ACCURATE
GROUP

February 5, 2019

VIA email: regs.comments@occ.treas.gov
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Legislative & Regulatory Activities Division
Office of the Comptroller of the Currency
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Ms. Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW.
Washington, DC 20551

Mr. Robert E. Feldman
Executive Secretary
FDIC
550 17th Street, NW
Washington, DC 20429
Attention: Comments/Legal ESS

Re: Real Estate Appraisals: Docket ID OCC-2018-0038

Dear Sir/Madam:

Accurate Group, LLC ("Accurate") is a leading multistate appraisal management company ("AMC") with registrations, licenses or pending applications for such in 45 states.[1] Accurate provides a full range of valuation products and services to its clients for transactions in 50 states and the District of Columbia. We thank the agencies for this opportunity to provide comment regarding the agencies' proposal to increase the threshold level at or below which appraisals would not be required for residential real estate-related transactions from $250,000 to $400,000 (the "Proposed Rule").

At the outset, we note that this rulemaking arose from comments to the 2017 EGRPRA report and the agencies' 2017 conclusion that changes to the $250,000 threshold would not be appropriate. The agencies stated three reasons for the 2017 conclusion, all of which have validity: "a limited impact on burden reduction due to appraisal still being required for the vast majority of these transactions pursuant to the rules of other federal government agencies and the

[1] Massachusetts and the District of Columbia are the only jurisdictions that have not enacted AMC licensing. In addition, Alaska, New Jersey, New York and Ohio have not commenced licensing.

GSEs; safety and soundness concerns; and consumer protection concerns." The GSEs and federal agencies will continue to set requirements above those of the agencies' appraisal guidelines, market experience informs us about the risks of inadequate real estate lending underwriting, and we all have an interest in avoiding harm to consumers. The agencies invited comment on all aspects of the proposed rulemaking while posing thirteen questions. Accurate does not take a position on the appropriateness of the proposed rulemaking; however, as an industry participant with deep experience, we submit these comments to nine of the thirteen questions presented in the spirit of providing relevant insight and information for the Agencies' consideration.

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?*

The agencies rely on statements in comments to CRE NPR that indicated that the cost of evaluations is "substantially less than" the cost of appraisals. Inasmuch as FIRREA and related regulations establish that Title XI compliant evaluations need not meet the more exacting requirements of USPAP, evaluations should in many instances be less expensive to produce than appraisals. Reliance on the sources referenced by the agencies for the cost of appraisals, The Veterans Affairs' appraisal fee schedules ("VA Schedules"), likely overstates the costs of appraisals as the VA Schedules are tied to specific VA underwriting requirements, which exceed the requirements of USPAP, and require the use of a VA approved panel of appraisers. The VA Schedules provide fees that are often at the high end of appraisal fees and in many instances exceed appraisal fees that are customary and reasonable.[2] Moreover, the VA fee schedule was established to meet the VA's needs with respect to turn time and service and not necessarily based on time studies or consideration of customary and reasonable requirements. As a consequence, appraisers often are paid appraisal fees well below the fees set forth in the VA Schedules.

Moreover, there are multiple types of USPAP compliant appraisals that are less expensive than VA appraisals and the FNMA 1004 often used in valuing a single family residence. Neither the Interagency Appraisal and Evaluation Guidelines (December 2010) nor the Interagency Guidelines for Real Estate Lending Policies dictate the type of appraisal that must be performed. Within a financial institution's valuation program, the institution can use limited scope appraisals, desktop appraisals, and hybrid appraisals, which meet FIRREA's requirements but are less costly to develop than the FNMA 1004 and VA appraisals. Various pilot programs are underway now to consider less expensive appraisals as substitutes for the types of appraisals that

[2] The Dodd-Frank Act Section 129E(i) sets forth the Customary and Reasonable Fee requirement. Subsection (1) provides: "In General.—Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised." The Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Consumer Financial Protection Bureau jointly issued The Interim Final Rule, paragraph 42(f) of which provides additional explanation of the customary and reasonable compensation requirements. 12 CFR 226 ¶42(f).

might now be required by other federal government agencies and the GSEs. Before considering the lower cost of evaluations, there is a range of appraisal products now in use that cost less than the fee range of $375 to $900 identified in the proposed rulemaking.

Question 2. *The agencies invite comment on the time associated with performing and reviewing appraisals versus evaluations. Should the agencies consider other data and data sources in assessing the time associated with performing and reviewing appraisals and evaluations?*

Time is a factor when it affects cost or causes delays. In most instances, the time associated with the appraisal or evaluation is recognized in the cost of the product or the labor cost of review. For example, an appraisal with scope of work that requires an appraiser to personally inspect the subject property will likely require more time to complete than a hybrid appraisal or evaluation with a scope of work that bifurcates the inspection. Hybrid appraisals with an exterior-only inspection can be provided in three days or less in much of the country. Interior inspections add additional time to preparation of hybrid appraisals but still reduce the time over VA appraisals and FNMA 1004 in many locales. Depending on the financial institution's resources, a USPAP-compliant appraisal may require more time for internal review than an evaluation but this time difference likely is less when desktop and hybrid appraisals are used instead of the more familiar FNMA 1004.

The agencies have also observed that delay in receiving the report can result in cost to the financial institution and the consumer when the delay affects the time required to underwrite the loan. AMCs and financial institutions have had to manage local delays in appraisal assignment turn times ("TAT"). For example, beginning in the Spring of 2016 and continuing into the Summer of 2017, there were frequent delays in obtaining appraisals in Colorado and Oregon. Delays have also been experienced in metropolitan areas such as Columbus, OH. These situations, however, were local and temporary. Lenders in those markets may have relevant data about how these delays affected their processing and costs to consumers. Recently, such local bottlenecks have been addressed with local waivers. The data used to support these waivers likely provides information about the causes of delays and the effects on the loan process.

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.*

As a practical matter, whether consumers make any use of valuations that are prepared for the creditor's underwriting is unclear. Certainly, purchase agreements often contain credit approval contingencies such that the valuation provided to the lender for its underwriting decision can affect whether the transaction will proceed. Consumers often question valuations when they are relied upon to deny credit but given that the appraisals and evaluations subject to this rulemaking are developed for creditors and are prepared after consumers have contracted for the purchase of the property or applied for credit it's unclear to what extent the content and information within valuations prepared for creditors are used by consumers. Consumers are not the intended users of these appraisals and evaluations. Congress, however, amended ECOA section 701(e) to require creditors to provide to applicants for credit secured by dwellings, as a matter of course, a copy of appraisals and other written valuations developed in connection with the transactions rather than only providing copies of appraisals upon applicants' request as previously required. The CFPB's Final Rule, "Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B)", amends ECOA to require delivery of appraisals and other valuations consistent with the Dodd-Frank amendment.[3] The CFPB describes the revisions to Regulation B "in general" as requiring "creditors to provide to applicants free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling, and require creditors to notify applicants in writing that copies of appraisals will be provided to them promptly." Appraisals and evaluations prepared for creditors, therefore, have to be provided to consumers but typically not until after consumers have made their decisions to consummate the transactions.

As to specific differences in content, evaluations typically do not contain the detail presented in appraisals.[4] Notably, evaluations are not required to include data on comparable properties but such information underlies the development of any valuation.

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.*

Creditors are tasked by the Appraisal Rules with establishing that the valuation method used, "whether prepared by an individual or supported by an analytical method or technological tool, provides a reliable estimate of the collateral's market value …." The Appraisal Guidelines also require that an evaluation "describe the method(s) used to confirm the property's actual physical condition and the extent to which an inspection was performed". Since the 2008 financial crisis regulators and the industry have encouraged better decisions about consumers' ability to repay. The loan amount and the value of the property reflected in loan-to-value ratios are critical to assessing the ability to repay. Better information about the value of the property should improve

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[3] Regulation B, 12 CFR part 1002.

[4] The Appraisal Guidelines set forth eight minimum requirements for the content of evaluations. These include (1) identify the location of the property, (2) provide a description of the property and its current and projected use, (3) describe the method(s) used to confirm the property's actual physical condition and the extent to which an inspection was performed, (4) describe the analysis that was performed and the supporting information that was used in valuing the property, (5) describe the supplemental information that was considered when using an analytical method or technological tool, (6) indicate the sources of information used in the analysis to value the property, (7) identify the preparer of the evaluation, and (8) "provide an estimate of the property's market value in its actual physical condition, use and zoning designation as of the effective date of the evaluation … with any limiting conditions."

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the ability to repay analysis. Financial institutions establish credit underwriting matrices based on factors such as transaction amount, LTV, credit attributes, severity and loss rates. Statistical analysis is used to determine the deviation from mean by product and then based on the loan parameters select an appropriate valuation product. For example, automated valuation models always assume average condition for the subject property. Appraisals will generally provide better values for properties that are not of average condition but evaluations should use inspections that reduce the variances attributable to condition.

While evaluations can provide reliable valuation information and may be an acceptable substitute for an appraisal, the involvement of a professional appraiser in a valuation and a more detailed scope of work do provide greater assurances about the reliability of the valuation. Unique attributes of properties and complexity create reasons for choosing an appraisal over an evaluation. This suggests that the age and variety of housing stock in a market, that is factors that affect condition, may affect whether an increase in the appraisal threshold in a specific market is appropriate.

At the same time that the availability of more information can be important, the independence of the information also adds benefit. Appraiser independence has been a driving factor of appraisal regulation for many years but especially in the wake of the 2008 Financial Crisis. Although Federal regulations establish that evaluations can be developed by non-appraisers, some state appraiser licensing statutes define "appraisal" so broadly that only an appraiser or an employee of the lender can prepare an evaluation. Requiring the use of appraisers to perform evaluations affects any analysis of the relative cost of appraisals and evaluations. Some states provide an exemption from the appraiser requirement that compels a lender to use its employees instead of third parties to develop evaluations. Where only employees are used, protecting independence may be more difficult.

Question 5. *To what extent is useful property valuation information readily available to consumers through public sources?*

This question highlights a concern about establishing a higher threshold nationally. The availability of property valuation information varies greatly by location. Information for a tract home on Long Island is likely more available to the appraiser, lender and consumer than data on homes in a rural upstate New York county.

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?*

A corollary to this question is who other than an institution's internal staff can prepare evaluations? While FIRREA establishes that an appraiser is not needed to perform an evaluation, state appraiser licensing statutes add requirements that limit who can prepare an evaluation. Only twenty-one states permit non-appraiser evaluations by non-employees of an institution. These states limit the extent to which a lender can make the cost of evaluations variable and in doing so raise the cost to the lender and consumer. By requiring that evaluations be prepared by employees, these states also limit the ability of institutions to use third-parties, e.g., AMCs, to protect the independence of the lending process. This is not an argument that lenders are not enforcing independence; instead it's an observation that the interplay between Federal law and state laws adds cost and limits operational flexibility. At least eight states do not allow anyone other than an appraiser to prepare an evaluation but in several of these states the standards applicable to appraisers, e.g., compliance with USPAP, create impediments and increase cost for appraisers and their clients.

Question 8. *Is the proposed level of $400,000 for the threshold at or below which regulated institutions would not be required to obtain appraisals for residential real estate transactions appropriate?*

There are many instances under the current threshold in which appraisals are required even though an evaluation might be used. We expect that the considerations that lenders, GSEs and others use to require appraisals where FIRREA would allow an evaluation would continue to apply to the transactions opened to evaluations by a higher threshold. In essence there are market requirements that would temper the effects of the increase as is observed in the safety and soundness discussion at page 30 of the Notice.

The agencies comment that they "do not have data that show that raising the appraisal threshold would result in increased loss rates." We are not aware of any study that examines whether different valuation methods affected the real estate collapse in 2007-09. The Notice also observes that the involvement of the appraisal requirements of the GSEs and other insurers mitigates the risk of valuation methods. But the proposed rule is not written to require that others provide assurances and there is a high probability that the GSEs and other insurers will move away from today's underwriting requirements over time. This is not an argument that the safety and soundness reasoning within the Notice will not withstand the test of time; it's merely a observation that it warrants more review.

There should be an examination also about whether a national threshold that might be supported based on national aggregate data could have negative effects in local markets where the higher threshold would result in a small fraction of homes being appraised.

Question 9. Is *the data used in this analysis appropriate? Are there alternative sources of data that would be appropriate for this analysis?*

As discussed above, the cost information relied upon likely overestimates the current costs of valuation by relying on Veterans Administration Schedules and not identifying the range of appraisal products that are in use or can be used before a lender uses an evaluation.

Question 12. *What challenges, if any, are posed by using evaluations for transactions that are exempt from the agencies' appraisal requirement due to the rural residential appraisal exemption?*

Appraisals and evaluations in rural areas may be affected by the availability of data. Confidence in AVMs and other valuation sources is affected by transaction volume, unique property characteristics, and other factors that may or may not be classified as adding to complexity.

Please contact us about any follow-up questions you may have.

Sincerely,

[redacted]

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