract.[54] The new federal guidelines have been recognized as "intended to ensure that home appraisals are accurate and realistic while preventing unscrupulous brokers from pressuring appraisers—whether by payments, threats or promises—to provide higher valuations."[55]

Law enforcement agencies have also stepped up in recent years to combat this problem. Indeed, mortgage fraud was one of the serious financial crimes that led President Obama to create the Financial Fraud Enforcement Task Force, which has as one of its "crucial components" the "Mortgage Fraud Working Group."[56] The nation's United States Attorneys are the driving force behind the Group's strategy, and use criminal prosecutions, civil enforcement and injunction actions, among

[53] 15 U.S.C. § 1639e.

[54] 15 U.S.C. § 1639e(b). *See also* 15 U.S.C. § 1639h (2012) (imposing appraisal requirements on lenders); 12 C.F.R. § 1026.42 (2011) (forbidding material misrepresentation of the value of a consumer's principal dwelling in a valuation).

[55] Beatrice Zagorski, How Does the Dodd-Frank Act Impact the Appraisal Process? (Dec. 14, 2011), available at http://www.mortgageorb.com/e107_plugins/content/content.php?content.10487.

[56] Berenbaum Testimony, *supra* n.43.

other tools, to detect and prevent mortgage-related fraud schemes.[57]

Industry organizations recognize the risk of appraisal fraud and potential harm to borrowers as well. The USPAP require that an appraiser "perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests."[58] The standards specifically proscribe accepting an assignment with a predetermined opinion, or communicating a misleading or fraudulent report.[59] Similarly, the National Association of Realtors "strongly supports the independence of appraisers and the appraisal process" and recognizes that "[c]ompromising independence impacts the quality of appraisal reports adding *risk for both consumers and lenders*."[60]

These policies are consistent with industry recognition that borrowers are fully *entitled* to rely on representations in appraisals.[61] The vast majority of appraisals are completed using the Freddie Mac and Fannie Mae Form, which states "The Appraiser certifies and agrees that: . . . The **borrower** . . . **may rely on this appraisal report** as part of any mortgage finance transaction that involves any one or more of these

---

[57] Wagner, *supra* n.41, at 2.

[58] Uniform Standards of Professional Appraisal Practice 2014-2015, *available at* uspap.org.

[59] *Id*.

[60] National Association of Realtors, *Issue Brief: Appraiser Independence* (Apr. 4, 2013) (emphasis added), *available at* http://www.realtor.org/appraisal/issue-brief-appraiser-independence.

[61] *See* Sage v. Blagg Appraisal Co., Ltd., 209 P.3d 169, 175 (Ariz. 2009) ("Our recognition of the duty owed by an appraiser to the buyer/borrower, moreover, is consistent with evolving industry standards that acknowledge that a buyer/borrower in fact relies on an appraisal prepared at the request of the lender.").

parties.[62] Fannie Mae's guidelines emphasize that lenders are not the only ones to rely on appraisals ordered by the lender. Borrowers should be able to rely on it too:

> The appraiser's certification . . . clarifies that the appraiser is accountable for the quality of his or her work to those who often rely on it as part of a mortgage finance transaction. The appraiser's accountability for the quality of his or her appraisal should not be limited to the lender/client and/or intended user identified in the appraisal report.[63]

The agencies' proposal to allow more loans without appraisals disregards recent experience and widespread acknowledgement that consumers are directly affected by whether the lender's appraisal is accurate. The proposal is also contrary to Congressional intent to require well-trained appraisers to conduct independent, reliable property valuations. Adopting the proposal would put both consumers and the broader economy at risk.

4. There have been no changes since the agencies decided against raising the threshold in 2017.

4.1 Overview of 2017 decision

In March 2017 the Federal Financial Institutions Examination Council issued a Joint Report to Congress under the Economic Growth and Regulatory Paperwork Reduction Act.[64] Under the

[62] Uniform Residential Appraisal Report ¶ 23 (Freddie Mac Form 70, Fannie Mae Form 1004 (March 2005), available at http://www.freddiemac.com/singlefamily/forms/sell/pdf/70.pdf (emphasis added).

[63] Fannie Mae, Single Family 2007 Selling Guide, pt. XI, ch. 2, ¶ 207 (Nov. 1, 2005), http://www.allregs.com/efnma/

[64] Federal Financial Institutions Examination Council, Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act (March 2017) (2017 EGRPRA Report), available at

Act, the FFIEC and its member agencies must jointly review agency regulations every 10 years and address whether any of them are outdated, unnecessary, or unduly burdensome.[65] The 2017 report discussed the appraisal threshold and was the result of a public notice and comment process.[66] Ultimately the agencies decided against raising the threshold from the current $250,000: "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."[67]

As explained in the report, this conclusion was based on a number of observations that are relevant to the pending proposal:

- "Raising the appraisal threshold for residential transactions in the Title XI appraisal regulations would have limited impact on burden," because the VA, FHA, GSEs and other federal entities separately impose their own appraisal requirements.[68]
- "The last financial crisis showed that, like other asset classes, imprudent residential mortgage lending can pose significant risks to financial institutions."[69]

---

https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.

[65] *Id.* at 1.

[66] *See id* at 28.

[67] *Id.* at 36. *See also* 83 Fed. Reg. at 63,114-63,115 (acknowledging, in the current proposal, that "[c]onsumer protection considerations contributed to the agencies' reluctance to propose increasing the appraisal threshold for residential real estate transactions immediately after the EGRPRA").

[68] 2017 EGRPRA Report at 35.

[69] *Id*.

- "The agencies recognize that appraisals can provide protection to consumers by helping to assure the residential purchaser that the value of the property supports the mortgage amount assumed."[70]

In addition, according to the report, "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."[71]

4.2 None of the factors underlying the 2017 conclusion have changed.

There is no evidence of any relevant change in the observations that led to the 2017 decision. According to the agencies, 2017 HMDA data showed that VA, FHA, GSE and other federal loans "account for more than 6 in 10 of all first-lien, single-family mortgage originations in the United States, a level considerably higher than the share in the years prior to the most recent financial recession."[72] That is still the latest HMDA data publicly available. According to the Urban Institute's more recent data, that breakdown has not significantly changed. It reports that during the first three quarters of 2018, 67% of mortgage originations came from the GSE, VA, and FHA programs—down only about 2% from 2017[73] and still a historically high level.

---

[70] *Id*.

[71] *Id.* at 36.

[72] 83 Fed. Reg. at 63,116.

[73] Urban Institute, Housing Finance at a Glance: A Monthly Chartbook, January 2019, available at https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-january-2019.

It also remains true that "imprudent residential mortgage lending can pose significant risk to financial institutions."[74] And, appraisals still "provide protection to consumers by helping to assure [them] that the value of the property supports the mortgage amount assumed."[75] The absence of any change in these factors show that there is no reason to change the agencies' 2017 decision.

4.3 Consumers should not be expected to buy their own, separate appraisals.

Some have suggested that consumers can voluntarily purchase their own appraisals, so consumer reliance is not a reason to compel lenders to obtain appraisals.[76] But that is a flawed argument for raising the threshold. While there is no data on how often consumers currently purchase their own appraisals, it is unrealistic to believe that the typical consumer will do so in the future. Consumers should be entitled to believe their lenders are acting rationally and desire an accurate valuation. Consumers should be allowed to rely on their lenders to obtain independent, reliable valuations.

Expecting consumers to buy their own, separate valuations also contradicts one of the premises of allowing evaluations instead of appraisals. The agencies assert that evaluations are cheaper and that a higher threshold will, therefore, benefit consumers. But if the cost of appraisals has a negative impact on consumers, that cost will also be a disincentive to consumers purchasing their own appraisals—especially when they must also pay for the lender's evaluations too.

5. Since the threshold was last increased, Congress has raised the bar for exceptions to the appraisal

---

[74] 2017 EGRPRA Report at 35.

[75] *Id*.

[76] *See, e.g.,* 83 Fed. Reg. at 63,115, 63,119.

requirement, so the agencies should require stronger evidence that their proposal poses no risk.

Since the agencies last raised the exemption threshold in 1994, Congress has adopted new laws emphasizing the importance of quality, reliable appraisals. The agencies' proposal to increase the threshold again does not recognize that Congress has raised the bar for exceptions to the appraisal requirement.

In 2008 Congress began to address the foreclosure crisis by passing the Housing and Economic Recovery Act of 2008.[77] HERA included provisions to protect appraiser independence and to require USPAP compliant appraisals for HOPE for Homeowner loans.[78] It also boosted the standards for other FHA appraisals.[79] In 2010 Congress passed the Dodd-Frank Act to mandate numerous additional improvements in the valuation of properties including the following:

- directing regulators to ban originators from "mischaracterizing or suborning the mischaracterization of the appraised value of [a] property";[80]
- requiring better consumer education materials regarding appraisals;[81]
- mandating appraisals for higher-risk loans;[82]
- mandating that consumers receive a copy of appraisals;[83]

[77] Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, 122 Stat. 2654 (July 30, 2008).

[78] 122 Stat. 2803-2804

[79] HERA, § 1404.

[80] Dodd-Frank Act, § 1403(a), Public Law 111-203, 124 Stat. 2190.

[81] *Id*. § 1450.

[82] *Id*. § 1471.

[83] *Id*. § 1474.

- improving the supervision of appraisers at the federal and state levels;[84]
- adding new regulations for appraisal management companies;
- creating a hotline for complaints about the violation of appraisal rules;[85] and
- prohibiting the agencies from raising the threshold unless the CFPB concurs that the new threshold "provides reasonable protection for consumers."[86]

As implemented by the CFPB, these measures 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.[87] In addition, the regulations limit conflicts of interest and require reasonable compensation of appraisers. In light of the expanding use of 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."[88] Appraisals are so important to the origination of consumer mortgages that the current versions of Regulation Z and its appendices mention appraisals and appraisers 480 times.[89]

---

[84] *Id*. § 1473.

[85] *Id.* § 1473(p).

[86] *Id.* § 1473(a).

[87] 12 C.F.R. § 1026.42(g)(1). *See generally* National Consumer Law Center, Truth in Lending § 9.4.2 (9th ed. 2015), updated at www.nclc.org.

[88] 12 C.F.R. § 1026.42(b)(3).

[89] Based on search of 12 C.F.R Part 1026 for text containing "apprais" (searched on Jan. 30, 2019 using www.ecfr.gov).

All of these changes show that Congress wants stricter regulation of appraisals than were permitted before the Great Recession. The emphasis on consumer protection is clear. The agencies cannot raise the exemption threshold unless the CFPB believes consumers will be adequately protected. And consumers must receive a copy of the appraisals associated with their loan application. There is also renewed emphasis on the use of USPAP-compliant appraisals by trained, independent appraisers.

This conclusion is not undermined by Congress's enactment of 12 U.S.C. § 3356 (described in § 8, *infra*) in December 2018. Congress thereby created a narrowly tailored exception to FIRREA's appraisal requirement. The enactment of 12 U.S.C. § 3356 it shows that Congress expects any exemptions to be narrowly tailored and targeted solely to areas where compliant appraisals are unavailable.

In contrast, the agencies' proposal seems to rely on the same standards and evidence used for pre-crisis threshold changes. This is a misinterpretation of the current state of the law and Congressional intent. Before raising the threshold, the agencies should do more than rely on the absence of harm from prior increases—especially due to the intervening foreclosure crisis. Instead the agencies should obtain the data outlined in § 2, supra and give greater consideration to the impact on consumer safety.

6. The agencies' proposal cannot be justified by reference to the GSEs' appraisal waiver program.

The agencies currently exempt from their appraisal rules all loans that are wholly or partially insured or guaranteed by, or eligible for sale to, a U.S. government agency or U.S. government-sponsored agency.[90] In essence, that means the agencies are depending on other government agencies and the

[90] *See* OCC: 12 CFR 34.43(a)(9) and (10); Board: 12 CFR 225.63(a)(9) and (10); and FDIC: 12 CFR 323.3(a)(9) and (10).

GSEs to adequately regulate the use of appraisals for the loans in which they are involved.

Given the volume of lending made under government-related programs, it is logical that their standards would influence the rest of the mortgage market. This effect may have influenced the agencies' decision to expand the exemption threshold. But there is an important difference between the GSEs' exemption rules and those of the agencies. The agencies are proposing a blanket exemption based on transaction value alone and merely recommend that lenders impose their own standards for when that blanket exemption should not be used.

In contrast, the GSEs offer exemptions after an automated loan-level review that uses multiple factors.[91] The GSEs' method is narrower, more carefully tailored, and relatively safer.

Before raising the threshold again, the agencies should consult with the GSEs to evaluate their waiver program. If the GSEs have found certain loans to be too risky to grant a waiver, the agencies should not grant a waiver for such loans either. As the agencies acknowledge, the number of loans made or guaranteed by the GSEs and other federal entities is at a historically high level.[92] If that percentage drops, more loans will shift to coverage under the agencies' exemption rules. Some lenders may even "shop" for the weakest standards by making loans under the agencies' blanket exemption rather than the GSEs' more tailored waiver program. If that occurs, it will increase the potential risk of loss for both consumers

---

[91] *See, e.g.,* Fannie Mae, Appraisal Waivers Fact Sheet (Dec. 4, 2018), available at https://www.fanniemae.com/content/fact_sheet/property-inspection-waiver-fact-sheet.pdf. *See generally* FHFA OIG, An Overview of Enterprise Appraisal Waivers (WPR-2018-006, September 14, 2018), available at https://www.fhfaoig.gov/Content/Files/WPR-2018-006.pdf.

[92] 85 Fed. Reg. at 16,116.

and lenders. While the agencies request comments on the risk this may pose to consumers, that is not enough because the general public is not privy to the information needed. The agencies should request input from FHFA, FHA, VA, and USDA.

The agencies should also not depend on the GSEs' waiver standards as a backstop. Currently, by automatically exempting all loans guaranteed or eligible for guarantee by the GSEs, the agencies abdicate their regulatory duties to FHFA and the GSEs. But that decision is dangerous because neither of those entities is required to consider bank safety and soundness or consumer protection. While the GSEs currently have stronger standards for appraisal waivers, the agencies should not assume that will always be the case. For that reason, the agencies should work with the GSEs to evaluate their waiver program and consider incorporating those rules directly into the agencies' rules as additional protections for all mortgages under the threshold.

7. By adopting FIRREA Title XI, Congress put authority for valuation standards in the hands of the Appraisal Foundation. Evaluations are not an adequate substitute for USPAP-compliant appraisals.

The agencies currently require an "evaluation" instead of an appraisal for all transactions below the existing threshold and propose extending that to the new threshold and transactions subject to 12 U.S.C. § 3356.[93] While evaluations are better than nothing, they are not an adequate substitute for an appraisal conducted by a qualified appraiser in compliance with the USPAP. The agencies' guidance for conducting evaluations is weak and vague; there are no requirements and no standardized methodology; and there is no education requirement. Because the agencies' provisions for evaluations

[93] *See, e.g.,* 12 C.F.R. § 323.3(b) (2018) (FDIC regulations; "For a transaction that does not require the services of a State certified or licensed appraiser under . . . this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.").

have been issued as guidance, it is not even clear to what extent they are mandatory.

Overall, the evaluation guidance gives lenders great discretion. As a result, it is possible that every bank in a community could produce evaluations differently and come up with different values for the same property. This could have negative consequences for lenders who may be tempted to lower standards for competitive reasons. And it could conceal discriminatory practices, thereby making fair lending laws harder to enforce.

Because there is no educational standard, the quality and accuracy of evaluations could vary dramatically. One lender could use an experienced, retired appraiser while another could use someone who failed the appraisal licensing exam. While the agencies have supervisory authority over lenders and could object to such an individual's qualifications, the ultimate decision would be subjective because there is no objective measurement of what constitutes sufficient knowledge of local market conditions or education. In contrast, state appraisal licensing laws provide clear guidance.

The evaluation guidelines are weaker than standard appraisal practices in other regards too. It is not necessary to inspect the property being evaluated.[94] While an inspection may not be necessary in rare circumstances, the agencies leave this decision to each bank's discretion. The guidelines also give lenders discretion to decide when a transaction is sufficiently risky to need an appraisal rather than an evaluation.[95] This includes setting their own guidelines for loan-to-value ratios,

---

[94] *See* Interagency Appraisal and Evaluation Guidelines, 75 Fed. Reg. 77,450, 77461 (Dec. 10, 2010) ("An institution should consider performing an inspection to ascertain the actual physical condition of the property and market factors that affect its market value.").

[95] *See id.* at 77,453.

atypical properties, and borrower-risk characteristics.[96] But that is the same kind of discretion that allowed faulty underwriting practices and steering in the past.

Overall, the decision to allow evaluations instead of appraisals gives lenders the type of discretion that has been abused in the past. Congress adopted Title XI of FIRREA to address that problem. Congress's solution was to require the agencies to adopt standards "in accordance with generally accepted appraisal standards as evidenced by the appraisal standards adopted by the Appraisal Standards Board of the Appraisal Foundation."[97] As the agencies raise the exemption threshold, that responsibility is increasingly transferred to the agencies themselves. Congress clearly intended for the agencies to adopt the Appraisal Foundation's standards in all but the rarest circumstances. Nullifying these standards for so many loans is contrary to Congressional intent.

8. The proposed rule would impermissibly override 12 U.S.C. § 3356 and would disadvantage rural lenders.

Congress recently amended FIRREA by adding a new exemption for transaction in rural areas.[98] Codified as 12 U.S.C. 3356, the amendment and the agencies' proposal overlap because both apply to loans up to $400,000. But there are also important differences, as discussed below.

Section 3356 waives the appraisal requirement for transactions in designated rural areas if (1) the transaction is valued under $400,000, and (2) if the lender has contacted at

[96] *See id.* at 77,460-77,461.

[97] 12 U.S.C. § 3339(1).

[98] Public Law 115–174, title I, §103, May 24, 2018, 132 Stat. 1299 (12 U.S.C. § 3356 *as codified*). *See* 83 Fed. Reg. at 63,111 n.1 (explaining that "Public Law 115–174 . . . provides that a Title XI appraisal is not required if the real property or interest in real property is located in a rural area[,] . . . the transaction value is $400,000 or less[,]" and meets other requirements.

least 3 licensed or certified appraisers but has not been able to obtain an appraisal "within 5 business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments . . . ."[99] Loans made without an appraisal subject to this exemption generally cannot be sold on the secondary market. They may only be transferred to another lender regulated by a federal banking agency—and then they must be held in portfolio.[100] By contrast, the proposed rule would eliminate the appraisal requirement for all loans under the $400,000 threshold, without any of these conditions.

Comparison of requirements for exemption from FIRREA appraisal requirement

12 U.S.C. 3356	Proposed Rule
Lender is regulated by one of the agencies	Same
Involves real estate in a designated rural area	No requirement
Transaction is for $400,000 or less	Same
Lender must have contacted at least 3 licensed or certified appraisers and has not been able to obtain an appraisal "within 5 business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments . . . ."[101]	No requirement
Loan may only be transferred to another lender regulated by a federal banking agency—and then it must be held in portfolio.[102]	No restrictions

[99] 12 U.S.C. § 3356.

[100] *Id*. There are additional exceptions for bank failures, mergers, and transfers to wholly owned subsidiaries.

[101] 12 U.S.C. § 3356.

[102] *Id*. There are additional exceptions for bank failures, mergers, and transfers to wholly owned subsidiaries.

It is unclear how the agencies' proposal would apply to transactions in rural areas covered by section 3356. The agencies' proposal would amend paragraph (a)(1) to exempt any "transaction that has a transaction value of $400,000 or less" from the requirement to obtain an appraisal. This proposed language appears to encompass all transactions that fall under $400,000, regardless of whether they are in rural or non-rural areas. If this reading is correct, then lenders in rural areas will, if the agencies adopt the proposal, be able to dispense with appraisals without first making three attempts to obtain an appraisal. That would nullify Congress's decision to create section 3356 just months ago.

New paragraph (a)(14) also exempts "transaction[s] exempted from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. 3356." This language does not appear to undo the regulation's nullification of section 3356. Instead, it appears that it merely creates a second, overlapping exemption for those transactions.

It is hard to imagine that Congress intended to create a narrow, targeted exemption for rural areas, only to have the agencies nullify the conditions Congress placed on that exemption. Allowing transactions in rural areas to proceed without meeting section 3356's requirements may violate federal law because Congress did not give the agencies authority to exempt anyone from section 3356. For comparison, 12 U.S.C. § 3341(b) explicitly authorizes the agencies to exempt some transactions from FIRREA's appraisal requirement.[103] The lack of similar language in section 3356 suggests that Congress did not give the agencies authority to create exemptions from its provisions. This is particularly likely because section 3356 itself defines a very detailed and narrow exemption.

---

[103] I.e. by setting the *de minimis* threshold that is the subject of the pending proposal.

One way to avoid nullifying the conditions that Congress created for waiver of the appraisal requirement in rural areas would be for the agencies to make the proposed $400,000 threshold in (a)(1) applicable only to non-rural areas. But that would put rural areas at a disadvantage, which would be inconsistent with Congress's apparent intent when it amended FIRREA in 2018.

The agencies do not address this issue in their notice but they should do so before finalizing the rule. The best solution is to abandon the proposed threshold increase. This would be the most logical decision because section 3356 demonstrates Congressional intent to limit the threshold increase to loans in rural areas that meet additional criteria. Congress is presumed to be aware of the agencies' authority to set an exemption threshold.[104] But section 3356 was adopted after that authority was enacted, after a recent foreclosure crisis fed by appraisal problems, and after Congress created new appraisal requirements through the Dodd-Frank Act. So section 3356 could be viewed as limiting the agencies' exemption authority to regions of the contrary with a proven shortage of appraisers. It must certainly be viewed as a sign that Congress wants guardrails on any rule waiving FIRREA's appraisal requirement.

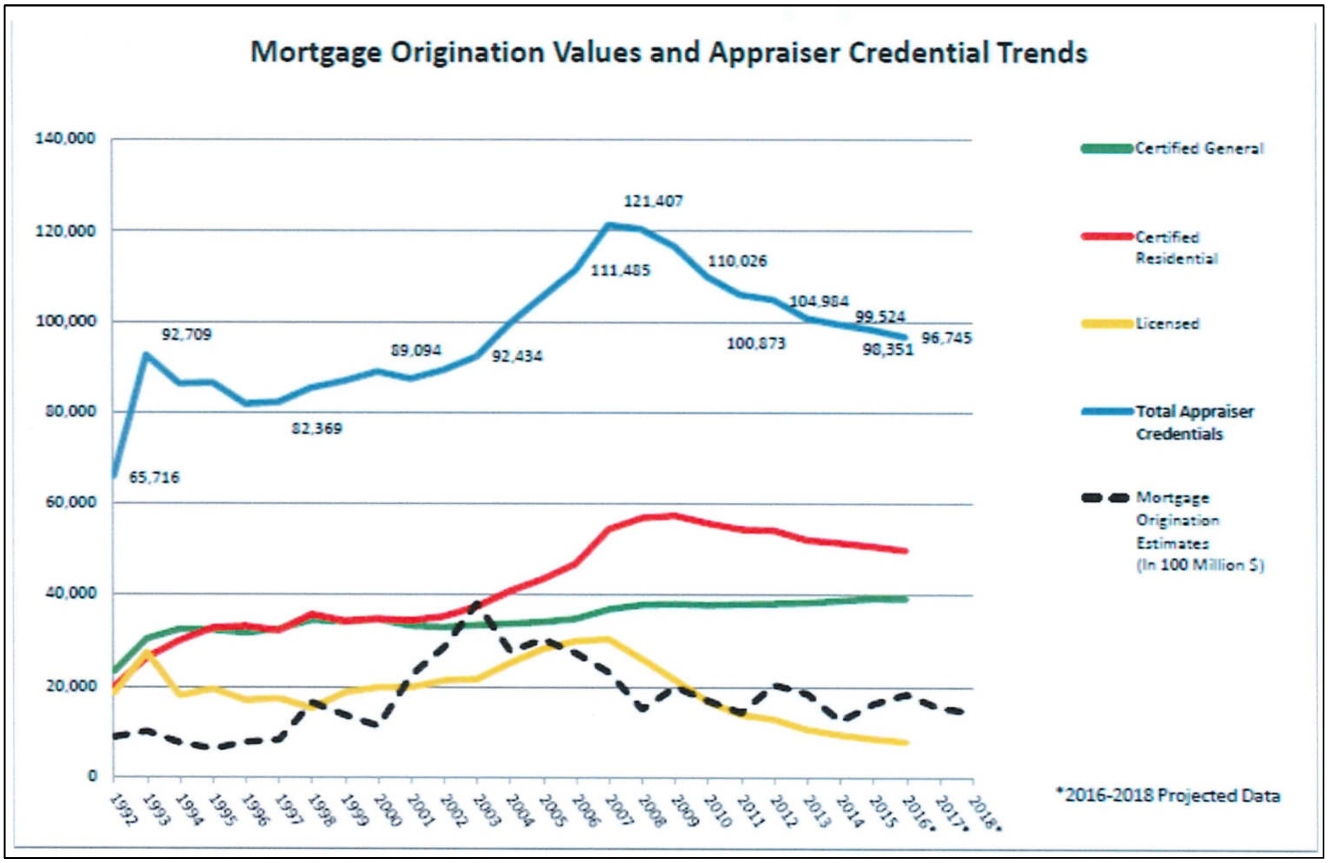
9. Nationally there is no appraiser shortage; any shortage is limited to a few rural areas, and that problem is addressed by 12 U.S.C. § 3356.

The agencies cite a shortage of appraisers as one reason for raising the threshold.[105] But the most recent national data shows that there is no 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.

---

[104] 12 U.S.C. § 3341(b).

[105] 83 Fed. Reg. at 63,121.



While there has been a decline from the peak number of credentialed appraisers, in 2007, that decline has mirrored the volume of originations. Now that the Great Recession has ended, mortgage originations are still well below 2007 levels. Closer examination shows that the decline in appraiser numbers has been mostly among licensed appraisers—the lowest skill level. The decline has been much smaller among certified residential appraisers and the number of certified general appraisers—the highest skill level—has actually increased.

As of September 2018, there are now more certified residential and certified general appraisers than there were in 2006, before the crisis.[106] And, since 2015, the number of

[106] Letter from The Appraisal Foundation to Conference of State Bank Supervisors dated Sept. 25, 2018 (on file with NCLC) ("Due to the real estate and mortgage finance boom of the early- to mid-

first-time exam takers for certified and licensed appraiser jobs has been growing.

Table: First-Time Test Administrations

License Level	Year				
	2015	**2016**	**2017**	**2018 (YTD)**[1]	**2018 Proj**[2]
Licensed Residential	169	175	260	268	322
Certified Residential	411	402	465	581	697
Certified General	393	407	447	340	408
Total	973	984	1,172	1,189	1,427

Source: The Appraisal Foundation

Additionally, in March 2018, the Appraisal Foundation lowered the requirements to become an appraiser, which should help increase the number of appraisers and the ease of finding one.[107] While some rural areas may have a shortage of appraisers, the recent amendment to 12 U.S.C. § 3356 seeks to address that problem. Overall, the claims of an appraiser shortage are exaggerated and do not provide a basis for increasing the threshold.

10. Conclusion

We urge the agencies not to adopt the proposed increase in the threshold. Instead they should work with the CFPB to collect needed data and hold public hearings before considering further changes. There are important unresolved questions regarding the impact of the agencies' proposals.

2000's, a great number of people began entering the appraisal profession. As a result, when the bubble burst in 2007-2008 there was an historic number of appraisers. Going back just two years prior, **there are more Certified Residential and Certified General active credentials today than there were in 2006**.") (Emphasis in original).

[107] *Id*.; Kelsy Ramirez, 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-appraiserb.

While we congratulate the agencies for requesting some of the information needed, other important issues have been left unaddressed.

11. Appendix of Signatories

The **National Consumer Law Center**® (NCLC®) is a non-profit Massachusetts corporation specializing in low-income consumer issues, with an emphasis on consumer credit. Since 1969, NCLC has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. NCLC publishes a series of consumer law treatises including *Mortgage Lending*, *Foreclosures & Mortgage Servicing*, and *Truth in Lending*. These comments are written by NCLC attorneys Andrew Pizor and Alys Cohen.

Americans for Financial Reform Education Fund (AFREF) is a nonpartisan, nonprofit coalition of more than 200 civil rights, community-based, consumer, labor, small business, investor, faith-based, civic groups, and individual experts. We fight for a fair and just financial system that contributes to shared prosperity for all families and communities.

Since 1994, the **Connecticut Fair Housing Center** has provided investigative and legal services to residents who believe they have been the victims of housing discrimination. The Center also has provided education and conducted outreach on fair housing and fair lending issues throughout Connecticut. In addition, the Center has worked with the State of Connecticut, cities, towns, housing developers, housing managers, and others to promote compliance with federal fair housing laws.

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

The **National Association of Consumer Advocates** (NACA) is a nonprofit association of more than 1,500 consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

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

Founded in 1988, the **National Fair Housing Alliance** is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights groups, and individuals from 37 states and the District of Columbia. Headquartered in Washington, DC, NFHA, through comprehensive education, advocacy and enforcement programs, provides equal access to housing for millions of people.

The **National Housing Law Project (NHLP)** is a non-profit law and advocacy center established in 1968 and based in San Francisco, California. NHLP is dedicated to advancing housing justice by using the power of the law to increase and preserve the supply of decent affordable housing, improve existing housing conditions, expand and enforce low-income tenants' and homeowners' rights, and increase opportunities for racial and ethnic minorities.