



Reconsiderations of Value of Residential Real Estate Valuations
Comments on Proposed Interagency Guidance

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by

National Consumer Law Center (on behalf of our low-income clients), National Fair
Housing Alliance,

and

Americans for Financial Reform Education Fund, Consumer Federation of America,
Mountain State Justice, National CAPACD, National Community Reinvestment
Coalition, National Housing Resource Center, National Urban League

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The National Consumer Law Center (on behalf of our low-income clients), the National Fair Housing Alliance® (NHFA™), Americans for Financial Reform Education Fund, Consumer Federation of America, Mountain State Justice, National CAPACD, National Community Reinvestment Coalition, National Housing Resource Center, and the National Urban League submit the following comments regarding the proposed guidance on reconsideration of valuation requests.¹ We thank you for the opportunity to comment on this proposal.

Summary: The proposed guidance is well designed to protect consumers when they find problems with an appraisal. But we do, however, recommend several improvements.

1. Introduction

We commend the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency (collectively, the Agencies) on producing proposed guidance that addresses most of the important issues related to Reconsideration of Valuation requests (ROVs) (the Proposed Guidance).² This Proposed Guidance is timely and needed.

In recent years, it has become clear that the problem of bias in appraisals has not gone away. The 1968 Fair Housing Act barred discrimination in home appraisals and other housing-related transactions on the basis of race, color, religion, national origin, sex, disability, and familial status.³ But, as demonstrated by lawsuits in the years after the

¹ Please see the appendix for a description of our organization. For questions about these comments, please contact NCLC Senior Attorney Andrew Pizor (APizor@nclc.org).

² Bd. of Governors of the Fed. Res. Syst., Consumer Fin. Protection Bur., Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., and Office of the Comptroller of the Currency, *Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations*, 88 Fed. Reg. 47071 (July 21, 2023) [hereinafter "Proposed Guidance"], available at <https://www.govinfo.gov/content/pkg/FR-2023-07-21/pdf/2023-12609.pdf>.

³ 42 U.S.C. § 3601, *et seq.*

Act was passed,⁴ and more recent media reports of bias,⁵ it is clear that the appraisal industry still has a problem with bias.⁶

Fixing the system for handling ROV requests is an important step toward making appraisals fairer. A 2022 report on the Uniform Standards of Professional Appraisal Practice (USPAP) noted that both fair housing organizations *and* appraisal organizations complained about the ROV process as a point of frequent breakdown in the ability of consumers to obtain fair and accurate appraisals.⁷ This complaint applied to consumers of color and otherwise.

Parties involved in a lending transaction, most often the consumer, can use the ROV process to express disagreement with an appraiser's opinion of value (i.e., an appraisal or appraisal report) and may submit information for the appraiser to consider. The information is generally given to the financial institution or appraisal management company. Financial institutions screen consumer ROVs and forward the ones they deem appropriate to the appraiser. Consumers often submit information including other property sales that may be comparable and details about the characteristics of the subject property that differ from the appraisal report. The appraiser then determines whether to revise the original opinion of value.

Appraisal groups noted variations in policies and practices among financial institutions. Unfortunately, federal law, Fannie Mae, and Freddie Mac provide no real guidance beyond the rules for appraiser independence. And fair housing advocates reported that consumers raising concerns with respect to discrimination often felt that their efforts to seek correction—or even simply to receive explanations supporting valuations—were not fairly considered and that the results seemed arbitrary and opaque, without transparency into the decision-making process.⁸ For these reasons, we

⁴ See, e.g., *United States v. American Institute of Real Estate Appraisers*, 442 F. Supp. 1072 (N.D. Ill. 1977).

⁵ See, e.g., Debra Kamin, *Chicago Tribune*, “Completely devastating”: Black landlord says white appraiser undervalued his rental property (Apr. 9, 2023), available at <https://www.proquest.com/newspapers/completely-devastating/docview/2798058258/se-2>; Debra Kamin, *N.Y. Times*, Widespread Racial Bias Found in Home Appraisals (Nov. 2, 2022), available at <https://www.nytimes.com/2022/11/02/realestate/racial-bias-home-appraisals.html>.

⁶ See generally National Fair Housing Alliance, Dane Law LLC, and the Christensen Law Firm, *Identifying Bias and Barriers, Promoting Equity: An Analysis of the USPAP Standards and Appraiser Qualifications Criteria* (Jan. 2022), available at https://nationalfairhousing.org/wp-content/uploads/2022/02/2022-01-28-NFHA-et-al_Analysis-of-Appraisal-Standards-and-Appraiser-Criteria_FINAL.pdf.

⁷ *Id.* at 77.

⁸ *Id.* at 78.

welcome the Agencies' proposed guidance on ROVs, with the caveats and recommendations discussed below.

2. Responses to Questions Posed

2.1 Question 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?

2.1.1 *Financial institutions remain responsible for compliance.*

We agree that it is particularly important to remind financial institutions that their “use of third parties in the valuation review process does not diminish [their] responsibility to comply with applicable laws and regulations.”⁹ Even when using an appraisal management company or independent appraiser, financial institutions remain subject to anti-discrimination laws, such as the Fair Housing Act and the Equal Credit Opportunity Act, as well as other federal and state consumer protection laws. Financial institutions cannot merely accept all appraisals at face value. They must subject them to a quality control process that checks for errors and indications of prohibited bias.

2.1.2 *Appraisals are not just a safety and soundness issue—they affect consumers too.*

It is also appropriate for the guidance to recognize that deficient appraisals harm homeowners, not just financial institutions.¹⁰ As stated in the guidance, “Deficient collateral valuations can keep individuals, families, and neighborhoods from building wealth through homeownership by potentially preventing homeowners from accessing accumulated equity, preventing prospective buyers from purchasing homes, making it harder for homeowners to sell or refinance their homes, and increasing the risk of default.” For that reason, a financial institution’s appraisal review process must be alert to errors causing not just overvaluation but *undervaluation* as well. Homeowners are more likely to complain about undervaluation, and institutions must be willing to accept ROVs on that basis.

2.1.3 *Financial institutions must establish reasonable timelines for processing consumer complaints about appraisals.*

The proposed guidance encourages financial institutions to “[e]stablish timelines in the complaint or ROV process for when milestones need to be achieved.”¹¹ We agree that this is appropriate but recommend making the guidance more forceful. Instead of

⁹ Proposed Guidance at 47076.

¹⁰ *Id.* at 47075.

¹¹ *Id.* at 47077.

merely saying institutions “*may* consider developing”¹² policies that establish timelines, the guidance should make this recommendation as close to mandatory as possible outside a formal rule.

We cannot imagine a situation in which it would be reasonable for an institution to fail to adopt timelines for processing consumer complaints, appraisal reviews, or processing ROVs. In particular, we urge the Agencies to recommend that institutions take one of the following steps, and notify the consumer, within three business days of receiving a consumer’s complaint about an appraisal:

- a. Transmit the ROV to the appraiser;
- b. Respond to the consumer by requesting more information;
- c. Request a new appraisal from a different appraiser if appropriate; or
- d. Notify the consumer if the mortgagee will not transmit the ROV or request a new appraisal, or of any other action taken.

2.1.4 *Financial institutions must clearly outline internal responsibilities and establish a channel for consumer complaints about appraiser bias.*

The proposed guidance also encourages financial institutions to adopt policies that:

- “Identify stakeholders and clearly outline each business unit's roles and responsibilities for processing an ROV request . . . ;” and
- “Establish risk-based ROV systems that route the request to the appropriate business unit (e.g., ROV requests that allege discrimination could be routed to the appropriate compliance, legal, and appraisal review staff that have the requisite skills and authority to research and resolve the request).”¹³

These two policies are particularly relevant to consumer complaints of appraiser bias, and we strongly agree that both are appropriate. But, for the same reasons as explained in § 2.1.3 above, both of these recommendations should be more strongly worded and as close to mandatory as possible.

The first of these two recommended policies would establish a clear channel for the timely resolution of consumer complaints. This is obviously important for both consumers and lenders and will also reduce financial institutions’ exposure to litigation risk.

¹² *Id.* at 47077 (emphasis added).

¹³ *Id.*

The second recommendation relates to how complaints of discrimination should be handled. Allegations of fair housing bias may require extra attention and expertise. Bias complaints should be reviewed and tracked even if the financial institution decides against transmitting the consumer's ROV to the appraiser. The guidance should recommend that bias complaints always be reported to the financial institution's complaint tracking system. The employees responsible for ROVs and appraisal reviews should not exercise any discretion over whether to do so.

The second recommendation's reference to "appropriate compliance, legal, and appraisal review staff that have the requisite skills ... to research and resolve the request" is also particularly important. Financial institutions should have employees trained in how to handle bias complaints, including how to respond to the consumer, when to inform the appraiser, when to order a new appraisal from a second appraiser, and when to report the complaint to appropriate regulatory authorities.

Similarly, we agree with the recommendation that institutions should "[e]nsure relevant . . . staff, inclusive of third parties . . . are trained to identify deficiencies (inclusive of prohibited discriminatory practices) through the valuation review process."¹⁴ It is especially important that staff be able to identify discriminatory practices, as it would be inappropriate to rely on untrained consumers to do so.

2.1.5 Financial institutions must request a second appraisal if the mortgagee determines that the first appraisal is materially deficient, and the appraiser is unable or uncooperative in resolving the deficiency.

Although the topic of second appraisals is covered briefly in previous guidance, the proposed guidance only says institutions "may consider" developing policies and procedures "[e]stablish guidelines for when a second appraisal could be ordered and who assumes the cost[.]" Instead, the Agencies should clarify, here, the circumstances under which a financial institution must request a second appraisal. For example, as part of resolving the ROV process, the financial institution must request a second appraisal if it determines that the first appraisal is materially deficient, and the appraiser is unable or uncooperative in resolving the deficiency. To promote safety and soundness as well as compliance with applicable law, the financial institution must order a second appraisal that accurately values the property.

2.2 Question 2: What model forms, or model policies and procedures, if any, related to ROVs would be helpful for the Agencies to recommend?

2.2.1 Develop a model form explaining the right to seek an ROV and how to do so.

We encourage the Agencies to develop a well-designed model form for financial institutions to use when educating consumers about ROVs. The form should be

¹⁴ *Id.*

available in multiple languages so consumers with limited English proficiency have an equal opportunity to exercise their rights.

The Proposed Guidance correctly recognizes that it is important “to inform consumers how to raise concerns about the valuation sufficiently early enough in the underwriting process for any errors or issues to be resolved before a final credit decision is made.” And we agree with the recommendation to “include suggesting to consumers the type of information they may provide when communicating with the financial institution about potential valuation deficiencies.” But, having seen some of the materials issued by financial institutions, we are concerned that this information will be overlooked unless the Agencies urge financial institutions to use a well-designed model form.

Consumers will not be able to ask for an ROV if they do not know they have the right to do so or how to do so. And financial institutions have no incentive to effectively explain how consumers can complain about appraisals. Strongly recommending that financial institutions use an Agency-designed model form will address this problem. Such a form should state the following information:

- that consumers should carefully read the appraisal report and notify the mortgagee of any errors, such as in the description of the property, or any other problems they find;
- that consumers have the right to ask for a reconsideration of the valuation if they believe it is too high or too low;
- that the appraisal must be free of any bias and must be conducted in a professional manner;
- that consumers have a right to complain to the mortgagee if they believe the appraiser was biased in any way or acted unprofessionally;
- how to contact the financial institution about any complaints or to request a reconsideration of valuation, along with a description of supporting information that will help the financial institution act on the consumer’s complaint or request; and
- how to complain to the appropriate regulator if a consumer believes the financial institution has not handled a complaint properly.

The timing of the notice is as important as its content. Consumers should receive the notice *before* an appraiser visits the home so consumers know they should pay attention to what the appraiser says and does, and not just what the final appraisal report says.

We encourage the Agencies to give the public an opportunity to comment on the model form before it is finalized. The Agencies also should use consumer testing and ensure the disclosure is accessible to consumers who are not proficient in English.

3. Coordinate with the Federal Housing Administration (FHA) and other PAVE Task Force Agencies to issue consistent, industry-wide guidance on ROVs.

Finally, we urge the Agencies to coordinate with the FHA and other agencies in the PAVE Task Force to ensure a consistent whole-of-government approach to addressing appraisal bias, including ROV policies. On February 2, 2023, NCLC, NFHA, and other leading consumer and civil rights advocates provided comments to the FHA on their proposed Mortgagee Letter regarding lender ROV policies. The FHA proposal and the Agencies' proposal are somewhat different and should be harmonized to provide a unified approach. By working together on fair housing oversight, Reconsideration of Valuation policies, and other important actions to prevent appraisal bias, the PAVE Task Force agencies can send a strong message about the importance of promoting fair housing opportunities and building wealth for all consumers.

4. Conclusion

The proposed guidance is a strong step toward improving how financial institutions handle consumer complaints about appraisals. But more needs to be done. The guidance should be more specific about necessary timelines, including recommending that institutions act on consumer complaints within 3 business days. The Agencies should also incorporate stronger guidance on when institutions should obtain a second appraisal. It is not enough to rely on older, previously issued guidance. The Agencies should also develop a model form that institutions can give consumers to advise them about appraisal problems. This will be particularly useful for smaller institutions that do not have the resources to develop their own form. We also recommend greater coordination with FHA and other PAVE task force members to ensure a consistent, whole-of-government approach to addressing appraisal discrimination.

Appendix

Americans for Financial Reform Education Fund: The [Americans for Financial Reform Education Fund \(AFREF\)](#) is a coalition of more than 200 consumer, investor, labor, civil rights, business, faith-based, and community groups that works through policy analysis, education, advocacy, and outreach to lay the foundation for a strong, stable, and ethical financial system. Formed in the wake of the 2008 financial crisis, AFREF works to protect and strengthen consumer protections for all people, including advocacy for greater protections against predatory lending, increased access to affordable and sustainable credit, and fairness and transparency in all financial transactions.

Consumer Federation of America: The [Consumer Federation of America \(CFA\)](#) is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. Today, more than 250 of these groups participate in the federation and govern it through their representatives on the organization's Board of Directors.

Mountain State Justice, Inc.: [Mountain State Justice \(MSJ\)](#) is a non-profit legal services organization dedicated to redressing systemic social, political, and economic imbalances of power for underserved West Virginians. MSJ has provided legal representation to thousands of homeowners combating predatory mortgage lending practices, including fraudulent appraisals, which threatened them with the loss of their homes.

National CAPACD- National Coalition for Asian Pacific American Community Development: [National CAPACD](#) (National Coalition for Asian Pacific American Community Development) is a coalition of more than 100 member organizations with a mission to build a powerful coalition of Asian American, Native Hawaiian, and Pacific Islander (AA & NHPI) community-based organizations working with low-income populations. We utilize a comprehensive set of community development strategies to advance equity and create vibrant, healthy communities.

National Community Reinvestment Coalition: The [National Community Reinvestment Coalition \(NCRC\)](#) is an association of more than 600 community-based organizations that work to promote access to basic banking services including credit and savings. Our members, including community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, and minority and women-owned business associations help create and sustain affordable housing, job development and vibrant communities for America's working families.

National Consumer Law Center: Since 1969, the nonprofit [National Consumer Law Center](#)[®] (NCLC[®]) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged

people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

National Fair Housing Alliance: The [National Fair Housing Alliance®](#) (NFHA™) is the country's only national civil rights organization dedicated solely to eliminating all forms of housing and lending discrimination and ensuring equal opportunities for all people. As the trade association for over 170 fair housing and justice-centered organizations and individuals throughout the U.S. and its territories, NFHA works to dismantle longstanding barriers to equity and build diverse, inclusive, well-resourced communities.

National Housing Resource Center: The [National Housing Resource Center](#) is dedicated to organizing nonprofit housing counseling agencies into a unified voice to advocate for the housing counseling industry and on behalf of housing consumers.

National Urban League: The [National Urban League](#) is a historic civil rights and urban advocacy organization with 90 affiliates serving 300 communities, providing direct services that impact and improve the lives of more than two million people nationwide.