



September 19, 2023

Chief Counsel's Office, Attention: Comment Processing
Office of the Comptroller of the Currency (OCC)
400 7th Street, SW., Suite 3E-218
Washington, DC 20219
RE: Docket ID OCC-2023-0007

Ann Misback, Secretary
Board of Governors of the Federal Reserve System (FRS)
20th Street and Constitution Avenue NW
Washington, DC 20551
RE: Docket No. OP-1809

James P. Sheesley, Assistant Executive Secretary
Attention: Comments/Legal OES (RIN 3064-ZA36)
Federal Deposit Insurance Corporation (FDIC)
550 17th Street NW
Washington, DC 20429

Melane Conyers-Ausbrooks, Secretary of the Board
National Credit Union Administration (NCUA)
1775 Duke Street
Alexandria, Virginia 22314-3428
RE: Docket No. NCUA-2023-0061

Comment Intake – Interagency ROV
Consumer Financial Protection Bureau, c/o Legal Division Docket Manager (CFPB)
1700 G Street NW
Washington, DC 20552
RE: Docket No. CFPB-2023-0033

To the OCC, FRS, FDIC, NCUA, and CFPB,

The undersigned professional appraisal organizations appreciate the agencies' collective efforts to develop guidance around Reconsiderations of Value (ROVs) to provide financial institutions, consumers, and appraisers with a more transparent and consistent process. Presently, the ROV process can and does vary significantly between institutions, creating an uneven process for consumers and appraisers based on an institution's individual policies regarding ROVs. Given the wide variety of practices, we believe the agencies would be best served by establishing principles-based guidance over more prescriptive illustrations.

While this guidance lacks the force and effect of laws or regulations, we believe guidance developed with an eye toward better application of existing laws and regulations around when and how an ROV is used can benefit all parties to a mortgage lending transaction, whether it is for a home purchase or a refinance of an existing mortgage loan. We also believe that this guidance must take into consideration the relative burdens carried by each party and provide appropriate balance so that ROVs can be as effective as possible for everyone involved.

Lastly, the undersigned organizations share a strong preference for an ROV mitigation process that mirrors the existing Tidewater process as used by the Veterans Administration home loan program and have provided our views regarding that process in a separate letter. Confirmation of the acceptability of Tidewater-like procedures within a principles-based guidance document would help encourage best practices beneficial to consumers and other stakeholders. The purpose of these comments is to respond substantively to the questions posed by the agencies herein and outline additional issues worth considering.

- 1) *To what extent does the proposed guidance describe suitable considerations for a financial institution to take into account in assessing and potentially modifying its current policies and procedures for addressing ROVs?*
 - a) *What, if any, additional examples of policies and procedures related to ROVs should be included in the guidance?*
 - b) *Which, if any, of the policies and procedures described in the proposed guidance could present challenges?*

The proposed guidance makes a key distinction regarding ROVs that should be at the center of how any institution considers whether and to what extent to adopt new or modify existing ROV policies and practices – that the process flows directly from the institution to the appraiser.

While consumer inputs may provide the underpinnings for the ROV request to be made, the institution is primarily responsible for making an initial determination as to whether consumer provided information is specific, verifiable, and additional to those factors already considered by the appraiser in forming their original opinion of value.

In this respect, both the agencies' guidance and individual institution policies should reflect the need to vet consumer inputs at the institution level first before initiating an ROV request with the appraiser. Our concern is that without specific guidance from the agencies as to when an institution should and should not initiate an ROV based on consumer inputs, the default posture will always be to err on the side of requesting an ROV. There are several reasons why such a default position is incorrect.

For starters, appraisers undertake significant professional risk every time they accept and complete an appraisal in connection with a mortgage loan transaction. Possible sanction by a state appraiser board for failure to comply with the Uniform Standards of Professional Appraisal Practice (USPAP), exposure to investigation for Fair Housing Act violations by the Department of Housing and Urban Development (HUD), and headline and reputational risk if the appraiser is alleged to have discriminated against the consumer form the risk paradigm appraisers operate under currently. Appraisers are acutely aware of these risks and work in a diligent, competent, and credible manner to mitigate these risks.

This environment underscores an expectation that appraisers have incentives to form credible opinions of value upon which institutions can reasonably rely when making lending decisions. While parties can have differing views about specific considerations of allowable factors when forming that opinion, some level of deference should be afforded when deciding whether to request an ROV. Any guidance provided by the agencies or policies developed by institutions should recognize this as a starting point.

Additionally, most ROV processes are undertaken by the appraiser without additional compensation for their time or services. This affects the appraiser two-fold: First, by providing a strong incentive to provide a credible opinion of value initially; and second, to be responsive in a timely manner when an ROV request is made and additional information is provided by the institution, whether it comes from the institution itself or the consumer.

Ultimately, the institution bears the decision about whether to request an ROV from the appraiser. It is incumbent on the agencies and the institutions to develop guidance and policies that reflect the environment in which the opinion of value was formed, and to thoroughly vet consumer complaints to ensure they are specific, verifiable, and provide additional information not previously considered by the appraiser.

Secondary to this issue is the need, rightly identified by the agencies in its proposal, for institutions and any third parties they rely upon (such as appraisal management companies, or AMCs) to review appraisals for USPAP compliance and for issues related to ECOA and the Fair Housing Act. While the USPAP compliance review requirement applies to federally related transactions (a definition hollowed out by the 1994 exemptions put forth by

some of the agencies involved in this proposal), there is no reason such reviews should not be occurring regardless of whether the lending activity is exempt from Title XI appraisal requirements. Such reviews go directly to the safety and soundness of lending activity, and the absence of such reviews erodes safety and soundness principles.

By performing these reviews, institutions provide an additional layer of scrutiny to appraisals such that, if the appraisal has already complied with the review requirements of the institution, any subsequent issue raised by the consumer should meet a threshold for materiality. Otherwise, the institution is simply acting as a cipher, passing on consumer issues without considering whether they are specific, verifiable, and additional to the information already contained in the appraisal. Put differently, guidance and policies should reflect the significant work already performed in connection with creation and review of the appraisal.

Further, the final guidance from the agencies should encourage institutions to deploy robust appraisal review processes and procedures and engagement of qualified review professionals. In doing so, the guidance should discourage exclusive reliance on purely automated approaches to bias or fair housing review. Current processes and procedures used by most mortgage lenders lean heavily on automated review tools, and this has already proven ineffective, as illustrated by the prevalence of highly charged words and phrases included in appraisal reports sold into the secondary market or guaranteed by federal agencies. Current review processes rely too heavily on automated solutions that are limited in identifying problems associated with the credibility and support for an appraisal.

Lastly, any guidance or policies should have the goal of keeping ROVs as a singular event. The time and cost (in lost opportunity to perform new appraisal assignments) to appraisers in responding to ROVs is significant. If the process is allowed to go through several iterations, appraisers are asked each time to put aside other assignments to craft a response.

This is inefficient and imposes upon the appraisers' ability to move forward from an assignment they completed to the best of their ability. ROV guidance and policies can and should be crafted to require a single response from the appraiser, containing all specific, verifiable, and additional information so the appraiser can consider the information and determine whether and to what extent their opinion of value should change.

2) *What model forms, or model policies and procedures, if any, related to ROVs would be helpful for the agencies to recommend?*

As discussed above, the agencies should develop model policies that provide clarity to institutions as to when consumer provided information should be provided to the appraiser as part of an ROV, or when the institution is within its rights to decide that consumer information is not sufficiently specific, verifiable, and additional to the information contained in the appraisal as to merit requesting an ROV. Absent this guidance, our concern is that the default posture of institutions will be to request an ROV regardless of the merits to avoid encountering material deficiency concerns with their own subsequent examinations.

Regarding forms or formats, at one time the Appraisal Foundation (TAF) developed a concept paper, with a model form, regarding how best to structure an ROV request around the idea of it being a singular (and not iterative) process, though this format was not subsequently introduced and adopted by institutions. We encourage the agencies to work collaboratively with TAF in reviving this work product to determine whether it can be leveraged in developing a model form or format for use by institutions.

Even if the TAF product is not viable, the extent to which the agencies can harmonize the contents of ROV forms and formats would benefit consumers and appraisers. For consumers, the current disparate environment around ROVs generally and process specifically means consumers are subject to wildly different processes and outcomes based solely on their choice of lending institution. Consistency in process, forms and formats would provide fairness to consumers regardless of who they choose as a lender and allow for greater comparison between institutions regarding the performance of their ROV process.

For appraisers, seeing forms or formats that are more alike than they are different will make it easier for appraisers to respond to ROV requests in a timely and substantive manner, without having to learn specific nuances across different institutions. Such consistency would better recognize the time and effort sunk both into the original appraisal as well as the ROV itself.

- 3) *To what extent, if any, does the proposed ROV guidance conflict, duplicate, or complement the existing Interagency Appraisal and Evaluation Guidelines (IAEG) or a financial institution's policies and procedures to implement those Guidelines?*

One area where the agencies guidance works in a complimentary manner to the IAEG is around documentation. An ROV process that places the onus on the institution to conduct its own reviews and seek resolution prior to the consumer seeing the appraisal and raising their own concerns works best where documentation clearly identifies those issues already raised with and addressed by the appraiser. If a consumer raises issues already discovered and resolved between the institution and the appraiser, the institution has documentation it can provide to the consumer as the basis for not requesting an ROV.

Other Issues Not Addressed in Questions

As we have participated in industry and agency work groups on this subject, including OCC Project REACH, the subject of proper escalation of bias or fair housing concerns has been raised as an ongoing and open concern amongst stakeholder organizations, particularly financial institutions. Some depository institutions that are regularly examined by federal financial institution examination agencies report an expectation among examiners that all bias and fair housing concerns should be escalated to a higher level of review. Some institutions are deploying separate tracks altogether for bias and fair housing complaint reviews. By comparison, institutions that fall outside of federal examiner review may not have the same expectations, creating wide inconsistency of behavior and treatment amongst institutions and consumers.

Related to this, some stakeholders have questions about how or when an institution should be allowed to order a second appraisal as a matter of policy and procedure. Further, some have raised a potential concern about the ordering of second appraisals and adverse impacts on protected classes.

We encourage the agencies to engage directly with stakeholder organizations to weigh these issues and develop clear and consistent guidance that addresses legal obligations and advances clear communication pathways for all parties involved. To this point, the issues associated with ROV are complex and cut across industries, oversight agencies, and practices. There are several open legal questions that require further discussion and resolution. This is a difficult environment in which to develop clear and consistent guidance.

The agencies and stakeholders would undoubtedly benefit from further vetting of concerns and development of best practices through roundtables and hearings. We encourage the agencies to conduct that level of stakeholder engagement in the development of the final guidance on the subject.

We appreciate having the opportunity to provide comment on this proposed guidance. If you have any questions or wish to discuss our views further, please contact:

- John D. Russell, JD, Strategic Partnership Officer for ASA, at 703-733-2103 or by email at jrussell@appraisers.org;
- Bill Garber, Director of Government and External Relations for the Appraisal Institute (AI), at 202-298-6449 or by email at bgarber@appraisalinstitute.org;
- Stephen Frerichs, Government Relations Consultant for the American Society of Farm Managers and Rural Appraisers (ASFMRA), at 703-212-9416 or by email at sfrerichs8@comcast.net; or,
- Stephen Sousa, Executive Vice President for MBREA, at 617-830-4530 or by email at steve@mbrea.org.

Sincerely,
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