



MORTGAGE BANKERS ASSOCIATION

September 19, 2023

Board of Governors of the Federal Reserve System
20th Street and Constitution Ave NW
Washington, DC 20551
Docket No. OP-1809

Consumer Financial Protection Bureau
1700 G St NW Washington, DC 20552
Docket No. CFPB-2023-0033

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
RIN 3064-ZA36

National Credit Union Administration
1775 Duke St #4206, Alexandria, VA
22314
Docket No. NCUA-2023-0061

Department of the Treasury
Office of the Comptroller of the Currency
400 7th Street, SW Washington, DC
20219
Docket ID OCC-2023- 000

RE: Interagency Proposed Guidance on Reconsideration of Value (ROV) Process

To Whom It May Concern:

The Mortgage Bankers Association (MBA)¹ thanks the Board of Governors of the Federal Reserve System (the Board), the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) (together, “the Agencies”) for their consideration of industry feedback on the proposed guidance regarding lender policies and procedures for reconsiderations of value (ROVs).² MBA looks forward to

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

² Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations. Available at: <https://www.federalregister.gov/documents/2023/07/21/2023-12609/interagency-guidance-on-reconsiderations-of-value-of-residential-real-estate-valuations>

working in partnership with the Agencies to establish lender guidance and standardize borrower experience (and expectations) in the execution of ROVs, an important tool in ensuring accurate valuations.

ROVs are a valuable means for lenders and borrowers to remedy informational and methodological errors in the initial appraisal report. MBA notes that the proposed guidance asserts that ROVs are a tool in combatting the undue influence of bias in real estate valuations. MBA applauds the role fair lending laws have played in the evolution of our country's housing markets and believes that the influence of racial bias on real estate valuations must be addressed. MBA does not, however, see ROVs, solely by themselves, as the optimal avenue for addressing discriminatory valuations, whether actual or perceived, as discussed below.

Lending institutions should have clear, robust, and efficient policies and procedures for ROVs.

In acknowledgment of risks associated with deficient residential real estate valuations, MBA agrees lenders should incorporate clear, robust, and efficient ROV processes and controls into their established quality control functions.

MBA supports principles-based guidance from the Agencies outlining that lenders should provide clear communication to borrowers of the requirements for requesting an ROV, and the range of outcomes they can expect from an ROV request, including:

1. Outlining the types of information that may be sourced, presented, and shared in a ROV;
2. Use of clear, plain language;
3. Timelines;
4. Process milestones;
5. Who assumes cost (if any);
6. Range of possible outcomes from an ROV; and
7. Protocols for communicating results.

The guidance should not be prescriptive or specify the details of these communications, but only suggest that they be outlined in policies by each lender, at their discretion, and provided to the borrower accordingly.

MBA additionally agrees lenders should consider – and regularly review – whether any of their ROV requirements create an unreasonable barrier to requesting an ROV.

MBA does not see ROVs as the best tool for addressing allegations of discrimination.

The reconsideration of value process is, in MBA's analysis, an appropriate and valuable avenue to seek correction of informational or methodological deficiencies that do not relate to discrimination. This distinction between discrimination and non-discrimination-related deficiencies is important, as seeking to remedy a potential discrimination-related deficiency with the same appraiser who conducted the initial valuation (as would generally apply in the ROV process) is counter-intuitive and may establish an adversarial dynamic between the lender and appraiser that runs counter to the goal of establishing a correct and fair valuation. Instead, accusations of bias should trigger an alternative complaint process, either by way of an escalated ROV process and/or a review entirely independent of the ROV process.

Further, MBA has concerns with the inclusion of a broad provision that lender staff should be trained to identify all appraisals for deficiencies related to implicit bias. Appraisers are licensed professionals with specialized knowledge that lender employees simply do not and cannot be expected to have. Most lender/servicer employees, and certainly those in multiple branch offices and states, will not be familiar with the local neighborhoods of the properties at issue to recognize the indicia of implicit bias. As part of their reasonable vendor management and fair lending practices, lenders and servicers can, and should, train their staff in identifying *clear* indications of discrimination involving protected classes within the appraisal report and/or the valuation process itself.

It would be additionally appropriate for investors, insurers, and guarantors to develop software-based reviews for bias (language, patterns of undervaluation, patterns of comp selection, etc.) within their appraisal data portals or other appraisal analysis environments. If an appraisal is flagged within the data portal/analysis environment, lenders should take subsequent steps – such as a second appraisal and/or third-party appraisal review -- to mitigate the finding. AMCs and appraisal companies could similarly implement appraisal review systems to flag indicia of bias prior to submission. Again, ROVs, by themselves, may not be appropriate to yield the outcome envisaged by the borrower when addressing a discrimination complaint.

Other appropriate, and likely more effective, avenues to address and remedy discrimination include greater training and/or education requirements for appraisers as well as increased remediation or recourse options available to appraisal management companies (AMCs) in the event that evidence of bias is observed. It would additionally be appropriate for such observations, when substantiated, to be reported to the appraiser's certification or licensing body.

The Agencies should be mindful of how the Interagency Guidance could overlay with forthcoming investor, insurer, and guarantor guide updates.

In finalizing the Interagency Guidance, the Agencies should consult with the Federal Housing Finance Agency (FHFA), the Government Sponsored Enterprises (GSEs), the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA) and the Rural Housing Service of the United States Department of Agriculture (USDA) on potential conflicts in policy objectives. MBA is aware that these program administrators are also engaging in reviews of ROV policies and procedures.

The Interagency Guidance should be principles-based and *not* set requirements for:

1. Limits on the number of ROV requests a borrower/lender can make;
2. Limits on the number or constraints on the type of alternative comparative sales to be reviewed in relation to the ROV request;
3. Limits on the amount an appraiser can charge for an ROV request and which party is responsible for fulfilling the fee; and
4. Guidance on handling ROVs received after a loan application has been denied, or after the loan has been closed.

Focusing on a principles-based approach that broadly specifies the types of information needed and communications provided will allow the investors, insurers, and guarantors to dictate more specific limits and provide further compliance guides.

MBA has concerns with the framework outlined in the “Applicable Statutes, Regulations, and Guidance” section.

MBA agrees that discrimination that violates fair lending laws is categorically unacceptable and that all parties involved in the mortgage loan production process hold some responsibility for compliance and eradication of unlawful bias. It is critical, however, to design the system of fair lending review in a manner that takes into account the unique position of each party and the concomitant limitations of each role. MBA is concerned that, as addressed above, the proposed guidance conflates use of the ROV process for collateral risk management with use of ROVs as an additional prong required for satisfying a lender's anti-discrimination obligations. MBA and its members identify a crucial distinction between the two types of complaints. Addressing a borrower's accusation of the influence of bias would logically trigger a set of customer service, complaint, and remediation processes that would not include attempting to seek a reconsideration of value from the initial appraiser.

MBA is concerned that the proposed guidance may lend credence to unsettled interpretations of a lender's legal responsibility to review all independent valuations for implicit bias. The Agencies propose attaching anti-discrimination responsibilities and related procedural obligations to every appraisal review function, even though these valuations are produced by independent third parties.

While it is true that ECOA and the Fair Housing Act (FHA) prohibit discrimination in all aspects of residential real estate-related transactions, lender liability does not extend to third-party appraisals conducted by independent agents. In MBA's assessment, ECOA and the FHA do not extend discrimination review obligations to independent third parties that are not agents of, or under the direct control of, the lender. The extension of a lender's ECOA and FHA obligations to apply to oversight of third-party independent agents (in this case, appraisers) is a legal interpretation that is contrary to the underlying statutes and existing precedent.

Additionally, Appraisal Independence Requirements (AIR) were very intentionally designed to ensure the integrity of real estate appraisals and prevent "value shopping." This applies equally to both over- and under- valuation.

To the extent this proposed guidance is providing a novel statutory interpretation, it should be noted that guidance of this sort is insufficient to establish new regulatory requirements related to fair lending or offer a new interpretation of the core fair lending statutes.

MBA is concerned, additionally, that the Agencies propose using the lender's obligation to review appraisal reports for compliance with USPAP as a vehicle for legal recourse against the lender for discriminatory actions by independent third parties. USPAP standards are controlled by the Appraisal Standards Board (ASB) of The Appraisal Foundation, a private organization that has little government oversight. It is inappropriate to rely upon *lender* review for USPAP, a standard set by a private body, as a vehicle for enforcing independent *appraiser* violations of fair lending law. Review of an appraisal for compliance with industry standards does not – and should not – convert the appraiser into an agent of the lender.

Finally, for lenders who have existing contracts with Appraisal Management Companies (AMCs) for their appraisals, where:

- the AMCs employ a systematic review process that includes rooting out bias,
- the lender has performed sufficient due diligence on the AMCs' review processes as part of the lender's ongoing third-party risk management assessment and
- the lender employees are regularly trained to identify and remedy clear indications of discrimination,

There should be limited expectation that additional file-level review is necessary.

The Interagency Guidance should not be a predicate for an enforcement action.

MBA appreciates the opportunity to comment and the insight into the agencies' thinking provided by this guidance. We would emphasize, however, that such guidance is insufficient to establish new regulatory requirements related to fair lending, nor does it establish any binding interpretation of fair lending law such that failure to follow it would give rise to a violation. Thus, this guidance cannot and should not be a predicate for an enforcement

action should an institution choose to implement alternative ROV procedures and strategies.

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MBA thanks the Agencies for their work in guiding lenders toward a more standardized ROV process. Setting expectations for lender review of ROV requests will improve borrower experience and reduce risk of collateral misvaluation. Should the Agencies have further questions, please contact Hanna Pitz at hpitz@mba.org, or at (202)557-2796.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Mills", enclosed in a thin black rectangular border.

Pete Mills
Senior Vice President
Residential Policy and Strategic Industry Engagement
Mortgage Bankers Association