



August 21, 2023

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ATTN: Comments/Legal OES (RIN 3064-AE68)
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Washington, DC 20429

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National Credit Union Administration
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Comment Intake—CFPB-2023-0025
Consumer Financial Protection Bureau
c/o Legal Division Docket Manager
1700 G Street NW
Washington, DC 20552

Clinton Jones
General Counsel
ATTN: Comments/RIN 2590-AA62
Federal Housing Finance Agency, Fourth Floor,
400 Seventh Street SW
Washington, DC 20219

Re: Quality Control Standards for Automated Valuation Models; Docket ID OCC-2023-0002; Docket No. R-1807 and RIN No. 7100 AG60; RIN 3064-AE68; RIN 3133-AE23; Docket No. CFPB-2023-0025; RIN 2590-AA62

To Whom It May Concern:

The Housing Policy Council¹ (“HPC”) appreciates the opportunity to comment on the proposed Quality Control Standards for Automated Valuation Models (“AVMs”) (“Proposal” or “Proposed Rule”).² HPC’s members use, produce, and rely on Automated Valuation Models (AVMs) and, as such, will be directly affected by this Proposed Rule. Our comments reflect HPC member interest in working closely with the Agencies³ to advance a regulation that is effective, clear, and consistent with both the letter and the spirit of the underlying statute.⁴

¹ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth building for families. For more information, visit www.housingpolicycouncil.org.

² Quality Control Standards of Automated Valuation Models, 88 Fed. Reg. 40638 (June 21, 2023).

³ The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Consumer Financial Protection Bureau, and Federal Housing Finance Agency (“FHFA”) (collectively, the “Agencies”).

⁴ 12 U.S.C. § 3354 (added by section 1473(q) of the Dodd-Frank Act).

As discussed in more detail in this letter, HPC:

- (1) agrees that Standards that reinforce the use of credible and reliable valuation models will also assist in the identification and eradication of discrimination;
- (2) seeks clarification regarding the application of the Standards in cases where AVMs are used to determine eligibility for appraisal waivers or additional servicing functions;
- (3) recommends that the definition of “credit decision” exclude loan modifications, which are not covered by the statutory text;
- (4) does not believe additional guidance on quality control for AVMs used or provided by a third party is required, as this is already addressed in the Agencies’ third-party oversight guidance;
- (5) requests a minor change in the third standard, regarding conflicts, to align the rule text with the text of the statute; and
- (6) recommends consistent enforcement of the Standards by the Agencies.

Overall, HPC agrees with the Agencies’ approach to this rule; the proposal indicates the intent of the Agencies to require, but not proscribe how institutions are to structure policies, practices, procedures, and control systems. The proposal, which HPC supports, provides covered entities the flexibility to set their own quality control standards for covered AVMs, as appropriate, based on the unique characteristics of their institutions and the risk and complexity of transactions for which they will use covered AVMs. The ability for institutions to set their own quality control standards is both appropriate and necessary to permit institutions to align any new practices with their existing risk management and compliance frameworks.

We believe this approach will lead to strong market-based solutions for AVMs that can evolve over time. In other words, the solutions will reflect robust competition and innovation, leading to better quality control and compliance tools for the development and use of AVMs.

I. Quality control standards should help to identify and root out discrimination.

As noted above, HPC agrees that mortgage originators and secondary market issuers should maintain policies, practices, procedures, and control systems to monitor AVM adherence to quality control standards. The approach proposed permits institutions to adopt quality controls that align with their existing risk management practices and that are appropriate for their unique business models. Further, the proposal will allow for future AVM innovation as well as refinements or enhancements to an institutions’ own controls.

Of note, HPC does not object to the Agencies’ decision to establish a fifth quality control factor that is not specifically mandated by law, but that reinforces the obligation to comply with applicable nondiscrimination laws. Already, at least three of the first four quality control factors – those set forth in the enabling statute – implicitly address compliance with applicable anti-discrimination laws. The first factor requires quality control standards designed to provide a high level of confidence in the estimates produced by AVMs, and AVMs that reflect discriminatory bias could affect such confidence. Indeed, AVMs affected by such bias could result in a form of data manipulation, in violation of the second quality control standard. And finally, the fourth statutory factor requires random sample testing and reviews, which are a necessary component of fair lending evaluations routinely performed by financial institutions.

We appreciate that the Agencies explicitly state that the anti-discrimination quality control standard does not introduce a new requirement but rather reinforces (“heightens awareness”) the applicability of nondiscrimination laws to AVMs. The Agencies rightly note that this fifth standard is consistent with current law and existing fair lending guidance. As with the other four factors, institutions would have the flexibility to design fair lending policies, procedures, practices, and control systems that comply with fair lending laws and also take into account their business models.

While HPC believes this fifth factor on antidiscrimination may not be strictly necessary as it is already addressed by existing law and guidance as well as by three of the other quality control factors, HPC has no objection to the Agencies’ adoption of this fifth factor.

II. Agencies should clarify expectations for the application of the quality control standards when AVMs support appraisal waivers or additional servicing functions.

Under the proposal, the Standards apply to mortgage originators’ and secondary market issuers’ use of AVMs in determining collateral value in connection with a credit decision or covered securitization determination. Such a determination may include: (a) whether to waive an appraisal requirement for a mortgage origination in connection with its potential sale or transfer to a secondary market issuer; (b) structuring, preparing disclosures for, or marketing initial offerings of mortgage-backed securities; (c) any usage of GSE AVMs for additional servicing functions; or (d) usage of AVMs outside of the GSEs, including those used for private-label securities.

HPC recommends that the Proposed Rule text align with the description in the preamble regarding the compliance responsibilities associated with AVMs used in appraisal waiver determinations or additional servicing functions. The preamble states:

Under the proposal, a secondary market issuer that uses AVMs in connection with making appraisal waiver decisions would be required to have policies, practices, procedures, and control systems in place to ensure that the AVM supporting those appraisal waiver decisions adheres to the rule's quality control standards. In contrast, a mortgage originator that requests an appraisal waiver decision from a secondary market issuer would not need to ensure that the AVM used to support the waiver meets the rule's quality control standards because the secondary market issuer would be using the AVM to make the appraisal waiver decision in this context, not the mortgage originator.⁵

Specifically, we believe that when a GSE determines a waiver is appropriate, the responsibility to comply with the rule must lie with the GSE, not the mortgage originator, as it is the GSE as the issuer, and not the originator, making a “covered securitization determination.” The mortgage originator receives the GSE’s waiver determination and lacks the authority to enforce GSE compliance with the Proposed Rule. Further, a mortgage originator cannot validate or quality control the valuation used by the GSE. We request the Agencies to make clear that an entity subject to the rule is responsible for compliance for AVMs that they or their service providers use, and not those that are deployed by their counterparties, consistent with the preamble description.

We are advocating this policy position in response to Question 5, which states: “Please address the feasibility of mortgage originators performing quality control reviews of the AVMs that secondary

⁵ 88 Fed. Reg. 40638, 40643 (emphasis added).

market issuers use to evaluate appraisal waiver requests. What, if any, consequences would such an approach have for mortgage originators' use of appraisal waiver programs?"⁶ This question is best answered in a manner consistent with the above-cited preamble text. The preamble indicates that the Proposed Rule would not impose a requirement for a mortgage originator to perform quality control reviews on the AVMs that secondary market issuers use to evaluate appraisal waiver requests. Put simply, such a requirement would be impossible to implement.

Further, despite the stated purpose and intent in the preamble, we are concerned that the text of the proposed rule may be read to impose such a requirement. The proposed rule states: "Mortgage originators and secondary market issuers that engage in credit decisions or covered securitization determinations themselves, or through or in cooperation with a third-party or affiliate, must adopt and maintain policies, practices, procedures, and control systems to ensure that automated valuation models used in these transactions adhere to quality control standards designed to [...]". We are concerned that this language may be incorrectly interpreted to require originators to be responsible for issuers' use of AVMs in appraisal waiver determinations. For example, the phrase "in cooperation with a third-party" could be misconstrued to imply a role for a mortgage originator in the GSE's appraisal waiver process – a role which it does not and could not perform.

To align with the clear intent of the Agencies, as detailed in the preamble, we recommend the Proposal be refined to create a clear distinction between (1) mortgage originators making credit decisions and (2) secondary market issuers making covered securitization determinations. This will require some minor editing to the regulatory text, particularly to the phrase "in cooperation with a third-party." However, the distinction will contribute to consistent interpretation and implementation, in a manner that aligns with the Agencies' stated intent.

III. We recommend modifying the definition of "credit decision" to exclude loan modifications.

Under the Proposal, a credit decision is defined as the determination whether and under what terms to originate, modify, terminate or make other changes to a mortgage, including a decision whether to extend new or additional credit or change the credit limit on a line of credit. Relying on an expansive interpretation of a credit decision, the Proposal treats a servicer as an originator not only for those transactions that constitute a new extension of credit, including a refinance or assumption, but also for all loan modifications. This conclusion is not grounded in the plain reading of the TILA regulation that is cited nor with common practice, where a loan modification merely restructures existing indebtedness, in accordance with investor or insurer rules. The servicer is not serving as a creditor or originator, as described in TILA.⁷ Therefore, we ask that the final rule align with the traditional practice of distinguishing the role of servicers from that of originators, in cases where there is no new extension of credit, and therefore exclude all modifications that do not require a new extension of credit.

This change should have minimal, if any, impact. The majority of loan modifications do not require a valuation of the property. However, the regulatory framing for this rule could be misapplied to

⁶ Id.

⁷ 15 U.S. Code § 1602, dd(2)

other regulations, creating a substantial conflict between the regulatory definitions of an originator versus a servicer. Therefore, we request that the legal argument and associated requirement for applying this rule to loan modifications that do not include the new extension of credit be eliminated. The focus should remain on transactions related to originating or extending new or additional credit, including refinancing or assumptions.

IV. Guidance on third-party oversight is better addressed elsewhere.

In Question 30, the Agencies ask: “Is additional guidance needed on how to implement the quality control standards to protect the safety and soundness of financial institutions and protect consumers beyond the existing supervisory guidance described in part I.A. of this Supplementary Information? Should such additional guidance explain how a regulated entity would implement quality control for an AVM used or provided by a third party?”

HPC does not believe additional guidance is necessary regarding the oversight of third parties who use or provide AVMs. As acknowledged in the Proposal, the Agencies have provided guidance on managing the risk inherent in the use of third-party service providers, such as outside entities that provide AVMs and AVM-related services. That guidance addresses the characteristics, governance, and operational effectiveness of a financial institution's risk management program for outsourced activities. The guidance is comprehensive and clear. While we believe additional guidance is not necessary, commentary on how existing supervisory guidance can be applied for third-party oversight under the Proposal may be beneficial.⁸ If the Agencies believe that this existing guidance should be updated, we recommend that the updates be made to that guidance and not part of this rulemaking.

Moreover, we do not believe additional guidance on how to implement the quality control standards regarding third parties is necessary at this time. Nevertheless, we recognize that this is something that should be kept under review from time to time and we would welcome the opportunity to contribute to this review process. Collaborative efforts like these will facilitate the widespread adoption of AVM technology, unlocking its full potential and benefiting consumers and mortgage market participants alike. We wish to work collaboratively with the Agencies, in an ongoing dialogue to effectively implement these standards.

V. A minor change is needed to align the rule's standards with the statutory text.

The Proposed Rule's third quality control standard is “avoid conflicts of interest,” compared to the statutory language for this factor: “seek to avoid conflicts of interest.” The other three of the first four quality control factors in the Proposed Rule are identical to the statutory language. There is no explanation as to why the language for the conflicts of interest factor is not identical to the statutory language. The preamble actually uses the statutory language (“seek to avoid conflicts of interest”).

We recommend that for consistency purposes and to avoid the possibility of unnecessarily introducing potential ambiguity between the rule and the statute, the Agencies modify the conflicts of interest factor to track the statutory language: “seek to avoid conflicts of interest.”

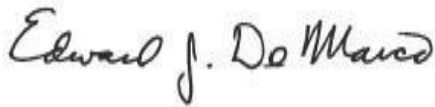
⁸ Another area for potential future policy guidance concerns the application of the rule for models that are used for both in-scope and out-of-scope activities. For example, does the rule apply if the same model is used for origination (in-scope) and portfolio monitoring (out-of-scope)?

VI. The Agencies should commit to consistent enforcement of the rule.

A vast array of entities will be subject to this rule, including banks, independent mortgage bankers, automated valuation model providers, the GSEs, and securitization market participants. We appreciate the Agencies joint issuance of the Proposed Rule and ask the Agencies to continue these joint efforts once the Rule is finalized. When supervisory manuals or other forms of relevant guidance are developed, Agencies should coordinate to provide consistent supervision and enforcement of the rule.

Thank you for the opportunity to comment on the Proposed Rule. HPC and our members are ready and willing to work with the Agencies on implementation of the final rule. Should you have any questions or wish to discuss this further, please contact Matthew Douglas at (202) 589-1924 and matt.douglas@housingpolicycouncil.org.

Yours truly,

A handwritten signature in black ink that reads "Edward J. DeMarco". The signature is written in a cursive, slightly slanted style.

Edward J. DeMarco
President
Housing Policy Council