

May 13, 2022

Director Rohit Chopra
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552
2022-CFPB-AVM@cfpb.gov

Re: CFPB Outline for the Small Business Advisory Review Panel for the Automated Valuation Model Rulemaking

Dear Director Chopra,

We the undersigned civil rights, consumer, technology, and other advocacy organizations are writing in response to the Consumer Financial Protection Bureau's ("CFPB") request for comment on the CFPB's Outline for the Small Business Advisory Review Panel for the Automated Valuation Model Rulemaking ("Outline").¹ We applaud the CFPB for seeking comment on this important topic. Our organizations believe that the responses below will help inform the CFPB and other agencies and the upcoming interagency rulemaking.

Executive Summary

In 1989, Congress enacted Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA") in the wake of the Savings and Loan Crisis because inadequate appraisals were found to be a major factor in the failure of many lending institutions.² Title XI's statement of purpose makes clear that Congress intended to broadly protect "Federal financial and public policy interests in real estate related transactions."³

In 2010, Congress amended FIRREA to ensure that another form of valuation known as "Automated Valuation Models" or "AVMs" would also adhere to quality control standards.⁴ Congress provided the following agencies with rulemaking authority to implement the statutory quality control standards: the CFPB, Board of Governors of the Federal Reserve ("Board"), Federal Deposit Insurance Corporation ("FDIC"), National Credit Union Administration ("NCUA"), Office of the Comptroller of the Currency ("OCC"), and the Federal Housing Finance Agency ("FHFA") (collectively, the "Agencies").

In February of 2022, consistent with its obligations under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), the CFPB published the Outline of its proposals related to the potential rulemaking. The Outline is not a proposed rule and does not necessarily reflect the views of the other Agencies. Thus, we provide the following comments in response to the

¹ CFPB, Small Business Advisory Review Panel for Automated Valuation Model Rulemaking (Feb. 23, 2022), https://files.consumerfinance.gov/f/documents/cfpb_avm_outline-of-proposals_2022-02.pdf.

² See Cherokee W. Wooley, *Regulation of Real Estate Appraisers and Appraisals: The Effects of FIRREA*, 43 Emory L.J. 357, 358 (1994).

³ 12 U.S.C. § 3331.

⁴ FIRREA section 1125 was added by section 1473(q) of the Dodd-Frank Act (Public Law 111-203, 124 Stat. 1376 (2010)) and is codified at 12 U.S.C. § 3354.

CFPB's Outline and also to advise all the Agencies of our perspective in advance of the proposed rulemaking.

- **The CFPB's proposed scope of the rule is too narrow. It is inconsistent with the letter and spirit of FIRREA, places a higher burden on small businesses, and fails to protect consumers, particularly consumers of color.**
- **The Agencies already have the supervision and enforcement authority to ensure that entities have sound Compliance Management Systems to mitigate risk (including fair lending risk) if they are using AVMs to determine the value of a consumer's principal dwelling. Accordingly, this AVM rule should impose little or no additional impact to entities of any size.**
- **That said, we support prompt action on this rule because the Agencies can be more effective in ensuring consistent and effective compliance by setting clear and robust regulatory expectations regarding the use of AVMs. With respect to the specific quality control standards:**
 - **We fully support the addition of "nondiscrimination" as a fifth quality control standard, but we urge the Agencies to incorporate "nondiscrimination" in each of the quality control standards. Fair lending risk should not be separated from safety and soundness risk.**
 - **We strongly urge the Agencies to review the comments and frameworks developed by civil rights, consumer, and technology advocates with respect to model risk management.**

Detailed Comments

I. Definitions

A. Defining AVMs used to "determine" the collateral worth

The CFPB's proposed scope of the rule is too narrow, is inconsistent with the letter and spirit of FIRREA, places a higher burden on small businesses, and fails to protect consumers, particularly consumers of color. FIRREA defines AVMs as "any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling."⁵ According to the CFPB Outline, the CFPB is considering proposing that "AVMs are covered when used for making underwriting decisions regarding the value of collateral rather than broadly covering AVMs used to produce any valuation estimate."⁶ The CFPB Outline proposes to exclude the following from coverage:

- **AVMs used to review prior, completed valuations (where, for example, the AVM is being used as a check on a traditional appraisal);⁷**

⁵ 12 U.S.C. § 3354(d).

⁶ Outline at 6.

⁷ *Id.* at 7.

- AVMs used by appraisers to reach their determination;⁸
- AVMs used to make reduction or suspension decisions for home equity lines of credit;⁹
- AVMs used for securitization;¹⁰ and
- AVMs used by a mortgage originator if the secondary market issuer’s use of an AVM is covered instead.¹¹

In addition, the CFPB Outline has proposed alternative definitions that would exclude:

- AVMs used for loan modifications and other changes to existing loans;¹²
- AVMs used for “installment land contracts and any other security interests that may not be understood as credit”;¹³ and
- AVMs used for manufactured homes and other dwellings titled as personalty.¹⁴

For the reasons listed below, we believe that the CFPB Outline takes the wrong approach. Instead, we believe that the Agencies, including the CFPB, should propose a rule with broad coverage to be consistent with the letter and spirit of FIRREA, reduce the regulatory burden on small businesses, and protect consumers, including consumers of color.

1. The CFPB’s proposed coverage of the rule is inconsistent with the letter and spirit of FIRREA.

For most American consumers, their home is their single most important financial asset and holds the key to wealth, stability, and opportunity for their family and generations to come. In addition, home values affect the tax base, school funding, and community investments. Moreover, time and again, our nation’s economy and financial markets have been significantly impacted by home valuations, with communities of color often bearing the brunt of failings in regulatory oversight, the mortgage market, and the home valuation process. Given the importance of homeownership to American families, particularly families of color, governmental and private organizations have recently called for bold reforms in appraisals and other home valuations as well as in automated technologies. Unfortunately, the CFPB’s proposal falls short of the strong protections so urgently needed.

The Outline’s proposal for an AVM rule with only narrow coverage is inconsistent with the letter and spirit of FIRREA. The CFPB’s reasoning for limiting coverage to underwriting is that “underwriting decisions entail a more official valuation than the estimates generated for other activities such as marketing or portfolio monitoring.”¹⁵ However, there is nothing in the text of the statute to indicate that “determining” was meant to be limited to “underwriting” and that somehow “underwriting” is a more “official valuation.” Indeed, FIRREA’s statement of purpose makes clear that Congress intended to broadly protect “Federal financial and public policy

⁸ *Id.* at 8.

⁹ *Id.* at 9.

¹⁰ *Id.* at 11.

¹¹ *Id.* at 13.

¹² *Id.* at 9.

¹³ *Id.* at 17.

¹⁴ *Id.* at 19.

¹⁵ *Id.* at 6.

interests in real estate related transactions.”¹⁶ Also, one of the goals of the AVM provision is to “ensure a high degree of confidence in the estimates produced by [AVMs].”¹⁷ Finally, for all of the exemptions listed in the CFPB Outline, the AVM’s valuation is part of the “determination” of value of the consumer’s principal dwelling and has very real-world consequences for lenders and consumers.

Moreover, we strongly disagree with the CFPB’s contention that AVMs conducted by certified or licensed appraisers should be exempt from coverage. The CFPB argues that appraisers themselves are “already subject to quality control standards under other Federal and State regulation and supervision.”¹⁸ By that logic, appraisals should also be exempt from any regulation because they are conducted by certified or licensed appraisers. That is, there would be no need for FIRREA, the implementing regulations, or the Uniform Standards of Professional Appraisal Practice (“USPAP”). By that same logic, mortgages would not be regulated because they are offered by licensed mortgage loan originators. There would be no need for the Truth in Lending Act, the Equal Credit Opportunity Act, and the bevy of laws that govern the mortgage, which is a consumer’s most significant financial transaction. Moreover, the CFPB’s argument seems to miss the point of President Biden’s initiatives,¹⁹ the Property Appraisal and Valuation Equity (“PAVE”) Task Force Action Plan,²⁰ and the report commissioned by the Appraisal Subcommittee (“ASC”),²¹ which was to address the weaknesses in the appraisal system, including the gaps in training and licensing of appraisers that have led to biased valuations. The exemption for AVMs conducted by appraisers and the other exemptions are inconsistent with the letter and spirit of FIRREA as well as many other statutes and initiatives that address the risks in the housing market.

2. *The CFPB’s approach will result in a patchwork of regulations and increased burden on small businesses.*

No one is served by the current patchwork of regulations. President Biden’s initiatives, the PAVE Task Force, and the ASC-commissioned report all highlighted the gaps and weaknesses in the current appraisal and home valuation systems. Instead of uniform federal requirements, the states as well as Fannie Mae and Freddie Mac (the “Government-Sponsored Enterprises” or “GSEs”) have issued regulations and requirements to try to remedy the gaps, which has resulted in a burdensome patchwork of rules. For example, states that are frustrated with the lack of

¹⁶ 12 U.S.C. § 3331.

¹⁷ 12 U.S.C. § 3354(a)(1).

¹⁸ Outline at 8.

¹⁹ See President Biden Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities through the Federal Government*, 86 Fed. Reg. 7009 (Jan. 20, 2021),

<https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>. On the centennial anniversary of the Tulsa Race Massacre (June 1, 2021), President Biden announced the creation of the Interagency Task Force on Property Appraisal and Valuation Equity (“PAVE Task Force”) to combat inequity in home appraisals.

²⁰ See PAVE Task Force, *Action Plan to Advance Property Appraisal and Valuation Equity* (March 2022), <https://pave.hud.gov/sites/pave.hud.gov/files/documents/PAVEActionPlan.pdf>.

²¹ See National Fair Housing Alliance (“NFHA”), Dane Law LLC, and Christensen Law Firm, *Identifying Bias and Barriers, Promoting Equity: An Analysis of the USPAP Standards and the Appraiser Qualification Criteria* (Jan. 2022),

https://nationalfairhousing.org/wp-content/uploads/2022/01/2022-01-18-NFHA-et-al_Analysis-of-Appraisal-Standards-and-Appraiser-Criteria_FINAL.pdf.

appropriate federal requirements for fair housing training for appraisers have begun to pass their own rules.²² Appraisers that are licensed in multiple states or for multiple products are burdened with identifying, understanding, and complying with the rules of myriad entities, including various states, the GSE's, the Federal Housing Administration, and the Veterans' Administration. If the Agencies, including the CFPB, miss the opportunity to promulgate rules with strong protections and broad coverage, that will not be the end of the story. Instead, states, the GSEs, and other entities will step in to create a patchwork of rules and guidance. There is strong support for regulatory relief from this patchwork approach, especially with regard to appraiser certification and registration. The CFPB's proposal for a narrow approach will not result in regulatory relief, but rather in small businesses spending additional resources to advocate before a myriad of regulatory bodies and to comply with a bevy of new regulations.

3. *The CFPB's narrow coverage poses a risk to consumers, particularly consumers of color.*

The CFPB's proposed approach will leave enormous gaps in coverage that will pose a risk to consumers, particularly consumers of color. To overcome the appraiser shortage and improve efficiency and predictability, more and more lenders are turning to AVMs to estimate the value of the collateral used to secure the mortgage. By using a narrow definition that is not warranted by the purpose or text of the statute, the Agencies, including the CFPB, will miss an opportunity to get ahead of an accelerating trend and issue broad protections for consumers in their most important financial transaction. Instead, the Agencies should adopt broader coverage that considers any use of an AVM in making a determination of the collateral value. For example, the Agencies can look to the Fair Housing Act's implementing regulations, which prohibit "using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin."²³

Failing to adopt broad coverage poses a particular risk to consumers of color and causes the promise of a fifth factor of "nondiscrimination" to ring hollow. AVMs are data-driven and such data may reflect the biases that exist in the marketplace due to historical and current patterns of discrimination.²⁴ The historical patterns are due to the undervaluations in formerly-redlined areas that were never rectified. Current valuations may reflect new redlining patterns, undervaluation of a neighborhood, or individual bias. Research has shown that there are thousands of mis-valuations and thousands of appraisal reports using race-related language that are present in the appraisal databases.²⁵ If AVMs continue to use these discriminatory appraisals as comparable

²² See, e.g., Cal. Bus. and Professions Code § 11360; Minn. Stat. § 82B.021; Tit. 19 NYCRR § 1107.33; Ohio Admin. Code 1301:11-3-03.

²³ 24 C.F.R. § 100.135(d)(1) (emphasis added).

²⁴ See Michael Neal, Sarah Strohak, Linna Zhu, and Caitlin Young, *How Automated Valuation Models Can Disproportionately Affect Majority-Black Neighborhoods*, Urban Institute (Dec. 2020), https://www.urban.org/sites/default/files/publication/103429/how-automated-valuation-models-can-disproportionately-affect-majority-black-neighborhoods_1.pdf.

²⁵ See, e.g., Jake Williamson and Mark Palim, *Appraising the Appraisal*, Fannie Mae Working Paper (Feb. 2022), <https://www.fanniemae.com/media/42541/display>; FHFA, *Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary*, FHFA Insights Blog (Dec. 14, 2021),

sales to determine current home valuations, AVMs will perpetuate and amplify inequitable outcomes. Users of AVMs that fall outside of a narrow rule will have less incentive to overcome biased data, seek fair outcomes, and implement nondiscrimination as part of their quality control. (Below we describe why we think all users of AVMs are already required to follow fair lending laws and should incorporate nondiscrimination in sound compliance management systems.)

B. Defining “mortgage originators,” “secondary market issuers,” and “mortgage”

For the reasons stated above, we urge the Agencies, including the CFPB, to propose definitions of “mortgage originators,” “secondary market issuers,” and “mortgage” that are as broad as possible. With respect to the term “mortgage originators,” in addition to the definitions proposed in the CFPB’s outline, the Agencies should consider whether the definition of a “loan originator” under the SAFE Act and its implementing regulations provide broad coverage.²⁶ Using an existing definition would also minimize the compliance burden on small businesses.

With respect to the term “mortgage,” we strongly recommend adopting a broad definition to protect consumers, particularly consumers of color. A narrow definition would have a disparate impact on protected classes by excluding broad swaths of the market from the quality control standards.

More specifically, we applaud the CFPB’s proposal of a second definition that would include “security interests arising under installment land contracts and any other security interests that may not be understood as credit.”²⁷ Land installment contracts are credit because they create a debt (the purchase price) and defer its payment.²⁸ Land contract creditors often fail to comply with the Truth in Lending Act, lender licensing requirements, and other applicable laws. This common failure, whether based in lack of understanding or willful disregard, should prompt increased education and enforcement efforts by the CFPB rather than providing a basis for exclusion from any proposed rule. Moreover, land installment sales contracts are disproportionately used by Black homebuyers, because they are unfairly denied traditional mortgage credit at a higher rate.²⁹ Such alternative financing has its roots in the race-based

<https://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx>; Melissa Narragon, et al., *Racial and Ethnic Valuation Gaps in Home Purchase Appraisals*, Freddie Mac Economic and Housing Research Note (Sept. 2021),

<http://www.freddiemac.com/fmac-resources/research/pdf/202109-Note-Appraisal-Gap.pdf>; Andre M. Perry, Jonathan Rothwell, and David Harshbarger, *The Devaluation of Assets in Black Neighborhoods*, The Brookings Institution Metropolitan Policy Program (Nov. 2018),

https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf. See also Junia Howell and Elizabeth Korver-Glen, *Neighborhoods, Race, and the Twenty-first Century Housing Appraisal Industry*, 4 *Sociology of Race and Ethnicity* 473 (2018), <https://journals.sagepub.com/doi/abs/10.1177/2332649218755178?journalCode=srea> (finding substantial differences in home values in communities of color even after controlling for home features, neighborhood amenities, socioeconomic status and consumer demand).

²⁶ See 12 U.S.C. § 5101 *et seq.*; Regulation G, 12 C.F.R. Part 1007; Regulation H, 12 C.F.R. Part 1008.

²⁷ Outline at 17.

²⁸ See Reg. Z, 12 C.F.R. § 1026.2(a)(14) (definition of “credit”). See also 15 U.S.C. § 1602(x) (including “purchase money security interest under an installment sales contract” in the definition of “residential mortgage transaction”).

²⁹ See Testimony of Nikitra Bailey, Senior Vice President of Public Policy, National Fair Housing Alliance at 14, *Affordable Housing and Economic Mobility*, before the House Select Committee on Economic Disparities and

redlining policies that were promoted by New Deal programs in the 1930s.³⁰ Adopting a broad definition would acknowledge the history and current reality as well as help remedy the dual credit market.

C. Defining “consumer’s principal dwelling”

Consistent with the reasons stated above, we urge the Agencies, including the CFPB, to propose definitions of “consumer,” “dwelling,” and “principal” that are as broad as possible. With respect to the definition of “consumer,” we agree with the CFPB’s statement that FIRREA is broader than the Truth in Lending Act (“TILA”).³¹ Accordingly, the definition of “consumer” should clarify that it does not limit use of the funds to personal, family, or household purposes (as per TILA), as long as the mortgage is secured by a consumer’s principal dwelling.³² Doing so will include loans obtained by small business owners and farmers who use their residence as collateral. This is especially important given the appraisal exemptions previously created for rural areas.³³

Similarly, we urge the Agencies to adopt a broad definition of “dwelling” that will address the reality of the wide variety of housing in which consumers live. For example, manufactured homes are one of the nation’s largest sources of affordable housing, especially in rural areas, and manufactured-home parks often act as retirement communities. As a result, a rule that would exclude manufactured homes that are not titled as or secured by real estate would have a disproportionate impact on older adults, indigenous people, and people with lower incomes in rural communities. The CFPB’s first option would cover this type of housing by following TILA and Regulation Z’s definition of “dwelling,” which would mean a residential structure that contains one to four units, whether or not that structure is attached to real property, and including an individual condominium unit, a cooperative unit, a manufactured home, and any other structure used as a residence, regardless of whether the structure is classified as personalty under State law.³⁴

We do not agree with the CFPB’s contention that the Agencies need to limit the coverage based on the CFPB’s enforcement authority.³⁵ Although the CFPB’s enforcement authority is limited to “1-4 unit single-family residential real estate,” the rulemaking authority of all the Agencies and the enforcement authority of the other Agencies is not so limited. Therefore, we encourage the

Fairness in Growth (March 1, 2022), https://fairgrowth.house.gov/sites/democrats.fairgrowth.house.gov/files/documents/Nikitra%20%20Bailey%20House%20Select%20Committee%20EDFG_Testimony%20%28FINAL%29.pdf; Jeremiah Battle et al., *Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color*, National Consumer Law Center (July 2016), <https://www.nclc.org/issues/toxic-transactions-threaten-communities-of-color.html>.

³⁰ See *id.*

³¹ Outline at 18.

³² See *id.*

³³ See, e.g., FDIC FIL-53-2019 (Sept. 27, 2019) (incorporating appraisal exemption for rural residential properties provided by Title XI, Section 103, Economic Growth, Regulatory Relief, and Consumer Protection Act, 12 U.S.C. §3356).

³⁴ Outline at 18. See TILA, 12 U.S.C. § 1602(w); and Regulation Z, 12 C.F.R. § 1026.2(a)(19). See also Regulation Z comments 2(a)(19)-2 (“dwelling” does not include recreational vehicles, campers, and similar structures that are not used as residences) and 23(a)(1)-3 (“dwelling” includes structures that are classified as personalty under State law).

³⁵ Outline at 18.

Agencies, including the CFPB, to consider the broader definition under the Fair Housing Act, which defines a dwelling as “any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.”³⁶ The Agencies should consider whether the Fair Housing Act definition of “dwelling” is broader and more suitable than the Regulation Z definition.

II. Scope of Eventual Rule Requirements

FIRREA requires AVMs to adhere to quality control standards designed to:

- Ensure a high level of confidence in the estimates produced,
- Protect against the manipulation of data,
- Seek to avoid conflicts of interest,
- Require random sample testing and reviews, and
- Account for any other such factor that the Agencies determine to be appropriate.³⁷

The CFPB Outline poses questions about the quality control standards generally as well as the specific standards, including whether to propose a fifth factor of “nondiscrimination.”

A. Quality control standards generally

While we applaud the CFPB’s leadership on this important issue, we want to emphasize that the Agencies already have the supervision and enforcement authority to ensure that entities have sound Compliance Management Systems to mitigate risk (including fair lending risk) if they are using AVMs to determine the value of a consumer’s principal dwelling.³⁸ In addition to authority provided under the fair lending laws, the Agencies have issued the following relevant guidance:

- The Interagency Fair Lending Examination Procedures,³⁹
- The Interagency Appraisal and Evaluation Guidelines,⁴⁰
- The Supervisory Guidance on Model Risk Management,⁴¹
- The Advisory Bulletin on Artificial Intelligence/Machine Learning Risk Management,⁴²

³⁶ 42 U.S.C. § 3602(b); *see also*, HUD’s implementing regulation at 24 C.F.R. § 100.20.

³⁷ 12 U.S.C. § 3354(a).

³⁸ Many of our organizations made a similar argument in the following comment letter: NFHA, et al., Comment Letter to the Federal Financial Institution Agencies regarding the Request for Information and Comment on Financial Institutions’ Use of Artificial Intelligence, including Machine Learning (July 1, 2021), https://nationalfairhousing.org/wp-content/uploads/2021/07/Federal-Banking-Regulator-RFI-re-AI_Advocate-Letter_FINAL_2021-07-01.pdf.

³⁹ OCC, FDIC, Board, Office of Thrift Supervision (“OTS”), and NCUA, Interagency Fair Lending Examination Procedures (Aug. 2009), <https://www.ffiec.gov/pdf/fairlend.pdf>.

⁴⁰ OCC, FDIC, Board, OTS, and NCUA, Interagency Appraisal and Evaluation Guidelines (Dec. 2, 2010), <https://www.fdic.gov/news/financial-institution-letters/2010/fil10082a.pdf>.

⁴¹ Board and OCC, Supervisory Guidance on Model Risk Management, SR 11-7 at 3 (Apr. 4, 2011) (“Model Risk Management Guidance”), <https://www.federalreserve.gov/supervisionreg/srletters/sr1107.htm>.

⁴² FHFA, Advisory Bulletin: Artificial Intelligence/Machine Learning Risk Management, AB 2022-02 (Feb. 10, 2022) (“FHFA Advisory Bulletin on Artificial Intelligence”),

- The Uniform Interagency Consumer Compliance Rating System,⁴³
- The Bulletin on Responsible Business Conduct,⁴⁴ and
- Third party risk management guidance.⁴⁵

Notably, much of this guidance covers the obligations of the supervised entities themselves as well as the supervised entities' responsibility to oversee any third parties, which would include AVM providers.

That said, the Agencies can be more effective in ensuring consistent and effective compliance by setting clear and robust regulatory expectations regarding the use of AVMs. Therefore, we support prompt agency action on this rule. More specifically, we agree with the CFPB that a principles-based approach would be effective because it would:

- Be consistent with existing guidance,
- Allow entities the flexibility to appropriately tailor their quality control standards based on their risk profile, and
- Be less likely to become outdated as technologies evolve.⁴⁶

B. Specific quality control standards

With respect to the specific quality control standards, we raise two points. First, we fully support the addition of “nondiscrimination” as a fifth quality control standard, but we urge the Agencies to incorporate “nondiscrimination” in each of the quality control standards. Lessons from the Great Recession and other lending crises have shown that fair lending risk should not be separated from safety and soundness risk. Accordingly, we strongly urge the Agencies to define “risk” with respect to all of the quality control standards to include the risk of discrimination, inequitable outcomes, and harm to consumers, not just the risk of loss to the mortgage lender.⁴⁷

Second, we strongly urge the Agencies to review the comments and frameworks developed by civil rights, consumer, and technology advocates with respect to model risk management, including:

<https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/AdvisoryBulletinDocuments/Advisory-Bulletin-2022-02.pdf>.

⁴³ Federal Financial Institutions Examination Council (“FFIEC”), Uniform Interagency Consumer Compliance Rating System at 21-22 (Nov. 7, 2016), https://www.ffiec.gov/press/PDF/FFIEC_CCR_SystemFR_Notice.pdf.

⁴⁴ CFPB Bulletin 2020-01, Responsible Business Conduct: Self-Assessing, Self-Reporting, Remediating, and Cooperating (Mar. 6, 2020), https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2020-01_responsible-business-conduct.pdf.

⁴⁵ Board, Guidance on Managing Outsourcing Risk, SR Letter 13-19/CA Letter 13-21 (Dec. 5, 2013, updated February 26, 2021), <https://www.federalreserve.gov/supervisionreg/srletters/sr1319.htm>; FDIC, Guidance for Managing ThirdParty Risk, FIL-44-2008 (June 6, 2008), <https://www.fdic.gov/news/financial-institution-letters/2008/fil08044a.pdf>;

OCC, Third-Party Relationships: Risk Management Guidance, Bulletin 2013-29 (2013), <https://www.occ.gov/news-issuances/bulletins/2013/bulletin-2013-29.html>. See also Board, FDIC, OCC, Proposed Interagency Guidance on Third Party Relationships: Risk Management, 86 Fed. Reg. 38182 (July 19, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-07-19/pdf/2021-15308.pdf>.

⁴⁶ Outline at 20-21.

⁴⁷ For example, the FHFA Advisory Bulletin on Artificial Intelligence incorporates fairness and equity in all aspects of the guidance.

- Advocate Comment Letter to the Federal Financial Institution Agencies regarding the Request for Information and Comment on Financial Institutions’ Use of Artificial Intelligence, including Machine Learning (July 1, 2021),⁴⁸
- National Fair Housing Alliance Purpose, Process, and Monitoring Framework (Feb. 17, 2022),⁴⁹ and
- Brookings Policy Brief from the National Fair Housing Alliance and FairPlay AI: An AI Fair Lending Policy Agenda for the Federal Financial Regulators (Dec. 2, 2021).⁵⁰

In addition, we have provided an Appendix with considerations for fair AVMs.

III. Potential Impacts on Small Entities

As the Agencies will need to consider the economic impact of an AVM quality control rule on small entities, we want to note that this AVM rule should impose little or no additional impact to entities. That is, supervised financial entities of any size as well as third party service providers are already covered by the guidance listed above and thus must have sound compliance management systems to mitigate safety and soundness risk and compliance risk, including the risk of fair lending violations. Moreover, the compliance management system should be based on the entity’s risk profile, not on the asset size of the entity. In sum, while entities would benefit from more specific rules and guidance, any entity that is using or offering AVMs should already have quality control policies and procedures in place to prevent harm to consumers and communities, prevent discrimination, and ensure equitable outcomes.

Thank you for considering our views.

Sincerely,

National Organizations:

American Civil Liberties Union
 Americans for Financial Reform Education Fund
 Center for Critical Race and Digital Studies
 Center for Responsible Lending
 Consumer Action
 Equal Rights Center
 HomeSmart - The Ultimate Team
 National Consumer Law Center (on behalf of its low-income clients)
 National Fair Housing Alliance

⁴⁸ Available at:
https://nationalfairhousing.org/wp-content/uploads/2021/07/Federal-Banking-Regulator-RFI-re-AI_Advocate-Letter_FINAL_2021-07-01.pdf

⁴⁹ Available at:
https://nationalfairhousing.org/wp-content/uploads/2021/07/Federal-Banking-Regulator-RFI-re-AI_Advocate-Letter_FINAL_2021-07-01.pdf

⁵⁰ Available at:
<https://www.brookings.edu/research/an-ai-fair-lending-policy-agenda-for-the-federal-financial-regulators/>.

National Housing Law Project
The Greenlining Institute
Woodstock Institute

State/Local Organizations:

CNY Fair Housing Inc.
CSA San Diego County
Fair Housing Advocates Association
Fair Housing Advocates of Northern California
Fair Housing Center of Central Indiana
Fair Housing Center of the Greater Palm Beaches
Fair Housing Center of West Michigan
Fair Housing Council of Orange County
Fair Housing Justice Center
Fair Housing Rights Center in SEPA
Housing Choice Partners
Housing Opportunities Made Equal of Greater Cincinnati
Long Island Housing Services, Inc.
Louisiana Fair Housing Action Center
Metro Fair Housing Services Inc.
Miami Valley Fair Housing Center Inc.
North Texas Fair Housing Center
Savannah Chatham County Fair Housing Council, Inc.
Southwest Fair Housing Council
Texas Appleseed

APPENDIX - Considerations for Fair AVMs

In addition to the frameworks noted above, we offer the following considerations for ensuring that the statutory quality control standards are structured to ensure fair and non-discriminatory outcomes for all consumers.

❖ “*Ensure a high level of confidence in the estimates produced*”

- Does the AVM provide for a fair, transparent, reliable, stable, explainable, repeatable process?
- Is there a 95% confidence band provided for estimates?
- Is there transparency about the method and assumptions made while estimating the confidence band?
- Are the features that are used to develop/train the model checked for equivalence to features used in the production version of the model?
- Is there a way to protect the model from confidentiality and integrity attacks?
- Are the estimates produced by the model representative of the population of housing stock in the jurisdiction where the model is being developed and deployed? Are there gaps/accuracy issues in estimates for sub-populations and are they ameliorated?
- Is there diversity in the appraiser, lender, and AVM developer pool?
- Have the missingness patterns of the features used to develop the trained model been compared with a similar report on the features used in the production version of the model to ensure there is no degradation of, lag, and drift in model performance, especially for consumers of color?
- Does the model ensure the same missing data imputation method being used at the training stage is applied at the serving stage along with distribution of each feature and distribution of model predictions in training and serving stages?
- Is there a comparison of the fairness metrics across protected class categories before and after the model is deployed in production using appropriate distance metrics? The goal of these comparisons is to inform decisions about whether the AVM model in production should be retrained, patched, or retired.
- Does the process ensure input data is always as updated as possible? Property values and the market are always changing. Updated data allows for the most accuracy. Making more data available will increase industry confidence in appraisal models. Increasing the sample size from which the data are drawn creates a larger distribution with a greater confidence range than valuations relying on single-point data, such as the previous sales price of one home.

❖ “*Protect against the manipulation of data*”

- Does the process ensure that the data being used to train the model is appropriate, representative, fair, and accurate?
- Is there a means to protect the records used to train the model?
- Are there defenses that assure fairness, accountability, and fair lending?
- Is there a means to protect the model from confidentiality and integrity attacks and cybersecurity risks?

- What metrics would be used to measure model performance and fairness (including potential disparate impact) of the algorithmic solution? If there is a cut-off score and pass rate at the decision stage of the algorithmic system, what is it and how does it affect model fairness (including disparate impact)? Raising these questions before beginning to build an AVM model will help account for biased data of formerly-redlined areas as much as possible.
- Is there a plan to monitor the quality of the input along with model predictions post-deployment relative to the input used to train the model and predictions used to validate the model? Input monitoring should gather information required to measure drifts in model features and output monitoring should provide information sufficient to quantify drifts in model output. In addition, the monitoring plan should cover metrics that could be used to decide robustness of the AVM system. Is there monitoring of potential feedback loops and delayed impact of metrics used to measure model performance and fairness?
- Is there defense at training and runtime so there is robustness of distribution drift defense? This will help guarantee the model performance is retained in the likely event that input distributions in training and production environments differ.

❖ **“Require random sample testing and reviews”**

- Is the random sample testing representative of the data used to train the AVM?
- Is there a data imbalance report that contains the distribution of each model?
- Does the data imbalance report and data missingness report provide evidence to evaluate and decide if the selected features are sufficiently representative or inclusive?