May 13, 2022

Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: 2022-SBREFA-AVM

Dear Director Chopra:

Thank you for the opportunity to comment on the Small Business Advisory Review Panel for Automated Valuation Model (AVM) Rulemaking.

As the largest professional organization of real estate appraisers in the United States, we write with concern with the initial direction of the AVM quality control standards rulemaking process. The Dodd Frank Act requires the federal financial institution regulatory agencies, Federal Housing Finance Agency, and the Consumer Financial Protection Bureau to develop the rules in consultation with the Appraisal Standards Board of the Appraisal Foundation. To our knowledge, the agencies have not actively engaged the ASB to consult on the quality control standards rulemaking. We urge this consultation to being immediately given the apparently projected timeline for the rulemaking.

We have provided response to some of the questions found in the Review Panel questionnaire, below. Many of the questions asked by the CFPB presume a significant level of quality control is currently taking place across the broad spectrum of mortgage origination channels. In reality, even the largest institutions are struggling to understand the complexities of real estate data used in AVMs, and current quality control processes are at best, perfunctory.

The uncertainty and instability of the current models require constant recalibration with large data sets and expensive testing harnesses. It is impractical and illogical to assume that different users of AVMs can each understand the models in sufficient detail to undertake any meaningful quality control procedures. Quality control requires metrics. Without a consensus on automated valuation models (AVMs) metrics among the many important stakeholders, the ability to safely use these models will be an on-going challenge.

We urge the CFPB to consider additional questions and considerations as it proceeds on this issue. Currently, there are no distinctions made between algorithms that might be developed or utilized by appraisers (a common occurrence) with industry developed AVM products. This is an important distinction that has great bearing on future state development.

Many of the current questions appear to be biased in favor of enhanced AVM use. The recent experience of Zillow should serve as a reminder of the pitfalls that may result from greater use or adherence with AVMs in decision making.

We believe the CFPB should ask additional questions piercing into this topic, including:

- Does your financial institution obtain multiple AVMs from AVM vendors for loan origination or other purpose?
    - If so, how do you determine which one is the most accurate or which one to use?
- What is a minimum Confidence Score needed to approve AVM Results?
- What does an AVM Confidence Score represent and how is it determined?

- What data sources are included in the AVMs used?
- When an AVM provides a range of value, which end of the range is used in collateral valuation decisions?
    - How is this decided?
- How often are the AVMs independently tested?
    - Who are reliable are AVM testers? How are they selected?
    - What are the key metrics used to determine accuracy of AVM test results?
    - Are you aware AVM developers can manipulate test results?
    - What decision would be made if it was determined that an AVM developer manipulated test results?
- Are any data used in the AVM selected by Census Tract?
    - If there are structural biases in the market, how would AVMs be free from bias?
    - Can an AVM be racially biased through algorithms?
- How is Highest and Best Use determined and analyzed by an AVM?
- On nonperforming assets, foreclosures and REO's, where it is determined later that the AVM output relied upon was not accurate and excessive, who should be held financially liable?
    - Do contracts with AVM vendors include language regarding liability for excessive collateral valuation?
- Is there financial liability for AVM service providers due to over/under valuation?

Moving forward, we suggest the agencies consider convening a public forum on this topic. We note the staff of the Appraisal Subcommittee are also to be consulted in the rulemaking process. Recently, the ASC has convened roundtable events relating to a range of industry governance issues. Such a roundtable, or series of events focusing on the AVM quality control standards, would yield strong public input and feedback in support of a well-rounded rulemaking.

Thank you again for the opportunity to comment. Please contact Bill Garber, Director of Government and External Relations, at 202-298-5586, bgarber@appraisalinstitute.org or Brian Rodgers, Manager of Federal Affairs at 202-298-5597, brodgers@appraisalinstitute.org if you have any questions or need additional information.

Responses to questionnaire

Q2. Please provide feedback and information, including supporting data, on the options we are considering for implementation of the statutory phrase "to determine the collateral worth"? Besides the options discussed in parts III.A.1 through 5 below, are there any alternative approaches we should consider?

The term, "collateral value" is more common than "collateral worth". Collateral worth is not currently defined or found in the Interagency Appraisal and Evaluation Guidelines (IAEG) or real estate appraisal regulations. In addition, use of the word "determine" value is problematic, as the valuation process is not determined, but supported.

Q3. Does your small entity currently have quality control processes in place for AVMs? If so, please describe those processes, including how they function, what costs (one-time or fixed, and variable) are associated with their implementation and oversight, and whether they differ based on AVM use, e.g., making underwriting decisions versus portfolio monitoring. Are there specific complexities or costs that are different for AVMs used in making underwriting decisions versus for other AVM uses?

You can't control for quality if you do not have metrics in place. Currently, there is a gaping hole in the acceptability of one AVM to the next.

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Q5. Please provide feedback and information, including supporting data, on the option to potentially focus on AVMs used for making underwriting decisions. Besides making underwriting decisions, does your use of AVMs have a direct impact on consumers?

The IAEG currently include an Appendix relating to AVMs. The agencies are supposed to be examining institutions on policy and procedures relating to AVM use on these guidelines. This should be ongoing and included in the Agencies activities.

Q9. What compliance costs would cause your small entity to stop or decrease your use of AVMs to perform quality control reviews of completed determinations?

Not sure that this should be included. Don't think that we can answer…

Q10. From your experience, how often are AVMs used by certified or licensed appraisers to develop appraisal valuations? What would the impact of the rule be on small entities if it did not cover AVMs when used by certified or licensed appraisers to develop appraisal valuations?

We're not sure this question can be answered. As appraisers, we can do an appraisal that utilizes an AVM, but it will still be an appraisal result. Ex. Institutionally employed appraisers. It would be one thing to develop an AVM, but another to use one as a check in one's work.

Q11. Would coverage of appraisers' use of AVMs potentially discourage use of AVMs by small entities as a valuation tool?

This is somewhat of a trick question – anything that costs more and takes longer is going to act as a discouragement by that entity unless one cares about the quality of the service.

Q13. What are the advantages and disadvantages for small entities of the option to exclude decisions to reduce or suspend a HELOC as provided in an initial credit agreement from the scope of section 1125 versus the alternative option that covers reduction or suspension decisions more broadly?

A reduction or suspension of a HELOC should be based on sound criteria. Some level of appeal should exist to homeowners if there is a disagreement regarding an AVM result.

Q18. What would be the advantages and disadvantages for small entities of excluding a mortgage originator's use of an AVM for appraisal waiver purposes in transactions where the secondary market issuer's use of an AVM is covered instead?

All valuation products should be subject to some level of review. Institutions are subject to appraisal review requirements, and the IAEG references a risk-based approach, but review has been emphasized in the Guidelines over time. We support that continued focus as it relates to AVMs

Q24. Are AVMs commonly used with installment sales contracts or similar transactions? How often are they used and in what way? On what are you basing your answer?

Based on the IAEGs, you cannot use an AVM without a physical inspection, so how would this be possible?

Q25. Please provide feedback and information, including supporting data, on whether the term "consumer" should extend to individuals who are not a party to whom credit is offered or extended, but who have an ownership interest in and use the secured property as their principal dwelling. Please also provide feedback and information, including supporting data, about additional costs or benefits, if any, that would result for small entities from a more inclusive designation of who is a “consumer.”

Is this referring to leasehold interests (renters)? We would be hesitant to redefine consumer.

Q29. Please provide feedback and information, including supporting data, on the approach we are considering in defining a “principal” dwelling. Please also provide any alternatives for consideration and explain, including supporting data, the advantages, and disadvantages for small entities of these alternatives.

If it’s a risk-based decision, it would seemingly make sense for the riskier loans (investment grade) to have more robust collateral valuation standards.

Q31. Would small entities be assisted by the CFPB adapting the Guidelines for use by CFPB-regulated institutions and adopting them as guidance rather than adopting specific requirements to implement the statutory quality control factors?

Generally, there are two types of standards – performance-based standards and a generalized (ethics) standards. We would suggest a guidelines approach. Standards imply a level of required approach or enforceability, which does not seem possible given the lack of uniformity of the AVM industry.

Q34. Should the CFPB allow each institution to tailor its methodology to the nature of its risk exposure, size, business activities, and the extent and complexity of its use of AVMs? Do you have suggestions on the best way to do so?

No, from our experience, this would create greater disparities for different sized banks. It’s difficult to regulate this space today, and if specific rules are created it may be even more difficult to oversee and manage. If models are going to be accepted and deployed widely, a certification needs to be included. Otherwise, there are a multitude of ways AVMs can be manipulated.

Small banks face certain competitive disadvantages with making risk-based decisions. Small banks will argue that they should be alleviated from some of the requirements they have more difficulty complying with; however, by this approach, we would introduce more risk to the system.

Q44E. Are there particular situations (e.g., loan dollar thresholds) where you determine that utilization of an AVM is necessary?

We are unclear where this question is driving? Is this referring to a low-LTV and low dollar situation?