

From: S Gardner [REDACTED]
Sent: Tuesday, August 22, 2023 11:38 AM
To: Comments
Subject: [EXTERNAL MESSAGE] July 21, 2023 - Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations; Comment Request (RIN 3064-ZA36)
Attachments: Proposed ROV Comment6.docx; Appraisal or Evaluation Complaint Form Template.docx

[REDACTED]

Please post the attached documents as a public comment to the proposed Reconsideration of Value Guidelines.

Thank you,

Suzy Gardner

Date: July 7, 2023

To: 

RE: Proposed Reconsideration of Value Guidelines

Trusted Advisors GAP Services, LLC appreciates the opportunity to provide a public comment regarding the proposed Reconsideration of Value Guidelines (Proposed ROV Guidelines). While the Proposed ROV Guidelines address many aspects relative to ROV policies and processes for residential real estate credit, they unfortunately are silent on certain aspects of such credit as well as whether the Proposed ROV Guidelines are applicable to all other types of real estate secured transactions. The lack of guidance regarding these types of credit will result in significant variations in how these issues are interpreted and applied across the country. *Consumers, small businesses, the financial industry, and the valuation industry would benefit from additional clarification* pertaining to the following issues:

- 1) **Expand Application to Small Businesses, Corporations, Partnerships, and Trusts.** The language throughout the Proposed ROV Guidelines only references residential transactions. However, the Equal Credit Opportunity Act (ECOA) *applies to “any extension of credit, including extensions of credit to small businesses,¹ corporations, partnerships, and trusts.* (Small Businesses). We recommend the agencies include language regarding the application of the Proposed ROV Guidelines to such forms of credit; or, explain why ECOA’s regulatory requirement for credit to Small Businesses does not apply for the purposes of the Proposed ROV Guidelines. Addressing these issues in the Proposed ROV Guidelines would reduce uncertainty and ensure such borrowers can avail themselves of the ROV process.
- 2) **Broaden Application to All Types of Real Estate Credit.** The Uniform Standards of Professional Appraisal Practice (USPAP) expressly prohibits an appraiser from performing an appraisal with bias that pertains to protected characteristics. We recommend the agencies include language regarding the application of the Proposed ROV Guidelines to credit transactions secured by small businesses, multi-family, or commercial real estate; or, provide an explanation why this USPAP requirement does not apply for the purposes of the Proposed ROV Guidelines. Addressing these issues in the Proposed ROV Guidelines would reduce uncertainty and ensure such borrowers can avail themselves of the ROV process.
- 3) **Include Verbal Complaints.** While creditors providing enhanced disclosures relative to the availability of the ROV process will facilitate the complaint process, many applicants may decide not to file a written complaint or may allow themselves to be “talked out” of filing a written complaint due to concerns of possible retaliation. To avoid these situations, we recommend that the Proposed ROV Guidelines should encourage financial organizations to require trained staff that hear a verbal complaint considered to be a request for a reconsideration of value or an allegation of discrimination; or discrimination is suspected in a review of a valuation product; to file a written complaint on the complainant’s behalf.

¹ In 2023, the CFPB amended ECOA to define a “small business” as any business concern that had \$5 million or less in gross annual revenue for its preceding fiscal year. See <https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/>.

- 4) **Provide Examples of Material Error(s).** The Proposed ROV Guidelines say “An appraisal does not comply with USPAP if it relies on a prohibited basis set forth in either the ECOA or the FHA or contains “*material*” [emphasis added] errors including errors of omission or commission.”² We recommend the agencies include information from USPAP or other sources relative to what constitutes a “material” error(s). We also recommend the agencies provide examples of fact patterns that potentially may represent a material error(s) in the Proposed ROV Guidelines, which would benefit all real estate credit applicants, the financial industry, and the valuation industry. The fact patterns may discuss thresholds, percentages, and other relevant criteria that would better enable the financial industry to more consistently interpret and apply in determining whether there is a material error(s) in a valuation product.
- 5) **Expand “Consumer” Provided Information.**
- (a) ***Broadening Application from Appraisal Products Only.*** The Proposed ROV Guidelines only discuss consumer provided information that could affect the value conclusion or if deficiencies are identified in the original *appraisal*. This language does not address whether consumers can provide information relative to other valuation products, such as evaluations. We recommend the agencies state that the Proposed ROV Guidelines apply to any applicant or other party with a legal interest in the real estate related transaction that has a concern(s) about errors or discrimination in all types of valuation products to clarify this issue.
- (b) ***Permitting Information to be Provided by All Other Applicants for Real Estate Credit.*** The Proposed ROV Guidelines do not address small businesses, multi-family or commercial real estate credit applicants providing information that could affect the value conclusion or if deficiencies are identified in the original appraisal or other valuation product. We recommend the agencies state that the Proposed ROV Guidelines apply to all applicants concerned about errors or discrimination in all types of valuation products to clarify this issue.
- (c) ***Requiring Information Affecting Value Conclusion or Identifying Deficiencies.*** The Proposed ROV Guidelines state “additional review may be warranted *if the consumer provides information* that could affect the value conclusion or if deficiencies are identified in the original appraisal.” The plain English reading of this language requires the consumer to provide information supporting the allegation of a deficiency.

However, requiring the consumer to provide this information is inconsistent with the February 14, 2023, Statement of Interest³ that the United States Department of Justice (DOJ) filed in a pending lawsuit alleging the defendant violated the Fair Housing Act (FHA) by discriminating on the basis of race in connection to a residential home appraisal. *The defendants moved to dismiss for failure to state a claim, arguing that the plaintiffs failed to allege facts that make out a prima facie case* at this stage of litigation. With respect to the defendants’ prima facie argument, the DOJ contended, among other things, that the *FHA “simply requires that Plaintiffs allege a plausible entitlement to relief as a result of defendants’ ‘discriminatory housing practices.’”*

² Per the proposed ROV Guidelines, an error of omission is neglecting to do something that is necessary, e.g., failing to identify the subject property’s relevant characteristics. An error of commission is doing something incorrectly, e.g., incorrectly identifying the subject property’s relevant characteristics.

³ See <https://www.justice.gov/crt/case-document/file/1472031/download>.

We recommend the agencies revise the proposed language to clarify that a *financial organization may request and encourage, but not require, a consumer to provide information* that could affect the value conclusion or if deficiencies are identified in the original appraisal. The Proposed ROV Guidelines should alert financial organizations that dismissing or closing a complaint relative to a valuation product based on a consumer NOT providing supporting information could result in an apparent violation of the FHA.

While not a regulatory requirement, we recommend the Proposed ROV Guidelines to encourage financial organizations to apply similar treatment to other applicants seeking real estate secured credit. Such language would *create a process for all applicants requesting real estate related credit to raise potential errors or deficiencies in valuation products to the attention of the financial organization, promote enhanced communications, and improve the quality of valuation products.*

- 6) **Provide Resources to State Investigators.** A December 20, 2022 Evaluation Report⁴ by the Office of the Inspector General of the Federal Housing Finance Agency (FHFA) found that the “*FHFA has identified appraisal reports that contain evidence of valuation bias but has not filed complaints with the appropriate state appraiser licensing authorities to prompt investigations into potential noncompliance with USPAP.*” Filing complaints with state authorities and prompting investigations into potential noncompliance with USPAP is consistent with the purposes of the Fair Housing Act, the Administration’s policy set forth in executive order 13985, and with actions FHFA has taken to promote fair lending. Filing complaints also facilitates the investigation and enforcement framework established by FIRREA.”

The Evaluation Report recommends the FHFA ensure complaints are filed with the relevant state appraiser licensing authorities for each appraisal that contain evidence of valuation bias noted in a December 2021 review. The FHFA agreed with the recommendation, committing to ensure complaints are submitted to the relevant state appraiser licensing authorities for those appraisals. While not specifically addressed, it is reasonable to expect the FHFA will require the government sponsored enterprises (GSEs) to file complaints with the relevant state appraiser licensing authorities relative to potential valuation bias noted in appraisals received in the future, resulting in a significant increase in the number of complaints.

However, state appraiser licensing authorities may not be able to perform a timely review of an influx of complaints due to an insufficient number of trained investigators and a lack of access to data that facilitates investigating allegations of discrimination. We recommend the Appraisal Subcommittee grant funds to the state appraiser licensing authorities to hire and train additional investigative personnel. We also recommend the agencies provide state investigators access to non-public portions of the Home Mortgage Act information and data the GSEs maintain to enable them to review potential patterns or trends of discrimination relative to a specific property type and address.

⁴ See at <https://www.fhfa.ig.gov/sites/default/files/EVL-2023-001.pdf>.

7) **Implement a User-Friendly Standardized National Valuation Complaint Form.** All parties involved in a real estate credit transaction would benefit from the implementation of a user-friendly standardized national valuation complaint form. Such a form would facilitate applicants' understanding of the ROV process, gather data from all financial organizations in a standardized format, and better enable regulatory agencies identify potential discriminatory trends and effectively allocate their resources to address this important matter. To facilitate this process, we recommend the agencies adopt the attached modified version of the currently existing Interagency Appraisal Complaint Form. This form provides a user-friendly format that is designed to:

- Facilitate the complainant's ability to provide pertinent data in a consistent manner that could affect the value conclusion or if deficiencies are identified in the original valuation product;
- Assist financial organizations' completion of valuation related complaints; and
- Enable regulatory personnel to collect and review data that would enhance the identification of potential concerns and trends in valuation product and allocate regulatory resources appropriately.

8) **Address All Applicable Parties.** The DOJ SOI cited caselaw, which "found that *proper defendants for appraisal-related discrimination may include not only appraisers, but their employers and the lenders who relied on their valuations.*" In addition, a third-party valuation service provider, such as appraisal management companies (AMCs), fee-appraisers, mortgage brokers, mortgage servicers, and appraisal firms, or a financial organization that fails to comply with USPAP could result in the potential revocation of a valuation credential or an apparent violation of the regulatory agencies' Appraisal Regulations. We recommend the agencies further address these issues in the Proposed ROV Guidelines to ensure third-party valuation service providers and financial organizations understand the potential implications of providing and relying on inaccurate or discriminatory valuation products.

Many of these issues respond to the Proposed ROV Guidelines' question "What other guidance may be helpful to financial institutions regarding the development of ROV processes?" While the Proposed ROV Guidelines provide much needed guidance on the complaint process for valuation-related concerns, the agencies should recognize such enhancements will result in a longer and more costly process that ultimately could have a negative impact on consumers and other applicants seeking real estate secured credit.

We appreciate your consideration of these issues.

Sincerely,



Beverlea (Suzy) Gardner, Senior Examination Specialist, FDIC, retired; and Candida (Candi) Coleman, MAI, on behalf of Trusted Advisors GAP Services, LLC

Appraisal or Evaluation Complaint Form

Overview. The [Insert Name of Organization], hereafter “Bank”, adopted the format of the Interagency Appraisal and Evaluation Complaint Form,¹ hereafter “Complaint Form” for any party with a legal interest (which includes a personal interest, a financial interest, or an advisory role) in a real estate transaction (which include, but are not limited to, the applicant, real estate agent or broker, loan officer, or other Bank staff) can use to file a complaint, including discrimination or bias concerns, relative to an appraisal or evaluation report. The Complaint Form includes nine (9) sections. The first seven (7) sections request information regarding your complaint. Section 8 requests that you sign a certification regarding the accuracy of the complaint. Section 9 provides a template if you or your agent would like to submit alternative comparable sales. Section 10 lists information for contacting Federal regulators regarding your complaint.

Complaint Process. The Bank will review your complaint and provide you with a written response. The Bank will review and respond to all written complaints, including complaints that are not signed. Within five (5) business days of receiving a written complaint from any party with a legal interest in a real estate transaction or from Bank staff, the Bank will provide a written acknowledgement to the party named and to the address specified in the complaint that the Bank has (1) received the complaint, (2) is reviewing the complaint, and (3) will provide a written response summarizing the Bank’s findings on all issues raised in the complaint, along with the estimated timeframe for completing the review and the complainant receiving the response. The Bank’s written response generally will be provided within ten (10) business days. Please note the Bank may not be able to provide the resolution you request because of legal and other constraints.

Discrimination or Bias. If your complaint includes concerns regarding discrimination or bias² in an *appraisal report*, such concerns can be noted by checking the box for Non-compliance with the Uniform Standards of Professional Appraisal Practice in the Complaint Form’s section titled “What is the nature of your complaint? Check all that apply.” If you have concerns regarding discrimination or bias in an *evaluation report*, such concerns can be noted by checking the box for Other in the Complaint Form’s section titled “What is the nature of your complaint? Check all that apply.”

Description of Complaint. To facilitate our understanding of your complaint, you are encouraged, but not required, to provide brief supporting details regarding your concerns in the Complaint Form’s section titled “Describe your complaint.” Please do not include any confidential information that you do not want to be publicly available in your comments.

Additional Resources. Additional information on “Complaints Regarding Alleged Appraisal Bias/Discrimination,” filing an appraisal complaint, and the National Appraisal Hotline is available at <https://refermyappraisalcomplaint.asc.gov/>.

¹ See at <https://www.federalreserveconsumerhelp.gov/~media/Files/appraisal/appraisalComplaintForm.pdf>.

² The Equal Credit Opportunity Act (ECOA) “requires financial institutions and other firms engaged in the extension of credit to “make credit equally available to all creditworthy customers without regard to sex or marital status.” In keeping with the broad reach of the prohibition, ECOA covers creditor activities before, during, and after the extension of credit, which includes the property valuation process. Moreover, ECOA makes it unlawful for “any creditor to discriminate against any applicant with respect to any aspect of a credit transaction:

- (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);
- (2) because all or part of the applicant’s income derives from any public assistance program; or
- (3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.”

Other laws and regulations prohibit discrimination on other protected characteristics, including military status, sexual orientation, gender, gender identity, gender expression, familial status, and disability.

Appraisal or Evaluation Complaint Form

I. Your Information.

Name (First, Last or Business)

Telephone or Mobile

Address (City, State, Zip Code)

Email Address

II. Who are you? Please check the appropriate box.

- | | |
|---|---|
| <input type="checkbox"/> Individual Property Owner | <input type="checkbox"/> Mortgage Broker |
| <input type="checkbox"/> Business Property Owner | <input type="checkbox"/> Appraiser |
| <input type="checkbox"/> Financial Institution Lender | <input type="checkbox"/> Appraisal Management Company |
| <input type="checkbox"/> Non-Financial Institution Lender | <input type="checkbox"/> Other _____ |

III. Who are you complaining about? Check all that apply.

- | | |
|------------------------------------|---|
| <input type="checkbox"/> Appraiser | <input type="checkbox"/> Appraisal Management Company |
| <input type="checkbox"/> Lender | <input type="checkbox"/> Other _____ |

Are you employed by the subject of your complaint? Yes No

IV. Please provide information regarding the person or entity you are complaining about. If more than one, please provide information in the "Describe your complaint" section, below.

Name (First, Last or Business)

Telephone or Mobile

Address (City, State, Zip Code)

Email Address (if available)

V. What is the nature of your complaint? Check all that apply.

- Errors or omissions in an appraisal or evaluation report
 - Physical Errors.** Physical errors, such as square footage, room count, etc.
 - Scope of Work.** Change(s) needed in Scope of Work due to acreage changes, additional buildings, etc. NOTE: A change in Scope of Work from the original appraisal report is considered a new assignment under USPAP and cannot be completed through the dispute process. A new appraisal must be ordered with the new conditions.
 - Adjustments.** Adjustments to comparable sales were excessive or inconsistent.
 - Improvements.** Substantive remodeling or renovations or improvements were not considered.
 - Income Approach.** Errors in rents, lease expirations, expenses, capitalization/discount rate, etc.
 - Comparable Sales.** Other appropriate alternative confirmed comparable sales (Please list in "Proposed Alternative Comparable Sales" section) are available that were not used and are:
 - Within the subject property's market area,
 - Closed no more than one (1) year from the date of the pending application (prefer within six (6) months for residential property), but prior to the effective date of the appraisal or evaluation report,
 - Within a similar distance or closer to the subject property as the comparable sales in the appraisal or evaluation report, and/or
 - Reasonably comparable in room count, square footage, usage, or other significant amenities.
 - Other.** _____

- Appraiser independence***
- Non-compliance with Uniform Standards of Professional Appraisal Practice (USPAP)***
 - Ethics Rule.** Ethics Rule includes concerns about discrimination or bias on a protected basis.
 - Standards Rule.** (Please list.) _____
- Improper (or attempted improper) influencing of an appraiser or evaluator***
- Removal/Exclusion from approved appraiser/evaluator list or addition to a “do not use” list**
- Appraisal or evaluation fee related issue**
- Other** _____

* For more information on appraiser independence, the Uniform Standards of Professional Appraisal Practice (USPAP), or improper influence, see <http://ReferMyAppraisalComplaint.ASC.gov>.

VI. Please provide information regarding the person or entity you are complaining about. If more than one, please provide information in the “Describe your complaint” section, below.

Type of Property

Residential 1-to-4 Family

Commercial or Multi-Family (over 4 units)

Address of Property Involved

Have you tried to resolve your complaint with anyone? Yes No

If Yes, date of contact: _____ Who did you contact? _____

In what city or branch location, or what company or government agency? _____

VII. Describe your complaint.**

Comments

CONFIDENTIAL

** You may provide an electronic document that describes your complaint. Please do not include any confidential information that you do not want to be publicly available in your comments.

VIII. Certification. I certify that I am the named individual or business (or their designee) filing this complaint and the information in this complaint is true and correct to the best of my knowledge and belief.

Signature

Date

Proposed Alternative Comparable Sales

Please list alternative comparable sales and supporting information. In the comments section or in an attachment, please explain the rationale why these comparable sales are considered better alternatives than one or more of the comparable sales in the appraisal or evaluation report. Please reference any additional supporting documents that will be attached to the complaint.

Proposed Alternative Comparable Sale #1:

Property Address Address			
City City	State State	Zip Zip	
Sales Price Sales Price		Date of Sale Sale Date	
Type Property Type	Total SF GBA	Actual Age Age	Site Size Acres
Data Source Data Souce			
APN / MLS# (if available): Ref. Number			
Comments – Include why is this considered a better alternative sale: Comments			

Proposed Alternative Comparable Sale #2:

Property Address Address			
City City	State State	Zip Zip	
Sales Price Sales Price		Date of Sale Sale Date	
Type Property Type	Total SF GBA	Actual Age Age	Site Size Acres
Data Source Data Souce			
APN / MLS# (if available): Ref. Number			
Comments – Include why is this considered a better alternative sale: Comments			

Proposed Alternative Comparable Sale #3:

Property Address Address			
City City	State State	Zip Zip	
Sales Price Sales Price		Date of Sale Sale Date	
Type Property Type	Total SF GBA	Actual Age Age	Site Size Acres
Data Source Data Souce			
APN / MLS# (if available): Ref. Number			
Comments – Include why is this considered a better alternative sale: Comments			

Contact Information³ for Federal Regulators for Appraisal and Evaluation Complaints

Federal Deposit Insurance Corporation (FDIC) Consumer Response Center

1100 Walnut Street, Box #11

Kansas City, MO 64106

Website: <http://www.fdic.gov/consumers/loans/appraisals/index.html>

Phone: 877-275-3342

Federal Reserve Board Consumer Help

PO Box 1200

Minneapolis, MN 55480

Website: <https://www.federalreserveconsumerhelp.gov/?District=13>

Phone: 888-851-1920

Comptroller of the Currency (OCC)

Customer Assistance Group

1301 McKinney Street

Suite 3450

Houston, TX 77010

Website: <http://www.helpwithmybank.gov>

Phone: 800-613-6743

Consumer Financial Protection Bureau (CFPB)

PO Box 2900

Clinton, IA 52733-2900

Website: <https://www.consumerfinance.gov/complaint/>

Phone: 855-411-2372



³ Refer to <https://refermyappraisalcomplaint.asc.gov/resources/financial-institutions> for more information regarding which Federal Regulator to contact due to concerns with an appraisal or evaluation report.