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National Association of Federally-Insured Credit Unions

September 19, 2023

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

**RE: Guidance on Reconsiderations of Value of Residential Real Estate Valuations
(Docket No. NCUA-2023-0061)**

Dear Ms. Conyers-Ausbrooks:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the request for comment on the proposed Interagency Guidance (proposed guidance) on Reconsiderations of Value (ROV) of Residential Real Estate Valuations issued by the Board of Governors of the Federal Reserve System; Consumer Financial Protection Bureau; Federal Deposit Insurance Corporation; Office of the Comptroller of the Currency, Treasury; and National Credit Union Administration (NCUA), collectively referred to as the “agencies”. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 138 million consumers with personal and small business financial service products. NAFCU and its member credit unions appreciate the opportunity to provide input on this proposed guidance. Given the diversity of institution sizes within the credit union industry, NAFCU requests that the NCUA ensure that any future guidance function solely as recommendations for credit unions, and avoid implementation of any mandatory requirements or rulemakings with respect to ROVs. NAFCU appreciates the agencies’ provision of sample policies and procedures related to ROVs as these examples may be useful for some credit unions. However, some of these examples, while still potentially beneficial to review, may present significant challenges in implementation.

General Comments

NAFCU recognizes the importance of financial institutions enhancing ROV processes to ensure a more accurate estimate of residential real estate valuations. In enhancing these processes, credit unions, like other financial institutions, will also have the burden of verifying that any new or updated ROV processes comply with safety and soundness standards and also adhere to all applicable laws and regulations. All this must be done while maintaining appraiser independence and without undercutting credit union’s traditional focus on extreme customer service. This is a significant responsibility for credit unions, especially those with more limited resources. It is for this reason that NAFCU emphasizes that this proposed guidance, and any subsequent guidance,

should remain an optional resource for credit unions to utilize, and have no consequences in the supervisory process.

As mentioned in the proposed guidance, the Federal Reserve Board, FDIC, NCUA, and OCC have previously promulgated Interagency Appraisal and Evaluation Guidelines (Appraisal and Evaluation Guidelines).¹ Within the Appraisal and Evaluation Guidelines, financial institutions are advised on potential actions that they can take to correct deficiencies identified in collateral valuations. These actions include requesting a correction of deficiencies from the appraiser, obtaining a second appraisal, and replacing evaluations prior to the credit decision that do not provide credible results or lack sufficient information to support the final credit decision.²

The proposed guidance does not appear to conflict significantly with the Appraisal and Evaluation Guidelines. The ideas suggested in the proposed guidance, such as establishing a process that provides for the identification, management, analysis, and escalation, and resolution of valuation related complaints across business lines, further develop the premise of the correction of deficiencies. It should be noted that the number of real estate appraisal businesses have been declining over the last five years, which can be an additional challenge from an implementation standpoint.³ Nonetheless, these suggestions, as they stand, do not significantly conflict with previous guidance on the correction of deficiencies.

Deficient collateral valuations are an important issue with significant consequences. Incorrect valuations can be due to several factors which include discrimination, errors, and omissions. The result is that certain real estate properties are overvalued and other properties are undervalued. It has been noted that homes in Black neighborhoods in particular are more often appraised below their true value.⁴ Instances of undervaluation, whether through error or some degree of discrimination, have a negative impact on communities and should be combatted to the extent possible. Facilitating improved ROV processes may help ameliorate the issue of deficient collateral valuations. Therefore, it is worth exploring potential processes and procedures that could guide credit unions in their efforts with respect to residential real estate valuations.

While it is important to explore methods to improve ROV processes, it is important also to reflect on challenges that financial institutions face. For instance, the agencies should consider who bears the cost of seeking an appraisal. If the financial institution is always responsible for the cost of the new valuation, it poses a potential problem where some consumers may request ROVs without justification in an attempt to seek higher property valuations at no cost. Additionally, the agencies should consider if ROV requests should be made within a certain timeframe after receipt of the original valuation. Allowing ROV requests to be made several days or more after receipt of

¹ Interagency Appraisal and Evaluation Guidelines, 75 FR 77450 (Dec. 10, 2010).

² *Id.*

³ IBISWorld, "Real Estate Appraisal in the US-Number of Businesses 2004-2029" *available at* <https://www.ibisworld.com/industry-statistics/number-of-businesses/real-estate-appraisal-united-states/#:~:text=The%20number%20of%20businesses%20in,five%20years%20between%202018%20%2D%202023.>

⁴ Brookings Institution, "How Racial Bias in Appraisals Affects the Devaluation of Homes in Majority-Black Neighborhoods" (Dec. 5, 2022) *available at* [https://www.brookings.edu/articles/how-racial-bias-in-appraisals-affects-the-devaluation-of-homes-in-majority-black-neighborhoods/.](https://www.brookings.edu/articles/how-racial-bias-in-appraisals-affects-the-devaluation-of-homes-in-majority-black-neighborhoods/)

the original valuation can have consequences on the rate lock and can generally be a considerable burden on financial institutions.

Credit unions are required by NCUA regulations to ensure that all federally related transactions conform with the Uniform Standards of Professional Appraisal Practice (USPAP).⁵ Adhering to USPAP requires that credit unions maintain compliance with applicable laws and regulations including nondiscrimination requirements. Under USPAP, credit unions are already prohibited from discriminatory behavior in the appraisal review process. Given the standards that credit unions are already required to adhere to, the promulgation of restrictive, additional regulation would therefore be duplicative and only guidance, which must be advisory rather than mandatory, should be issued.⁶ However, NAFCU welcomes this effort to gather information to develop new and improved ROV processes to potentially assist in combatting deficiencies in real estate valuations. Improved ROV policies and procedures may provide supplementary information and context that would be useful in providing insight that may not have been part of the original appraisal process with the potential to benefit the process as a whole.

Review of Suitable Considerations

The proposed guidance does include examples of policies, procedures, and control systems that, if successfully implemented, would assist credit unions in combatting the issue of deficient valuations. This would have to be done by implementing appropriate policies and procedures for addressing ROV issues. It should be noted that even if certain suggestions could be deemed useful in mitigating deficient valuations, credit unions like all financial institutions must also realistically assess their ability to integrate these proposed changes into their systems. Due to the varying size and availability of internal resources for credit unions, it is difficult to expect universal adoption of any suggestions, even if they hold merit.

ROVs have been suggested as a possible resolution to consumer complaints related to residential property valuations. NAFCU expects that ROVs may indeed assist in resolving consumer disputes related to residential property valuation. ROVs would provide an option for the property to be reevaluated and potentially address the consumer's concern.

Performing an ROV for this type of issue is beneficial in that it directly addresses the root of the consumer's complaint. However, an ROV may not always resolve this issue. Even after an ROV is completed, consumers may still complain that the revised property valuation does not match the true value of their real estate. This would be especially true in instances where the ROV does not yield much deviance from the original value assessment. In some cases, consumers may not accept an ROV as a suitable solution to resolve their complaint. Additionally, credit unions will need to consider the costs and additional resources that will be needed to provide ROVs. Despite these issues, ROVs can still likely be beneficial in helping resolve some of the complaints that credit unions will face from consumers regarding residential property valuations.

⁵ See 12 CFR part 722; 12 CFR part 701.31.

⁶ Role of Supervisory Guidance, 86 FR 18173 (April 8, 2021).

The proposed guidance suggests that financial institutions consider whether any information or other process requirements related to a consumer's request for initiation of an ROV may discourage consumers from requesting an ROV. This is an issue that credit unions may seek to evaluate, to the extent possible. It would certainly be conducive to consumers and more efficient if the process to request an ROV was as streamlined as possible. However, it should be noted that in some situations the collection of information and other process requirements are a necessary facet of the procedure for the ROV to be done correctly. Overall, it would be beneficial if the process to initiate an ROV can be streamlined; however, this is likely only possible to a limited extent from a practical standpoint.

Another suggestion listed in the proposed guidance is to identify stakeholders and clearly outline each business unit's roles and responsibilities for processing an ROV request. This is a sensible and practical suggestion that credit unions can seek to implement to the extent that it fits their capabilities. Each institution will likely have its own manner of determining the responsibilities for each business unit and regulators should acknowledge that these roles and responsibilities may vary widely across institutions based on their size and complexity.

In a similar vein, financial institutions have been encouraged to establish risk-based ROV systems that send requests to the appropriate business unit for review. This is also a useful suggestion that credit unions may look to consider. If it can be implemented, it would allow credit union personnel with the best expertise on the matter to evaluate the issues. However, it may not be financially feasible for all credit unions to establish a complete system in which risk-based ROV systems are automatically routed to the appropriate personnel. Such a comprehensive system would require oversight by one or more properly qualified employees. Credit unions would likely need to hire additional staff for these roles, which would be a significant expense especially for smaller institutions.

The proposed guidance has also suggested the establishment of certain processes to increase the consistency of the consideration of ROV requests. This includes using plain and clear language both in notices to consumers regarding the ROV request process and also in the ROV policies themselves. This is useful guidance for any credit unions that choose to revamp their existing ROV request process or ROV policies or establish such a request process and policies. Instructions and policies that are listed in plain and clear terms have the benefit of allowing readers to gain better message retention and understanding of the information presented to them.⁷ NAFCU agrees that financial institutions should strive to list ROV related notices and policies in plain language to the degree it is feasible.

Similarly, it is sensible for credit unions to establish internal guidelines for the type of information that credit unions will need to initiate within the ROV process. This will establish a level of standardization within an organization that would allow the ROV process to move more smoothly. Finally, another suitable suggestion listed in the proposed guidance is to establish

⁷ Business Wire, "Labrador Reveals the Effectiveness of Plain Language Proven by Data" (July 28, 2023) *available at* <https://www.businesswire.com/news/home/20200728005012/en/Labrador-Reveals-the-Effectiveness-of-Plain-Language-Proven-by-Data>.

protocols for communicating the status of complaints and results to consumers. This is an important service to consumers which demonstrates that organizations have a robust system that ensures information is properly communicated to consumers in a timely fashion. However, for some institutions, these systems may be manual and not completely digitized, depending on the credit union's resources.

Policies and Procedures That May Present Challenges

Some of the examples of policies and procedures suggested in the proposed guidance while potentially useful, may pose some significant challenges. The suggestion to establish a process that provides for the identification, management, analysis, escalation, and resolution of valuation related complaints across all relevant business lines is admirable. However, a system that requires this for all channels and sources, which include letters, phone calls, in-person complaints, emails, regulators, and third-party service providers would require significant resources and entail a considerable cost. This would be necessary both to establish such a system and also to maintain it consistently. Some credit unions may be able to easily absorb the fixed and variable costs that such an extensive system entails. However, it's unlikely that credit unions of all levels will be able to implement such a robust system to the extent listed.

The proposed guidance also advises financial institutions to establish a process to inform consumers about how to raise concerns regarding their property valuations early on in the underwriting process so that any errors or issues can be resolved before a final credit decision is made. In practice, it would be difficult to flag the full scope of suggested information that consumers may need to provide when communicating with financial institutions about potential valuation deficiencies. With each consumer having a unique set of circumstances, it is difficult to consider a standardized policy or guide that advises them on all the possible additional information they would need to provide. Additionally, having consumers actually provide all such key information, even if identified, at the beginning of the loan origination process would be challenging and potentially confusing for consumers, as well as administratively burdensome for credit unions to process.

Establishing a timeline in the complaint or ROV process for when certain milestones need to be achieved is another suggestion that may be difficult to achieve. The internal process times could vary significantly for the review of complaints or ROVs of varying complexity. Some of these process times, in procedures involving third parties, could be outside the full scope of the organization's control. For this reason, it is unlikely a consistent timeline can be established for all complaints and ROVs. Additionally, an arbitrarily short timeline for review could lead to a rushed or cursory processing of complaints and execution of the ROV process.

Finally, the proposed guidance also advises financial institutions to ensure that relevant lending and valuation related staff, including third parties, are trained to identify deficiencies through the valuation process. This places a significant financial burden on credit unions not only to implement a significant amount of training with their staff, but also with third parties. It would likely be difficult to implement such a comprehensive level of training, especially for individuals

outside of the organization. NAFCU encourages the agencies to release industry-wide education and additional resources to assist stakeholders in identify common areas of deficiencies.

Additional Guidance

As discussed above, the proposed guidance includes useful examples of policies and procedures related to ROVs. Even the examples that could be challenging to implement for the reasons discussed above can still be of use for financial institutions. The agencies should consider including additional examples of policies and procedures related to ROVs that would be useful for financial institutions.

One additional example that may be useful is a policy related to the review process that business units may utilize to determine if an ROV is the appropriate measure to implement for a number of different types of consumer complaints. It is likely that financial institutions of all sizes will face consumer complaints related to a number of issues that may be tangentially related to the valuation of real estate. For instance, this could include potentially inaccurate financial information of individuals. Staff at financial institutions will likely need assistance in determining which issues call for an ROV as a potential solution and which issues must be addressed through avenues different than an ROV.

Another potentially beneficial example would be a procedure guiding organizations on managing a significant overflow of consumer complaints. It may be useful to have a guiding procedure that assists organizations in categorizing complaints to provide standardized solutions when applicable. This would improve efficiency and allow credit unions to deal with consumer complaints more expediently, especially in periods when there is a strong influx of complaints.

Model Forms, Policies, and Procedures

The proposed guidance has also invited input on any model forms or model policies and procedures. Any model document that is circulated by the agencies should merely be a guide to financial institutions on the type of information they may wish to consider including in their own forms, policies, and procedures. One potentially helpful model form would be a model form for ROV requests. This would allow financial institutions to review the type of data and information that is recommended for stakeholders to collect. One example of such a model form has been distributed by the U.S. Department of Veteran Affairs.⁸ NAFCU requests the agencies to release a common model form that can be easily used by borrowers and is consistent across financial institutions .

Another useful resource for credit unions would be a model disclosure on the process for making a request for an ROV and what the potential implications are to borrowers. For example, one potential impact of a request for an ROV could be a delay in closing. Similarly, it is possible in some cases that a request for an ROV can result in a loss of rate lock. A model disclosure synthesizing this information can be helpful for credit unions of varying sizes.

⁸ U.S. Dept. of Veteran Affairs, "Reconsideration of Value Request SOP" *available at* <https://benefits.va.gov/RODENVER/docs/ReconsiderationofValueRequestSOP.pdf>.

A model policy on determining the validity of the valuation of comparable properties listed in ROV request forms could also assist some credit unions. This policy could potentially come as a list of factors or considerations that credit unions should take into account when determining the weight of comparable properties listed in ROV request forms. As previously mentioned, such a model policy can serve as a resource for credit unions to consider when drafting their own unique policies.

Other standalone general guidance on the development of ROV processes could be related to training employees and internal stakeholders. Specifically, this should include any best practices that the agencies recommend that financial institutions should consider when training employees working on ROVs. Such guidance could assist in better preparing employees at financial institutions dealing with complex issues related to ROVs.

Conclusion

NAFCU appreciates the opportunity to comment on the proposed guidance. At this time, it is not necessary for the agencies to engage in rulemaking that imposes requirements related to ROVs on credit unions. Although some of the suggested examples of policies, procedures, and control systems listed in the proposed guidance might present significant implementation challenges, the examples overall can potentially be useful to some credit unions as guidance. If you have any questions, please do not hesitate to contact me at 703-615-0469 or oimtiazi@nafcu.org.

Sincerely,

A handwritten signature in black ink that reads "Omar Imtiaz". The signature is written in a cursive, slightly slanted style.

Omar Imtiaz
Regulatory Affairs Counsel