January 20, 2008

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

Re: Proposed Interagency Appraisal and Evaluation Guidelines

Dear Mr. Feldman:

Bank of America appreciates the opportunity to comment on the proposed Interagency Appraisal and Evaluation Guidelines (the Guidelines) which will supersede the 1994 Interagency Appraisal and Evaluation Guidelines and reflect revisions to the Uniform Standards of Professional Appraisal Practice (USPAP). The Guidelines also demonstrate the evolution of collateral valuation practices, such as the use of evaluation alternatives and come at an important time for the real property valuation profession.

Bank of America is one of the world's largest financial institutions, serving individual consumers, small and middle market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. The company provides unmatched convenience in the United States, serving more than 59 million consumer and small business relationships with more than 6,100 retail banking offices, nearly 18,700 ATMs and award-winning online banking with nearly 29 million active users. With the acquisition of Countrywide Financial Corporation, Bank of America has recently become the largest residential mortgage lender and servicer in the United States.

We offer the following specific comments and requests for clarification to the proposed Guidelines:

Selection of Persons Who May Perform Appraisals and Evaluations.

Recommendation of an Appraiser to a Panel of Appraisers.

The Guidelines state that a lender's collateral valuation program should establish criteria to select, evaluate, and monitor the performance of persons who perform an appraisal or evaluation.

The Guidelines emphasize the importance of independence in the selection process by providing that the person who selects and manages the selection of appraisers or persons who provide evaluations should be independent from the loan production area. The Guidelines also assert that independence is compromised when a borrower or loan production staff member recommends or selects a person to perform an appraisal or evaluation.

Clearly, borrowers and loan production staff are prohibited from selecting or retaining a person to perform an appraisal or evaluation for any particular appraisal or evaluation assignment, and they are also prohibited from recommending an appraiser for any particular appraisal assignment. However, the Guidelines do not provide clear directions for a lender or its agent regarding who may allow loan production staff to recommend an appraiser for inclusion on its panel of fee appraisers. We believe any such recommendation should be subject to adherence to written policies and procedures uniformly applied to any request for inclusion of an appraiser on a panel, due diligence on the recommended appraiser's qualifications for inclusion on the panel, and other appropriate risk management processes to ensure independence from the loan production area. Any recommended appraiser, regardless of the source of recommendation, should be subject to the same robust due diligence and risk management processes. Further, the acceptance of any appraiser recommendation should be adequately documented by the lender.

Loan production staff are actively engaged in the their market areas and are presented from time to time with opportunities to recommend persons who have an interest in providing quality appraisal services to a lender. Loan production staff should be considered an appropriate source for recommending the inclusion of quality appraisers on a panel of fee appraisers provided the lender's review is uniform, unbiased, independent, nonpreferential and well documented.

Therefore, we request a clarification to the Guidelines that would allow a lender or its agent to receive a recommendation for inclusion of an appraiser on a panel from the loan production area. The lender, or its agent, should have sound risk management principles in place that are applied uniformly to ensure that the recommended appraiser's work will be independent and reliable and the lender, or its agent, must have processes in place to report and discipline any person who does not adhere to the applicable written policies and procedures.

On December 23, 2008, the Federal Housing Finance Agency announced that Fannie Mae and Freddie Mac will implement a revised Home Valuation Code of Conduct (Code) effective May 1, 2009. In Section IV of the Code, on "Prevention of Improper Influences on Appraisers", the use of an affiliated appraisal management company of a lender is permissible provided the employees in the sales or loan production functions of the lender are not involved in recommending, or otherwise influencing, the selection of any appraiser for inclusion on a list or panel of appraisers approved to perform appraisals for the lender.

Notwithstanding the Code provision stated above which differs from the proposed guidance and which draws distinctions based on affiliation, we believe that if there is clear separation of the appraisal function from the loan production area, independence of the appraisal work will not be diminished by allowing loan production staff to recommend an appraiser for inclusion on a panel of fee appraisers. Of course, this will require the lender and its agent to appropriately document their risk management principles in this area to ensure the independence and reliability of appraisal reports.

<u>Borrower Base Loans</u>

The proposed Guidelines state that an institution's use of a borrower-ordered appraisal would violate the appraisal regulations (in the CFR). In the lending industry, so-called "borrower base" loans are common for larger and more sophisticated borrowers. In these arrangements, there is a maximum credit amount that a lender will not exceed, but below that there is a maximum amount *available* to be loaned. Often these loans are unsecured, but many times they are secured, and the appraisal guidelines would apply. Where the loan is secured, "availability" is usually calculated as a percentage of the value of the loan collateral as from time to time determined during the course of the loan. The value of the collateral on day one of the loan or the admission of new collateral is determined by an appraisal, but thereafter is often determined *by the borrower*. In many cases, the borrower merely certifies the value to the lender. In these cases, the lender does not obtain an appraisal at all after the initial loan is made or the initial placement of collateral into the pool.

"Borrower base" loans are an industry-wide standard product in which lenders reserve the right to conduct their own appraisal which can be used to confirm the borrower's certification. Further, the valuation of the construction projects that are the subject of "borrower base" loans require completed, stabilized values. Thus, we propose that the Guidelines exempt these loans where the borrower certifies the valuation for availability.

Use of Written Engagement Letters for Appraisal Assignments.

The Guidelines state that a lender or its agent should use written engagement letters when ordering appraisals. We believe this is good practice and are actively engaged in communication with our appraisers to document the expectations of each party to the appraisal assignment. The Guidelines also suggests that the engagement letter should be included in the permanent credit file. We assume the suggestion to include the engagement letter in the credit file is for the purpose of establishing a centralized location for maintenance of this documentation for examination and other business purposes.

Bank of America retains the appraisal report, which contains the market value for the property, in its permanent credit file. For residential real estate transactions, we use the services of our affiliate, LandSafe Appraisal Services, Inc. (LandSafe), to provide an appraisal report on a loan transaction. LandSafe is an appraisal management company which uses staff appraisers as well as a panel of fee appraisers to perform appraisal assignments. LandSafe maintains centralized and imaged records of engagement letters, including documentation of any communication with appraisers, on a transaction level basis. These records are highly automated and, therefore, retrieval time is minimal when needed for an audit or examination.

Given the ease of retrieving such documentation, we would recommend that the Guidelines be clarified to allow for alternative methods of maintaining such documentation as long as the method meets the objectives of timeliness of retrieval and the documents are capable of being produced in a clear and comprehensive format.

Evaluation Content.

The Guidelines state that an evaluation should support the lender's decision to engage in the transaction and, among other listed minimum standards, should be documented in the credit file.

The analysis provided above on documentation of engagement letters in the credit file is equally applicable to the Guidelines' suggestion that the evaluation also be documented in the credit file. For residential real estate transactions, LandSafe is the service provider for evaluations and appraisals and maintains, as agent of the lender, the evaluation documentation in its records and databases. As indicated above, the records are imaged and maintained in an automated database capable of generating documents as needed. Further, the credit file currently indicates that LandSafe was the service provider for the evaluation.

As noted above, we would recommend that the Guidelines be clarified to allow for alternative methods of maintaining such documentation as long as the method meets the objectives of timeliness of retrieval and the documents are capable of being produced in a clear and comprehensive format.

Accepting an Appraisal from Another Institution.

The Guidelines recommend that when a lender is considering accepting an appraisal from another lender, it should document in the credit file that the appraiser was engaged directly by the other lender, and that the appraiser had no direct, indirect, or prospective interest, financial or otherwise, in the property or transaction.

The discussion above on the suggested inclusion of engagement letters and evaluation content in the credit filed applies here as well. For residential real estate transactions, LandSafe is the service provider for appraisals and, as agent of the lender, the documentation evidencing that the appraisal report from the other lender is compliant and acceptable is located in its records and databases. These records are imaged and maintained in an automated database capable of generating reporting as needed. Further, the credit file indicates that LandSafe was the service provider for the appraisal assignment.

As noted above, we would recommend that the Guidelines be clarified to allow for alternative methods of maintaining such documentation as long as the method meets the objectives of timeliness of retrieval and the documents are capable of being produced in a clear and comprehensive format. Additionally, further examples as to what "documentation" should be obtained from the other institution as to appraiser independence would be beneficial.

Reviewing Appraisals and Evaluations.

Appraisals and evaluations must contain sufficient information and analysis to support a lender's credit decision to engage in a loan transaction. Thus, we support and agree with the proposition that the review of an appraisal or evaluation prior to the final credit decision on a loan transaction should be risk-based dependent on the type and potential risk of the transaction and the process through which the appraisal or evaluation is obtained. The review should assess the acceptability of the appraisal or evaluation, including whether it is compliant with appraisal regulations and guidelines and the lender's policies and procedures.

The Guidelines discuss a lender's risk-focused review procedures and state that "with prior approval from its primary regulator" a lender may use various review techniques "such as automated tools or sampling methods" for performing pre-funding reviews of appraisals or evaluations supporting lower risk single-family residential mortgages.

For residential real estate transactions, Bank of America utilizes LandSafe as the service provider of appraisals and evaluations for the lender. LandSafe employs a risk-based, rules-oriented, automated database and scorecard to review appraisals and evaluations for acceptability, independence and reliability. The methodology used to conduct its review appraisals and evaluations has been examined under the existing supervisory framework for appraisals and evaluations by both the Office of the Comptroller of the Currency and the Office of Thrift Supervision and has received supportive feedback on its robust and risk-focused review procedures.

We recognize and support the need for a transparent and ongoing supervisory relationship that ensures that the primary regulator understands how the appraisal business is conducted by or on behalf of the lender during an examination and between examinations. Therefore, we request clarification on the meaning of the qualifying language "with prior approval from its primary regulator" as it relates to a regulator's acceptance of the risk-based review procedures for appraisals and evaluations of a lender when automated tools or sampling methods are used.

Specifically, we request clarification on the intent of the qualifying language, and further clarification on what would be considered "prior approval" from a regulator in this area. Given that the Guidelines do not require prior "written" approval, we believe that the goal of the proposed language is to encourage a healthy dialogue on appraisal and evaluation review methods to provide for a clear understanding between the parties on the risk-focused techniques and sampling methods being used.

The review provisions of the Guidelines also suggest that the content of the appraisal or evaluation review should be maintained in the credit file. The discussion above on the suggested inclusion of engagement letters, evaluation content, and lender transferred appraisal reports in the credit files applies to this matter too. For residential real estate transactions, LandSafe, as the agent of lender, is the service provider for appraisals and evaluations; and the documentation evidencing the review is located in its records and databases. These records are imaged and maintained in an automated database capable of generating reporting as needed.

As noted above, we would recommend that the Guidelines be clarified to allow for alternative methods of maintaining such documentation as long as the method meets the objectives of timeliness of retrieval and the documents are capable of being produced in a clear and comprehensive format.

Appendix A – Appraisal Exemptions.

The Guidelines request comment on the Appendix A exemption from regulatory appraisal requirements for residential real estate transactions involving US government sponsored agencies. The banking regulations that address when an appraisal is required provide that an appraisal need not conform to the federal banking agencies' appraisal regulations if the transaction either: (i) qualifies for sale to a US government sponsored agency; or (ii) involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate. (See, OCC: 12 CFR 34, Subpart C and OTS: 12 CFR Part 564).

The US government sponsored agency exemption provided for in Appendix A is the same as the exemption stated in the banking regulations noted above. However, Appendix A does expand on when this exemption may be used as noted below.

The Guidelines clarify that lenders who rely on part (i) of the exemption should maintain adequate documentation that confirms that the transaction "qualifies" for sale to a US government sponsored agency. We support this clarification to appropriately identify when the exemption is being used by the lender and its agent.

Item 7 of Appendix A includes those situations where loan workouts or modifications can be based on an evaluation rather than an appraisal. While the situations in which the use of an evaluation instead of an appraisal are permitted are sufficiently broad to encompass most loan workouts or modifications since these are situations in which typically no new funds are advanced, we would suggest that Appendix B, Evaluation Alternatives, be clarified to permit the use of an index adjustment to the original appraised value to establish valuation for loan workouts or modifications. The recently released FDIC guide entitled, "FDIC Loan Modification Program," details the FDIC's systematic and streamlined approach to loan modifications at IndyMac Federal Bank for the purpose of providing a tool to assist bankers, servicers and investors in the loan modification process. In the FDIC guide, the FDIC discusses the net present value (NPV) test that they use in order to determine if a modification is less costly to the investor than foreclosure. In detailing the formula used to calculate NPV, on page 12 of the booklet, it states, "Current Property Value is determined by an interior appraisal, Broker Price Opinion (BPO), Automated Valuation Model (AVM), or original appraised value adjusted by MSA level home price change to date. This value is then adjusted by forecasted MSA level home price changes." We support modifying Appendix B to clarify that the use of an index adjustment to the original appraised value is an acceptable evaluation alternative to do streamlined modifications.

Bank of America is also supportive of the guidance in Item 8 of Appendix A that appears to provide some operational advice when making a loan that will be used for the purchase of other loans, and we take an assignment of the mortgage interests in the underlying loan. Previously, there has been some concern that, even though this exemption appears in the CFR, it was not clear to what standard lenders would be held if they relied upon the appraisals of the mortgage originators. The proposed Guidelines provide a safe harbor by advising that lenders spot check a representative sample of the underlying mortgage appraisals and, if satisfactory, need not conduct additional review.

Proposed Technical Changes

- On page 22 of the Guidelines in the first full paragraph addressing the use of written engagement letters, we would suggest that the agencies remove the phrase; " . . . particularly for large complex or our of area commercial real estate properties." Inclusion of the phrase could lead to confusion and imply that a written engagement letter is not necessary for all transactions. Eliminating the statement clearly supports the examiners request for written engagement letters.

- On page 25 of the Guidelines in the first paragraph, we would suggest deleting the word "effective". As the revised language mirrors the current requirements stated in Banking Circular 94-55, which requires an institution to analyze and report "as is" value. The proposed Guidelines as drafted would require the statement of the named conditions as of the effective date of value. Conceivably, the effective date could be a prospective date for new construction, thereby eliminating the requirement for an "as is" value. Deleting the word "effective" would eliminate any confusion in this area.

- The first paragraph on Page 30 of the Guidelines states, "[f]urther, USPAP requires the appraiser to disclose whether or not the subject property was inspected and whether anyone provided significant real property appraisal assistance to the appraiser signing the report." USPAP does not require disclosure of anyone to who provides significant assistance. Disclosure is for "significant real property appraisal assistance." The difference is important, because USPAP does not require disclosure of assistance from, for example, an engineer who provides technical information, only from appraisers. Only appraisers can provide "real property appraisal assistance."

- The first paragraph on page 35 of the guidelines should be edited to delete: "obtain documentation" and "transferring the appraisal" in both places that it appears. These changes will confirm the Guidelines to the USPAP which does not permit an appraiser's report to be "transferred" from one client to another. The paragraph does not specifically reference USPAP, but there is definitely a misconception in Banks regarding "readdressing" reports to the second Bank and whether the second Bank needs the first Bank to officially transfer the report to them. The intent of this section and prior FIRREA interpretation does not require a report to be readdressed and/or transferred. The suggested changes will remove misconstrued language from the Guidelines without changing the intent.

Bank of America appreciates the opportunity to comment on the proposed appraisal Guidelines, and we thank you for your consideration of these remarks.

Respectfully submitted,

Gregory Baer
Deputy General Counsel

Bank of America