American Bankers Association

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February 5, 2019

Ann E. Misback, Secretary,
Board of Governors of the Federal Reserve System,
20th Street and Constitution Avenue, NW.,
Washington, DC 20551
Re: Docket No. R-1639 and RIN 7100; Real Estate Appraisals
Email: regs.comments@federalreserve.gov

Mitchell E. Plave, Special Counsel
Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency,
400 7th Street, SW., Suite 3E-218, Mail Stop 9W-11,
Washington, DC 20219
Re: Docket ID OCC-2018-0038; Real Estate Appraisals
Email: regs.comments@occ.treas.gov

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Re: FDIC RIN 3064-AE87 – Real Estate Appraisals
Email: Comments@FDIC.gov

Re: Request for Comments on Proposal to Increase the Real Estate Appraisal Threshold

Dear Ms. Misback and Messrs. Plave and Feldman:

The American Bankers Association ("ABA")[1] appreciates the opportunity to provide comments on the Joint Agency Proposed rule on Real Estate Appraisals.[2] In this proposal, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (the "agencies") are inviting comment on a proposal to amend regulations requiring appraisals of real estate for certain transactions. The proposal would increase the threshold level at or below which appraisals would not be required for residential real estate transactions from $250,000 to $400,000. The proposal would also continue to require

1 1 The American Bankers Association is the voice of the nation's $17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits and extend nearly $10 trillion in loans.

2 83 FR 235

evaluations that are consistent with safe and sound business practices for transactions exempted by the increased threshold.

ABA commends the work of the agencies in analyzing the impact of these regulatory changes on the safety and soundness of the banking industry, as well as the agencies' attempts to minimize systemic risks. These proposals are of particular importance as residential real-estate-secured transactions impacted by these changes are loans originated for the bank's own portfolio. ABA acknowledges the need for the agencies review of the various house price indices over the last 25 years, from 1994 to 2019, and generally agrees with the agencies' review which reflects a strong, yet conservative value that protects against inflation in the proposed increase level set at the threshold of $400,000. This proposed change will help smaller community banks keep pace with the strong competitive pressure posed by growing secondary market appraisal waivers. ABA members support the proposal for the less risky portfolio loans of 1-to-4 family residential loans. The uniqueness of each individual bank's lending structures will be enhanced by the optionality a higher threshold of $400,000 will provide to serve various markets. ABA strongly encourages the National Credit Union Association (NCUA) to mirror the current standards set and those proposed by the joint agencies to provide unified appraisal standards and transparency in the marketplace[3].

General Comments

ABA believes that the first priority that must be considered is the continued protection of banks by the implementation of strong risk management practices. We therefore support the higher threshold as proper valuations would be assured through internal and external valuations and the advancement of tech-based solutions that continue to improve and serve the needs of housing solutions in the marketplace. Our members are fully examined depository institutions and have the risk management controls in place to manage these changes responsibly. Also, as industry changes continue to advance with FINTECH advancements, we expect continued innovation and a new direction in valuations and the appraisal formats to develop and evolve, as outlined in the July 31, 2018 U. S. Department of Treasury report to the President[4].

Growing challenges, including demand from consumers and struggles with turn-around times, have begun to push the search for technology and alternative paths to fill the needs of portfolio investors. We note that the Appraisal Foundation recently acknowledged the need to change training techniques, and methods.[5] At least one initiative will begin affecting practices positively in rural areas via its upcoming creative training alternatives for new appraiser initiatives, which was recently announced by the Appraisal Standard Board and will be rolled out in 2019/2020. This initiative, formally called the Practical Applications of Real Estate Appraisal (PAREA) will – among other things – establish an online virtual training center. "PAREA will provide an alternative method for appraisers to gain experience towards obtaining real property appraiser credentials by performing USPAP-compliant appraisals on real properties as well as

[3] ABA Comment Letter to NCUA on Real Estate Appraisals Dec. 3, 2018
[4] U.S. Department of the Treasury A Financial System That Creates Economic Opportunities Nonbank Financials, Fintech, and Innovation Report to President Donald J. Trump July 31, 2018
[5] Appraisal Buzz Jan. 29, 2019, AQB Helps Bridge the Gap

virtual properties via emerging classroom technology."[6] Appraisals, in turn, are expected to continue to evolve as hybrid appraisals and other online products take shape in the market.

Effective Risk Controls Currently Apply:

ABA believes that the agencies' proposals suggest workable solutions while also paying an appropriate level of attention to the relevant prudential concerns. Under the proposed rule, the increase in thresholds for requiring appraisals in residential transactions would be accompanied by the required implantation of effective risk-control measures by depository institutions. When institutions decide to forego obtaining an appraisal by state-certified or licensed appraisers, the rule would require that institutions obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices. This requirement will serve as an effective safeguard to the proposed threshold increase because alternative valuation methods can be highly reliable and assure accuracy via various approaches to value conclusions. Depository institutions currently have the experience, the procedures, and the practices in place to manage and evaluate real-estate-secured loans in their market areas, including risk management quality control systems to ensure the proper review is provided. The Appraisal Institute and The Appraisal Foundation have resources available via education tools to further enhance valuations and the review process for the banks.

The proposed increase in the residential real estate threshold to $400,000 will provide immediate relief to the challenges faced by banks as they continue to manage current challenges of shortages and lengthening turnaround times in many areas. Financial institutions will be able to control the process and the turnaround times, as well as the quality of the product to protect the risk within their own portfolios. As outlined in the proposed rule's preamble, these loans are -for the most part - not originated for sale in the market and the banks maintain prudent lending practices for their own portfolio risk.

Some banks report that they will continue to obtain USPAP compliant appraisals for all transactions, even if exempt, to either protect their portfolio or to meet investor demand; others - primarily portfolio lenders in rural areas, have unique challenges and are well versed in the use of alternative evaluations and their effectiveness – and will use evaluations effectively in their market areas. Although market competition could create pressures for evaluations to be performed in many more scenarios, this proposed threshold modification is being implemented only for federally regulated institutions. This ensures that existing risk management practices will mandate and dictate prudent usage.

Current Evaluation Tools Are Highly Reliable:

Depository institutions have access to, and currently employ, very accurate valuation tools. Our members perform valuations for residential portfolio transactions, home equity loans, and routine asset quality reviews. These valuations adhere to the interagency guidelines[7] and are assessed by

[6] National Board Adopts Revised Criteria for Real Property Appraiser Qualifications, Feb.1.2018

[7] Interagency Appraisal and Evaluations Guidelines, 75 FR 77450, at 77458 (December 10, 2010)

the prudential regulators during safety and soundness examinations. If the bank provides an internal evaluation for the transaction, the cost is usually borne by the bank. Third-party evaluations cost approximately 50 percent or less than appraisals, and often result in meaningful and immediate reductions in consumer costs. *ABA believes that existing regulatory oversight rules have the necessary safeguards to assure that depository institutions deploy proper control methods.*

Community Banks Are At Disadvantage:

Some of our portfolio lenders face ongoing concerns competing against the programs of Freddie Mac's Automated Collateral Evaluation[8] and Fannie Mae's Property Inspection Waiver[9] programs. Government Sponsored Enterprises ("GSEs") now allow the waiving appraisals on some originations that are eligible for sale. These programs apply to residential single-family purchase and refinance loans; in such transactions, the GSEs may no longer require that appraisals be performed. This poses strong price advantages to lenders that rely on GSE programs. The proposed increase in the residential threshold for regulated banks would level the playing field for small portfolio lenders—these institutions understand local property values and can well leverage the benefits of evaluations, which afford more competitive options against a full appraisal waiver.

The agencies also cite to Consumer Financial Protection Bureau (the "Bureau") views that appraisals can provide consumer protection benefits and their concern 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. Although there may be some ancillary consumer benefit to a bank-ordered appraisal, the reality is that, in real estate transactions, the appraisal is not ordered for the benefit of the consumer, but rather, for the benefit of the lender. Consumers may, and are often advised to, obtain an appraisal for their own use as outlined in the Purchase and Sale agreement. This agreement is an example of a form that will require retooling by attorneys and Realtors, and will – and should – remain outside of regulation by federal regulators.

Those in the industry must work together to ensure that consumers fully understand these changes. Additionally, in today's market *most* buyers opt to have a home inspection performed. Such an inspection allows the condition of the property to be evaluated before purchase and allows the buyer, if the property does not pass the home inspection, to renegotiate the contract or cancel the anticipated buy-sell transaction, addressing one of the concerns of the Bureau. However, the point that the appraisal is attained for the mortgagee's protection should not be overlooked. **We encourage the Bureau to consider a merged disclosure document that is designed to allow a consumer to understand and protect their interest in the transaction by allowing the consumer to clearly understand the difference between an appraisal and a valuation report, the benefits of an appraisal (versus an evaluation) and the general**

[8] Freddie Mac Automated Collateral Evaluation Requirements, September 2017
http://www.freddiemac.com/singlefamily/loanadvisorsuite/pdf/ACEMatrixDoc.pdf
[9] Fannie Mae Property Inspection Waiver Frequently Asked Questions, August 18, 2017
https://www.fanniemae.com/content/faq/property-inspection-waiver-faqs.pdf

structure of their purchase transaction. ABA recommends a revision to the "*Initial Disclosure Requirement*" a written disclosure to the applicant. Specifically, we recommend that new language that describes the transaction and the differences between a valuation and an appraisal to be incorporated into that redrafted Disclosure document.

Answers to Additional Questions:

We would like to take this opportunity to address the following questions posed by the joint agencies that we feel are most important to our members:

Question 1. The agencies invite comment on the cost data for evaluations and appraisals detailed above. Should the agencies consider other data and data sources in assessing the costs of appraisals and evaluations to regulated institutions and consumers?

ABA is unaware of other data sources to consider using in assessing the cost of appraisals and evaluations. The cost assessment appears sound and appropriate.

Question 3. What valuation information, if any, would consumers lose in practice if more evaluations are performed rather than appraisals? What additional comments, if any, are there relative to the presentation or content of evaluations for residential real estate transactions in practice? Please provide data or other evidence to support any comments.

Although an evaluation is not a USPAP appraisal, it does indicate the value of a property and it presents recent comparable sales data on specific properties. Consumers may not fully understand the difference between an appraisal, prepared by a state licensed or certified appraiser, and an evaluation. Although a financial institution may determine the use of an evaluation is appropriate in a lending decision, it is not appropriate for the consumer to think an evaluation and an appraisal are equivalent. This issue should be further considered in areas where sales data is not publicly accessible, including non-disclosure states where real estate sales are not publicly available for comparable property data.

Question 4. To what extent do appraisals or evaluations provide benefits or protections for consumers that are purchasing 1-to-4 unit single-family residences? What are the nature and magnitude of the differences, if any, in consumer protection, including any differences in credibility, arising from the use of evaluations rather than appraisals, especially with respect to residential real estate transactions of $400,000 or less? For example, are there any differences with respect to negotiating the price of a home or canceling a transaction when an evaluation rather than an appraisal is obtained? Please provide data or other evidence to support any comments.

At times, consumers tend to challenge bank-prepared internal evaluations more quickly than third party evaluations and appraisals. In those cases the depository institutions have indicated they have opted to order an appraisal for high loan-to-value and high risk profile loan transactions.

Question 6. How often do institutions use their own internal staff to prepare evaluations? What challenges, if any, to meeting requirements and standards for independence, particularly in smaller institutions, do internally-prepared evaluations present? Similarly, what challenges, if any, to meeting requirements and standards for independence are presented by evaluations prepared by third parties?

ABA members have different practices for evaluations depending on their individual bank's risk profile. All evaluations meet the requirements and standards outlined in Interagency Appraisal and Valuation Guidance. Many of our members have trained and knowledgeable staff who continue to enhance their capabilities via industry training necessary to prepare internal evaluations. Others will opt to utilize either appraisers or third parties to prepare evaluations to meet the market demands.

Question 10. Will institutions expand their use of evaluations if the proposal to raise the residential threshold is finalized or continue to use appraisals for the additional residential real estate transactions of $400,000 or less that are eligible for this exemption? How frequently do lenders obtain evaluations for eligible residential real estate transactions in practice? For what types of eligible residential real estate transactions are lenders likely to obtain evaluations? Please provide data or other evidence to support any comments.

The individual risk profile of each bank will determine the type of residential real estate transactions for which lenders will require evaluations, or appraisals, for their portfolio loans. For example, most institutions indicate that they typically only require an evaluation for "rate, term refinance with no cash out" transactions and that they (again typically) require an appraisal for routine "cash-out refinance" transactions. Some indicate that portfolio loans, the proceeds of which are used to finance arm's length purchase money transactions, (which tend to have relatively with low risk characteristics) will be a type of transaction for which they merely require an evaluation. Some banks will require evaluations for low-LTV 1st or 2nd lien in-house HELOCs, but others have indicated that appraisal are required for <u>all HELOC transactions, and for all real estate-secured loan transactions</u>. When the market conditions and property are well known to the bank, the risk profile of the loan will be assessed and an evaluation will be used, assuming such determination fits the applicable risk profile characteristics.

All feedback from ABA members indicates that the determinations of whether appraisals or evaluations will be required for specific types of transactions will be risk-based, and that the policies governing such determinations will be approved at the Board level after they are developed.

ABA appreciated the opportunity to comment on this proposal. If you have any questions about the content of this letter, please contact Sharon Whitaker (202) 663-5321.

Sincerely,

[redacted]

Sharon Whitaker
Vice President, Commercial Real Estate Finance
American Bankers Association