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January 18, 2009

To: Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

Re: Proposed Interagency Appraisal and Evaluation Guidelines
FEDERAL DEPOSIT INSURANCE CORPORATION
DEPARTMENT OF THE TREASURY

From: Calvin W. Moye
CALMO Realty Services, Inc (FRS Contractor for Real Estate Appraisal Review School - REARS)

As a general comment, the proposed guidelines do provide welcomed guidance and clarification. Many points of contention have been resolved. The effort to consolidate previous issuances and clarify specific circumstances is apparent and well designed. The authors should be commended.

It is assumed that the Proposed Guidelines are not an attempt to create new requirements and the following comments are not an attempt to change the existing Regulations or Guidelines. Two types of comments are offered. The non-specific comments are general in nature and not necessarily related to a specific section of the Proposed Comments. The second type of comment is related to a specific area of the Proposed Guidelines.

The non-specific comments and suggestions are based upon 21 years of experience as commercial bank executive, facilitation of 50 REARS classes for FFIEC and CSBS, 43 years of experience as an appraiser, development and design of numerous courses as well the personal facilitation of more than 350 classes for appraisers, bankers and regulatory agencies in 30+ states.

Non-Specific Comments

Non-Specific Comment 1

The original regulations in 1990 only allowed a regulated institution to order an appraisal. After issuance of the regulations, the Agencies recognized that preventing non-regulated mortgage lenders/brokers from ordering appraisals would adversely affect the flow of mortgage funds into the secondary market. At that time, the secondary market was primarily composed of the GSEs. In 1992 and 1994, the Regulations and Guidelines were modified to allow non-regulated institutions and agents of regulated institutions to order appraisals (financial services institutions and agent was added).

Allowing brokers and mortgage companies to order appraisals was not an issue until the later, when brokered loans become the primary origination method. It is difficult to assume that a person driving around with a box of 1003 applications taking applications (and shopping the application with several lenders) is a financial services institution or is an agent of a regulated lender.

The two terms, financial services institution (to include mortgage brokers) and agent are still included in the Proposed Guidelines and should be defined in detail or removed. The phrase "legal agent' might be appropriate or another term that indicates the agent is legally responsible to the institution and clarification that an agent cannot not associated with loan production. The Home Value Code of Conduct (HVCC) may offer some examples of appropriate language.

Non-Specific Comment 2

The Proposed Guidelines dedicate a significant amount of space to AVMs. AVMs may have a greater potential for inaccurate values than a professional appraisal or evaluation, but they are independent, offer unbiased opinions and are insulated from lender pressure. How they are used by the lender after receipt may be a greater issue than the accuracy of the AVM.

My perception on evaluations (my firm produces an evaluation system designed for lenders) is that the in-house evaluations are often inadequate for collateral assessment.

Additional guidance on the content of evaluations (in additional to an AVM and/or a tax assessment) would be beneficial to increasing the quality of collateral assessment.

Non-Specific Comment 3

Based upon personal field experience, many institutions do not place sufficient emphasis on the appraisal, review or evaluation process, and use ill-designed evaluation forms and review forms. Engagement letters are seldom used and are typically a single page with the location of the property and absent of instructions. During the past several years, the Agencies were concerned with other important issues such as BSA, and did not have the time to devote to the review of appraisals and evaluations. As the current crises deepens, it is assumed that time will be allocated to examiners to review appraisals in detail and the time to provide on-site guidance to the institutions.

Additional and stronger guidance on the importance of these functions to both institutions and examiners may assist with a faster recovery. Implementation of better designed systems/forms for appraisal ordering, appraisal review and evaluation preparation should be strongly "encouraged" and enforced.

Non-Specific Comment 4

The secondary market departments and mortgage subsidiaries of supervised banks often ignore the Guidelines and Regulations because close regulatory oversight has not historically been necessary for these production areas.

Agency guidance that encourages the mortgage lending divisions to adhere to the Guidelines and Regulations of their mother institutions may enhance collateral quality.

Non-Specific Comment 5

The secondary market departments or mortgage subsidiaries of supervised banks typically ignore the Guidelines and Regulations, especially the independence issues. Mortgage lenders view real estate agents as their clients, not the borrower. The logic being: A real estate agent or developer brings numerous loans to a lender, a borrower only brings one. If an appraiser does not provide a value satisfactory to the real estate agent or developer, the lender is told not to use the appraiser or they will stop bringing their buyers to obtain loans.

Agency guidance that encourages the mortgage lending divisions to adhere to the Guidelines and Regulations of their mother institution may enhance collateral quality.

Non-Specific Comment 6

The design of the Guidelines assists the reader (both banker and examiner) in complying with the Guidelines contents. Questions and answers are one of the best methods of conveying the information, but a series of lists is probably not appropriate for the Proposed Guidelines. However, creating lists within the Guidelines may aid the reader. Some sections have lists, but they are often mixed with narrative explanations and the reader loses the flow of the list.

Perhaps listing the requirements, components and exceptions of the Guidelines when possible will enhance the readability. An example is offered in CWM Specific Comment 8.

Specific Comments

The following comments are referenced by page number as presented in the proposed guidelines.

Proposed Guidelines: .. "While the information provided to the appraiser by the institution should not unduly influence the appraiser, the institution may provide a copy of the sales contract for purchase transactions." (Page 20)

Page 20

CWM Comment 1: .. The appraiser is required by the USPAP to analyze any current sales activity and would be able to advise the bank if concessions were involved. Commercial banks

typically resist sending the contract (though mortgage lenders routinely send them with the appraisal request).

Additionally, the Agencies' definition of "value" for LTV purposes may be different than the market value reported in the appraisal. If the appraiser reviews the contract terms (personal property, intangibles, restrictions, options etc.), the appraiser will be better equipped to provide "sufficient analysis" for the bank to engage in the transaction.

A professional appraiser would state in the appraisal that the banker refused to provide the contract (as required by the USPAP) and that should trigger a reaction on the part of an examiner. Oddly, during 50+ one-week classes composed of students from at least four of the Agencies, we have discovered that the majority of examiners believe the contract should not be given to the appraiser.

Suggestion: ***Perhaps the word "may" can be replaced with "should", a word often used in the Proposed Guidelines to encourage compliance. If the banker or examiner fears the appraiser will be influenced by the contract price, the bank's appraiser approval process may be flawed.***

Proposed Guidelines: ... "Institutions should use written engagement letters when ordering appraisals, particularly for large, complex, or out-of-area commercial real estate properties" (page 22)

Page 22

CWM Comment 2: .. The second portion of this sentence deemphasizes the importance of the first part. Though it is probably not the intent, the language infers that the banker should pay less attention to the loans not in the list. It is my belief that bankers and examiners will interpret that engagement letters are only expected (or only important) when the named properties are involved in the transaction.

Suggestion: ***Perhaps the sentence could be divided into two sentences as follows:***

"Institutions should use written engagement letters when ordering appraisals. More detailed (concise, complex) engagement letters should be used for large, complex, or out-of-area commercial real estate properties."

Proposed Guidelines: ... "To avoid the appearance of any conflict of interest, appraisal or evaluation development work should not commence until the institution has selected a person for the assignment" (page 22)

Page 22

CWM Comment 3: .. The content and intent of this sentence is obscure.

Suggestion: ***Language providing clarification of the intent of the sentence would assist readers to comply with the Guidelines.***

Proposed Guidelines: ... "Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units. This standard is designed to avoid having appraisals prepared using unrealistic assumptions and inappropriate methods.

Page 23

An appraisal must include the market value of the property and should reflect the property's <u>condition in its actual physical condition, use, and zoning designation,</u> as of the effective date of the appraisal." (Page 23)

CWM Comment 4: .. This "as is" requirement has always been included in the same paragraph as the discounting requirement.

The construction of the narrative infers that an "as is" value is only required if discounting is required. Some examiners and bankers believe that it is a requirement for all appraisals.

The proposed guidelines have another reference to "as is" value in the Definition Appendix that contains no reference to discounting.

Suggestion: ***The Guidelines would be more effective as a reference tool if a positive statement, in addition to the discounting paragraph, was included in the***

Guidelines. The requirements would be more effective in the field if they were summarized (listed) before the detailed discussions. For example:

1. Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP……
2. Be written
3. Contain sufficient information and analysis to support the institution's …
4. Analyze and report appropriate deductions and discounts for proposed …..
5. The appraisal must contain an opinion of market value as defined in the ….

After the listing of requirements, there could be a list (summary) of items not allowed. For example:

1. Under the Agencies' appraisal regulations, the result of an Automated ….
2. The Agencies' appraisal regulations do not permit an appraiser to appraise..

Proposed Guidelines: ... "The result of an AVM certified by an appraiser does not, by itself, meet this standard." (Page 24)

Page 24

CWM Comment 5: .. The word "certified" is misleading. If a licensed or certified appraiser signs an AVM, it becomes an appraisal under the USPAP. The scope may be limited and the appraiser may be violating the USPAP, but it is an appraisal under the USPAP if signed.

Suggestion: ***Clarification or a definition of a "certified AVM" would enhance the reader's ability to understand the intent of this sentence.***

Proposed Guidelines: ... "Non-market Lease Terms. For properties subject to leases with terms that do not reflect current market conditions, the appraiser must make appropriate deductions and discounts, which should be based on stabilized occupancy at prevailing market terms." (Page 25)

Page 25

CWM Comment 6: .. This paragraph may need additional clarification. The paragraph addresses prevailing market terms, but an appraisal based upon prevailing market terms produces a market value of the property unencumbered by leases. The language infers that value for lending is always based upon the value of the property, unencumbered by leases. This paragraph can be misleading because of the following two circumstances:

1. If the property is under a long-term lease at a below market rate, the leased fee value (the banker's and the owner's position) is less than market value. The banker should be relying upon the leased fee value, not the market value of the property in this circumstance.
2. If the property is encumbered by a long-term lease at a rent above market rent, the owner's leased fee value is greater than market value. Under these circumstances, if the lender's LTV is based on the leased fee, credit is being extended to the tenant who did not sign the note. Under these circumstances, the banker should base the LTV on the market value of the property.

Logically, the lenders should be basing the LTV on the lesser of leased fee or market value, but there is no clear guidance for that circumstance.

Suggestion: ***It appears that this requirement addresses, or intends to address a portion of this issue, but does not provide sufficient clarity for the lender, examiner or appraiser to understand the requirement. It may also be misleading when a positive or negative leased fee value exists.***

Proposed Guidelines: ... "Further, the market value should not include a going concern value or a special value to a specific property user." (Page 28)

Page 28

CWM Comment 7: .. What is an example of a "going concern" - Hotel/motel, convenience store, car wash, nursing home?

The real estate underlying the credit secured with these types of properties may not appraise for a sufficient amount to allow a borrower to buy the property, if the LTV is based upon the real estate value. Typically, institutions base the LTV on the "value in use" and appraisers often avoid using the term "value in use" so the loan can be made.

For example, a nursing home is a specialized use that requires a "value in use" and the real estate has little value in relationship to its probable sale price as a "going concern". If it is not operating, its value is only a fraction of the cost to construct it or its value as a going concern.

Another example, the real estate value of a convenience store is typically 30 to 50% of the sale price if it is sold as a "going concern". If the loan defaults, the bank will typically own a vacant building with no equipment or inventory and the "good will" will be gone. However, if a borrower is buying the going concern including the real estate property for $1 million, the real estate is worth $500,000 and the bank offers a loan of $400,0000 (thus requiring a cash outlay of $600,000 from the borrower), there will not be many convenience store loans. Hotels, food services, nursing homes, car washes, churches and some manufacturing plants have the same characteristics.

Upon default, typically the bank gets the real estate, not a viable going concern.

Suggestion: ***A definition is needed for a "going concern" that includes examples of a going concern.***

Suggestion: ***Additionally, guidance is needed for the LTV limits for those types of properties. Can the lender lend 85% of the $1 million as mentioned in the above example for a convenience store, or is it limited to the 85% of the real estate value? If they lend 85%, does it go to the bucket as an exception? An OCC representative made some public comments about the LTV of these types of properties several years ago, but no guidance was issued. (The LTV ratios are covered in the Interagency Real Estate Lending Guidelines, but the issue has now been mentioned in the Appraisal Guidelines)***

Proposed Guidance: ..... "Among other considerations, when accepting an appraisal from another institution, the acquiring institution should obtain documentation that the appraiser was engaged directly by the institution transferring the appraisal and had no direct, indirect, or prospective interest, financial or otherwise, in the property or transaction. If an institution relies on a third party originator or its agent for the appraisal, the standard of independence still applies. (Page 35)

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CWM Comment 8: .. The guidelines state that an institution may use an appraisal that was prepared by an appraiser engaged directly by another regulated or financial services institution, provided the institution determines that the appraisal is valid, conforms to the Agencies' appraisal regulations, and is otherwise acceptable.

However, the definition of financial services institution in the Guidelines includes loan brokers. Loan brokers typically cannot comply with the independence requirement of the Regulations and Guidelines. Inclusion of loan brokers as a financial services institution, especially in this economic crisis, does not seem to be prudent.

Additionally, the Home Code of Conduct (HVCC) will become effective on May 1, 2009 and though it only applies to Fannie and Freddie, it will probably impact the operations of supervised institutions. The HVCC does not allow mortgage brokers to order appraisals. If banks originate loans with appraisals ordered by "agents" or "brokers", the liquidity and marketability of those loans may be lessened.

Suggestion: ***These portions of the Guidelines infer that an appraisal ordered by a loan broker is acceptable. It would be prudent to add clarification or discussion of the fact that the Agency independence requirements extend to everyone (including brokers) before compliance can be achieved.***

May also be important to modify the Guideline language from " conforms to the Agencies' appraisal regulations," to "conforms to the Agencies' appraisal regulations and guidelines,

Proposed Guidelines: ... "This exemption applies to business loans with a transaction value of $1 million or less when the sale of, or rental income derived from, real estate is not the primary source of repayment.

Page 43

To apply this exemption, the Agencies expect the institution to determine that the primary source of repayment for the business loan is operating cash flow from the business rather than rental income or sale of the property. For this type of exempted loan, the Agencies……" (Page 43)

CWM Comment 9: .. Bankers try to use this exemption for properties such as convenience stores, even chain convenience stores. Under the present description of a business loan, a convenience store would be exempt. The repayment of the loan is from the business and is not dependent upon the rent or resale of the property. It would appear that this is not the intent of the exemption. There are other properties that would also qualify under this exemption which are higher risk.

Suggestion: ***It would seem prudent to exclude non owner-operated properties or place some other restriction on the exemption to limit the abuse of this exemption.***

Proposed Guidelines: ... "If a property, however, has reportedly appreciated because of a planned change in use of the property such as rezoning, an appraisal should be performed for a federally related transaction unless another exemption applies." (Page 45)

Page 45

CWM Comment 10: The illustration using a property that has appreciated is confusing. Logically, the validation of a prior appraisal would entail the determination that the property's value is equal to, or greater than, the value at the time of the appraisal. Why would the fact a property "appreciated" exclude the ability to validate the prior appraisal?

Suggestion: ***A more concise statement without an illustration of an "appreciated" property might be more effective.***

Additionally, the fact that the zoning has changed does not necessarily change the value or the use of the property. The logical distinction is "Has the current highest and best use" of the property changed from the "highest and best use" in the prior appraisal report?

Proposed Guidelines: ... "For example, to satisfy the condition for no material change in market conditions or the physical aspects of the property, the planned future use of the property should be consistent with the use identified in the appraisal or evaluation." (Page 45)

Page 45

CWM Comment 11: Obviously if the current or proposed use of the property is inconsistent with the use in which it was appraised, the appraisal is invalid. This requirement is hidden in the narrative of a larger paragraph and easily overlooked by users of the Guidelines. It is a finite statement and automatically precludes the validation of a prior appraisal.

Suggestion: ***`Perhaps placing this requirement in a separate paragraph would increase its prominence, because it is an absolute reason not to validate a prior appraisal.***

Proposed Guideline: ..... "If the mortgages that secure the mortgage warehouse loan are sold to Fannie Mae or Freddie Mac, the sale itself may be used to demonstrate that the underlying loans complied with the Agencies' appraisal regulations. In such cases, the Agencies expect an institution to monitor its borrower's performance in selling loans to the secondary market and take appropriate steps, such as increasing sampling and

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auditing of the loans and the supporting documentation, if the borrower experiences more than a minimal loan put-back rate." (Page 48)

CWM Comment 12: This paragraph will be confusing to users of the Guidelines, especially this portion "In such cases, the Agencies expect an institution to monitor its borrower's performance in selling loans". This sentence is not clear, who is the borrower?

Suggestion: ***Is the lender selling more than one or two loans with the same borrower to Fannie or Freddie? Does a borrower sell loans to GSEs? A clarification of the terms in this paragraph is needed.***

Proposed Guidelines: ... Tract Development – As defined in the Agencies' appraisal regulations, a project of five units or more that is constructed or is to be constructed as a single development. For purposes of these Guidelines, "unit" refers to: a residential building lot, a detached single-family home, an attached single-family home, and a residence in a condominium building. (Page 65)

Page 65

CWM Comment 13: The phrase "Tract Development" refers to only single-family properties according to the Guidelines. Considering the problems anticipated with CRE, do commercial developments also need attention? Most of the appraisal requirements and the complexities for commercial developments mirror those for single-family developments. Discounting is required, absorption forecasts are necessary and expense allocations must be calculated for both types of developments. The base definition of tract development would cover commercial development, but the narrative discussion in the Guidelines limits the term to single-family.

For example, questions such as this arise:

Does the 12-month absorption period apply to non single-family developments?

Suggestion: ***Though the focus has moved to single-family development at the present time, it may be appropriate to include commercial developments in the definition of tract developments.***

Thank you for the opportunity to submit comments. Your consideration of these comments is appreciated.

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