DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC–2023–0002]

RIN 1557–AD87

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No. R–1807]

RIN 7100–AG60

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

RIN 3064–AE68

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 722 and 741

[Docket No. NCUA–2023–0019]

RIN 3133–AE23

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

[Docket No. CFPB–2023–0025]

RIN 3170–AA57

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1222

RIN 2590–AA62

Quality Control Standards for Automated Valuation Models

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Consumer Financial Protection Bureau (CFPB); and Federal Housing Finance Agency (FHFA).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The OCC, Board, FDIC, NCUA, CFPB, and FHFA (collectively, the agencies) invite comment on a proposed rule to implement the quality control standards mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) for the use of automated valuation models (AVMs) by mortgage originators and secondary market issuers in determining the collateral worth of a mortgage secured by a consumer's principal dwelling. Under the proposal, the agencies would require institutions that engage in certain credit decisions or securitization determinations to adopt policies, practices, procedures, and control systems to ensure that AVMs used in these transactions to determine the value of mortgage collateral adhere to quality control standards designed to ensure a high level of confidence in the estimates produced by AVMs; protect against the manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and comply with applicable nondiscrimination laws.

DATES: Comments must be received by August 21, 2023.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the agencies. Commenters should use the title ''Quality Control Standards for Automated Valuation Models'' to facilitate the organization and distribution of comments among the agencies. The agencies invite interested parties to submit written comments to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Quality Control Standards for Automated Valuation Models'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov:* Go to *https://regulations.gov/.*

Enter ''Docket ID OCC–2023–0002'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments, please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov.*

- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2023–0002'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically—Regulations.gov:* Go to *https://regulations.gov/.*

Enter ''Docket ID OCC–2023–0002'' in the Search Box and click ''Search.'' Click on the ''Dockets'' tab and then the document's title. After clicking the document's title, click the ''Browse All Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Comments Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Browse Documents'' tab. Click on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen checking the ''Supporting & Related Material'' checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1807 and RIN No. 7100 AG60, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

In general, all public comments will be made available on the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, and will not be modified to remove confidential, contact or any identifiable information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during Federal business weekdays. Please call (202) 452–3684 to make an appointment to visit the Board and inspect comments.

FDIC: The FDIC encourages interested parties to submit written comments. Please include your name, affiliation, address, email address, and telephone number(s) in your comment. You may submit comments to FDIC, identified by RIN 3064–AE68, by any of the following methods:

- *FDIC Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the FDIC's website.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal OES (RIN 3064–AE68), Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m.
- *Email: comments@fdic.gov.* Comments submitted must include ''RIN 3064–AE68'' in the subject line of the message.

Public Inspection: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

NCUA: You may submit written comments, identified by RIN 3133–AE23, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments for Docket Number NCUA–2023–0019.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

You may view all public comments on the Federal eRulemaking Portal at *http://www.regulations.gov* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. If you are unable to access public comments on the internet, you may contact NCUA for alternative access by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

CFPB: You may submit comments, identified by Docket No. CFPB–2023–0025 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2023AVMQualityControl@cfpb.gov.* Include Docket No. CFPB–2023–0025 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—CFPB–2023–0025, Consumer Financial Protection Bureau, c/o Legal Division Docket Manager, 1700 G Street NW, Washington, DC 20552.

Instructions: The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number for this rulemaking. Because paper mail in the Washington, DC, area and at the CFPB is subject to delay commenters are encouraged to submit comments electronically. In general, the CFPB will post all comments received without change to *https://www.regulations.gov.*

The CFPB will make all comments, including attachments and other supporting materials, part of the public record and subject to public disclosure. You should not include proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals. The CFPB will not edit comments to remove any identifying or contact information.

FHFA: You may submit your comments, identified by regulatory identification number (RIN) 2590–AA62, by any of the following methods:

- *Agency website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include ''RIN 2590–AA62'' in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AA62, Federal Housing Finance Agency, Fourth Floor, 400 Seventh Street SW, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard's Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/RIN 2590–AA62, Federal Housing Finance Agency, Fourth Floor, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.

FHFA invites comment on all aspects of the proposed amendments and will take all comments into consideration before adopting amendments through a final rule. FHFA will post copies of all comments received without change on the FHFA website at *http://www.fhfa.gov,* and will include any personal information you provide, such as your name, address, email address, and telephone number. In addition, the FHFA will make copies of all comments received available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT:

OCC: G. Kevin Lawton, Appraiser (Real Estate Specialist), (202) 649–7152; Mitchell Plave, Special Counsel, (202) 649–5490; or Joanne Phillips, Counsel; or Marta Stewart-Bates, Counsel, Chief Counsel's Office, (202) 649–5500; Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Anna Lee Hewko, Associate Director, (202) 530–6260; Andrew Willis, Manager, Policy Development

Section, (202) 912–4323; Carmen Holly, Lead Financial Institution Policy Analyst, (202) 973–6122; Devyn Jeffereis, Senior Financial Institution Policy Analyst, (202) 365–2467, Division of Supervision and Regulation; Jay Schwarz, Assistant General Counsel, (202) 452–2970; Matthew Suntag, Senior Counsel, (202) 452–3694; Derald Seid, Senior Counsel, (202) 452–2246; Trevor Feigleson, Counsel, (202) 452–3274, David Imhoff, Attorney (202) 452–2249, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States.

FDIC: Patrick J. Mancoske, Senior Examination Specialist, Division of Risk Management Supervision, (202) 898–7032; Lauren A. Whitaker, Counsel, Legal Division, (202) 898–3872; Navid K. Choudhury, Counsel, Legal Division, (202) 898–6526, *nchoudhury@fdic.gov;* Mark Mellon, Counsel, Legal Division, (202) 898–3884; Mark T. Heil, Senior Financial Economist, Division of Insurance and Research, (202) 898–7232; or Stuart Hoff, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898–3852, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, TDD users may contact (202) 925–4618.

NCUA: Policy and Accounting: Victoria Nahrwold, Associate Director; Naghi H. Khaled, Director of Credit Markets; or Simon Hermann, Senior Credit Specialist; Office of Examination and Insurance at (703) 518–6360; National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, *Legal:* Ian Marenna, Associate General Counsel for Regulations and Legislation; John H. Brolin, Senior Staff Attorney; or Ariel Pereira, Senior Staff Attorney; Office of General Counsel, at (703) 518–6540; National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

CFPB: Shaakira Gold-Ramirez, Counsel; Pedro De Oliveira, Joseph Devlin, Thomas Dowell, Joan Kayagil, or Melissa Stegman, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

FHFA: Julie Giesbrecht, Senior Policy Analyst, Office of Housing and Regulatory Policy, (202) 557–9866, *Julie.Giesbrecht@fhfa.gov;* Karen Heidel, Assistant General Counsel, Office of General Counsel, (202) 649–3073; or *Karen.Heidel@fhfa.gov.* For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1473(q) of the Dodd-Frank Act amended title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (title XI) [1] to add a new section 1125 relating to the use of automated valuation models (AVMs) in valuing real estate collateral securing mortgage loans (section 1125).[2] The term ''automated valuation model'' is commonly used to describe computerized real estate valuation models used for a variety of purposes, including loan underwriting and portfolio monitoring.[3] Section 1125 defines an AVM 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.'' [4] The quality control standards proposed in this rule are applicable only to AVMs used in connection with making credit decisions or covered securitization determinations regarding a mortgage (covered AVMs), as defined in this proposed rule.

Section 1125 directs the agencies to promulgate regulations to implement quality control standards regarding AVMs.[5] Section 1125 requires that AVMs, as defined in the statute, adhere to quality control standards designed to ''(1) ensure a high level of confidence in the estimates produced by AVMs; (2) protect against the manipulation of data; (3) seek to avoid conflicts of interest; (4) require random sample testing and reviews; and (5) account for any other such factor that the agencies determine to be appropriate.'' [6] As required by section 1125, the agencies consulted with the staff of the Appraisal Subcommittee (ASC) and the Appraisal Standards Board of the Appraisal Foundation (ASB) as part of promulgating this rule.

Driven in part by advances in database and modeling technology and the availability of larger property datasets, the mortgage industry has begun to use AVMs with increasing frequency as part of the real estate valuation process. For example, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the GSEs) may use proprietary AVMs in their collateral valuation processes. While advances in AVM technology and data availability have the potential to contribute to lower costs and shorter turnaround times in the performance of property valuations, it is important that institutions using such tools take appropriate steps to ensure the credibility and integrity of the valuations produced by AVMs.[7]

A. Existing Guidance Relating to the Use of AVMs

Since 2010, the OCC, Board, FDIC, and NCUA have provided supervisory guidance on the use of AVMs by their regulated institutions in Appendix B to the Interagency Appraisal and Evaluation Guidelines (Guidelines).[8] The Guidelines recognize that an institution may use a variety of analytical methods and technological tools in developing real estate valuations, provided the institution can demonstrate that the valuation method is consistent with safe and sound banking practices. The Guidelines recognize that the establishment of policies and procedures governing the selection, use, and validation of AVMs, including steps to ensure the accuracy, reliability, and independence of an AVM, is a sound banking practice.[9] In addition to Appendix B of the Guidelines, the OCC, Board, and FDIC have issued guidance on model risk management practices (Model Risk Management Guidance) that provides supervisory guidance on validation and testing of models.[10]

The NCUA is not a party to the Model Risk Management Guidance. The NCUA monitors the model risk efforts of federally insured credit unions through its supervisory approach by confirming that the governance and controls for an AVM are appropriate based on the size and complexity of the transaction; the risk the transaction poses to the credit union; and the capabilities and resources of the credit union.

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[1] 12 U.S.C. 3331 *et seq.*

[2] Public Law 111–203, 124 Stat. 1376, 2198 (2010), *codified at* 12 U.S.C. 3354.

[3] *See Interagency Appraisal and Evaluation Guidelines,* 75 FR 77450, 77468 (Dec. 10, 2010).

[4] 12 U.S.C. 3354(d).

[5] 12 U.S.C. 3354(b).

[6] 12 U.S.C. 3354(a).

[7] *See, e.g.,* U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation* 103–107 (July 2018), *available at https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation.pdf.*

[8] *See supra,* note 3. The Guidelines were adopted after notice and comment.

[9] *Id.*

[10] *See Supervisory Guidance on Model Risk Management,* OCC Bulletin 2011–12 (Apr. 4, 2011); Federal Reserve Board SR Letter 11–7 (Apr. 4, 2011); and *Guidance on Model Risk Management,* FDIC FIL–22–2017 (June 7, 2017).

The CFPB and FHFA are not parties to the Guidelines or the Model Risk Management Guidance. The FHFA has separately issued model risk management guidance that provides the FHFA's supervisory expectations for its regulated entities in the development, validation, and use of models.[11]

The agencies have also provided guidance on managing the risk inherent in the use of third-party service providers, such as outside entities that provide AVMs and AVM services.[12] Institutions that make use of third parties are reminded that they remain responsible for ensuring that third parties, in performing their activities, comply with applicable laws and regulations, including the safety and soundness requirements established by the OCC, Board, FDIC, and NCUA. These guidance documents address the characteristics, governance, and operational effectiveness of a financial institution's risk management program for outsourced activities.

II. The Proposed Rule

The agencies are inviting comment on a proposed rule to implement quality control standards for the use of AVMs that are covered by this proposal. The agencies' proposed rule would require that mortgage originators and secondary market issuers adopt policies, practices, procedures, and control systems to ensure that AVMs used in certain credit decisions or covered securitization determinations adhere to quality control standards designed to meet specific quality control factors. The proposed rule would not set specific requirements for how institutions are to structure these policies, practices, procedures, and control systems. This approach would provide institutions the flexibility to set quality controls for AVMs as appropriate based on the size of the institution and the risk and complexity of transactions for which they will use AVMs covered by this proposed rule. As modeling technology continues to evolve, this flexible approach would allow institutions to refine their policies, practices, procedures, and control systems as appropriate. The agencies' existing guidance related to AVMs would remain applicable.

A. Scope of the Proposed Rule

The quality control standards in section 1125 of title XI apply to AVMs ''used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.'' [13] The proposed rule would implement the statute by applying the quality control standards when an AVM is being used to make a determination of collateral value, as opposed to other uses such as monitoring value over time or validating an already completed valuation. Determinations of collateral value are generally made in connection with credit decisions or covered securitization determinations as defined in this proposed rulemaking, for example when determining a new value before originating a purchase-money mortgage or placing a loan in a securitization pool.

Other uses of AVMs, such as for portfolio monitoring, do not involve making a determination of collateral value, and thus are not within the scope of the proposed rule. The agencies are further proposing that the rule would not cover the use of AVMs in the development of an appraisal by a certified or licensed appraiser, nor in the review of the quality of already completed determinations of collateral value (completed determinations). The proposed rule would cover the use of AVMs in preparing evaluations required for certain real estate transactions that are exempt from the appraisal requirements under the appraisal regulations issued by the OCC, Board, FDIC, and NCUA, such as transactions that have a value below the exemption thresholds in the appraisal regulations.[14]

Section 1125(c)(1) provides that compliance with regulations issued under section 1125 shall be enforced by, ''with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary.'' [15] Section 1125(c)(1) applies to a subsidiary of a financial institution only if the subsidiary is (1) owned and controlled by a financial institution, and (2) regulated by a Federal financial institution regulatory agency. Section 1125(c)(2) provides that compliance with regulations issued under section 1125 shall be enforced by, ''with respect to other participants in the market for appraisals of 1-to-4 unit single family residential real estate, the Federal Trade Commission, the Bureau of Consumer Financial Protection, and a State attorney general.'' [16]

The NCUA has long acknowledged that subsidiaries of federally insured credit unions—also referred to as credit union service organizations (CUSOs)—and their employees are not subject to regulation by the NCUA as contemplated by Congress under statutory provisions similar to section 1125(c).[17] This proposal would not alter that position. The NCUA, unlike the Federal banking agencies that do have supervisory and regulatory authority over subsidiaries of their regulated institutions, does not have authority to supervise or examine subsidiaries owned and controlled by federally insured credit unions.[18] Rather, the NCUA's regulations only indirectly affect CUSOs. For example, part 712 and § 741.222 of the NCUA's regulations permit federally insured credit unions to invest only in CUSOs that conform to

[11] *See Model Risk Management Guidance,* FHFA Advisory Bulletin 2013–07 (Nov. 20, 2013).

[12] *See Third-Party Relationships: Risk Management Guidance,* OCC Bulletin 2013–29 (Oct. 31, 2013); *Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013–29,* OCC Bulletin 2020–10 (March 5, 2020); *Guidance on Managing Outsourcing Risk,* Federal Reserve Board SR Letter 13–9 (Dec. 3, 2013); *Third-Party Risk Guidance for Managing Third-Party Risk,* FDIC FIL–44–2008 (June 6, 2008); *Evaluating Third Party Relationships,* NCUA Supervisory Letter 07–01 (Oct. 2007); *Oversight of Third-Party Provider Relationships,* Advisory Bulletin 2018–08 (Sept. 28, 2018); and CFPB, *Compliance Bulletin and Policy Guidance; 2016–02, Service Providers* (Oct. 31, 2016).

[13] 12 U.S.C. 3354(d).

[14] *See* 12 CFR 34.43(b) (OCC); 12 CFR 225.62(c) (Board); 12 CFR 323.3(b) (FDIC); and 12 CFR 722.3(d) (NCUA). Under the NCUA's rule, an ''evaluation'' is described as a ''written estimate.'' 12 CFR 722.3(d).

[15] 12 U.S.C. 3354(c)(1) (emphasis added). The term ''Federal financial institutions regulatory agencies'' means the Board, the FDIC, the OCC, the former OTS, and the NCUA. 12 U.S.C. 3350(6). Title III of the Dodd-Frank Act provides that the OCC is now the Federal financial institutions regulatory agency for Federal savings associations. Title III of the Dodd-Frank Act also provides that the FDIC is the Federal financial institutions regulatory agency for State savings associations. Finally, the Dodd-Frank Act provides that the Board is responsible for regulation of savings and loan holding companies. The term ''financial institution'' means an insured depository institution as defined in 12 U.S.C. 1813 or an insured credit union as defined in 12 U.S.C. 1752. *See* 12 U.S.C. 3350(7).

[16] 12 U.S.C. 3354(c)(2).

[17] *See Registration of Mortgage Loan Originators,* 75 FR 51623, 51626 (Aug. 23, 2010) (applying similar reasoning to the licensing of mortgage loan originators who were employees of CUSOs under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008); and *Minimum Requirements for Appraisal Management Companies,* 80 FR 32657, 32665 (Aug. 10, 2015) (applying similar reasoning to the registration and regulation of appraisal management company CUSOs under 12 U.S.C. 3353).

[18] *See, e.g.,* Bank Service Company Act, 12 U.S.C. 1861–1867; NCUA, Third-Party Vendor Authority 7–10 (March 2022) *available at https://ncua.gov/files/publications/regulation-supervision/third-party-vendor-authority.pdf;* and Financial Stability Oversight Council, 2021 Annual Report 125 (2021) *available at https://home.treasury.gov/system/files/261/FSOC2021AnnualReport.pdf.*

certain specified requirements.[19] Given that the authority under section 1125(c)(1), in the context of federally insured credit unions, applies to subsidiaries owned and controlled by a federally insured credit union [20] and regulated by the NCUA,[21] the NCUA would not take action to enforce the requirements of this rule under section 1125(c)(1), if the rule is made final, with respect to CUSOs. Rather, under section 1125(c)(2), the Federal Trade Commission, the CFPB, and State attorneys general would have enforcement authority over CUSOs, whether owned by a State or federally chartered credit union, in connection with a final AVM rule.[22] Accordingly, the second sentence in proposed § 722.201(b)(1) would provide that subpart B of part 722 of the NCUA's regulations applies to credit unions insured by the NCUA that are mortgage originators or secondary market issuers.

The NCUA is also proposing to amend § 741.203(b) to clearly include the proposed AVM regulations in the NCUA's list of regulatory provisions applicable to federally insured, state-chartered credit unions. Accordingly, proposed § 741.203(b) would provide that insured credit unions must adhere to the requirements stated in part 722 of this chapter.

1. AVMs Used in Connection With Making Credit Decisions

The proposed rule would apply to AVMs used in connection with making a credit decision. The proposed rule would define ''credit decision,'' in part, to include a decision regarding whether and under what terms to originate, modify, terminate, or make other changes to a mortgage. The scope provision of the proposed regulatory text would expressly exclude the use of AVMs in monitoring the quality or performance of mortgages or mortgage-backed securities. The use of AVMs solely to monitor a creditor's mortgage portfolio would not be a credit decision under the proposed rule because the lending institution has already made the credit decision. The scope of the proposed rule would include, for example, decisions regarding originating a mortgage, modifying the terms of an existing loan, or renewing, increasing, or terminating a line of credit. The proposed rule uses the term ''credit decision'' to help clarify that the proposed rule would cover these various types of decisions.

The proposal to limit the scope of the rule to credit decisions and covered securitization determinations reflects the statutory definition of AVM, which focuses on the use of an AVM ''by mortgage originators and secondary market issuers to *determine* the collateral worth of a mortgage secured by a consumer's principal dwelling.'' [23] The proposed rule would distinguish between using AVMs to determine the value of collateral securing a mortgage and using AVMs to monitor, verify, or validate a previous determination of value (*e.g.,* the proposed rule would not cover a computerized tax assessment used to verify the valuation made during the origination process).[24] The proposed rule focuses on those aspects of mortgage and securitization transactions where the value of collateral is typically determined.

Loan modifications and other changes to existing loans. The proposed rule would cover the use of AVMs in deciding whether to change the terms of an existing mortgage even if the change does not result in a new mortgage origination, as long as a ''mortgage originator'' or ''secondary market issuer,'' or servicers that work on the originator's or secondary market issuer's behalf, uses the AVM to determine the value of a mortgage secured by a consumer's principal dwelling. For example, the proposed rule would cover AVMs used in making decisions to deny a loan modification or to confirm collateral values, such as when there is a request to change or release collateral. In relevant part, section 1125 provides that an AVM is ''any computerized model used by mortgage originators and secondary market issuers *to determine the collateral worth* of a mortgage. . . . '' [25] The agencies' view is that the phrase ''determine the collateral worth'' broadly covers instances where mortgage originators and secondary market issuers use AVMs in connection with making credit decisions. Under the proposal, the agencies consider mortgage originators and secondary market issuers or servicers that work on their behalf to be using AVMs in connection with making a credit decision when they use AVMs to modify or to change the terms of existing loans.

Question 1. How, if at all, could the agencies' proposal to cover loan modifications and other changes to existing loans be made clearer?

Home equity line of credit (HELOC) reductions or suspensions. The proposed rule would cover AVMs used in deciding whether or to what extent to reduce or suspend a HELOC. The proposed rule would apply to AVMs used in connection with making credit decisions. The agencies consider mortgage originators and secondary market issuers to be using AVMs in connection with making a credit decision when they use AVMs to decide whether or to what extent to reduce or suspend a HELOC.

Question 2. Part II.B of this **SUPPLEMENTARY INFORMATION** *discusses the proposed definitions of mortgage originator and secondary market issuer. To what extent do financial institutions purchase or service HELOCs without engaging in mortgage originator or secondary market issuer activities as defined by the proposed rule?*

Question 3. How might a rule covering only AVM usage by mortgage originators and secondary market issuers disadvantage those entities vis-à-vis their competitors?

2. AVMs Used by Secondary Market Issuers

The language of section 1125 includes not only mortgage originators, but also secondary market issuers. Given that the statute refers to secondary market issuers and the primary business of secondary market issuers is to securitize mortgage loans and to sell those mortgage-backed securities to investors, the proposed rule would cover AVMs used in securitization determinations. In addition, covering AVMs used in securitizations could potentially protect the safety and soundness of institutions and protect consumers and investors by reducing the risk that secondary market issuers will misvalue homes. For example, misvaluation by secondary market issuers could in turn incentivize mortgage originators to originate misvalued loans when making lending decisions.[26] Such misvaluations could

[19] 12 CFR part 712.

[20] The term ''financial institution'' means an insured depository institution as defined in 12 U.S.C. 1813 or an insured credit union as defined in 12 U.S.C. 1752. *See* 12 U.S.C. 3350(7).

[21] 12 U.S.C. 3354(c)(1).

[22] 12 U.S.C. 3354(c)(2).

[23] 12 U.S.C. 3354(d) (emphasis added).

[24] Many secondary market transactions by regulated entities require an appraisal unless an appraisal consistent with regulatory standards was obtained at the time of origination. *See* 12 CFR 43.43(a)(8) (OCC); 12 CFR 225.63(a)(8) (Board); 12 CFR 323.3(a)(8) (FDIC); 12 CFR 722.3(a)(5) (NCUA).

[25] 12 U.S.C. 3354(d) (emphasis added).

[26] For example, the 2008 financial crisis was precipitated in part by secondary market issuers that ''lowered the credit quality standards of the mortgages they securitized'' and mortgage originators that ''took advantage of these lower credit quality securitization standards . . . to relax the underwriting discipline in the loans they issued'' because, ''[a]s long as they could resell a mortgage to the secondary market, they didn't care about its quality.'' Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report,* at 425 (2011), *available at https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.*

pose a risk of insufficient collateral for financial institutions and secondary market participants and could limit consumers' refinancing and selling opportunities.[27]

Appraisal waivers. The proposed rule would define ''covered securitization determination'' to include determinations regarding, among other things, whether to waive an appraisal requirement for a mortgage origination (appraisal waiver decisions).[28] 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.

For example, both GSEs have appraisal waiver programs and are the predominant issuers of appraisal waivers in the current mortgage market.[29] To determine whether a loan qualifies for an appraisal waiver under either GSE program, a mortgage originator submits the loan casefile to the GSE's automated underwriting system with an estimated value of the property (for a refinance transaction) or the contract price (for a purchase transaction). The GSE then processes that information through its internal model, which may include use of an AVM, to determine the acceptability of the estimated value or the contract price for the property. If the GSE's analysis determines, among other eligibility parameters, that the estimated value or contract price meets its risk thresholds, the GSE offers the lender an appraisal waiver.[30]

In this example, when the GSEs use AVMs to determine whether the mortgage originator's estimated collateral value or the contract price meets acceptable thresholds for issuing an appraisal waiver offer, the GSEs would be making a ''covered securitization determination'' under the proposed rule. As a result, the proposed rule would require the GSEs, as secondary market issuers, to maintain policies, practices, procedures, and control systems designed to ensure that their use of such AVMs adheres to the rule's quality control standards. On the other hand, when a mortgage originator submits a loan to determine whether a GSE will offer an appraisal waiver, the mortgage originator would not be making a ''covered securitization determination'' under the proposed rule because the GSE would be using its AVM to make the appraisal waiver decision in this context. As a result, the mortgage originator would not be responsible for ensuring that the GSEs' AVMs comply with the proposed rule's quality control standards.

Question 4. To what extent do secondary market issuers other than the GSEs issue appraisal waivers?

Question 5. Please address the feasibility of mortgage originators performing quality control reviews of the AVMs that secondary 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?

Other uses by secondary market issuers. The proposed rule would define ''covered securitization determination'' to include determinations regarding, among other things, structuring, preparing disclosures for, or marketing initial offerings of mortgage-backed securitizations.[31] Monitoring collateral value in mortgage-backed securitizations after the securities have already been issued would not be a covered securitization determination.

The proposed rule would cover AVM usage if and when a secondary market issuer uses an AVM as part of a new or revised value determination in connection with covered securitization determinations. For example, the GSEs use the origination appraised value or the estimated value in appraisal waivers when issuing mortgage-backed securities. Hence, AVMs are not used by the GSEs to make a new or revised value determination in connection with MBS issuances. However, because the GSEs provide guarantees of timely payment of principal and interest on loans that are included in an MBS, they are obligated to purchase loans that are in default from MBS loan pools. The GSEs may modify such loans and subsequently re-securitize them as new MBS offerings. In these instances, the GSEs may use an AVM to estimate collateral value for investor transparency and disclosure. AVMs used in this manner by the GSEs would be considered covered securitization determinations because there are new or revised value determinations.

As discussed in part II.A.3 of this **SUPPLEMENTARY INFORMATION**, the proposed rule distinguishes between secondary market issuers using AVMs to determine the value of collateral securing a mortgage versus using AVMs solely to review completed value determinations. For example, AVMs used solely to review appraisals obtained during mortgage origination would not be covered by the proposed rule.

Question 6. The agencies are proposing to include securitizations within the scope of the proposed rule where the AVM is being used to determine collateral value for loans being considered for inclusion in pools collateralizing mortgage-backed securities. To what extent do secondary market issuers use AVMs to determine collateral value in securitizations?

Question 7. Would covering uses of AVMs for securitizations hinder small entities' access to secondary market liquidity and, if so, how might such impacts be mitigated?

Question 8. What would be the advantages and disadvantages of exempting federally backed securitizations from the AVM quality control standards?

Question 9. Are the compliance obligations of lenders and securitizers clear under this proposed rule?

3. AVM Uses Not Covered by the Proposed Rule

Uses of AVMs by appraisers. The proposed rule would not cover use of an AVM by a certified or licensed appraiser

[27] *See, e.g., Appraisals for Higher-Priced Mortgage Loans,* 78 FR 10367, 10418 (Feb. 13, 2013).

[28] On March 1, 2023, Fannie Mae began a transition in terminology away from ''appraisal waivers'' and to ''value acceptance.'' As stated in the March 1 announcement, ''value acceptance is being used in conjunction with the term 'appraisal waiver' to better reflect the actual process of using data and technology to accept the lender-provided value. We are moving away from implying that an appraisal is a default requirement.'' *See Fannie Mae Provides Updates Regarding Valuation Modernization | Fannie Mae.*

[29] *See* Fannie Mae, *Appraisal Waivers, available at https://singlefamily.fanniemae.com/originating-underwriting/appraisal-waivers* (last visited January 26, 2023); Freddie *Mac, Automated Collateral Evaluation* (ACE), *available at https://sf.freddiemac.com/tools-learning/loan-advisor/our-solutions/ace-automated-collateral-evaluation.*

[30] *See* Fannie Mae, *Appraisal Waivers, available at https://singlefamily.fanniemae.com/originating-underwriting/appraisal-waivers;* Freddie Mac, *Automated Collateral Evaluation (ACE), available at https://sf.freddiemac.com/tools-learning/loan-advisor/our-solutions/ace-automated-collateral-evaluation.*

[31] *See, e.g., Asset Backed Securities,* 70 FR 1505, 1544 (Jan. 7, 2005) (examples of asset characteristics that are ''material'' include LTV ratios); *Appraisals for Higher-Priced Mortgage Loans,* 78 FR 78519, 78533 (Dec. 26, 2013) (''[t]he credit risk holder of the existing obligation might obtain a valuation . . . to estimate LTV for determining the appropriate securitization pool for the loan.'').

in developing an appraisal.[32] This approach reflects the fact that, while appraisers may use AVMs in preparing appraisals, they must achieve credible results in preparing an appraisal under the Uniform Standards of Professional Appraisal Practice (USPAP) and its interpreting opinions.[33] As such, an appraiser must make a valuation conclusion that is supportable independently and does not rely on an AVM to determine the value of the underlying collateral. The agencies also note that it may be impractical for mortgage originators and secondary market issuers to adopt policies, procedures, practices, and control systems to ensure quality controls for AVMs used by the numerous independent appraisers with which they work.

Question 10. How often are AVMs used by certified or licensed appraisers to develop appraisals?

Question 11. What would be the advantages and disadvantages of excluding AVMs used by certified or licensed appraisers in developing appraisal valuations?

Under the appraisal regulations issued by the OCC, FRB, and FDIC, lenders regulated by those agencies are required to obtain ''evaluations'' for certain transactions that fall within exceptions in the appraisal regulations.[34] Evaluations must be consistent with safe and sound banking practices.

The proposed rule would cover AVMs used in the process of preparing evaluations. This distinction between appraisals and evaluations reflects that USPAP standards and appraiser credentialing are not required for individuals who prepare evaluations. The proposed rule's coverage of AVMs used in the process of preparing evaluations also reflects the more extensive use of, and reliance on, AVMs within the evaluation function.

Reviews of completed collateral valuation determinations. The proposed rule would not cover AVMs used in reviews of completed collateral value determinations, given that the underlying appraisal or evaluation determines the value of the collateral, rather than the review of the appraisal or evaluation. The appraisal or evaluation review serves as a separate and independent quality control function.[35] The agencies note that the proposed rule does not make distinctions based on the amount of time between the completed collateral valuation determination and the subsequent review; if an AVM is solely being used to review the completed determination, such AVM use is not covered by the proposed rule regardless of how soon the AVM is used after that determination.

Question 12. What would be the advantages and disadvantages of including AVMs that are used in reviews of completed determinations within the scope of the proposed rule? To what extent do institutions use AVMs in reviewing completed determinations?

Question 13. What, if any, additional clarifications would be helpful for situations where an AVM would or would not be covered by the proposed rule?

B. Definitions

1. Automated Valuation Model

The Dodd-Frank Act defines an AVM, for purposes of section 1125, 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.'' [36] The proposed rule would define an AVM as any computerized model used by mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralizing a mortgage. The proposed definition is substantively identical to the definition in section 1125 but reflects common terminology and clarifies that the determination of value relates to the dwelling.

Question 14. What, if any, other definitions of AVM would better reflect current practice with respect to the use of AVMs to determine the value of residential real estate securing a mortgage?

2. Control Systems

The proposal would define control systems as the functions (such as internal and external audits, risk review, quality control, and quality assurance) and information systems that institutions use to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel, including with respect to compliance with statutes and regulations. The agencies intend for institutions to use control systems that are appropriate for the size and complexity of their mortgage origination and securitization businesses.

Question 15. What, if any, alternate definitions would be more suitable than the proposed definition of control systems? What challenges, if any, would be involved in integrating control systems for AVMs into existing control systems?

3. Covered Securitization Determination

The proposed rule would define ''covered securitization determination'' to mean a determination regarding (1) whether to waive an appraisal requirement for a mortgage origination in connection with its potential sale or transfer to a secondary market issuer, or (2) structuring, preparing disclosures for, or marketing initial offerings of mortgage-backed securitizations. Monitoring collateral value in mortgage-backed securitizations after they have already been issued would not be covered securitization determinations.

Question 16. Would the proposed definition of a covered securitization determination hinder small entities' access to secondary market liquidity and, if so, how might such impacts be mitigated?

Question 17. Other than the uses discussed in the proposed rule, are there other ways that AVMs are used in the securitization process? Is the scope of the proposed definition of ''covered securitization determination'' appropriate and, if not, how should the agencies expand or narrow the definition?

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[32] The appraisal regulations issued by the OCC, Board, FDIC, and NCUA set forth, among other requirements, minimum standards for the performance of real estate appraisals in connection with federally related transactions. *See* 12 CFR part 34, subpart C (OCC); 12 CFR part 208, subpart E, and 12 CFR part 225, subpart G (Board); 12 CFR part 323 (FDIC); and 12 CFR part 722 (NCUA). The CFPB proposes to codify the AVM requirements in Regulation Z, 12 CFR part 1026, and to cross-reference Regulation Z § 1026.35(c)(1)(i), which defines ''certified or licensed appraiser'' as a person who is certified or licensed by the State agency in the State in which the property that secures the transaction is located, and who performs the appraisal in conformity with USPAP and the requirements applicable to appraisers in title XI, and any implementing regulations in effect at the time the appraiser signs the appraiser's certification.

[33] *See* USPAP STANDARDS RULE 1–1, GENERAL DEVELOPMENT REQUIREMENTS (''In developing a real property appraisal, an appraiser must . . . be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal''); *see also* Advisory Opinion 37 (AO–37) on Computer Assisted Valuation Tools.

[34] *See* 12 CFR 34.43(b) (OCC); 12 CFR 225.62(c) (Board); and 12 CFR 323.3(b) (FDIC); *see also Interagency Appraisal and Evaluation Guidelines,* 75 FR at 77460 (discussing transactions that require evaluations under the appraisal rules and providing recommendations for evaluation development).

[35] Appraisals are subject to appropriate review under the appraisal regulations. *See* 12 CFR 34.44(c); (OCC); 12 CFR 225.64(c) (Board); 12 CFR 323.4(c) (FDIC); 12 CFR 722.4(c) (NCUA). While these reviews are independent of, and subsequent to, the underlying appraisals and evaluations, the reviews generally take place before the final approval of a mortgage loan.

[36] 12 U.S.C. 3354(d).

4. Credit Decision

The proposal would define credit decision to mean a decision regarding whether and under what terms to originate, modify, terminate, or make other changes to a mortgage. The proposed definition of credit decision would include a decision whether to extend new or additional credit or change the credit limit on a line of credit. Monitoring the value of the underlying real estate collateral in their mortgage originators' loan portfolios would not be a credit decision for the purposes of this proposed rule. This reflects the fact that the collateral worth of a mortgage is generally determined in connection with credit decisions or covered securitizations rather than when the value of the collateral supporting a mortgage is monitored or verified.

Question 18. What, if any, clarifications are needed for the definition of the term ''credit decision''?

Question 19. What, if any, other decisions should the agencies include within the definition of credit decision?

5. Dwelling

The section 1125 definition of AVM refers to a mortgage secured by a ''consumer's principal dwelling.'' [37] The OCC, Board, FDIC, NCUA, and FHFA would define dwelling to mean a residential structure that contains one to four units, whether or not that structure is attached to real property. The term would include an individual condominium unit, cooperative unit, factory-built housing, or manufactured home, if any of these are used as a residence. The proposed definition of dwelling also would provide that a consumer can have only one principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling would be considered the principal dwelling.[38]

The CFPB proposes to codify the AVM requirements in Regulation Z, 12 CFR part 1026, which generally implements the Truth in Lending Act (TILA). The definition of dwelling proposed by the other agencies is consistent with the CFPB's existing Regulation Z.[39] Unlike TILA, title XI generally does not limit its coverage to credit transactions that are primarily for personal, family, or household purposes.[40] Because this rulemaking is conducted pursuant to title XI rather than TILA, the CFPB proposes to revise Regulation Z §§ 1026.1, .2, .3, and .42, and related commentary, to clarify that this rule would apply when a mortgage is secured by a consumer's principal dwelling, even if the mortgage is primarily for business, commercial, agricultural, or organizational purposes.[41]

Question 20. What, if any, alternate definitions would be more suitable than the proposed definition of dwelling and the approach to what is a principal dwelling?

Question 21. Should the rule define the meaning of ''consumer'' or is that term commonly understood?

Question 22. Because the CFPB proposes to apply its existing Regulation Z definitions of ''dwelling'' and ''consumer,'' the CFPB invites comment on whether, for purposes of the AVM requirements, it should amend its definitions and associated commentary to address particular circumstances, consistent with the objectives of section 1125. Should the rule exclude from coverage AVMs used only in making determinations of the worth of particular residential structures or AVMs used only in extending credit to a trust where a non-obligor individual uses the residence as their principal dwelling? Should the rule include language to address special circumstances, such as dwellings purchased by active-duty military personnel for their future permanent residence while assigned temporarily to a different duty station? Please provide any supporting explanation and data.

6. Mortgage

Section 1125(d) defines an AVM with reference to determining ''the collateral worth of a mortgage secured by a consumer's principal dwelling.'' [42] Section 1125 does not define ''mortgage.'' Because the statute does not refer to ''mortgage loans'' or ''mortgage credit,'' but rather uses the word ''mortgage,'' the proposal would define ''mortgage'' to broadly cover the mortgage market as fully as the statute appears to envision, in the language of section 1125(d) and throughout section 1125. Consequently, for this purpose, the agencies would adopt in part the Regulation Z definition of ''residential mortgage transaction,'' [43] which existed at the time the statute was passed. The proposal would define the term mortgage to mean a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in a consumer's principal dwelling.

Question 23. What, if any, alternate definitions would be more suitable than the proposed definition of mortgage?

Question 24. What are the benefits and disadvantages of including purchase money security interests arising under installment land contracts in the definition of mortgage? Please provide any data or information you have about the use of AVMs in this market segment.

7. Mortgage Originator

For purposes of this proposal, the agencies would adopt the definition of mortgage originator contained in TILA.[44] Although section 1125 of title XI does not define the term mortgage originator, a recent amendment to title XI (section 1127) adopted the TILA definition of mortgage originator by cross reference.[45] The OCC, Board, and FDIC implemented the same definition in their appraisal regulations.[46] Implementing the same definition in this proposal would maintain consistency in the usage of this term

[37] 12 U.S.C. 3354(d).

[38] The NCUA notes that under its regulations, a Federal credit union may make a mortgage loan to a member for a maturity of up to 40 years if the loan is secured by a one-to-four family dwelling that is or will be the principal residence of the member-borrower, among other requirements. 12 CFR 701.21(g). The use of the term ''principal residence'' in § 701.21(g) of the NCUA's regulations is distinct from the term ''principal dwelling'' used in this proposed rule. The proposed definition of ''dwelling'' and the condition that the dwelling is or will be a principal dwelling within one year for purposes of this proposed AVM rule would not change what type of dwelling is considered to be a principal residence under the NCUA's regulations, the parameters of which are drawn directly from the Federal Credit Union Act. 12 U.S.C. 1757(5)(A)(i). If this proposed rule is adopted as a final rule, the NCUA would issue a clarifying statement to assist Federal credit unions in distinguishing the two requirements.

[39] *See* 12 CFR 1026.2(a)(19) (definition of ''dwelling'') and 1026.2(a)(24) (definition of ''residential mortgage transaction''). The phrase ''consumer's principal dwelling'' is used in the Regulation Z provisions on valuation independence. 12 CFR 1026.42. Regulation Z generally defines ''consumer'' as a natural person to whom consumer credit is offered or extended. 12 CFR 1026.2(a)(11). The CFPB notes that pursuant to Regulation Z comments 2(a)(11)–3 and 3(a)–10, consumer credit includes credit extended to trusts for tax or estate planning purposes and to land trusts.

[40] *See* 12 CFR 1026.2(a)(12) (definition of ''consumer credit'').

[41] Therefore, the exemptions in 12 CFR 1026.3 would not apply to the requirements established by the CFPB under this rule.

[42] 12 U.S.C. 3354(d).

[43] 12 CFR 1026.2(a)(24).

[44] 15 U.S.C. 1602(dd)(2).

[45] 12 U.S.C. 3356(a)(1).

[46] *See* 12 CFR 34.43(a)(14) (OCC), 225.63(a)(15) (Board), and 323.3(a)(14) (FDIC).

with other sections of title XI and the agencies' appraisal regulations.

As proposed, the term mortgage originator generally would include creditors as defined by 15 U.S.C. 1602(g), notwithstanding that the definition of mortgage originator at 15 U.S.C. 1602(dd)(2) excludes creditors for certain other purposes.[47] While the term mortgage originator is broad enough to include mortgage brokers, in practice, brokers generally would not be covered by the proposed rule when they do not engage in the type of credit or securitization decisions covered under the proposal.

Based on the exception provided at 15 U.S.C. 1602(dd)(2)(G), the term mortgage originator would generally exclude servicers as defined by 15 U.S.C. 1602(dd)(7) as well as their employees, agents, and contractors. Consistent with the interpretation published in the CFPB's 2013 Loan Originator Compensation Rule, a person is a servicer with respect to a particular transaction only after it is consummated and that person retains or obtains its servicing rights.[48] In addition, whether a person is a servicer under the mortgage originator definition depends on the type of activities the person performs.

An entity that otherwise meets the definition of servicer at 15 U.S.C. 1602(dd)(7) is a ''mortgage originator'' for purposes of 15 U.S.C. 1602(dd)(2) only if it performs any of the activities listed in 15 U.S.C. 1602(dd)(2)(A) for a transaction that constitutes a new extension of credit, including a refinancing or an assumption. As a result, the proposed rule would apply to servicers and their employees, agents, and contractors if, in connection with new extensions of credit, they both use covered AVMs to engage in credit decisions and perform any of the activities listed in 15 U.S.C. 1602(dd)(2)(A). Once a servicer meets this definition of mortgage originator, the servicer would be required to comply with the requirements of this proposed rule any time it uses an AVM to determine the collateral worth of a mortgage secured by a consumer's principal dwelling, including those instances where the use of an AVM does not involve a new extension of credit such as a loan modification or a reduction of a home equity line of credit.

Question 25. What, if any, alternate definitions would be more suitable than the definition of mortgage originator proposed?

Question 26. Would the proposed definition of mortgage originator disadvantage any covered entities vis-à-vis their market competitors?

8. Secondary Market Issuer

The agencies are proposing to define secondary market issuer as any party that creates, structures, or organizes a mortgage-backed securities transaction. The agencies propose to define secondary market issuer in this manner due to the statutory focus in section 1125 on ''issuers'' and ''determin[ing] the collateral worth'' of a mortgage. This type of determination, as opposed to verification or monitoring of such determination, would typically take place in the secondary market in connection with the creation, structuring, and organization of a mortgage-backed security.

A number of parties may be involved in the securitization process and this proposed definition is designed to ensure coverage of entities responsible for the core decisions required for the issuance of mortgage-backed securities, including making determinations of the value of collateral securing the loans in the securitization transaction.

Question 27. What, if any, alternate definitions would be more suitable than the proposed definition of secondary market issuer? What, if any, additional types of entities should the agencies include in the definition? Should the definition cover fewer types of entities and, if so, which entities should not be covered?

Question 28. Would the proposed definition of secondary market issuer hinder small entities' access to secondary market liquidity and, if so, how might the agencies mitigate such impacts?

Question 29. What, if any, other terms should be defined in the proposed rule?

C. Quality Control Standards

1. Proposed Requirements for the First Four Quality Control Factors

The proposed rule would require 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, to adopt and maintain policies, practices, procedures, and control systems to ensure that AVMs used in these transactions 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; and require random sample testing and reviews. This approach would allow mortgage originators and secondary market issuers the flexibility to set their quality control standards for covered AVMs as appropriate based on the size of their institution and the risk and complexity of transactions for which they will use covered AVMs.

These quality control factors are consistent with practices that many participants in the mortgage lending market already follow and with the guidance described in part I.A of this **SUPPLEMENTARY INFORMATION** that applies to many regulated institutions that would be subject to this rule. For example, Appendix B of the Guidelines contains detailed guidance for institutions seeking to establish policies, practices, procedures, and control systems to ensure the accuracy, reliability, and independence of AVMs. The requirement for quality control standards in the proposed rule is also consistent with model risk guidance, as discussed earlier. In line with the agencies' service provider guidance, regardless of whether mortgage originators and secondary market issuers use their own AVMs or make use of third-party AVMs, the proposed rule would require the mortgage originators and secondary market issuers to adopt and maintain policies, practices, procedures, and control systems to ensure that AVMs adhere to the rule's requisite quality control standards.

The agencies considered whether to propose more prescriptive requirements for the use of AVMs and decided not to do so. Different policies, practices, procedures, and control systems may be appropriate for institutions with different business models and risk profiles, and a more prescriptive rule could unduly restrict institutions' efforts to set their risk management practices accordingly. In addition, as noted earlier, guidance is already in place to assist regulated institutions in using AVMs in a safe and sound manner, and institutions that are not regulated by the agency or agencies providing the guidance may still look to the guidance for assistance with compliance. The agencies also considered that the statute does not require the agencies to set prescriptive standards for AVMs. For these reasons, a rule requiring institutions to develop policies, practices, procedures, and control systems designed to satisfy the requirement for quality control standards may more effectively carry

[47] 15 U.S.C. 1602(dd)(2).

[48] *Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z),* 78 FR 11280, 11306 (Feb. 15, 2013).

out the purposes of section 1125 than a more prescriptive rule.[49]

Question 30. 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?*

Question 31. In what ways, if any, would a more prescriptive approach to quality control for AVMs be a more effective means of carrying out the purposes of section 1125 relative to allowing institutions to develop tailored policies, practices, procedures, and control systems designed to satisfy the requirement for quality control standards? If so, what would be the key elements of such an alternative approach?

2. Specifying a Nondiscrimination Quality Control Factor

Section 1125 provides the agencies with the authority to ''account for any other such factor'' that the agencies ''determine to be appropriate.'' [50] Based on this authority, the agencies propose to include a fifth factor that would require mortgage originators and secondary market issuers to adopt policies, practices, procedures, and control systems to ensure that AVMs used in connection with making credit decisions or covered securitization determinations adhere to quality control standards designed to comply with applicable nondiscrimination laws.

Existing nondiscrimination laws apply to appraisals and AVMs and institutions have a preexisting obligation to comply with all Federal laws, including Federal nondiscrimination laws. For example, the Equal Credit Opportunity Act (ECOA) and its implementing Regulation B bar discrimination on a prohibited basis in any aspect of a credit transaction.[51] The agencies have long recognized that this prohibition extends to using different standards to evaluate collateral,[52] which would include the design or use of an AVM in any aspect of a credit transaction in a way that would treat an applicant differently on a prohibited basis or result in unlawful discrimination against an applicant on a prohibited basis. Similarly, the Fair Housing Act prohibits unlawful discrimination in all aspects of residential real estate-related transactions, including appraisals of residential real estate.[53]

As with models more generally, there are increasing concerns about the potential for AVMs to produce property estimates that reflect discriminatory bias, such as by replicating systemic inaccuracies and historical patterns of discrimination. Models could discriminate because of the data used or other aspects of a model's development, design, implementation, or use.[54] Attention to data is particularly important to ensure that AVMs do not rely on data that incorporate potential bias and create discrimination risks. Because AVMs arguably involve less human discretion than appraisals, AVMs have the potential to reduce human biases. Yet without adequate attention to ensuring compliance with Federal nondiscrimination laws, AVMs also have the potential to introduce discrimination risks. Moreover, if models such as AVMs are biased, the resulting harm could be widespread because of the high volume of valuations that even a single AVM can process. These concerns have led to an increased focus by the public and the agencies on the connection between nondiscrimination laws and AVMs.

While existing nondiscrimination law applies to an institution's use of AVMs, the agencies propose to include a fifth quality control factor relating to nondiscrimination to heighten awareness among lenders of the applicability of nondiscrimination laws to AVMs. Specifying a fifth factor on nondiscrimination would create an independent requirement for institutions to establish policies, practices, procedures, and control systems to specifically address nondiscrimination, thereby further mitigating discrimination risk in their use of AVMs. Specifying a nondiscrimination factor may also increase confidence in AVM estimates and support well-functioning AVMs. In addition, specifying a nondiscrimination factor could help protect against potential safety and soundness risks, such as operational, legal, and compliance risks, associated

[49] The agencies have, in other contexts, allowed institutions to adjust their compliance programs in a way that reflects institution-specific factors, such as an institution's size and complexity and the nature and scope of its lending activities. *See, e.g., Interagency Guidelines Establishing Standards for Safety and Soundness,* 12 CFR part 30, Appendix A (OCC); 12 CFR part 208, Appendix D–1 (Board); 12 CFR part 364, Appendix A (FDIC) (requiring institutions to have internal controls and information systems for implementing operational and managerial standards that are appropriate to their size and the nature, scope and risk of their activities); 12 CFR 34.62 (OCC); 12 CFR 208.51 (Board); 12 CFR 365.2 (FDIC) (requiring institutions to adopt policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate): *Interagency Guidelines Establishing Information Security Standards,*12 CFR part 30, Appendix B, (OCC); 12 CFR part 208, Appendix D–2 (Board); 12 CFR part 364, Appendix B (FDIC); 12 CFR part 748, Appendix A (NCUA) (requiring institutions to implement a comprehensive written information security program that is appropriate to the size and complexity of the institution and the nature and scope of its activities); and 12 CFR 41.90 (OCC); 12 CFR 222.90 (Board); 12 CFR 334.90 (FDIC) (requiring that banks establish policies and procedures for the detection, prevention, and mitigation of identity theft). *See also Guidelines Establishing Standards for Residential Mortgage Lending Practices,*12 CFR part 30, Appendix C (OCC) (providing that residential mortgage lending activities should reflect standards and practices appropriate for the size and complexity of the bank and the nature and scope of its lending activities); 12 CFR 1007.104 (CFPB) (requiring policies and procedures regarding the registration of mortgage loan originators that are appropriate to the nature, size, complexity, and scope of the financial institution's mortgage lending activities); and 12 CFR 1026.36(j) (CFPB) (requiring policies and procedures regarding mortgage loan origination that are appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the depository institution and its subsidiaries).

[50] 12 U.S.C. 3354(a)(5).

[51] 15 U.S.C. 1691(a) (prohibiting discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity) or marital status, age (provided the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program), or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act); *see also* 12 CFR part 1002. This prohibition includes discrimination on the prohibited basis characteristics of ''the neighborhood where the property offered as collateral is located.'' 12 CFR part 1002, supp. I, para. 2(z)–1.

[52] *See* Interagency Task Force on Fair Lending, *Policy Statement on Discrimination in Lending,* 59 FR 18266, 18268 (Apr. 15, 1994) (noting that under both ECOA and the Fair Housing Act, a lender may not, because of a prohibited factor, use different standards to evaluate collateral).

[53] 42 U.S.C. 3605 (prohibiting discrimination because of race, color, religion, national origin, sex, handicap, or familial status in residential real estate-related transactions); 42 U.S.C. 3605(b)(2) (defining ''real estate-related transactions'' to include the ''selling, brokering, or appraising of residential real property.''); *see also* 24 CFR part 100; note 50, *supra.*

[54] In other contexts, models and data have the potential to be a source of bias and may cause consumer harm if not designed, implemented, and used properly. *See generally,* Federal Trade Commission, *Big Data: A Tool for Inclusion or Exclusion? Understanding the Issues* (Jan. 2016), *available at https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf;* Reva Schwartz et al., *A Proposal for Identifying and Managing Bias in Artificial Intelligence,* Nat'l Inst. of Standards & Tech., U.S. Department of Commerce (June 2021), *available at https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1270-draft.pdf. See also* Andreas Fuster et al., *Predictably Unequal? The Effects of Machine Learning on Credit Markets,* 77 J. of Fin. 5 (Feb. 2022), *available at https://doi.org/10.1111/jofi.13090;* Emily Bembeneck, et al., *To Stop Algorithmic Bias, We First Have to Define It,* Brookings Inst. (Oct. 21, 2021), *available at http://brookings.edu/research/to-stop-algorithmic-bias-wefirst-have-to-define-it/.*

with failure to comply with nondiscrimination laws.

In proposing to add a fifth quality control factor on nondiscrimination, the agencies note that compliance with applicable nondiscrimination laws with respect to AVMs may be indirectly reflected within and related to three of the first four statutory quality control factors. For example, the first factor requires quality control standards designed to ensure a high level of confidence in the estimates produced by AVMs. AVMs that reflect discriminatory bias in the data or discriminatory assumptions could affect confidence in AVM outputs and may also result in a form of data manipulation, particularly with respect to model assumptions and in the interactions among variables in a model, which bears on the second quality control factor in section 1125. The fourth quality control factor requires random sample testing and reviews of AVMs. The proposed fifth factor on nondiscrimination may include an array of tests and reviews, including fair lending reviews, which would support the general requirement for random sampling testing and review in section 1125. The first four factors do not, however, expressly address quality control measures relating to compliance with nondiscrimination laws.

Requiring institutions using AVMs covered by this proposed rule to adopt fair lending compliance policies and practices would be consistent not only with current law but also with well-established fair lending guidance. The OCC, Board, FDIC, NCUA, CFPB, and FHFA have issued statements and other materials setting forth principles the agencies will consider to identify discrimination.[55] The OCC, Board, FDIC, NCUA, and CFPB have further underscored the importance of robust consumer compliance management to prevent consumer harm in the Interagency Policy Statement on the Use of Alternative Data in Credit Underwriting (Alternative Data Policy Statement). In the Alternative Data Policy Statement, the agencies emphasized that ''[r]obust compliance management includes appropriate testing, monitoring and controls to ensure consumer protection risks are understood and addressed.'' [56] In addition, the CFPB has published procedures for CFPB examiners to assess an institution's fair lending related risks and controls related to the use of models—including, potentially, AVMs—in the credit decision process.[57]

The agencies propose that institutions would have the flexibility to design fair lending policies, procedures, practices, and control systems that are in compliance with fair lending laws and take into account their business models, as discussed in part II.C.1 of this **SUPPLEMENTARY INFORMATION** regarding the first four quality control factors.

The agencies seek comment on the proposal to specify a nondiscrimination quality control factor, including ways they could facilitate compliance for smaller financial institutions and whether additional clarity should be provided to assist institutions in complying with the proposed fifth factor.

Question 32. What are the advantages and disadvantages of specifying a fifth quality control factor on nondiscrimination? What, if any, alternative approaches should the agencies consider?

Question 33. To what extent is compliance with nondiscrimination laws with respect to covered AVMs already encompassed by the statutory quality control factors requiring a high level of confidence in the estimates produced by covered AVMs, protection against the manipulation of data, and random sampling and reviews? Should the agencies incorporate nondiscrimination into those factors rather than adopt the fifth factor as proposed? Would specifying a nondiscrimination quality control factor in the rule be useful in preventing market-distorting discrimination in the use of AVMs?

Question 34. What are the advantages and disadvantages of a flexible versus prescriptive approach to the nondiscrimination quality control factor?

Question 35. Are lenders' existing compliance management systems and fair lending monitoring programs able to assess whether a covered AVM, including the AVM's underlying artificial intelligence or machine learning, applies different standards or produces disparate valuations on a prohibited basis? If not, what additional guidance or resources would be useful or necessary for compliance?

Question 36. What, if any, other approaches should the agencies consider for incorporating nondiscrimination requirements in this proposed rule?

D. Request for Comments

The agencies invite comments on all other aspects of the proposed rulemaking.

E. Proposed Implementation Period

The agencies propose an effective date of the first day of a calendar quarter following the 12 months after publication in the **Federal Register** of any final rule based on this proposal. This extended effective date would give institutions time to come into compliance with the rule. The agencies seek comment on this extended implementation period.

Question 37. In addition to providing time for implementation, in what other ways should the agencies facilitate implementation for small entities?

III. CFPB Small Business Review Panel

While Federal agencies generally must consider the impact that their proposed rules could have on small entities, the Regulatory Flexibility Act (RFA),[58] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) [59] and the Dodd-Frank Act, imposes on the CFPB additional requirements with respect to small entities.

Specifically, the CFPB must convene and chair a Small Business Review Panel (Panel) whenever it is considering a proposed rule that could have a significant economic impact on a substantial number of small entities.[60]

[55] *See, e.g.,* Interagency Task Force on Fair Lending, *Policy Statement on Discrimination in Lending,* 59 FR 18266 (Apr. 15, 1994), *available at https://www.govinfo.gov/content/pkg/FR-1994-04-15/html/94-9214.htm;* Interagency Fair Lending Examination Procedures (Aug. 2009), *available at https://www.ffiec.gov/PDF/fairlend.pdf;* CFPB, *Examination Procedures—ECOA* (Oct. 2015), *available at https://files.consumerfinance.gov/f/documents/201510_cfpb_ecoa-narrative-and-procedures.pdf;* Federal Housing Finance Agency, *Policy Statement on Fair Lending,* 86 FR 36199 (July 9, 2021), *available at https://www.govinfo.gov/content/pkg/FR-2021-07-09/pdf/2021-14438.pdf.*

[56] *Id. Interagency Statement on the Use of Alternative Data in Credit Underwriting* (Dec. 2019), *available at https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_alternative-data.pdf;* CFPB, *Supervisory Highlights: Summer 2013,* 5–11 (Aug. 2013), *available at https://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf* (discussing the pillars of a well-functioning CMS). *See also* Federal Financial Institutions Examination Council (FFIEC), *Notice and Final Guidance, Uniform Interagency Consumer Compliance Rating System,* 81 FR 79473 (Nov. 14, 2016), *available at https://www.ffiec.gov/press/PDF/FFIEC_CCR_SystemFR_Notice.pdf* (''in developing the revised CC Rating System, the Agencies believed it was also important for the new rating system to establish incentives for institutions to promote consumer protection by preventing, self-identifying, and addressing compliance issues in a proactive manner. Therefore, the revised rating system recognizes institutions that consistently adopt these compliance strategies.'').

[57] CFPB, *ECOA Baseline Review Module* 2, 6 (Apr. 2019), *available at https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_ecoa-baseline-exam-procedures_2019-04.pdf).*

[58] 5 U.S.C. 601 *et seq.*

[59] Public Law 104–121, 110 Stat. 857 (1996) (5 U.S.C. 609) (amended by Dodd-Frank Act section 1100G).

[60] 5 U.S.C. 609(b).

This Panel must consist of the Chief Counsel for Advocacy of the Small Business Administration (Advocacy) [61] and full-time employees from both the CFPB and the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB).[62] Additionally, the Panel must collect feedback regarding the proposed rule under consideration from a group of small entity representatives (SERs) that the rule likely would cover if it were implemented.[63] Within 60 days of convening, the Panel must issue a report that documents the SERs' feedback and presents the Panel's recommendations.[64]

In preparation for convening a Panel for this rulemaking and to help facilitate the Panel's outreach to SERs, the CFPB issued an Outline of Proposals and Alternatives under Consideration (SBREFA Outline) on February 23, 2022.[65] The CFPB then convened a Panel for this rulemaking on March 14, 2022, and held two Panel outreach meetings during March 15–16, 2022, conducted online via video conference.[66] Sixteen SERs participated in this process through written and/or oral feedback. The SERs included representatives from community banks, credit unions, non-depository mortgage lenders, and mortgage brokers.

On May 13, 2022, the CFPB released the Final Report of the Panel on the CFPB's Proposals and Alternatives Under Consideration for the AVM Rulemaking (SBREFA Panel Report).[67] The SBREFA Panel Report includes the following:

- A description of the proposals that are being considered by the CFPB and that were reviewed by the Panel;
- Background information on small entities that would likely be subject to those proposals and on the particular SERs selected to advise the Panel;
- A discussion of the feedback from and recommendations made by the SERs; [68] and
- A discussion of the findings and recommendations of the Panel.[69]

The CFPB also invited other stakeholders to submit feedback on the SBREFA Outline. Feedback from these other stakeholders on the SBREFA Outline was not considered by the Panel and is not reflected in the SBREFA Panel Report but will be placed on the public docket for this notice. The CFPB received 11 submissions from a variety of other stakeholders, including trade associations, a coalition of consumer and civil rights groups, AVM developers and testers, a research center, and a not-for-profit corporation responsible for setting appraiser standards and qualifications.

As it prepared this proposed rule with the other agencies, the CFPB considered the feedback it received from SERs and other stakeholders (collectively, SBREFA feedback) and the findings and recommendations of the Panel. The CFPB has summarized the feedback, findings, and recommendations that it received during the SBREFA process in part III.A of this **SUPPLEMENTARY INFORMATION**.[70]

A. Summary of SBREFA Feedback and Panel Findings and Recommendations

In their feedback on the SBREFA Outline, SERs and other stakeholders (collectively, SBREFA commenters) generally expressed support for the rulemaking's goal of ensuring AVM accuracy. Many SBREFA commenters noted that AVMs potentially save time and money but also cautioned that they would need to have greater confidence in AVMs before broadly expanding their usage of them. While acknowledging that AVM developers are entitled to maintain trade secrets and protect their intellectual property rights, several SBREFA commenters expressed concern that AVM developers do not provide sufficient transparency regarding how they calculate AVM values.

SBREFA commenters expressed some support for greater standardization of AVM testing and reporting but cautioned that prescriptive regulations could threaten innovation and increase costs. The SBREFA Panel recommended that the CFPB continue to explore ways to minimize the burden to small entities of the AVM rule in light of SERs' concerns about compliance costs generally and their feedback regarding the potential additional costs and delays that could result if the industry substituted current AVM usage with appraisals.

While acknowledging that Congress has required the rulemaking agencies to issue a rule, SBREFA commenters generally expressed a preference for the less prescriptive, principles-based option presented in the SBREFA Outline, along with nonbinding guidance to aid in compliance with that rule. The not-for-profit corporation responsible for setting appraiser standards and qualifications recommended its USPAP as a starting point for flexible AVM regulations. A coalition of consumer and civil rights groups also provided various examples for a principles-based framework in an appendix to their submission.

SBREFA commenters generally supported aligning definitions in the AVM rule with definitions in existing financial regulations to simplify compliance. Some SERs and a trade association recommended that the AVM rule incorporate a transaction-based exemption threshold, such as not covering portfolio loans under $400,000. Other SERs asked the CFPB to consider an asset-size threshold to exempt small entities from the rule. However, a coalition of consumer and civil rights groups advocated for the rule's coverage to be as broad as possible.

Several SBREFA commenters stated that it would be beneficial to have a governmental or not-for-profit accrediting body for AVMs, so that AVM users could rely on such accreditation for complying with the AVM rule. Several SERs and other stakeholders also advocated for greater information sharing regarding the GSEs' AVMs.

1. Defining ''Consumer's Principal Dwelling''

The section 1125 definition of AVM refers to a mortgage secured by a

[61] Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA.

[62] 5 U.S.C. 609(b)(3).

[63] 5 U.S.C. 609(b)(4).

[64] 5 U.S.C. 609(b)(5).

[65] CFPB, *Small Business Advisory Review Panel For Automated Valuation Model (AVM) Rulemaking—Outline of Proposals and Alternatives Under Consideration* (Feb. 23, 2022), *available at https://files.consumerfinance.gov/f/documents/cfpb_avm_outline-of-proposals_2022-02.pdf.*

[66] In advance of the Panel outreach meetings, the CFPB, Advocacy, and OIRA also held six online conferences with the SERs to describe the small business review process, obtain important background information about each SER's current business practices, and familiarize the SERs with selected portions of the SBREFA Outline.

[67] CFPB, *Final Report of the Small Business Review Panel on the CFPB's Proposals and Alternatives Under Consideration for the Automated Valuation Model (AVM) Rulemaking* (May 13, 2022), *available at https://files.consumerfinance.gov/f/documents/cfpb_avm_final-report_2022-05.pdf.* The CFPB's SBREFA Outline and related materials, as well as the CFPB's presentation slides framing the discussion during the Panel outreach meetings, are appended to the SBREFA Panel Report. *See* SBREFA Panel Report at app. D through F.

[68] In addition to oral feedback, ten of the 16 SERs provided written feedback, which is appended to the SBREFA Panel Report at Appendix B.

[69] As required by the RFA, the CFPB considers the Panel's findings in its initial regulatory flexibility analysis, as set out in part V of this **SUPPLEMENTARY INFORMATION**.

[70] The SBREFA Panel Report provides a more complete summary of feedback from the SERs and the findings and recommendations of the Panel. The CFPB's documents and content from its SBREFA process for this rulemaking should not be construed to represent the views or recommendations of the Board, OCC, FDIC, NCUA, or FHFA.

consumer's principal dwelling. The terms ''consumer,'' ''dwelling,'' and ''principal dwelling'' are not defined in title XI, although the Dodd-Frank Act also added the phrase ''consumer's principal dwelling'' into provisions of title XI that address appraisal management company requirements and broker price opinions.[71] During the SBREFA process, the CFPB presented to the SERs an approach that would base the scope of ''consumer's principal dwelling'' on how that phrase is used in the Regulation Z § 1026.42 provisions on valuation independence.[72]

Coverage of ''consumers.'' For most purposes Regulation Z defines ''consumer'' as a natural person to whom consumer credit is offered or extended.[73] The SBREFA Outline noted that, for certain purposes, the scope of the Regulation Z term ''consumer'' may apply to additional persons.[74] The SBREFA Outline noted further that, unlike TILA, section 1125 does not limit its coverage to credit transactions that are primarily for personal, family, or household purposes.[75] Therefore, the SBREFA Outline advised the SERs that the CFPB was considering proposing language to clarify that its implementation of AVM standards in Regulation Z does not exclude from section 1125 coverage any mortgage for which the proceeds are used for other purposes, as long as the mortgage is secured by a consumer's principal dwelling.[76]

The SERs provided a variety of observations about extending the AVM requirements to business-purpose loans and defining the term ''consumer'' to include persons other than a natural person. In addition to addressing the scope of coverage generally and consistency with existing definitions, the SERs discussed valuation costs, processing times, and business practices.[77] The SBREFA Panel recommended that the CFPB leverage existing definitions in Regulation Z but consider whether adjustments should be made to apply the AVM standards to business-purpose loans and loans to trusts and limited liability companies.

Coverage of ''dwelling'' and limiting coverage to ''principal'' dwelling. The section 1125 definition of AVM refers to determining the collateral worth of a mortgage secured by a consumer's principal dwelling. During the SBREFA process, the CFPB indicated it was considering definitions of dwelling and principal dwelling that are very similar to their treatment in the proposed rule, but the CFPB also addressed the possibility of limiting the definitions' scope to transactions in which the mortgage is secured by a lien on real property. The SBREFA Outline cited to the CFPB's appraisal independence requirements in Regulation Z § 1026.42 as an approach under consideration for clarifying whether second and vacation homes and new construction would be considered principal dwellings.

Regarding the definition of ''dwelling,'' SERs discussed considerations relevant to limiting application of the AVM quality control standards to mortgages secured by real property, including alternative valuation guides and sampling challenges.[78] A coalition of consumer and civil rights groups urged adoption of a broad definition of dwelling and suggested considering adopting the Fair Housing Act definition of dwelling.[79]

Regarding what would be a ''principal'' dwelling, the SERs discussed considerations for applying the AVM standards to second homes, vacation homes, and new construction.[80] One SER commented on the importance of considering how coverage might apply to active military personnel who are purchasing a home for their future permanent residence while assigned temporarily to a different duty station. One trade association supported leveraging existing definitions for key terms in the AVM rule, including dwelling and consumer's principal dwelling. The SBREFA Panel recommended that the CFPB (i) consider whether limiting coverage to dwellings secured by liens on real property, and extending coverage to second homes and vacation homes, would be consistent with the purposes of section 1125; and (ii) clarify whether mortgages secured by undeveloped land, manufactured homes, and other structures used as dwellings would be covered by the quality control standards. The SBREFA Panel also recommended that the CFPB assess whether any adjustment or clarification of the AVM rule would be appropriate to accommodate the special circumstances of active-duty military personnel. Finally, the SBREFA Panel recommended that the CFPB seek comment on whether coverage of the AVM rule should vary from the definition of principal dwelling used in other statutes and CFPB regulations, including as applied to new construction.

2. Defining ''Mortgage''

Section 1125 defines an AVM by reference to determining ''the collateral worth of a mortgage,'' [81] but does not define the term ''mortgage.'' In the SBREFA process, the CFPB was considering proposing two alternative definitions of ''mortgage.'' The first alternative would define ''mortgage'' as an extension of credit secured by a dwelling. The second alternative would define it as a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in a dwelling.

Most SERs did not express a preference for one definition over the other, but some did request further clarity on what types of transactions would be covered, and others asked that the definition be coordinated with existing regulatory definitions. Two SERs preferred the first mortgage definition. One of those SERs suggested that the first definition of mortgage was easier to understand, and the other SER preferred the first definition because it did not appear to include installment sales contracts, which it said could be understood to include consumer purchases for improvements to a home (for example, financing an HVAC system).[82]

A coalition of consumer and civil rights groups commenting on the definition of mortgage preferred the second definition because it was

[71] *See* Dodd-Frank Act section 1473(f)(4), adding section 1121(11) to title XI, codified at 12 U.S.C. 3350(11)): and Dodd-Frank Act section 1473(r), adding section 1126(a) to title XI, codified at 12 U.S.C. 3355(a), respectively.

[72] The appraisal management company provisions in title XI include a requirement that appraisal management companies apply valuation independence standards established under TILA. 12 U.S.C. 3353(a)(4). TILA is implemented in the CFPB's Regulation Z, 12 CFR part 1026 (Regulation Z). The CFPB implemented the valuation independence standards in Regulation Z § 1026.42 and is proposing to also implement its AVM standards in § 1026.42.

[73] *See* 12 CFR 1026.2(a)(11).

[74] To see how the CFPB has interpreted and applied the definition of ''consumer'' in Regulation Z, *see* comments 2(a)(11)–1 through 4 and comment 3(a)–10 in Regulation Z, Supplement I.

[75] *See* 12 CFR 1026.2(a)(12) (definition of ''consumer credit'').

[76] The terms ''dwelling'' and ''principal dwelling'' are discussed separately in this section.

[77] *See* SBREFA Panel Report at section 8.13.

[78] *See* SBREFA Panel Report at section 8.13.

[79] *See* 42 U.S.C. 3602(b) (''Dwelling' means 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.'').

[80] *See* SBREFA Panel Report at section 8.13.

[81] 12 U.S.C. 3354(d). Section 1125 focuses on mortgages ''secured by a consumer's principal dwelling.'' *Id.*

[82] The CFPB notes that the second definition, which the agencies are proposing today, limits the ''installment sales contract'' reference to ''purchase money'' transactions.

broader and would protect consumers using installment sales contracts, who the stakeholder said are often Black homebuyers. A trade association did not think that installment land contracts should be included.

The SBREFA Panel recommended that the CFPB attempt to coordinate a definition of ''mortgage'' with preexisting regulations, to the extent feasible.

3. Defining ''Mortgage Originator''

Section 1125 covers AVMs used by ''mortgage originators,'' but does not define the term.[83] In the SBREFA Outline, the CFPB indicated that it was considering a definition of ''mortgage originator'' that potentially could cover persons who are loan originators, creditors, and/or, under limited circumstances, servicers for purposes of Regulation Z.[84] Four SERs, a trade association, and a coalition of consumer and civil right groups expressed support for a definition of ''mortgage originator'' that relies on definitions from existing consumer financial laws because they believe that would simplify implementation of any future final rule and/or minimize the compliance burden on small businesses. The SBREFA Panel also endorsed this approach in its recommendations.[85]

Although there was support among SERs and other stakeholders for defining ''mortgage originator'' based on definitions in existing consumer financial laws, six SERs and a coalition of consumer and civil rights groups indicated that the CFPB should consider alternative existing definitions for the term. These alternative definitions included defining ''mortgage originator'' (i) by reference to the term's use in other consumer financial laws, such as SAFE Act, Regulation G, or Regulation X, (ii) by reference to a person's current licensure status, or (iii) by reference to a person's function, such as covering lenders but not mortgage brokers or servicers. One SER in particular expressed concern that the definition of ''mortgage originator'' should not apply to mortgage brokers because, even though mortgage brokers commonly are considered ''loan originators,'' they rarely use AVMs and have no control over the valuation methods or vendors used in mortgage transactions.

In addition to receiving requests from SERs asking it to consider alternative definitions for the term ''mortgage originator,'' the CFPB also received comments from three SERs regarding the scope of the definition of the term ''mortgage originator.'' Two SERs asked the CFPB to consider applying a transaction-based or asset-based threshold that would exclude small entities from the scope of the definition of the term ''mortgage originator.'' Another SER asked the CFPB to ensure that any definition of the term ''mortgage originator'' it ultimately adopts will apply equally to both traditional market participants and financial technology firms.

4. Defining ''Secondary Market Issuer''

Section 1125 uses, but does not define, the term ''secondary market issuers''; specifically, the statute defines an AVM by reference to computerized models ''used by mortgage originators and secondary market issuers to determine the collateral worth'' of certain mortgages.[86] In the SBREFA Outline, the CFPB discussed two alternative definitions of the term ''secondary market issuer.'' The first alternative would define the term to include only entities that issue asset-backed securities collateralized by mortgages (mortgage securities). The second alternative would define the term more broadly to mean an issuer, guarantor, insurer, or underwriter of mortgage securities. Most SERs and other stakeholders providing feedback on the SBREFA Outline did not express specific views regarding these alternatives, but a coalition of consumer and civil rights groups as well as one SER supported the broader definition. The SBREFA Panel recommended that the CFPB continue to explore the extent to which a broader or narrower definition of ''secondary market issuer'' would further the statutory purposes of section 1125, along with the benefits and costs of such approach.

5. Types of AVM Uses

Section 1125 defines an AVM as any computerized model ''used by mortgage originators and secondary market issuers to determine the collateral worth'' of certain mortgages.[87] In the SBREFA Outline, the CFPB noted that, depending on how that phrase in the statute is implemented, the rule's quality control requirements might cover a variety of AVM uses by mortgage originators and secondary market issuers.

Underwriting versus non-underwriting AVM uses. Section 1125 focuses on AVMs used to ''determine'' the collateral worth. In the SBREFA Outline, the CFPB discussed focusing the rule on AVMs used in making underwriting decisions. Some SERs and trade associations providing feedback on the SBREFA Outline supported that approach. However, a coalition of consumer and civil rights groups advocated for the rule to broadly cover uses of AVMs to produce any valuation estimate whatsoever. The SBREFA Panel recommended that the CFPB continue to explore the extent to which limiting the rule's coverage to uses of AVMs for underwriting decisions would sufficiently further the statutory purposes of section 1125, along with the benefits and costs of such an approach. The SBREFA Panel also recommended that the CFPB consider clarifying whether, and to what extent, the proposed rule distinguishes between AVMs used before and after the origination of a mortgage.

Loan modifications and other changes to existing loans. Section 1125 focuses on AVMs used to ''determine'' the collateral worth. Among specific types of AVM uses, the CFPB's SBREFA Outline explored whether the rule should apply in instances where a mortgage originator, secondary market issuer, or service provider for a mortgage originator or secondary market issuer uses an AVM to determine the value of collateral in order to support a decision to modify or to change the terms of an existing loan. Specifically, the SBREFA Outline presented two alternatives. Under the first alternative, the rule would cover AVMs used in transactions that result in a consumer receiving a new mortgage origination. Under this alternative, the rule would cover a transaction like a refinancing, but not a transaction like a loan modification that would not result in a new mortgage origination. Under the second alternative, the rule would cover any AVM used to decide whether to change the terms of an existing mortgage even if the change does not result in a new mortgage origination, so long as a ''mortgage originator'' or ''secondary market issuer,'' or a service provider acting on behalf of a mortgage originator or a secondary market issuer, uses the AVM to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

[83] 12 U.S.C. 3354(d).

[84] *Small Business Advisory Review Panel for Automated Valuation Model (AVM) Rulemaking, Outline of Proposals and Alternatives under Consideration* 14–15 (Feb. 23, 2022), *available at https://files.consumerfinance.gov/f/documents/cfpb_avm_outline-of-proposals_2022-02.pdf.*

[85] *Final Report of Small Business Review Panel on the CFPB's Proposals and Alternatives under Consideration for the Automated Valuation Model (AVM) Rulemaking* 39 (May 13, 2022), *available at https://files.consumerfinance.gov/f/documents/cfpb_avm_final-report_2022-05.pdf.*

[86] 12 U.S.C. 3354(d). Section 1125 focuses on mortgages ''secured by a consumer's principal dwelling.'' *Id.*

[87] 12 U.S.C. 3354(d). Section 1125 focuses on mortgages ''secured by a consumer's principal dwelling.'' *Id.*

With respect to the two alternatives, SERs generally expressed a preference for the CFPB's first alternative over the second. One SER stated that they preferred a rule that did not cover loan modifications and other changes to existing loans, even if it ultimately covered refinancing transactions, because such a rule would have lower implementation costs. That SER further explained that consolidating the AVM quality control processes in their institution's origination functions (including refinancings) would be less burdensome than building processes for multiple use cases. Several SERs expressed concern that the second alternative could negatively impact consumers who are pursuing loss mitigation options. Specifically, those SERs stated that AVMs are quicker and less costly than appraisals, but that the second alternative could discourage use of AVMs in favor of appraisals during the loss mitigation process, which, in turn, would harm consumers by increasing both property valuation costs and application processing times. One SER also asked the CFPB to clarify whether the first alternative would apply to transactions that are withdrawn or denied in addition to transactions that are consummated.

The CFPB also received feedback on these alternatives from a trade association. That trade association stated that their members supported the first alternative because they wanted to exclude AVMs used in loan modifications from the scope of the rule. The trade association further stated that their members did not support the second alternative presented in the SBREFA Outline because, in their view, it both was inconsistent with title XI's directive to apply quality control standards to mortgage originators and would place additional burdens on the processing of loan workouts for distressed borrowers.

Credit line reductions or suspensions. Section 1125 focuses on AVMs used to ''determine'' the collateral worth of a mortgage secured by a consumer's principal dwelling. Among specific types of AVM uses, in the SBREFA Outline, the CFPB was considering whether or not the rule would cover AVMs used in deciding whether or to what extent to reduce or suspend a home equity line of credit. SERs discussed balancing the consumer protections of covering credit line reductions or suspensions against the burdens of such regulation. One SER noted that AVMs used in determining credit line reductions or suspensions ought to be covered from a consumer protection standpoint. Another SER noted that such decisions occur only a couple times a year at their institution, and the burden of additional regulations could cause servicers like them to abandon the use of AVMs for such purposes. The SBREFA Panel recommended that the CFPB continue to explore the extent to which a rule not covering uses of AVMs for credit line reductions and suspensions would sufficiently further the statutory purposes of section 1125, along with the benefits and costs of such approach. The Panel also recommended that the CFPB consider whether covering such uses only for mortgage originators and secondary market issuers disadvantages entities vis-à-vis competitors that acquire mortgages but are not mortgage originators or secondary market issuers.

Uses of AVMs by appraisers. Section 1125 applies to AVMs used by ''mortgage originators'' and ''secondary market issuers,'' respectively.[88] Third-party appraisers generally would not be mortgage originators or secondary market issuers; thus, appraisers themselves generally would not be covered by the eventual rule. But, as discussed in part I.A of this **SUPPLEMENTARY INFORMATION**, regulated entities—including mortgage originators and secondary market issuers—are responsible for managing risk inherent in the use of third-party service providers, such as appraisers.[89]

In the SBREFA Outline, the CFPB indicated that it was considering whether or not the rule would cover an AVM when a mortgage originator (or secondary market issuer) relies on an appraisal developed by a certified or licensed appraiser (appraiser), notwithstanding that the appraiser used the AVM in developing an appraisal. Several SERs and a trade association advocated for not covering such AVMs uses; they explained that mortgage originators and secondary market issuers should not be responsible for appraisers' AVM usage because appraisers are already subject to other Federal and State regulation and supervision. The SERs further stated that, given other Federal laws requiring valuation independence,[90] mortgage originators have limited ability to oversee appraisers' use of AVMs. A coalition of consumer and civil rights groups urged that the rule should cover AVMs used by appraisers and stated that there are gaps in the training and licensing of appraisers. The SBREFA Panel recommended that the CFPB continue to assess the extent to which a rule not covering appraisers' uses of AVMs would sufficiently further the statutory purposes of section 1125.

Securitization. Section 1125 focuses on AVMs used to ''determine'' the collateral worth of a mortgage secured by a consumer's principal dwelling. Among specific types of AVM uses, in the SBREFA Outline, the CFPB was considering whether or not the rule would cover a secondary market issuer's use of an AVM in the offer and sale of mortgage securities. Most SERs and other stakeholders providing feedback on the SBREFA Outline did not express specific views regarding whether to cover AVMs used in securitization, but one SER expressly advocated for not covering such uses because, otherwise, the rule would create a cost burden and hinder access to the secondary market, particularly for small mortgage originators. Another SER stated that most small entities do not securitize loans and that they would be discouraged from doing so if the eventual rule covered AVMs used in securitization. A coalition of consumer and civil rights groups advocated for the rule's coverage to be as broad as possible. The not-for-profit corporation responsible for setting appraiser standards and qualifications expressed concern regarding securitization creating moral hazard for mortgage origination because securitizers often provide funding to originators in exchange for loans with weak representations and warranties that may result in originators having little to no incentive for accurate valuations. The SBREFA Panel recommended that the CFPB continue to explore the extent to which a rule not covering uses of AVMs in securitizations would sufficiently further the statutory purposes of section 1125, along with the benefits and costs of such an approach.

Reviews of completed determinations. Section 1125 focuses on AVMs used to ''determine'' the collateral worth of a mortgage secured by a consumer's principal dwelling. Among specific types of AVM uses, in the SBREFA Outline, the CFPB considered whether or not the rule would cover AVMs used in a subsequent review of a completed

[88] 12 U.S.C. 3354(d).

[89] *See supra* note 12.

[90] For consumer credit transactions secured by a consumer's principal dwelling, TILA section 129E, 15 U.S.C. 1639e, and its implementing regulations require valuation independence by, for example, prohibiting material misrepresentation of property value and conflicts of interest for persons preparing valuations or performing valuation management functions. CFPB: 12 CFR 1026.42; Board: 12 CFR 226.42; *see Truth in Lending,* 75 FR 66554 (Oct. 28, 2010) (interim final rule); *see also Truth in Lending,* 75 FR 80675 (Dec. 23, 2010) (correction). TILA section 129E(g)(2) directed the Board to issue an interim final rule. 15 U.S.C. 1639e(g)(2).

appraisal or other completed determination of collateral value (completed determination). Several SERs and a trade association expressly advocated for not covering such AVM uses, including a SER that stated requiring quality control of AVMs when they are, in turn, being used to quality control already completed determinations would be an excessive amount of quality control and would not provide additional benefit—but would increase the cost of credit for consumers. A coalition of consumer and civil rights groups advocated for the rule's coverage to be as broad as possible.

The SBREFA Panel recommended that the CFPB continue to explore the extent to which a rule not covering uses of AVMs for subsequent reviews of completed determinations would sufficiently further the statutory purposes of section 1125, along with the benefits and costs of such an approach. The SBREFA Panel also recommended that the CFPB consider clarifying in the proposed rule whether, and to what extent, the proposed rule makes distinctions based on the amount of time between the completed determination and the subsequent review.

Appraisal waivers. Section 1125 focuses on AVMs used to ''determine'' the collateral worth of certain mortgages. In the SBREFA Outline, the CFPB indicated that it was considering a rule that would exclude a mortgage originator's use of AVMs for appraisal waiver programs where the secondary market issuer's use of an AVM is covered instead. Specifically, the CFPB indicated that it was considering two potential options. One option was to exclude the mortgage originator's use of the secondary market issuer's AVM for appraisal waiver programs. The second option was to exclude the mortgage originator's use of any AVM used exclusively to determine whether a loan qualifies for an appraisal waiver program or to generate a value estimate exclusively for an appraisal waiver program. SERs were supportive of a proposed rule not covering a mortgage originator's use of AVMs for appraisal waiver programs where the secondary market issuer's use of an AVM is covered instead. One SER appreciated that such an approach did not increase compliance burden on mortgage originators, while another SER indicated that secondary market issuers, especially the GSEs, were in a better position to perform quality control reviews of their AVMs than the mortgage originators requesting the appraisal waiver evaluations.

6. Options for the First Four Quality Control Standards

Section 1125 requires that AVMs adhere to quality control standards designed to: (1) ensure a high level of confidence in the estimates produced; (2) protect against the manipulation of data; (3) seek to avoid conflicts of interest; (4) require random sample testing and reviews; and (5) account for any other such factor that the agencies determine to be appropriate. Section 1125(b) requires the agencies to promulgate regulations to implement these quality control standards.

In the SBREFA process, the CFPB was considering proposing two alternative methods for compliance in regard to the first four AVM quality control factors. In the first alternative (principles-based option), the CFPB was considering proposing to require regulated institutions to adopt and maintain their own policies, practices, procedures, and control systems to ensure that AVMs used for covered transactions adhere to quality control standards designed to meet those factors, but not proposing specific requirements for those policies, practices, procedures, and control systems. For the second alternative regarding the quality control factors (prescriptive option), the CFPB was considering proposing a prescriptive rule with more detailed and specific requirements in regard to the quality control factors.

SERs overwhelmingly expressed support for the first option the CFPB presented, which would require covered entities to develop policies and procedures that would achieve the quality control standards but would not set specific requirements for those policies and procedures. For example, one SER explained that their institution focuses on the risk assessed, especially the dollar amount of the loan, and the first option would allow them to maintain that focus. That SER further stated that a more prescribed approach would increase their costs and affect their ability to offer services that utilize AVMs, and that the CFPB should allow AVM use to evolve rather than shut down useful innovation with specific controls. Another SER said that low-risk home equity loans for relatively small amounts should not have to meet the same requirements as half-million-dollar loans and that, otherwise, the small-dollar mortgages would become unaffordable. One SER stated that a prescriptive rule would result in a complex and expansive regulation because it would need to address risk factors across many aspects of the market, including product type, geographic area, loan purpose and loan size.[91]

Almost all other stakeholders who commented on the quality control options in the SBREFA Outline preferred the principles-based approach, largely for the same reasons that the SERs did. Some of these stakeholders, particularly those involved in the appraisal and valuation market, suggested that the CFPB should try to foster standardization in the market, while also allowing flexibility. Several of these commenters suggested that the market would benefit from some form of credential or certification for AVM providers.

The SBREFA Panel recommended that the CFPB consider providing additional clarity in the notice of proposed rulemaking (NPRM) on what the rule would require of small entities in order to comply with the quality control standards and seek comment on improving that clarity. In addition, the Panel recommended that the CFPB consider seeking comment in the NPRM on potential methods to facilitate compliance targeted on small financial institutions. The Panel further suggested that such methods considered could include clear instruction on how a small entity can monitor compliance regarding use of third-party AVM vendors. The CFPB notes that the proposed rule requests comment on the possible use of additional guidance.

7. Specifying a Nondiscrimination Quality Control Standard

Section 1125 provides the agencies the authority to account for any other such factor that the agencies determine to be appropriate.[92] In the SBREFA process, the CFPB was considering proposing that it exercise its authority under section 1125 to specify a fifth quality control factor designed to ensure that AVMs used for covered transactions comply with applicable nondiscrimination laws. The CFPB was considering proposing two alternative methods—a principles-based option or a prescriptive option—for compliance with the nondiscrimination factor,

[91] The SERs also discussed other topics besides the direct question of whether the CFPB should adopt the policies and procedures or the prescriptive rule options, such as their current policies and procedures and their concerns about lacking the expertise to effectively monitor AVM vendor compliance with the rule. *See* CFPB, *Final Report of the Small Business Review Panel on the CFPB's Proposals and Alternatives Under Consideration for the Automated Valuation Model (AVM) Rulemaking* 24–30 (May 13, 2022), *available at https://files.consumerfinance.gov/f/documents/cfpb_avm_final-report_2022-05.pdf.*

[92] 12 U.S.C. 3354(a)(5).

consistent with the first four quality control factors.

During the SBREFA process, SERs uniformly voiced concern regarding how they can assess AVM compliance with applicable nondiscrimination law or know that they are in violation of the law. SERs stated that it is impractical for them to assess AVM fair lending performance because they are not equipped to validate the algorithms that AVM providers use. SERs commented that, as small institutions, they do not have the staff, the data, or the scale to assess AVM model results meaningfully. In addition, SERs stated that lenders do not have access to the data or methodology used by the AVM because the data is proprietary.

SERs expressed that it is important to ensure fairness in AVM development and application, including ensuring that AVMs do not rely on data that results in inadvertent discrimination. However, SERs stated that the burden should be on AVM providers to comply with nondiscrimination requirements, and the providers should be regulated.

In addition, SERs expressed that there is sufficient fair lending regulatory infrastructure already in place and that adding a fair lending requirement to the quality control standards for AVMs would be duplicative and, therefore, unnecessary. SERs further stated that the other four quality control standards required by statute already account for fair lending compliance.

A number of other stakeholders, including several trade associations, echoed many of the SERs' concerns about specifying a nondiscrimination quality control standard. A coalition of consumer and civil rights groups stated that while they fully support the addition of nondiscrimination as a fifth quality control standard, the agencies should incorporate nondiscrimination into each of the quality control standards, asserting that fair lending risk should not be separated from safety and soundness risk.

The SBREFA Panel recommended that the CFPB consider providing additional clarity in the NPRM on what the rule would require of institutions in order to comply with a nondiscrimination quality control factor and seek comment on improving that clarity. In addition, the Panel recommended that the CFPB consider seeking comment in the NPRM on potential methods to facilitate compliance targeted on small financial institutions, such as providing clear and simple instructions, allowing some form of safe harbor, or some other method or methods. Such methods considered could include clear instruction on how a small entity can monitor compliance regarding use of third-party AVM vendors.

8. Implementation Period

Title XIV of the Dodd-Frank Act requires an implementation period within 12 months after issuance of the interagency final rule.[93] Many SERs and an AVM testing company providing feedback on the SBREFA Outline stated that small entities would need more than the statutory 12-month period to comply with the eventual rule. Those stakeholders highlighted the potential nondiscrimination quality control factor as an aspect of the potential rule that would be particularly time consuming to implement. One SER and a trade association stated that the implementation period should be at least 12 months while a research center estimated only six months would be necessary. The SBREFA Panel recommended that the CFPB continue to explore the appropriateness of an implementation period longer than 12 months.

IV. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995.[94] In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a current Office of Management and Budget (OMB) control number.

The proposed rule would establish quality control standards mandated by the Dodd-Frank Act for the use of AVMs by mortgage originators and secondary market issuers in determining the collateral worth of a mortgage secured by a consumer's principal dwelling. Section 1473(q) of the Dodd-Frank Act amended title XI to add section 1125 relating to the use of AVMs in valuing real estate collateral securing mortgage loans. Section 1125 directs the agencies to promulgate regulations to implement quality control standards regarding AVMs.

The proposed rule would require supervised 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, to adopt and maintain policies, practices, procedures, and control systems to ensure that AVMs used in these transactions adhere to quality control standards designed to:

(a) Ensure a high level of confidence in the estimates produced;

(b) Protect against the manipulation of data;

(c) Avoid conflicts of interest;

(d) Require random sample testing and reviews; and

(e) Comply with applicable nondiscrimination laws.

The quality control standards in the proposed rule are applicable only to covered AVMs, which are AVMs as defined in the proposed rule. The proposed rule would require the regulated mortgage originators and secondary market issuers to adopt policies, practices, procedures, and control systems to ensure that AVMs adhere to the specified quality control standards whenever they use covered AVMs while engaging in certain credit decisions or covered securitization determinations.

As a result, the proposed rule creates new recordkeeping requirements. The agencies are revising their current information collections related to real estate appraisals and evaluations. The OMB control number for the OCC is 1557–0190, the Board is 7100–0250, the FDIC is 3064–0103, and the NCUA is 3133–0125. These information collections will be extended for three years, with revision. In addition to accounting for the PRA burden incurred as a result of this proposed rule, the agencies are also updating and aligning their information collections with respect to the hourly burden associated with the Guidelines.

The information collection requirements contained in this proposed rule have been submitted by the OCC, the FDIC, and the NCUA to the OMB for review and approval under section 3507(d) of the PRA [95] and section 1320.11 of the OMB's implementing regulations.[96] The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on

[93] 12 U.S.C. 1400(c)(1)(B).

[94] 44 U.S.C. 3501–3521.

[95] 44 U.S.C. 3507(d).

[96] 5 CFR 1320.

respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on the collections of information should be sent to the address listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503, or by facsimile to 202–395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Recordkeeping and Disclosure Requirements and Provisions Associated with Real Estate Appraisals and Evaluations.

Frequency of Response: Annual and event generated.

Affected Public: Businesses, other for-profit institutions, and other not-for-profit institutions.

Respondents:

OCC: National banks, Federal savings associations.

Board: State member banks (SMBs), bank holding companies (BHCs), nonbank subsidiaries of BHCs, savings and loan holding companies (SLHCs), nondepository subsidiaries of SLHCs, Edge and agreement corporations, U.S. branches and agencies of foreign banks, and any nonbank financial company designated by FSOC to be supervised by the Board.

FDIC: Insured state nonmember banks and state savings associations, insured state branches of foreign banks.

NCUA: Private Sector: Not-for-profit institutions.

General Description of Report:

For federally related transactions, title XI requires regulated institutions [97] to obtain appraisals prepared in accordance with USPAP promulgated by the Appraisal Standards Board of the Appraisal Foundation. Generally, these standards include the methods and techniques used to estimate the market value of a property as well as the requirements for reporting such analysis and a market value conclusion in the appraisal. Regulated institutions are expected to maintain records that demonstrate that appraisals used in their real estate-related lending activities comply with these regulatory requirements.

The proposed rule would require supervised 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, to adopt and maintain policies, practices, procedures, and control systems to ensure that AVMs used in these transactions adhere to quality control standards designed to:

(a) Ensure a high level of confidence in the estimates produced;

(b) Protect against the manipulation of data;

(c) Avoid conflicts of interest;

(d) Require random sample testing and reviews; and

(e) Comply with applicable nondiscrimination laws.

Current Action: The proposed rule creates new recordkeeping requirements in connection with adopting and maintaining policies, practices, procedures, and control systems. The agencies estimate that the new recordkeeping burden associated with the proposed rule would result in an implementation burden of 13.33 hours per respondent and an annual ongoing burden of 5 hours per respondent. In addition to accounting for the PRA burden incurred as a result of this proposed rule, the agencies are also updating and aligning their information collections (IC) with respect to the hourly burden associated with the Guidelines. This would result in an annual ongoing burden of 10 hours per respondent for recordkeeping and an annual ongoing burden of 5 hours per respondent for disclosure.

OCC Burden

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 1557–0190]

Requirement	Citations	Number of respondents	Burden hours per respondent	Total number of hours annually
Recordkeeping: Resolution stating plans for use of property.	§ 7.1024(d)	6	5	30
Recordkeeping: ARM loan documentation must specify indices to which changes in the interest rate will be linked.	§ 34.22(a); § 160.35(b)	164	6	984
Recordkeeping: Appraisals must be written and contain sufficient information and analysis to support engaging in the transaction.	§ 34.44	976	1,465 responses per respondent @5 minutes per response.	119,072
Recordkeeping: Written policies (reviewed annually) for extensions of credit secured by or used to improve real estate.	§ 34.62; appendix A to subpart D to part 34; § 160.101; appendix A to § 160.101.	1,413	30	42,390
Recordkeeping: Real estate evaluation policy to monitor OREO.	§ 34.85	9	5	45
Recordkeeping: New IC 1—AVM Rule—Policies and Procedures (Implementation).	Proposed § 34.222	342	13.33 hours (40 hours divided by 3 years).	4,559
Recordkeeping: New IC 2—AVM Rule—Policies and Procedures (Ongoing).	Proposed § 34.222	342	5	1,710
Recordkeeping: New IC 3—Interagency Appraisal and Evaluation Guidelines—Policies and Procedures.	N/A	976	10	9,760

[97] National banks, Federal savings associations, SMBs and nonbank subsidiaries of BHCs, insured state nonmember banks and state savings associations, and insured state branches of foreign banks.

TABLE 1—SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued

[OMB No. 1557–0190]

Requirement	Citations	Number of respondents	Burden hours per respondent	Total number of hours annually
Reporting: Procedure to be followed when seeking to use an alternative index.	§ 34.22(b); § 160.35(d)(3)	249	6	1,494
Reporting: Prior notification of making advances under development or improvement plan for OREO.	§ 34.86	6	5	30
Disclosure: Default notice to debtor at least 30 days before repossession, foreclosure, or acceleration of payments.	§ 190.4(h)	42	2	84
Disclosure: New IC 4—Interagency Appraisal and Evaluation Guidelines.	N/A	976	5	4,880
Total Annual Burden Hours				185,038

Board Burden

TABLE 2—SUMMARY OF ESTIMATED ANNUAL BURDEN

[FR Y–30; OMB No. 7100–0250]

FR Y–30	Estimated number of respondents	Estimated annual frequency	Estimated average hours per response	Estimated annual burden hours
Recordkeeping				
Sections 225.61–225.67 for SMBs	701	519	5 minutes	30,318
Sections 225.61–225.67 for BHCs and nonbank subsidiaries of BHCs	4,714	25	5 minutes	9,821
Guidelines	5,415	1	10	54,150
Policies and Procedures AVM rule (Initial setup)	2,088	1	13.3	27,770
Policies and Procedures AVM rule (Ongoing)	2,088	1	5	10,440
Disclosure				
Guidelines	5,415	1	5	27,075
Total Annual Burden Hours				159,574

FDIC Burden

TABLE 3—SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0103]

Information collection (obligation to respond)	Type of burden (frequency of response)	Average annual number of respondents	Number of responses per respondent	Time per response (hours/minutes)	Annual burden (hours)
Recordkeeping Requirements Associated with Real Estate Appraisals and Evaluations (Mandatory).	Recordkeeping (On Occasion).	3,038	250	5 minutes (0.083)	63,039
New IC 1—AVM Rule—Policies and Procedures—Implementation (Mandatory).	Recordkeeping (Annual).	1,042	1	13.33 hours (40 hours divided by 3 years).	13,890
New IC 2—AVM Rule—Policies and Procedures—Ongoing (Mandatory).	Recordkeeping (Annual).	1,042	1	5 hours	5,210
New IC 3—2010 Guidelines—Policies and Procedures—Ongoing (Mandatory).	Recordkeeping (Annual).	3,038	1	10 hours	30,380
New IC 4—2010 Guidelines—Disclosure—Ongoing (Mandatory).	Disclosure (Annual).	3,038	1	5 hours	15,190
Total Annual Burden Hours					127,709

NCUA Burden

TABLE 4—SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3133–0125]

Information collection	Type of burden	Average annual number of respondents	Number of responses per respondent	Time per response (hours)	Annual burden (hours)
Recordkeeping Requirements Associated with Real Estate Appraisals and Evaluations.	Recordkeeping (On Occasion).	3648	618	0.0825	187,872
New IC 1—AVM Rule—Policies and Procedures—Implementation.	Recordkeeping (Annual)	365	1	13.33	4,863
New IC 2—AVM Rule—Policies and Procedures—Ongoing.	Recordkeeping (Annual)	365	1	5	1,824
New IC 3—2010 Guidelines—Policies and Procedures—Ongoing.	Recordkeeping (Annual)	3648	1	10	36,480
New IC 4—2010 Guidelines—Disclosure—Ongoing.	Disclosure (Annual)	3648	1	5	18,240
Total Annual Burden Hours	.....	.....	.....	.....	249,279

The CFPB, in consultation with OMB, and the FHFA do not believe that they have any supervised entities that will incur burden as a result of this proposed rule and therefore will not be making a submission to OMB. Comments are invited on this determination by the CFPB and the FHFA.

V. Regulatory Flexibility Act Analysis

A. OCC

The RFA requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $850 million or less and trust companies with total revenue of $47.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The OCC has assessed the burden of the proposed rule and has determined that the costs associated with the proposed rule would be limited to reviewing the rule; ensuring that existing practices, procedures, and control systems adequately address the four statutory quality control standards; and adopting policies, practices, procedures, and control systems to ensure that AVMs adhere to quality control standards designed to comply with applicable nondiscrimination laws. To estimate expenditures, the OCC reviewed the costs associated with the activities necessary to comply with the proposed rule. These include an estimate of the total time required to implement the proposed rule and the estimated hourly wage of bank employees who may be responsible for the tasks associated with achieving compliance with the proposed rule. The OCC used a bank employee compensation rate of $120 per hour.[98]

The OCC currently supervises approximately 661 small entities.[99] The proposed rule would impact approximately 614 of these small entities. The OCC estimates the annual cost for small entities to comply with the proposed rule would be approximately $21,600 per bank (180 hours × $120 per hour). In general, the OCC classifies the economic impact on a small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Based on these thresholds, the OCC estimates that the proposed rule would have a significant economic impact on 26 small entities, which is not a substantial number. In general, for RFA purposes, the OCC classifies substantial as 5 percent or more of OCC-supervised small entities. Therefore, the OCC concludes that the proposed rule would not have a significant economic impact on a substantial number of small entities.

B. Board

The Board is providing an initial regulatory flexibility analysis with respect to this proposal. The RFA requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules

[98] To estimate wages the OCC reviewed May 2021 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities (NAICS 5220A1). To estimate compensation costs associated with the rule, the OCC uses $119.63 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (6.1 percent as of Q1 2022), plus an additional 32.8 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2021 for NAICS 522: credit intermediation and related activities).

[99] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $850 million and $47.5 million, respectively. Consistent with the General Principles of Affiliation in 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining whether to classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2022, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the SBA's *Table of Size Standards.*

which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposal on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the proposal is not expected to have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. The Board will consider whether to conduct a final regulatory flexibility analysis after any comments received during the public comment period have been considered.

1. Reasons Why Action Is Being Considered by the Board

As discussed above, the Dodd-Frank Act amended title XI to add a new section governing the use of AVMs in mortgage lending and directing the agencies to promulgate regulations to implement specified quality control standards. The proposal serves to implement this statutory mandate.

2. The Objectives of, and Legal Basis for, the Proposal

The proposed rule would implement statutorily mandated quality control standards for the use of AVMs. The Board would adopt the proposal pursuant to section 1125 of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.[100]

3. Estimate of the Number of Small Entities

The proposal would apply to Board-regulated small entities that are mortgage originators or secondary market issuers. There are approximately 472 state member banks and approximately 2,799 bank holding companies and savings and loan holding companies that qualify as small entities for purposes of the RFA.[101]

4. Description of the Compliance Requirements of the Proposal

The proposal would require Board-regulated small entities that are mortgage originators or secondary market issuers to adopt and maintain policies, practices, procedures, and control systems to ensure that AVMs used in credit decisions or covered securitization determinations adhere to specified quality control standards. These quality control standards must ensure a high level of confidence in the estimates produced, protect against the manipulation of data, avoid conflicts of interest, and require random sample testing and reviews and comply with applicable nondiscrimination laws. To the extent that small entities do not already maintain adequate policies, practices, procedures, and control systems, they could incur administrative costs to do so. It is likely that the majority of Board-regulated small entities that are mortgage originators or secondary market issuers either do not use AVMs in credit decisions or covered securitization determinations would already be in compliance with the proposed specified standards or could become compliant with relatively minor modifications to their current practices.[102]

Board staff estimates that impacted Board-supervised small entities would spend 160 hours establishing or modifying policies, practices, procedures, and control systems, at an hourly cost of $99.32.[103] The estimated aggregate initial administrative costs of the proposal to Board-supervised small entities amount to $7,500,646 or $15,891.00 per bank[104] and ongoing costs are expected to be small when measured by small entities' annual expenses.

5. Consideration of Duplicative, Overlapping, or Conflicting Rules and Significant Alternatives to the Proposal

The Board has not identified any Federal statutes or regulations that would duplicate, overlap, or conflict with the proposal. The Board is required by statute to promulgate regulations to implement the quality control standards required under section 1125 of title XI, and thus no significant alternatives are available.[105]

Question 38. How frequently do bank holding companies and savings and loan holding companies that meet the definition of small entity use AVMs to engage in making credit decisions or securitization determinations?

Question 39. Is the number of hours estimated to establish policies, procedures and control systems to comply with the rule realistic for small institutions. If not, what number is hours would be more appropriate?

C. FDIC

The RFA generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[106] However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $850 million.[107] Generally, the FDIC considers a significant economic impact

[100] 12 U.S.C. 3354.

[101] Under regulations issued by the SBA, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $850 million or less. *See Small Business Size Standards: Adjustment of Monetary-Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation,* 87 FR 69118 (Nov. 17, 2022). Consistent with the General Principles of Affiliation in 13 CFR 121.103, the Board counts the assets of all domestic and foreign affiliates when determining if the Board should classify a Board-supervised institution as a small entity. Small entity information for state member banks is based on Reports of Condition and Income average assets from September 30, 2022. Small entity information for bank holding companies and savings holding companies is based on average assets reflected in June 30, 2022 *Parent Company Only Financial Statements for Small Holding Companies* (FR Y–9SP) data.

[102] For example, the Board has provided guidance to most such entities on use of AVMs. *See Interagency Appraisal and Evaluation Guidelines,* 75 FR 77450, 77468 (Dec. 10, 2010).

[103] To estimate wages, the Federal Reserve reviewed May 2021 estimates for wages (by industry and occupation) from the BLS for credit intermediation and related activities (NAICS 5220A1). To estimate compensation costs associated with the rule. the Federal Reserve uses $99.32 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (2 percent as of Q1 2021), plus an additional 33.4 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2020 for NAICS 522: credit intermediation and related activities). The number of hours, 160, to establish policies, procedures and control systems is an estimate based on supervisory experience.

[104] This analysis assumes that the majority of credit decision and securitization determinations are performed at depository institutions. Therefore, only the number of State member depository institutions that are small entities, 472, are included in the calculation of administrative costs. The impact on the majority of small bank holding companies and savings and loan holding companies is expected to be minimal.

[105] 12 U.S.C. 3354.

[106] 5 U.S.C. 601 *et seq.*

[107] The SBA defines a small banking organization as having $850 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by the SBA on Nov. 17, 2022, *Small Business Size Standards: Adjustment of Monetary-Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation,* published at 87 FR 69118, effective December 19, 2022). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is ''small'' for the purposes of RFA.

to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represents a significant economic impact for an FDIC-supervised institution.

The FDIC does not believe that the proposed rule, if adopted, would have a significant economic effect on a substantial number of small institutions. However, since some expected effects of the proposed rule are difficult to assess or accurately quantify given current information, the FDIC has included an Initial RFA Analysis in this section.

1. Why Action Is Being Considered

This action would fulfill the statutory mandate in the Dodd-Frank Act that the agencies promulgate regulations to implement quality control standards for AVMs used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.[108]

2. Policy Objectives of, and Legal Basis for, the Proposed Rule

Policy objectives. The overarching policy objectives of this proposed rule are to promote credibility and integrity in the use of AVMs for the purpose of residential mortgage lending valuation, thereby supporting safe and sound banking practices as well as helping ensure compliance with applicable nondiscrimination laws. If adopted, the proposed rule would achieve these objectives by, among other things, incorporating the principles stated in existing guidance [109] through requiring regulated financial institutions to adopt and maintain policies, practices, procedures, and control systems to ensure that AVMs adhere to a set of quality control standards, and by directly linking nondiscrimination law to institutions' AVM policies, practices, procedures, and controls. Further, as discussed above in Section II of the **SUPPLEMENTARY INFORMATION**, the proposal provides institutions the flexibility to tailor their quality control standards for AVMs as appropriate based on the size of the institutions and the risk and complexity of transactions for which they will use covered AVMs.

Legal basis. The Dodd-Frank Act amended title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by adding a new section 1125 requiring AVMs to adhere to certain quality control standards. Section 1125 directs the FDIC, OCC, FRB, NCUA, CFPB, and FHFA in consultation with the staff of the Appraisal Subcommittee and the Appraisal Standards Board of the Appraisal Foundation, to promulgate regulations to implement quality control standards regarding covered AVMs.[110] The proposed rule would require institutions that engage in certain credit decisions or securitization determinations to adopt policies, practices, procedures, and control systems designed to ensure that AVMs used in determining the value of mortgage collateral secured by a consumer's principal dwelling to adhere to quality control standards designed to: ensure a high level of confidence in the estimates produced by AVMs; 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. The agencies exercised their statutory authority to propose a fifth quality control standard that would require institutions to adopt policies, practices, procedures, and control systems to ensure that AVMs adhere to quality control standards designed to assure compliance with applicable nondiscrimination laws.

3. Initial Regulatory Flexibility Act Analysis

A description and an estimate of the number of small institutions to which the proposed rule will apply. As of December 31, 2022, there were 3,038 FDIC-supervised institutions, and 2,356 of them were small institutions for the purposes of the RFA.[111] Of these, 2,284 FDIC-supervised small institutions reported a non-zero value for mortgagees on their books.[112] Therefore, the FDIC estimates that 2,284 small institutions could be subject to the proposed rule. The FDIC lacks data on the number of small FDIC-supervised institutions that use AVMs for their mortgage originations. Subject matter experts believe that up to approximately 10 percent of all FDIC-supervised institutions currently use an AVM for mortgage origination decisions, loan modification decisions, and securitization decisions covered by the proposed rule. However, based on supervisory experience, these experts believe a smaller percentage of small FDIC-supervised institutions use AVMs because they believe AVM use is strongly positively correlated with institution size.

Expected Effects. The costs and benefits discussed in this section apply to any small FDIC-supervised institution that would be directly subject to the proposed rule, in particular the 2,284 FDIC-supervised small institutions estimated to be affected by the proposed rule.

Costs. The proposed rule would, if adopted, generally reflect existing Guidelines, supervisory expectations, and statutory obligations regarding the use of AVMs by supervised institutions. As mentioned, since 2010, the FDIC has provided supervisory Guidelines on the use of AVMs by its regulated institutions.[113] The FDIC believes the covered institutions [114] using AVMs, including small institutions, have considered the Guidelines in developing policies, procedures, practices, and control systems, and therefore should also be consistent with the proposed rule's quality control standards 1 through 4. This belief is supported by a review of ten years of FDIC bank examination reports, which revealed that just 0.2 percent of the examinations flagged shortcomings in AVM management practices.[115] This suggests that the labor hours required to implement the four quality control standards would be relatively modest.

The fifth quality control standard is consistent with existing applicable nondiscrimination laws. For example, the ECOA and its implementing Regulation B, bar discrimination on a prohibited basis in any aspect of a credit

[108] The legal basis is described in item (2) below.

[109] The guidance is discussed below. It consists of FDIC guidance on appraisals and evaluation and FDIC guidance on model risk.

[110] 12 U.S.C. 3354(a) through (b).

[111] Based on Call Reports data as of December 31, 2022.

[112] Based on Call Reports data as of December 31, 2022. The variable LNRERES represents balances for 1–4 family residential real estate loans.

[113] The FDIC provides guidance on the use of AVMs by their regulated institutions in Appendix B to the Interagency Appraisal and Evaluation Guidelines (''Guidelines'') (75 FR 77450, Dec. 10, 2010). The Guidelines advise that institutions should establish policies, practices, and procedures governing the selection, use, and validation of AVMs, including steps to ensure the accuracy, reliability, and independence of an AVM. In addition, the FDIC has issued guidance on model risk management practices (Model Risk Guidance) that provides supervisory guidance on validation and testing of computer-based financial models (FDIC FIL–22–2017, dated June 7, 2017). *See generally* Section I.A. of **SUPPLEMENTARY INFORMATION**.

[114] The term ''covered institutions'' refers to financial institutions that would be subject to the proposed rule.

[115] The search of nearly 22,000 FDIC Reports of Examination from June 2011 to June 2021 revealed just 44 instances of a flag indicating an institution's AVM use or management practices needed to improve. Therefore, 99.8 percent of the examination reports do not mention AVM practices and imply satisfactory practices (or no AVM use).

transaction.[116] Similarly, the Fair Housing Act [117] prohibits unlawful discrimination in all aspects of residential real estate-related transactions, including valuations of residential real estate. However, the FDIC has not previously issued guidance or regulations that directly address nondiscrimination laws as it relates to expected or required AVM policies, procedures, practices, and controls. As a result, some covered institutions may not have fully integrated nondiscrimination laws directly into their AVM policies and risk management practices.

As mentioned, the FDIC lacks information on the labor hours and costs that would be incurred by covered institutions to comply with the proposed rule. Therefore, it assumes that small FDIC-supervised institutions would expend 120 labor hours, on average, to comply with the proposed rule during the first year of implementation, and 40 labor hours, on average, in each successive year. This estimate assumes that in the first year, institutions would need to review and understand the implications of the newly enacted rule, conduct a review of their own policies, practices, procedures, and controls for their consistency with the rule, identify any deficiencies, and take corrective actions as needed. In the second year, the institutions' expected costs would be lower on average, as they limit their actions to primarily reviewing and maintaining their compliance.

This analysis subdivides the assumed compliance-related average labor hours spent by covered institutions into two types: (1) burdens under the Paperwork Reduction Act (PRA), and (2) those for non-PRA compliance activities. For PRA burdens, based on supervisory experience the agency assumes that on average, covered FDIC-supervised small institutions using AVMs for originations or modifications would spend 40 hours in the first year and 5 hours in each subsequent year to meet the recordkeeping requirements.

The FDIC believes non-PRA requirements may impose additional burdens on small institutions. For the first four quality control standards, these requirements may include, for example, back-testing of AVM outputs relative to property sale prices to understand the degree of confidence they merit, and the development and implementation of safeguards against data manipulation. The agency believes covered small institutions' additional non-PRA compliance activities that are attributable to the proposed rule would be relatively modest for the first four quality control standards, largely because the 2010 Guidelines already encourage them to conduct such activities. Covered small institutions may initially expend greater levels of effort to comply with the fifth quality control standard. The FDIC lacks data on the time required by the institutions to develop and implement the nondiscrimination quality control standard.

Based on supervisory experience and subject matter expertise, the FDIC assumes that all non-PRA compliance activities would average 80 hours per institution in the first year of the proposed rule's adoption and 35 hours in subsequent years. Summing assumed burden hours for both PRA (recordkeeping) activities and non-PRA activities associated with the proposed rule, the FDIC estimates that average first year compliance labor hours per covered institution would equal 120 (40 PRA + 80 non-PRA), and second year compliance labor hours would equal 40 (5 PRA + 35 non-PRA). These combined compliance labor hours represent total estimated regulatory burden hours attributable to the proposed rule.

This method multiplies the assumed average number of hours per year required to comply with the proposed rule by the weighted average estimated total compensation rate for each labor category expected to be involved in associated activities.[118] The resulting product represents the cost estimate.

The FDIC lacks access to data on the number of small FDIC-supervised institutions that use AVMs for mortgage originations or loan modifications for owner-occupied residential real estate, making it difficult to estimate reliably the AVM use rates by covered small institutions. Therefore, this illustrative exercise presents three sets of potential cost figures. An upper-bound estimate assumes that all small FDIC-supervised institutions that have residential real estate loan balances use an AVM. A second estimate assumes that 10 percent of small FDIC-supervised institutions with mortgage balances use an AVM (an intermediate estimate is also presented). These assumed AVM use rates exceed the expected rates for small institutions, according to subject matter experts who suggest that only a small fraction use them in practice. Therefore, the FDIC believes that the resulting range of cost estimates likely tends to overestimate potential compliance costs.

The analysis assumes the current number of FDIC-supervised small institutions with residential mortgage lending activity (2,284) is representative of the number of covered institutions in the year of implementation and in successive years. The aggregate estimated compliance costs would span the range from (assuming a 10 percent AVM use rate) $2.6 million in the first year and $0.9 million [119] in the second, to $26.4 million in the first year and $8.8 million [120] in successive years (assuming 100 percent AVM adoption). An intermediate assumed 35 percent AVM use rate would generate estimated first-year costs of $9.2 million and subsequent year costs of $3.0 million.[121]

Further analysis shows that the estimated costs described above would not impose a significant economic impact on a substantial number of small institutions. The method estimates the average cost per institution by multiplying the assumed number of labor hours in each year by the estimated weighted average hourly labor cost rate. This yields the average costs per institution in year 1 (approximately

[116] 15 U.S.C. 1691(a) (prohibiting discrimination on the basis of race, color, religion, national origin, sex or marital status, age (provided the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act); *see also* 12 CFR part 1002.

[117] 42 U.S.C. 3605 (prohibiting discrimination because of race, color, religion, national origin, sex, handicap, or familial status in residential real estate-related transactions); 42 U.S.C. 3605(b)(2) (defining ''real estate-related transactions'' to include the ''selling, brokering, or appraising of residential real property''); *see also* 24 CFR part 100.

[118] The assumed distribution of occupation groups involved in the actions taken by institutions in response to the proposed rule in year 1 include Financial Analysts (40 percent of hours), Compliance Officers (40 percent), Lawyers (15 percent), and Executives and Managers (5 percent). In year 2 and beyond, the assumed distribution is Financial Analysts (50 percent of hours), Compliance Officers (40 percent), Lawyers (5 percent), and Executives and Managers (5 percent). These combinations of occupations results in an overall estimated hourly total compensation rate of $96.57. This average rate is derived from the BLS' Specific Occupational Employment and Wage Estimates, and BLS' Cost of Employee Compensation data.

[119] Calculations are as follows. Lower estimate: Year 1: $2.6 million = 274,080 hours × $96.57 per hour × 10% AVM use rate. Year 2: $0.9 million = 91,360 hours × $96.57 per hour × 10% use rate.

[120] Upper-bound estimate: Year 1: $26.4 million = 274,080 hours × $96.57 per hour × 100% AVM use rate. Year 2: $8.8 million = 91,360 hours × $96.57 per hour × 100% use rate.

[121] Year 1: $9.2 million = 274,080 hours × $96.57 × 35% use rate. Year 2: $3.0 million = 91,360 hours × $96.57 × 35% use rate. The 35 percent assumed AVM use rate is based on internal analysis of 2021–22 Y–14M data by the FRB and applies to large institutions not regulated by the FDIC. Under the assumption that AVM use rates are strongly positively correlated with institution size, this analysis expects this use figure substantially exceeds the actual rate applicable to FDIC-supervised small institutions.

$11,600) and year 2 (approximately $3,900).[122] The method compares these average costs to each covered institution's annual labor costs and annual non-interest expenses to ascertain whether they may face substantial economic impacts. Year 1 estimated average costs exceed the 5 percent threshold of annual salaries and benefits for 11 (0.48 percent) of the institutions, and year 2 average costs do not surpass the threshold for any of the institutions. Similarly, year 1 estimated average costs top the 2.5 percent threshold of annual noninterest expenses for 11 (0.48 percent) of the institutions, and year 2 average costs do not exceed the threshold for any of the institutions.

The compliance costs incurred by any one covered institution is likely to vary with the volume of covered AVM activity, the degree to which current AVM compliance activities differ from the robust quality control standards in the proposed rule, or the usage of in-house or third-party AVM service providers.

Benefits. If adopted, the proposed rule would confer public benefits by promoting the credibility and integrity of residential real estate valuations used by covered institutions, thereby supporting their safe and sound operations, and helping ensure that the use of AVMs by institutions is consistent with nondiscrimination laws. These benefits cannot be reliably quantified by the FDIC.

These benefits are predicated on the premise that some institutions would enhance their AVM policies, practices, procedures, and controls in response to the proposal's first four quality control standards, despite most institutions already generally following the principles in existing Guidelines. At the same time, the fifth standard may be more likely to generate changes in institutions' policies and procedures and potential associated benefits, than their responses to the first four standards. Generally, to the extent the proposal drives actions that result in more accurate and credible AVM valuations of residential real estate, it may contribute to more efficient underwriting, lending decisions, and risk management among covered institutions. Such effects may be derived through multiple channels, for example:

—*Improved risk information and its impacts:* Improved valuation accuracy would be expected to result in more precise residential property credit risk assessment and pricing. Generally, valuation error, whether generated by an AVM or appraiser, may reduce the precision of risk measurement and pricing, for instance, by distorting loan-to-value (LTV) ratios. This misvaluation affects both the immediate transaction and the downstream users of valuation data to inform loan decisions, valuations of comparable properties, and default risk estimation.[123] More accurate risk information would be expected to enhance loan performance [124] and reduce loss-given-default [125] by more tightly matching loan decisions and terms to actual risk exposures. In the aggregate, more accurate risk information may promote the safety and soundness of the financial system by reducing the likelihood of large negative asset valuation shocks and by enhancing economy-wide mortgage default estimates.[126] For example, research identifies flawed home appraisals as a contributor to the 2008 financial crisis.[127]

—*Potentially more equitable mortgage lending outcomes.* Despite statutory obligations requiring nondiscrimination in all aspects of residential real estate transactions, including property valuations, preliminary research continues to find evidence of disparities in residential property values along racial and ethnic lines,[128] mortgage approval rates, and lending terms.[129] Additionally, research suggests that appraised values that more frequently result in valuations below sales contract prices in minority neighborhoods may play a role in disparities for housing-related outcomes.[130]

Imprecision in AVM results may contribute to the propagation of racial and ethnic disparities through two channels. First, AVMs using comparable sales as inputs may include sale prices

[122] The estimated average cost per institution is the same for all assumed AVM use rates.

[123] *See* Calem et al. (2021). Calem, Paul S., Lauren Lambie-Hanson, Leonard I. Nakamura, and Jeanna H. Kenney, 2021, ''Appraising Home Purchase Appraisals.'' *Real Estate Economics* 49: 134–168.

[124] Agarwal et al. (2015) and Lacour-Little and Malpezzi (2003) find evidence that inaccurate collateral valuations are associated with increased loan default rates. Agarwal, Sumit, Itzhak Ben-David, and Vincent Yao, 2015, ''Collateral Valuation and Borrower Financial Constraints: Evidence from the Residential Real Estate Market.'' *Management Science* 61: 2220–2240. Lacour-Little, Michael and Stephen Malpezzi, 2003, ''Appraisal Quality and Residential Mortgage Default: Evidence from Alaska.'' *Journal of Real Estate Finance and Economics* 27: 211–233.

[125] Carillo et al. (2022) find evidence that larger markups in home purchase transactions are associated with greater losses to lenders, conditional on loan default. Carillo, Paul E., William M. Doerner, and William D. Larson, 2022, ''House Price Markups and Mortgage Defaults.'' *Journal of Money, Credit, and Banking* (online early view).

[126] Carillo et al. (2022) argue that LTV miscalculation can reduce the reliability of aggregate default estimates.

[127] *See* Ben-David (2011), Nakamura (2010), Eriksen (2019). Ben-David, Itzhak, 2011, ''Financial Constraints and Inflated Home Prices during the Real Estate Boom.'' *American Economic Journal: Applied Economics* 3: 55–87. Eriksen, Michael D., Hamilton B. Fout, Mark Palim, and Eric Rosenblatt, 2019, ''The Influence of Contract Prices and Relationships on Appraisal Bias.'' *Journal of Urban Economics* 111: 132–143.

[128] The average value of single-family homes in majority White communities ($424,810) in the U.S. was more than double that of single-family homes in majority Black ones ($169,855) in 2018. Neal, Michael, Sarah Strochak, Linna Zhu, and Caitlin Young, 2020, ''How Automated Valuation Models Can Disproportionately Affect Majority Black Neighborhoods.'' Urban Institute Housing Finance Policy Center.

[129] Analysis of data from the Federal Housing Administration and from the GSEs shows that mortgage loan interest rates for home purchases charged by lenders to equivalent-risk minority borrowers have been persistently elevated relative to rates for non-minority borrowers, especially in high minority share neighborhoods. Bartlett, Robert, Adair Morse, Richard Stanton, and Nancy Wallace, 2022, ''Consumer Lending Discrimination in the Fintech Era.'' *Journal of Financial Economics* 143: 30–56. Research suggests that elevated loan denial rates among Black borrowers is largely explained by differences in applicant risk characteristics and other underwriting factors but still estimates a 2 percentage point greater denial rate for Black applicants after controlling for them. Bhutta, Neil, Aurel Hizmo, and Daniel Ringo, 2022, ''How Much Does Racial Bias Affect Mortgage Lending? Evidence from Human and Algorithmic Credit Decisions.'' Finance and Economics Discussion Series 2022–067. Federal Reserve Board.

[130] Research by Freddie Mac found that 7 percent of appraisals in majority White census tracts had appraisal values below sales contract prices, while majority Black tracts had 12 percent, and majority Latino tracts had 15 percent of appraisal values below contract prices. At the individual borrower level, it showed that 6 percent of White applicants' appraisal values fell below their sales contract prices, while this occurred for 8 percent of Black applicants, and 9 percent of Latino applicants. Freddie Mac, 2021, ''Racial and Ethnic Valuation Gaps in Home Purchase Appraisals.'' Economic and Housing Research Note. Studies of appraisal valuation differences by race for home refinancing find smaller gaps. Controlling for unobserved factors across groups, Pinto and Peter (2022) estimate that appraised values for refinancing for Black homeowners is 0.5 percent lower than for Whites for comparable properties within the same Census tract. Using their preferred valuation metric, Ambrose, et al. (2023) find that appraisals for refinancings discount the value of Black-owned homes by 4 percent and the value of Hispanic-owned homes by 2 percent, relative to the valuations of White-owned homes. Pinto, Edward and Tobias Peter, 2022, ''How Common is Appraiser Racial Bias—An Update.'' American Enterprise Institute Housing Center. Ambrose, Brent, James Conklin, N. Edward Coulson, Moussa Diop, and Luis Lopez, 2023, ''Do Appraiser and Borrower Race Affect Mortgage Collateral Valuation?'' SSRN working paper. Research by Fout and Yao (2016) shows that low appraisals substantially increase the likelihood of lower sales prices (from 8 percent for all other appraisals to 51 percent for significantly low appraisals) and delayed/cancelled home sales (from 25 percent to 32 percent). Fout, Hamilton and Vincent Yao, 2016, ''Housing Market Effects of Appraising Below Contract.'' Fannie Mae white paper.

that were below original contract prices due in part to prior appraisals that more commonly undervalue homes in minority communities. Second, less precise AVM valuations in these communities may influence institutions' credit decisions and lending terms to account for the associated risk, potentially making it more difficult for borrowers to obtain financing. Publicly available research on AVM valuation results in minority communities is limited. This preliminary research demonstrates that AVM home valuations in predominantly Black neighborhoods have persistently exhibited substantially greater percentage error rates than AVM valuations in predominantly White neighborhoods.[131] To the extent that the proposed rule fosters actions by covered small institutions that result in more accurate AVM home valuations, this may help to mitigate the potential role of AVMs in persistent disparities in home valuations and their associated impacts.

Overall, the FDIC expects the benefits outlined above, if realized, to contribute to the safety and soundness of the financial system, the institutions, and to the well-being of their customers.

4. An Identification, to the Extent Practicable, of all Relevant Federal Rules Which May Duplicate, Overlap With, or Conflict With the Proposed Rule

The FDIC has not identified any likely duplication, overlap, and/or potential conflict with this proposed rule and any other Federal rule.

5. A Description of Any Significant Alternatives to the Proposed Rule That Accomplish its Stated Objectives.

The FDIC considered the alternative of not including the nondiscrimination element of the proposed rule. However, the FDIC considers the proposed rule to be a more appropriate alternative because research continues to find evidence of disparities in residential property values along racial and ethnic lines, mortgage approval rates and lending terms, despite existing statutory obligations that prohibit discrimination.[132] The ECOA and its implementing Regulation B, bar discrimination on a prohibited basis in any aspect of a credit transaction. Similarly, the Fair Housing Act prohibits unlawful discrimination in all aspects of residential real estate-related transactions, including appraisals of residential real estate. However, preliminary research has demonstrated that AVM home valuations in predominantly Black neighborhoods have persistently exhibited substantially greater percentage error rates than those in predominantly White neighborhoods.[133] Therefore, the FDIC considers the proposed rule to be an appropriate alternative because it establishes a required quality control standard that may foster ongoing and consistent review of AVMs and their output for imprecision or bias.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small institutions that the FDIC has not identified?

D. NCUA

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment, unless the agency certifies it will not have a *significant* economic impact on a *substantial* number of small entities.[134]

The RFA establishes terms for various subgroups that potentially qualify as a ''small entity''—including ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [135] Federally insured credit unions (FICUs), as not-for-profit enterprises, are ''small organizations,'' within the broader meaning of ''small entity.'' Moreover, the RFA permits a regulator (such as the NCUA) to sharpen the definition of ''small organization'' as appropriate for agency activities—provided that definition is subjected to public comment and published in the **Federal Register**.[136] The NCUA's Interpretive Ruling and Policy Statement (IRPS) 15–1 defined ''small entity'' as any FICU with less than $100 million in assets.[137] IRPS 15–1 (with this definition) was published in the **Federal Register**, and the NCUA solicited and reviewed public comments on this definition.[138]

As of December 31, 2022, there were 4,760 FICUs, of which 2,981 (62.6 percent) qualified as ''small entities'' by holding fewer than $100 million in assets.[139] For reasons noted below, the NCUA does not believe the proposed regulatory amendments will have a *significant* economic impact on a *substantial* number of small entities. That said, because most FICUs are small entities and some rule effects are difficult to assess *ex ante,* the NCUA opted to conduct an Initial Regulatory Flexibility Act Analysis.

1. Why Action Is Being Considered

The proposed rule would fulfill the statutory mandate in the Dodd-Frank Act requiring agencies to promulgate quality-control standards for AVMs used by mortgage originators and secondary-market issuers to value principal dwellings used as collateral.

2. Policy Objectives of, and Legal Basis for, the Proposed Rule

The NCUA is proposing the rulemaking to: (1) promote credit union safety and soundness by enhancing the integrity of collateral valuation for residential mortgage lending; and (2) help ensure credit unions comply with all applicable nondiscrimination laws. The legal basis for this rule is section 1125 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as added by the Dodd-Frank Act—which directs covered agencies (in consultation with the staff of the Appraisal Subcommittee and Appraisal Standards Board of the Appraisal Foundation) to promulgate regulations with AVM quality-control standards.[140] The statute charges the NCUA with enforcing the regulations with respect to financial institutions, defined in Title XI to include Federally

[131] Neal, et al. (2020) and Zhu, Linna, Michael Neal, and Caitlyn Young, 2022, ''*Revisiting Automated Valuation Model Disparities in Majority-Black Neighborhoods, New Evidence Using Property Condition and Artificial Intelligence.*'' Urban Institute Housing Finance Policy Center. However, the studies find the absolute error magnitudes are generally similar across neighborhoods of different racial and ethnic makeups.

[132] *See* Neal, et al. (2020), Ambrose, et al. (2023), Bartlett, et al. (2022), and Bhutta, et al. (2022).

[133] Neal, et al. (2020) and Zhu, et al. (2022).

[134] 5 U.S.C. 601 *et seq.*

[135] 5 U.S.C. 601.

[136] 5 U.S.C. 601(4).

[137] 80 FR 57512 (Sept. 24, 2015).

[138] IRPS 15–1 was preceded by IRPS 81–4, which defined ''small entity'' as any FICU with fewer than $1 million in assets (46 FR 29248 (June 1, 1981)). The NCUA Board updated the definition in 2003 to include FICUs holding fewer than $10 million in assets with IRPS 03–2 (68 FR 31949 (May 29, 2003)). In 2013, IRPS 13–1 increased the threshold to under $50 million in assets (78 FR 4032 (Jan. 18, 2013)). In addition, the Board pledged to review the RFA threshold after two years and thereafter on a three-year cycle, as part of its routine cycle of regulatory review.

[139] These figures come from the *Quarterly Credit Union Data Summary 2022 Q4,* pages i-iii, available at: *https://ncua.gov/files/publications/analysis/quarterly-data-summary-2022-Q4.pdf.* The *Data Summary,* in turn, is compiled using mandatory quarterly 5300 (*i.e.,* call report) and Profile submissions from supervised credit unions.

[140] 12 U.S.C. 3354.

insured credit unions, for which the NCUA is the primary Federal supervisor.[141]

3. Description and Estimate of the Number of Small Institutions Subject to Proposed Rule

The proposed rule would apply to FICUs relying on AVMs in their residential mortgage-lending decisions. Year-end 2022 data indicate 1,876 small-entity FICUs held residential real estate loans (1st or junior liens).[142]

The NCUA does not currently require supervised credit unions to note in their quarterly data submissions whether AVMs are used in mortgage originations/modifications for owner-occupied residential real estate. In its Initial Regulatory Flexibility Analysis elsewhere in this **SUPPLEMENTARY INFORMATION**, the FDIC notes ''subject matter experts believe that up to approximately 10 percent of all FDIC-supervised institutions currently use an AVM for mortgage origination decisions, loan modification decisions, and securitization decisions covered by the proposed rule.'' Applying this 10-percent estimate suggests the proposed rule could apply to up to 188 ''small entity'' credit unions. The FDIC notes that AVM use is likely strongly positively correlated with institution size. Given the small size of most FICUs, it is likely far fewer than 10 percent use AVMs in residential-mortgage underwriting.[143] To be conservative, the 10-percent is used as an upper bound in the following analysis.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

As noted, since 2010, the OCC, Board, FDIC, and NCUA have provided supervisory guidance on AVM use to regulated institutions in Appendix B to the Interagency Appraisal and Evaluation Guidelines (Guidelines).[144] The Guidelines recommend that institutions establish policies, practices, and procedures governing the selection, use, and validation of AVMs—including steps to ensure accuracy, reliability, and independence.[145] The quality-control standards in the proposed rule are consistent with those in the Guidelines, existing supervisory expectations, and statutory nondiscrimination requirements. The NCUA believes the proposed rule would largely serve to make explicit standards that have been communicated through less formal, more varied means for over ten years. Accordingly, the NCUA anticipates compliance costs for ''small'' credit unions would likely be minimal.

Based on interviews with examiners and supervisors (about experience with rules largely codifying existing practice as well as the specifics of the AVM rule), the NCUA estimates the upper-bound for compliance burden is 33 labor hours annually. The upper-bound estimate for AVM usage of 188 credit unions implies the aggregate compliance burden should not exceed 6,204 hours. To put this figure in context, the 1,876 credit unions under $100 million with residential mortgages on their books paid their employees an average of $32.56 per hours in salary and benefits.[146] The upper-bound compliance estimate of 6,204 hours, therefore, implies an upper bound on aggregate cost of $202,002.[147] Viewed another way, this aggregate cost is only 0.008 percent of total 2022 non-interest expense for ''small'' credit unions.[148] These figures suggest the compliance cost of the proposed rule would not impose a significant burden on a substantial number of ''small entities.'' [149]

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap With, or Conflict With the Proposed Rule

The NCUA has not identified any likely duplication, overlap, or potential conflict with this proposed rule and any other Federal rule.

6. Any Significant Alternatives to the Proposed Rule That Accomplish its Stated Objectives

As noted, the proposed rule implements a statutory mandate, thereby limiting the ability of covered agencies to consider alternatives. That said, agencies did exercise authority provided by section 1125 to include the nondiscrimination quality-control factor (given continued evidence of disparities in residential property lending terms along racial and ethnic lines). Further, covered agencies determined this factor should impose little additional burden, given that institutions have a preexisting obligation to comply with all Federal law, including Federal nondiscrimination laws.[150]

The NCUA invites comments on all aspects of the supporting information provided in this RFA section. The NCUA is particularly interested in comments on any significant effects on small entities that the agency has not identified.

E. CFPB

The RFA [151] generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements. These analyses must ''describe the impact of

[141] *See* 12 U.S.C. 3350(7).

[142] At year-end 2022, median asset size for commercial banks was $324.7 million—compared with $53.6 million for credit unions. Moreover, as noted, 62.6 percent of credit unions held fewer than $100 million in assets; the comparable year-end 2022 figure for commercial banks was 16.2 percent.

[143] Discussions with NCUA examiners and supervisors supported the notion 10 percent is an extreme upper bound.

[144] *See supra,* note 3. The Guidelines were adopted after notice and comment.

[145] Because such a small percentage of credit unions actively relied on AVMs at the time, written NCUA guidance was not as detailed as that provided by the banking agencies. Nonetheless, expectations for safe-and-sound use have been conveyed through the supervisory process to FICUs employing AVMs in residential mortgage lending.

[146] This figure was obtained by dividing 2022 total compensation expense for the 1,876 credit unions by the product of full-time equivalent employees (17,115), 52 weeks per years, and 40 hours per week.

[147] There are other good reasons to believe 6,204 hours in an upper bound. The proposed rule should, for example, ease compliance with existing supervisory guidance/expectations by making the exact ''rules of the game'' more explicit. In theory, this applies to all covered institutions. But, given the small size of credit unions—the median number full-time equivalent employees for the 1,876 ''small entities'' with residential mortgages at year-end 2022 was *seven*—time savings from any reduction in supervisory ambiguity are particularly valuable. Moreover, following the now explicit guidance should result in fewer safety-and-soundness and fair-lending issues (which are particularly burdensome for small credit unions to address because of thin staff).

[148] Viewed still another way, $202,002 is less than one-third of the standard deviation of total non-interest expense for the 1,876 small credit unions.

[149] Of course, estimates of a modest impact based on central tendency do not exclude the possibility the compliance costs will prove meaningful for some small credit unions. The NCUA believes, however, additional costs in these cases will mostly reflect the need to correct safety-and-soundness or compliance deficiencies now in sharper relief because of increased supervisory focus on AVMs—not the rule *per se.*

[151] 5 U.S.C. 601 *et seq.*

[152] 5 U.S.C. 603(a). For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of SBA regulations and reference to the NAICS classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

the proposed rule on small entities.'' [152] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[153] If it will have such an impact, the CFPB is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[154] The CFPB has not certified that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Accordingly, the CFPB convened and chaired a SBREFA Panel to consider the impact of the proposed rule on small entities that would be subject to that rule and to obtain feedback from representatives of such small entities. The SBREFA Panel for this rulemaking is discussed in part III of the **SUPPLEMENTARY INFORMATION**. The CFPB is also publishing an IRFA. Among other things, the IRFA estimates the number of small entities that will be subject to the proposed rule and describes the impact and regulatory burden of that rule on those entities. The IRFA for this rulemaking follows this discussion.

Section 603(b) of the RFA sets forth the required elements of the IRFA. Section 603(b)(1) requires the IRFA to contain a description of the reasons that the agency is considering action.[155] Section 603(b)(2) requires a succinct statement of the objectives of, and the legal basis for, the proposed rule.[156] The IRFA further must contain a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.[157] Section 603(b)(4) requires a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record.[158] In addition, the CFPB must identify, to the extent practicable, all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.[159] Furthermore, the CFPB must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.[160] Finally, as amended by the Dodd-Frank Act, RFA section 603(d) requires that the IRFA include a description of any projected increase in the cost of credit for small entities, a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities (if such an increase in the cost of credit is projected), and a description of the advice and recommendations of representatives of small entities relating to the cost of credit issues.[161]

1. Description of the Reasons Agency Action Is Being Considered

As discussed in part I of the **SUPPLEMENTARY INFORMATION**, section 1473(q) of the Dodd-Frank Act amended title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 to add a new section 1125. Section 1125 directs the agencies to promulgate regulations for quality control standards for AVMs, which are ''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.'' [162] Specifically, section 1125 requires that AVMs meet quality control standards designed to ensure a high level of confidence in the estimates produced by AVMs; 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.

The proposed rule effectuates Congress's mandate to the agencies to adopt rules to implement quality control standards for AVMs. For a further description of the reasons agency action is being considered, see the background discussion for the proposed rule in part I of the **SUPPLEMENTARY INFORMATION**.

2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objectives of the proposed rule include protecting consumers and protecting Federal financial and public policy interests in real estate related transactions. To achieve these objectives, the proposed rule would require mortgage originators and secondary market issuers to adopt policies, practices, procedures, and control systems to ensure that covered AVMs adhere to quality control standards designed to meet specific quality control factors. The legal basis for the proposed rule is section 1125 of title XI; section 1125 was established by section 1473(q) of the Dodd-Frank Act.[163]

In addition to the first four statutory factors, section 1125 provides the agencies with the authority to account for any other such factor that the agencies determine to be appropriate.[164] Based on this authority, the agencies propose to include a fifth factor that would require mortgage originators and secondary market issuers to adopt policies, practices, procedures, and control systems to ensure that covered AVMs adhere to quality control standards designed to comply with applicable nondiscrimination laws.

The objectives of, and legal basis for, the proposed rule are further discussed in parts I and II of the **SUPPLEMENTARY INFORMATION**.

3. Description of and, Where Feasible, Provision of an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

A ''small business'' is determined by application of SBA regulations in reference to the North American Industry Classification System (NAICS) classification and size standards.[165] Under such standards, the CFPB identified three categories of small nondepository entities that may be subject to the proposed provisions: (1) real estate credit companies; (2) secondary market financing companies; and (3) other activities related to credit intermediation (which includes mortgage loan servicers).

The following table summarizes the CFPB's estimate of the number and industry of entities that may be affected by the proposed rule:

[153] 5 U.S.C. 605(b).

[154] 5 U.S.C. 609.

[155] 5 U.S.C. 603(b)(1).

[156] 5 U.S.C. 603(b)(2).

[157] 5 U.S.C. 603(b)(3).

[158] 5 U.S.C. 603(b)(4).

[159] 5 U.S.C. 603(b)(5).

[160] 5 U.S.C. 603(c).

[161] 5 U.S.C. 603(d)(1); Dodd-Frank Act section 1100G(d)(1), 124 Stat. 2112.

[162] 12 U.S.C. 3354(d).

[163] Public Law 111–203, 124 Stat. 1376, 2198 (2010) (codified at 12 U.S.C. 3354).

[164] 12 U.S.C. 3354(b).

[165] The current SBA size standards are found on SBA's website, Small Bus. Admin., *Table of size standards* (Dec. 19, 2022), *https://www.sba.gov/document/support-table-size-standards.*

TABLE A—ESTIMATED NUMBER OF SMALL ENTITIES BY INDUSTRY

NAICS	Industry	SBA small entity threshold	Estimate total entities in 2017	Estimate number of small entities in 2017	Estimate number of small entities in 2022
522292	Real Estate Credit	$41.5m	3,289	2,904	3,672
522294	Secondary Market Financing	41.5m	115	106	134
522390	Other Activities Related to Credit Intermediation	22.0m	566	566	716
Column Total			3,970	3,576	4,521

Note: *See* footnote 148 for methodology to extrapolate 2017 numbers to 2022.
Source: 2017 County Business Patterns and Economic Census (Release Date: 5/28/2021).

In developing these estimates, the CFPB chose assumptions that would likely overcount the number of small entities and explains this reasoning in detail herein. Thus, the true number of small entities is likely to be less than the estimates reported. The following paragraphs describe the categories of entities that the CFPB expects would be affected by the proposed rule.

Real Estate Credit companies (NAICS 522292). This industry encompasses establishments primarily engaged in lending funds with real estate as collateral, including mortgage companies and real estate credit lenders. Economic Census data states that there were 3,289 nondepository institutions (nondepositories) in 2017 that engaged in real estate credit and whose use of AVMs might be covered by the proposed rule. The SBA established a revenue threshold for small entities of average annual receipts of less than $41.5 million. The Economic Census provides data for the number of small entities with less than $40 million and less than $50 million in revenue, but not less than $41.5 million in revenue. Using the conservative threshold of $50 million, the CFPB estimates that about 2,904 of these 3,289 institutions were small entities in 2017. This estimate is most likely an overcount because this NAICS industry also includes firms involved in construction lending, farm mortgages, and Federal land banks, which might not be covered by the proposed rule. Lastly, due to a lack of more recent data in the Economic Census, the CFPB scales up the 2017 estimate by a factor of 1.2643 to obtain a 2022 estimate of 3,672 small entities.[166]

Secondary market financing companies (NAICS 522294). This industry encompasses establishments primarily engaged in buying, pooling, and repackaging loans for sale to others on the secondary market, including collateralized mortgage obligation issuers and real estate mortgage investment conduits. Economic Census data states that there were 115 nondepository secondary market financing companies in 2017 whose use of AVMs might be covered by the proposed rule. This industry has a size standard threshold of less than $41.5 million in average annual receipts. However, the Economic Census only reports breakdowns in number of firms with less than $15 million and less than $100 million in revenue. Using the more conservative threshold of less than $100 million, the CFPB estimates that 106 secondary market financing companies were small entities in 2017. This estimate is most likely an overcount because this NAICS industry also includes firms involved in secondary market financing of student loans and other debt products, which might not be covered by the AVM rule. Lastly, due to a lack of more recent data in the Economic Census, the CFPB scales up the 2017 estimate by a factor of 1.2643 (same as before) to obtain a 2022 estimate of 134 small entities.

Other Activities Related to Credit Intermediation (NAICS 522390). This industry encompasses establishments primarily engaged in facilitating credit intermediation (except mortgage and loan brokerage; and financial transactions processing, reserve, and clearinghouse activities), and includes loan servicing firms. NAICS 522390 is a broader category than the previous two categories discussed in this section. Some examples of business activity in this NAICS industry are check cashing services, loan servicing, money transmission services, payday lending services, and traveler's check issuance services, but only loan servicing would fall under the proposed rule. To account for this broader categorization, using Economic Census data on number of establishments in this NAICS industry broken down by the North American Product Classification System (NAPCS), the CFPB filtered NAICS 522390 by the relevant NAPCS collection codes: (a) Residential Mortgage Loans and (b) Other Secured or Guaranteed Home Loans to Consumers. The filtered count of the number of establishments is 566. However, these data do not provide the number of firms, each of which may consist of one or more establishments. Thus, the CFPB uses the most conservative assumption—that each firm has only one establishment—to estimate the number of firms covered by the proposed rule to be (at most) 566 in 2017. Furthermore, data broken down by firm/establishment size are unavailable, so the CFPB assumes the most conservative extreme that all 566 of these firms are small entities. Lastly, due to a lack of more recent data in the Economic Census, the CFPB scales up the 2017 estimate by a factor of 1.2643 (same as before) to obtain a 2022 estimate of 716 small entities.

Finally, only small entities that themselves, or through or in cooperation with a third-party or affiliate, utilize AVMs in credit decisions or covered securitization determinations would be covered by the rule if finalized as proposed. The remaining small entities might opt for alternative valuation methods not involving AVMs. Due to the lack of data on the usage of AVMs by small entities in credit decisions or covered securitization determinations, the CFPB follows the FDIC and makes the following assumption: the range of AVM usage lies between 10% (lower bound) and 100% (upper bound). Applying this assumption to the estimated total number of small entities results in the estimated range of covered

[166] According to U.S. Bureau of Economic Analysis, ''Gross Output by Industry'' (*https://apps.bea.gov/iTable/?reqid=150&step=2&isuri=1&categories=gdpxind,* accessed 3/8/2023), from 2017Q3 to 2022Q3 (the latest available data at the time of writing), the finance sector (NAICS 52) gross output expanded from $2,836.7 billion to $ 3,586.5 billion, a 26.43 percent increase. Thus, the CFPB scales up the number of entities in 2017 by a factor of 1.2643 and rounds to the nearest whole number.

small entities shown in the following table:

TABLE B—ESTIMATED LOWER AND UPPER BOUNDS OF COVERED SMALL ENTITIES IN 2022

	Lower bound	Upper bound
Est. Number of Covered Small Entities	452	4,521
Assumed Proportion of Small Entities Using AVMs	10%	100%

In summary, the CFPB estimates that between 452 and 4,521 small entities would be covered by the rule if finalized as proposed.

In this analysis, the CFPB also considered including other NAICS categories, most notably ''Mortgage and Nonmortgage Loan Brokers'' (NAICS 522310). This industry includes establishments primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis. Based on this definition, the CFPB believes that this industry is generally not involved in credit decisions or covered securitization determinations and would not likely be covered by the rule if finalized as proposed.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Would Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report

The proposed rule would not impose new reporting or recordkeeping requirements for CFPB respondents but would impose new compliance requirements on small entities subject to the proposal. The proposed requirements and the costs associated with them are discussed herein.

Entities will likely have to spend time and resources reading and understanding the regulation and developing the required policies, practices, procedures, and control systems for their employees to follow to ensure compliance, in addition to engaging a legal team to review their draft policies, practices, procedures, and control systems. Costs associated with drafting compliance policies, practices, procedures, and control systems are likely to be higher for institutions who use AVMs for a more diverse set of circumstances. Such entities would likely need to tailor guidance for each specific use case. Small entities would also likely have to implement training of staff that utilize AVM output for covered purposes.

Costs to small entities. The CFPB expects that if finalized as proposed, the rule might impose one-time and ongoing costs on small nondepository entities who use AVMs in valuing real estate collateral securing mortgage loans. The CFPB has preliminarily identified three categories of costs that make up the components necessary for a nondepository institution to comply with the proposed rule. Those categories are drafting and developing policies, practices, procedures, and control systems; verifying compliance; and training staff and third parties. Nondepositories would incur the bulk of these costs in the first year. However, the CFPB anticipates that nondepositories would incur some ongoing costs in subsequent years, such as updating policies, practices, procedures, and control systems, continuing review for compliance, and training new staff. Following the FDIC, the CFPB assumes that the ongoing annual costs would be one-third of the one-time first-year costs.

Using the cost methodology outlined in the SBREFA Panel Report, the CFPB estimates that the one-time costs in the first year for each covered small nondepository entity would be the following: $7000 for drafting and developing policies, practices, procedures, and control systems, $10,000 for verifying compliance, and $6000 for training. Thus, the total costs per entity would be $23,000 in the first year and $7667 for each subsequent year.

The CFPB calculates the overall market impact of the proposed rule on small entities by multiplying the costs per entity by the estimated number of covered small entities. The CFPB estimates that the overall market impact of one-time costs in the first year for covered small nondepositories would be between $10,396,000 and $103,983,000. The CFPB estimates that the overall market impact of ongoing costs in each subsequent year for covered small nondepositories would be between $3,465,333 and $34,661,000 per year. The ranges in estimated impact are wide due to uncertainty surrounding the percentage of small entities using AVMs in credit decisions or covered securitization determinations.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

As discussed in the SBREFA Panel Report, the CFPB as well as SERs identified other title XI, TILA, and ECOA laws and implementing regulations related to determining the collateral worth of a mortgage that have potentially duplicative, overlapping, or conflicting requirements with section 1125.[167] Title XI and the prudential agencies' implementing regulations require a licensed or certified appraiser for certain transactions.[168] TILA section 129H [169] and its implementing regulations require lenders to obtain an appraisal by a certified or licensed appraiser—and in some cases two appraisals—for certain higher-risk transactions (termed ''higher-priced mortgage loans'' or ''HPMLs'' in the regulations).[170]

In addition to these Federal laws and regulations requiring a licensed or certified appraiser for various transactions, other Federal laws and regulations broadly address determining the collateral worth of a mortgage, whether using an appraisal, AVM, or other method. For consumer credit transactions secured by a consumer's principal dwelling, TILA section 129E [171] and its implementing regulations require valuation independence by, for example, prohibiting material misrepresentation of property value and conflicts of

[167] CFPB, *Final Report of Small Business Review Panel on the CFPB's Proposals and Alternatives under Consideration for the Automated Valuation Model (AVM) Rulemaking* 37 (May 13, 2022), *available at https://files.consumerfinance.gov/f/documents/cfpb_avm_final-report_2022-05.pdf.*

[168] *See, e.g.,* 12 U.S.C. 3331; 75 FR 77450, 77465 (Dec. 10, 2010); 12 CFR 34.43(a)(1) through (14) (OCC); 12 CFR 225.63(a)(1) through (15) (Board); 12 CFR 323.3(a)(1) through (14) (FDIC); 12 CFR 722.3(a)(1) through (6) (NCUA).

[169] 15 U.S.C. 1639h (added by Dodd-Frank Act section 1471).

[170] CFPB: 12 CFR 1026.35(a) and (c); OCC: 12 CFR part 34, subpart G and 12 CFR part 164, subpart B; Board: 12 CFR 226.43; NCUA: 12 CFR 722.3(a); FHFA: 12 CFR part 1222, subpart A. The FDIC adopted the CFPB's version of the regulations. *See* 78 FR 10368, 10370 (Feb. 13, 2013).

[171] 15 U.S.C. 1639e (added by Dodd-Frank Act section 1472).

interest for persons preparing valuations or performing valuation management functions.[172] Title XI, as amended by the Dodd-Frank Act, provides in part that, ''[i]n conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.'' [173] ECOA section 701(e) [174] and its implementing regulation, Regulation B, generally require creditors to provide applicants for first-lien loans on a dwelling with copies of written valuations developed in connection with an application.[175]

Moreover, in the SBREFA Outline the CFPB discussed how valuations are subject to other provisions of ECOA and other Federal nondiscrimination laws.[176] For example, ECOA and Regulation B bar discrimination on a prohibited basis in any aspect of a credit transaction.[177] This prohibition extends to using different standards to evaluate collateral,[178] which would include the design or use of an AVM in any aspect of a credit transaction in a way that would treat an applicant differently on a prohibited basis or result in unlawful discrimination against an applicant on a prohibited basis. Similarly, the Fair Housing Act prohibits unlawful discrimination in all aspects of residential real estate-related transactions, including appraisals of residential real estate.[179]

SERs also provided suggestions of other potentially related Federal statutes and regulations. A SER expressly highlighted that the prudential agencies' title XI regulations for residential mortgages set a dollar-based threshold for requiring an appraisal. Another SER stated that many of the prudential agencies' safety and soundness regulations, including liquidity and interest rate risk management regulations, have potential intersections with section 1125. Some SERs also identified other statutes they believe have some potential intersections with section 1125, including the Fair Credit Reporting Act (FCRA),[180] the Gramm-Leach-Bliley Act (GLBA),[181] and HMDA.[182]

The CFPB is evaluating these suggestions and requests comment on them and the extent to which other Federal statutes or regulations might impose duplicative, overlapping, or conflicting requirements with this proposed rule implementing section 1125. The CFPB further requests comment on methods to minimize such conflicts to the extent they might exist.

6. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

In drafting this proposed rule, the CFPB considered a number of alternatives, including those considered as part of the SBREFA process. Many of the alternatives considered would result in greater costs to small entities than would the proposal. For example, the CFPB considered proposing a prescriptive rule with more detailed and specific requirements, and the CFPB considered proposing a rule that would also cover the use of AVMs solely to review completed value determinations (*e.g.,* to review appraisals). Since such alternatives would result in a greater economic impact on small entities than the proposal, they are not discussed here.

The CFPB also considered alternatives that might have resulted in a smaller economic impact on small entities than does the proposal. Some of these alternatives are briefly described and their impacts relative to the proposed provisions are discussed herein.

Coverage of loan modifications and other changes to existing loans. The CFPB considered proposing a rule that would exclude AVMs used in loan modifications not resulting in new mortgage originations. As discussed in part III of the **SUPPLEMENTARY INFORMATION**, during the SBREFA process SERs generally favored that approach. The CFPB understands that the proposed rule's coverage of loan modifications and other changes to existing loans would introduce additional burden to small entities. However, the CFPB has preliminarily determined that this coverage would aid in fulfilling the consumer protection objective of section 1125. For consumers seeking loss mitigation, obtaining an AVM valuation that adheres to the quality control standards in the proposed rule during the loan modification process would be particularly important for their financial decision-making and outcomes, given they are already in financial distress. The CFPB seeks comment on the likely impact of this coverage aspect of the proposed rule on the compliance costs of small entities.

Coverage of credit line reductions or suspensions. The CFPB considered proposing a rule that would not cover AVMs used solely in deciding whether or to what extent to reduce or suspend a home equity line of credit. As discussed in part III of the **SUPPLEMENTARY INFORMATION**, during the SBREFA process SERs discussed balancing the consumer protections of covering credit line reductions or suspensions against the burdens of such regulation. The CFPB understands that the proposed rule's coverage of credit line reductions and suspensions would introduce additional burden to small entities. However, the CFPB has preliminarily determined that this coverage would aid in fulfilling the consumer protection objective of section 1125. Credit line reductions and suspensions impose hardship on consumers, who now face greater credit constraints and reduced financial options. Obtaining an AVM valuation that adheres to the quality control standards in the proposed rule during the credit decision process is particularly important for these consumers, given the potential for improving consumer financial outcomes. The CFPB seeks comment on

[172] CFPB: 12 CFR 1026.42; Board: 12 CFR 226.42; *see* 75 FR 66554 (Oct. 28, 2010) (interim final rule); 75 FR 80675 (Dec. 23, 2010) (correction). TILA section 129E(g)(2) directed the Board to issue an interim final rule. 15 U.S.C. 1639e(g)(2).

[173] Dodd-Frank Act section 1473(r), 124 Stat. 2198–99 (codified at 12 U.S.C. 3355) (adding section 1126 to FIRREA). Under FIRREA section 1126, a ''broker price opinion'' means ''an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model.'' 12 U.S.C. 3355(b).

[174] 15 U.S.C. 1691(e) (amended by Dodd-Frank Act section 1474).

[175] 12 CFR 1002.14.

[176] CFPB, *Small Business Advisory Review Panel for Automated Valuation Model Rulemaking Outline of Proposals under Consideration* 23–25 (2022), *available at https://files.consumerfinance.gov/f/documents/cfpb_avm_outline-of-proposals_2022-02.pdf.*

[177] 15 U.S.C. 1691(a) (prohibiting discrimination on the basis of race, color, religion, national origin, sex or marital status, age (provided the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act); *see also* 12 CFR part 1002.

[178] *See* Interagency Task Force on Fair Lending, *Policy Statement on Discrimination in Lending,* 59 FR 18266, 18268 (Apr. 15, 1994) (noting that under both ECOA and the Fair Housing Act, a lender may not, because of a prohibited factor, use different standards to evaluate collateral).

[179] 42 U.S.C. 3605 (prohibiting discrimination because of race, color, religion, national origin, sex, handicap, or familial status in residential real estate-related transactions); 42 U.S.C. 3605(b)(2) (defining ''real estate-related transactions'' to include the ''selling, brokering, or appraising of residential real property.''); *see also* 24 CFR part 100.

[180] 15 U.S.C. 1681 *et seq.*

[181] Public Law 106–102, 113 Stat. 1338 (1999).

[182] 12 U.S.C. 2801 *et seq.*

the likely impact of this coverage aspect of the proposed rule on the compliance costs of small entities.

Nondiscrimination quality control factor. The CFPB considered proposing a rule that would not specify a nondiscrimination quality control factor. As discussed in part III of the **SUPPLEMENTARY INFORMATION**, during the SBREFA process, SERs expressed concern regarding the nondiscrimination quality control factor. In particular, SERs noted the impracticality of having small entities assess fair lending performance of AVMs provided by third parties, as well as noting concerns that this nondiscrimination quality control factor potentially duplicates other fair lending regulatory infrastructure. The CFPB understands that the proposed rule's nondiscrimination quality control factor would introduce additional burden to small entities. However, the CFPB has preliminarily determined that this factor would aid in fulfilling the consumer protection objective of section 1125. There is a long history of housing market discrimination in the United States, including misvaluation of property owned by minority consumers, as observed in biases in the appraisal process.[183] Misvaluations limit credit access for minority consumers, potentially leading to worse financial outcomes by hampering home ownership and wealth accumulation among minority consumers.

The CFPB acknowledges that for small entities with a limited volume of AVM valuation observations, detecting discrimination in AVMs may not be feasible. Nevertheless, there are other steps small entities could take towards satisfying the nondiscrimination quality control factor. For example, the SBREFA process described various points in the valuation process where humans interact with AVMs and make decisions regarding AVM usage and application of AVM outputs; having policies, practices, procedures, and control systems in place that ensure such human interactions and decision-making comply with applicable nondiscrimination laws would be feasible for small entities. As another example, in choosing third-party AVM providers, small entities can do research into how providers assess and account for discrimination in their AVMs and opt for providers who have taken such factors into consideration.

The CFPB seeks comment on the likely impact of the nondiscrimination quality control factor of the rule if finalized as proposed on the compliance costs of small entities.

7. Discussion of Impact on Cost of Credit for Small Entities

The CFPB believes that there will be little to no impact on the cost of credit incurred by small entities covered by the proposed rule. Should a covered small entity apply for a business loan, the lender is unlikely to consider that covered small entity's use of AVMs or their compliance with the proposed rule in their credit pricing or credit extension decisions.

During the SBREFA process, the CFPB asked SERs about this possible impact, but they did not provide feedback on how their credit or their lending to small businesses would be affected by the rule. This lack of feedback is consistent with the above assertions.

F. FHFA

The RFA requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the Agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C 605(b)). FHFA has considered the impact of the proposed rule under the RFA and FHFA certifies that the proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities because the regulation only applies to Fannie Mae and Freddie Mac, which are not small entities for purposes of the RFA.

VI. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

VII. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[184] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[185]

The Federal banking agencies note that comment on these matters has been solicited in other sections of this **SUPPLEMENTARY INFORMATION** section and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. The Federal banking agencies invite comments that will further inform the Federal banking agencies' consideration of RCDRIA.

VIII. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal

[183] Interagency Task Force on Property Appraisal and Valuation Equity (PAVE), *Action Plan to Advance Property Appraisal and Valuation Equity: Closing the Racial Wealth Gap by Addressing Mis-valuations for Families and Communities of Color* 2–4 (Mar. 2022), *available at https://pave.hud.gov/sites/pave.hud.gov/files/documents/PAVEActionPlan.pdf.*

[184] 12 U.S.C. 4802(a).

[185] 12 U.S.C. 4802.

mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $182 million or more in any one year.[186]

The burden associated with the proposed rule would be limited to reviewing the rule, ensuring that existing practices, procedures, and control systems adequately address the four statutory quality control standards, and adopting policies, practices, procedures, and control systems to ensure that AVMs adhere to quality control standards designed to comply with applicable nondiscrimination laws. The OCC estimates that expenditures to comply with the proposed rule's mandates would be approximately $20.1 million (180 hours × $120 per hour × 931 banks = $20.1 million). For this reason, the OCC has determined that this proposed rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of $182 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this proposal.

IX. NCUA Executive Order 13132 on Federalism

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This proposed rule would not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Although the AVM statute and the proposed rule apply to federally insured, state-chartered credit unions, the NCUA does not believe that the rule would change the relationship between the NCUA and State regulatory agencies. The NCUA would anticipate coordinating with State regulatory agencies to implement and enforce the rule after it is adopted as part of its ongoing coordination with these agencies. Accordingly, the NCUA believes that the effect of this change on the states would be limited. The NCUA has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

X. NCUA Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.[187]

XI. Severability

Each of the agencies preliminarily intend that, if any provision of the proposed rule, if adopted as final, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue in effect.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Investments, Reporting and recordkeeping requirements, Securities.

12 CFR Part 323

Banks, banking, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 722

Appraisal, Appraiser, Credit unions, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 741

Credit, Credit Unions.

12 CFR Part 1026

Advertising, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 1222

Appraisals, Government sponsored enterprises, Mortgages.

[186] The OCC estimates the UMRA inflation adjustment using the change in the annual U.S. GDP Implicit Price Deflator between 1995 and 2022, which are the most recent annual data available. The deflator was 71.300 in 1995 and 129.511 in 2022, resulting in an inflation adjustment factor of 1.82 (129.511/71.300 = 1.816 and $100 million × 1.82 = $182 million).

[187] Public Law 105–277, 112 Stat. 2681 (1998).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For reasons set out in the joint preamble, the Office of the Comptroller of the Currency proposes to amend part 34 of chapter I of title 12 of the Code of Federal Regulations to read as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* and 5412(b)(2)(B).

■ 2. Subpart I is added to part 34 to read as follows:

Subpart I—Quality Control Standards for Automated Valuation Models Used for Mortgage Lending Purposes

Sec.

34.220 Authority, purpose, and scope.
34.221 Definitions.
34.222 Quality control standards.

§ 34.220 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to section 1125 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3354, as added by section 1473(q) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376, 2198 (2010)).

(b) *Purpose and scope.* (1) The purpose of this subpart is to implement the quality control standards in section 3354 of title 12 for the use of automated valuation models in determining the value of collateral in connection with making a credit decision or covered securitization determination regarding a mortgage or mortgage-backed security. This subpart applies to entities regulated by the OCC that are mortgage originators or secondary market issuers.

(2) This subpart does not apply to the use of automated valuation models in:

(i) Monitoring of the quality or performance of mortgages or mortgage-backed securities;

(ii) Reviews of the quality of already completed determinations of the value of collateral; or

(iii) The development of an appraisal by a certified or licensed appraiser.

§ 34.221 Definitions.

As used in this subpart:

(a) *Automated valuation model* means any computerized model used by

mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralizing a mortgage.

(b) *Control systems* means the functions (such as internal and external audits, risk review, quality control, and quality assurance) and information systems that are used to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel, including with respect to compliance with statutes and regulations.

(c) *Covered securitization determination* means a determination regarding:

(1) Whether to waive an appraisal requirement for a mortgage origination in connection with its potential sale or transfer to a secondary market issuer; or

(2) Structuring, preparing disclosures for, or marketing initial offerings of mortgage-backed securitizations.

(d) *Credit decision* means a decision regarding 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.

(e) *Dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, factory-built housing, or manufactured home, if it is used as a residence. A consumer can have only one ''principal'' dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this subpart.

(f) *Mortgage* means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in a consumer's principal dwelling.

(g) *Mortgage originator* has the meaning given in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

(h) *Secondary market issuer* means any party that creates, structures, or organizes a mortgage-backed securities transaction.

§ 34.222 Quality control standards.

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:

(a) Ensure a high level of confidence in the estimates produced;

(b) Protect against the manipulation of data;

(c) Avoid conflicts of interest;

(d) Require random sample testing and reviews; and

(e) Comply with applicable nondiscrimination laws.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board proposes to amend part 225 of chapter II of title 12 of the Code of Federal Regulations, as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 3. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3354, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 4. Add subpart O to part 225 as follows:

Subpart O—Quality Control Standards for Automated Valuation Models Used for Mortgage Lending Purposes

Sec.

225.350 Authority, purpose and scope.
225.351 Definitions.
225.352 Quality control standards.

Subpart O—Quality Control Standards for Automated Valuation Models Used for Mortgage Lending Purposes

§ 225.350 Authority, purpose and scope.

(a) *Authority.* (1) *In general.* This subpart is issued pursuant to section 1125 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3354, as added by section 1473(q) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376, 2198 (2010)), as well as under the Federal Reserve Act, as amended (12 U.S.C. 221 *et seq.*); the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the Home Owners' Loan Act of 1933 (12 U.S.C. 1461 *et seq.*); section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365); and the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*).

(2) Nothing in this part shall be read to limit the authority of the Board to take action under provisions of law other than 12 U.S.C. 3354, including but not limited to action to address unsafe or unsound practices or conditions, or violations of law or regulation, under section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818).

(b) *Purpose and scope.* (1) The purpose of this subpart is to implement the quality control standards in section 3354 of title 12 for the use of automated valuation models in determining the value of collateral in connection with making a credit decision or covered securitization determination regarding a mortgage or a mortgage-backed security. This subpart applies to entities and institutions regulated by the Board (Board-regulated institutions) that are mortgage originators or secondary market issuers.

(2) This subpart does not apply to the use of automated valuation models in:

(i) Monitoring of the quality or performance of mortgages or mortgage-backed securities;

(ii) Reviews of the quality of already completed determinations of the value of collateral; or

(iii) The development of an appraisal by a certified or licensed appraiser.

§ 225.351 Definitions.

As used in this subpart:

Automated valuation model means any computerized model used by mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralizing a mortgage.

Control systems means the functions (such as internal and external audits, risk review, quality control, and quality assurance) and information systems that are used to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel, including with respect to compliance with statutes and regulations.

Covered securitization determination means a determination regarding:

(1) Whether to waive an appraisal requirement for a mortgage origination in connection with its potential sale or transfer to a secondary market issuer; or

(2) Structuring, preparing disclosures for, or marketing initial offerings of mortgage-backed securitizations.

Credit decision means a decision regarding 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.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, factory-built housing, or manufactured home, if it is used as a residence. A consumer can have only one ''principal'' dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this subpart.

Mortgage means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in a consumer's principal dwelling.

Mortgage originator has the meaning given in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

Secondary market issuer means any party that creates, structures, or organizes a mortgage-backed securities transaction.

§ 225.352 Quality control standards.

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:

(a) Ensure a high level of confidence in the estimates produced;

(b) Protect against the manipulation of data;

(c) Avoid conflicts of interest;

(d) Require random sample testing and reviews; and

(e) Comply with applicable nondiscrimination laws.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the FDIC proposes to amend part 323 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 323—APPRAISALS

■ 5. The authority citation for part 323 continues to read as follows:

Authority: 12 U.S.C. 1818, 1819(a) (''Seventh'' and ''Tenth''), 1831p–1 and 3331 *et seq.*

■ 6. Add subpart C to part 323 to read as follows:

Subpart C—Quality Control Standards for Automated Valuation Models Used for Mortgage Lending Purposes

Sec.

§ 323.15 Authority, purpose, and scope.
§ 323.16 Definitions.
§ 323.17 Quality control standards.

§ 323.15 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to section 1125 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3354, as added by section 1473(q) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376, 2198 (2010)).

(b) *Purpose and scope.* (1) The purpose of this subpart is to implement the quality control standards in section 3354 of title 12 for the use of automated valuation models in determining the value of collateral in connection with making a credit decision or covered securitization determination regarding a mortgage or mortgage-backed security. This subpart applies to entities regulated by the FDIC that are mortgage originators or secondary market issuers.

(2) This subpart does not apply to the use of automated valuation models in:

(i) Monitoring of the quality or performance of mortgages- or mortgage-backed securities;

(ii) Reviews of the quality of already completed determinations of the value of collateral; or

(iii) The development of an appraisal by a certified or licensed appraiser.

§ 323.16 Definitions.

As used in this subpart:

Automated valuation model means any computerized model used by mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralizing a mortgage.

Control systems means the functions (such as internal and external audits, risk review, quality control, and quality assurance) and information systems that are used to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel, including with respect to compliance with statutes and regulations.

Covered securitization determination means a determination regarding:

(1) Whether to waive an appraisal requirement for a mortgage origination in connection with its potential sale or transfer to a secondary market issuer; or

(2) Structuring, preparing disclosures for, or marketing initial offerings of mortgage-backed securitizations.

Credit decision means a decision regarding 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.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, factory-built housing, or manufactured home, if it is used as a residence. A consumer can have only one ''principal'' dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this subpart.

Mortgage means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in a consumer's principal dwelling.

Mortgage originator has the meaning given in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

Secondary market issuer means any party that creates, structures, or organizes a mortgage-backed securities transaction.

§ 323.17 Quality control standards.

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:

(a) Ensure a high level of confidence in the estimates produced;

(b) Protect against the manipulation of data;

(c) Avoid conflicts of interest;

(d) Require random sample testing and reviews; and

(e) Comply with applicable nondiscrimination laws.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722 and Part 741

Authority and Issuance

For the reasons discussed above in the joint preamble, the NCUA Board proposes to amend 12 CFR parts 722 and 741 as follows:

PART 722—APPRAISALS

■ 7. The authority citation for part 722 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, and 3331 *et seq.* Section 722.3(a) is also issued under 15 U.S.C. 1639h.

■ 8. Redesignate §§ 722.1 through 722.7 as §§ 722.101 through 722.107 under the following subpart A heading:

Subpart A—Appraisals Generally

Sec.

§ 722.101 Authority, purpose, and scope.
§ 722.102 Definitions.
§ 722.103 Appraisals and written estimates of market value requirements for real estate-related financial transactions.
§ 722.104 Minimum appraisal standards.
§ 722.105 Appraiser independence.
§ 722.106 Professional association membership; competency.
§ 722.107 Enforcement.

■ 9. Add subpart B to read as follows:

Subpart B—Quality Control Standards for Automated Valuation Models Used for Mortgage Lending Purposes

Sec.

§ 722.201 Authority, purpose, and scope.
§ 722.202 Definitions.
§ 722.203 Quality control standards.

Subpart B—Quality Control Standards for Automated Valuation Models Used for Mortgage Lending Purposes

§ 722.201 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to section 1125 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3354, as added by section 1473(q) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1375, 2198 (2010)).

(b) *Purpose and scope.* (1) The purpose of this subpart is to implement the quality control standards in section 3354 of title 12 for the use of automated valuation models in determining the value of collateral in connection with making a credit decision or covered securitization determination regarding a mortgage or mortgage-backed security. This subpart applies to credit unions insured by the NCUA that are mortgage originators or secondary market issuers.

(2) This subpart does not apply to the use of automated valuation models in:

(i) Monitoring of the quality or performance of mortgages or mortgage-backed securities;

(ii) Reviews of the quality of already completed determinations of the value of collateral; or

(iii) The development of an appraisal by a certified or licensed appraiser.

§ 722.202 Definitions.

As used in this subpart:

Automated valuation model means any computerized model used by mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralizing a mortgage.

Control systems means the functions (such as internal and external audits, risk review, quality control, and quality assurance) and information systems that are used to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel, including with respect to compliance with statutes and regulations.

Covered securitization determination means a determination regarding:

(1) Whether to waive an appraisal requirement for a mortgage origination in connection with its potential sale or transfer to a secondary market issuer; or

(2) Structuring, preparing disclosures for, or marketing initial offerings of mortgage-backed securitizations.

Credit decision means a decision regarding 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.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, factory-built housing, or manufactured home, if it is used as a residence. A consumer can have only one ''principal'' dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this subpart.

Mortgage means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in a consumer's principal dwelling.

Mortgage originator has the meaning given in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

Secondary market issuer means any party that creates, structures, or organizes a mortgage-backed securities transaction.

§ 722.203 Quality control standards.

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:

(a) Ensure a high level of confidence in the estimates produced;

(b) Protect against the manipulation of data;

(c) Avoid conflicts of interest;

(d) Require random sample testing and reviews; and

(e) Comply with applicable nondiscrimination laws.

PART 741—Requirements for Insurance

■ 10. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, 1790d, 3331 *et seq;* 31 U.S.C. 3717.

■ 11. Revise § 741.203(b) to read as follows:

§ 741.203 Minimum loan policy requirements.

* * * * *

(b) Adhere to the requirements stated in part 722 of this chapter.

* * * * *

CONSUMER FINANCIAL PROTECTION BUREAU

Authority and Issuance

For reasons set out in the joint preamble, the CFPB proposes to amend Regulation Z, 12 CFR part 1026, as follows:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 12. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 3354, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart A—General

■ 13. Amend § 1026.1 by adding paragraph (c)(6) to read as follows:

§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

* * * * *

(c) * * *

(6) The requirements of § 1026.42(i) apply to certain persons regardless of whether they are creditors and even if the mortgage, as defined in § 1026.42(i)(2)(v), is primarily for business, commercial, agricultural, or organizational purposes.

* * * * *

■ 14. Amend § 1026.2 by revising paragraph (a)(11) to read as follows:

§ 1026.2 Definitions and rules of construction.

(a) * * *

(11) *Consumer* means a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 1026.15 and 1026.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest. For purposes of § 1026.42(i), the term means a natural person to whom credit is offered or extended, even if the credit is primarily for business, commercial, agricultural, or organizational purposes. For purposes of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41, the term includes a confirmed successor in interest.

* * * * *

■ 15. Amend § 1026.3 by adding paragraph (i) to read as follows:

§ 1026.3 Exempt transactions.

* * * * *

(i) The exemptions in this section are not applicable to § 1026.42(i) (Quality Control Standards for Automated Valuation Models).

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 16. Amend § 1026.42 by revising paragraph (a) and adding paragraph (i) to read as follows:

§ 1026.42 Valuation independence.

(a) *Scope.* Except for paragraph (i) of this section, this section applies to any consumer credit transaction secured by the consumer's principal dwelling. Paragraph (i) of this section applies to any mortgage, as defined in paragraph (i)(2)(v), secured by the consumer's principal dwelling, even if the mortgage is primarily for business, commercial, agricultural, or organizational purposes.

* * * * *

(i) *Quality Control Standards for Automated Valuation Models*—(1) *Scope.* The purpose of this paragraph (i) is to implement quality control standards for the use of automated valuation models in determining the value of collateral in connection with making a credit decision or covered securitization determination regarding a mortgage or mortgage-backed security. This paragraph (i) applies to the use of automated valuation models by any mortgage originator or secondary market issuer, other than either a financial institution as defined in 12 U.S.C. 3350(7), or a subsidiary owned and controlled by such a financial institution and regulated by one of the Federal financial institutions regulatory agencies as defined in 12 U.S.C. 3350(6). This paragraph (i) does not apply to the use of automated valuation models in:

(i) Monitoring of the quality or performance of mortgages or mortgage-backed securities;

(ii) Reviews of the quality of already completed determinations of the value of collateral; or

(iii) The development of an appraisal by a certified or licensed appraiser as defined in § 1026.35(c)(1)(i).

(2) *Definitions.* As used in this paragraph (i):

(i) *Automated valuation model* means any computerized model used by mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralizing a mortgage.

(ii) *Control systems* means the functions (such as internal and external audits, risk review, quality control, and quality assurance) and information systems that are used to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel, including with respect to compliance with statutes and regulations.

(iii) *Covered securitization determination* means a determination regarding:

(A) Whether to waive an appraisal requirement for a mortgage origination in connection with its potential sale or transfer to a secondary market issuer; or

(B) Structuring, preparing disclosures for, or marketing initial offerings of mortgage-backed securitizations.

(iv) *Credit decision* means a decision regarding 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.

(v) *Mortgage* means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in a consumer's principal dwelling.

(vi) *Mortgage originator* has the meaning given in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

(vii) *Secondary market issuer* means any party that creates, structures, or organizes a mortgage-backed securities transaction.

(3) *Quality control standards.* 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:

(i) Ensure a high level of confidence in the estimates produced;

(ii) Protect against the manipulation of data;

(iii) Avoid conflicts of interest;

(iv) Require random sample testing and reviews; and

(v) Comply with applicable nondiscrimination laws.

■ 17. Amend Supplement I to Part 1026 by:

■ a. Under Section 1026.2—Definitions and Rules of Construction, in 2(a)(19)—Dwelling, revise paragraph 1 and add paragraph 4;

■ b. Under Section 1026.3—Exempt Transactions, add paragraph 2; and

■ c. Under Section 1026.42—Valuation Independence:

■ i. Under 42(a) Scope, revise paragraph 2;

■ ii. Under Paragraph 42(b)(2), revise paragraph 1.

■ iii. Add heading section 42(i) Quality Control Standards for Automated Valuation Models.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.2—Definitions and Rules of Construction

* * * * *

2(a)(19) Dwelling

1. *Scope.* A dwelling need not be the consumer's *principal* residence to fit the definition, and thus a vacation or second home could be a dwelling. However, for purposes of the definition of residential mortgage transaction, the right to rescind, and the application of automated valuation model requirements, a dwelling must be the principal residence of the consumer. (*See* the commentary to §§ 1026.2(a)(24), 1026.15, 1026.23, and 1026.42).

* * * * *

4. *Automated valuation models.* For purposes of the application of the automated

valuation model requirements in § 1026.42(i), a consumer can have only one principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of applying this definition to a particular transaction. (*See* the commentary to § 1026.2(a)(24)).

* * * * *

Section 1026.3—Exempt Transactions

* * * * *

2. *Relationship to § 1026.42(i).* As provided in § 1026.3(i), the provisions in § 1026.42(i) governing the use of automated valuation models apply even if the transactions in which automated valuation models are used would otherwise be exempt under this section.

* * * * *

Section 1026.42—Valuation Independence

42(a) Scope

* * * * *

2. *Consumer's principal dwelling.* Except for section 1026.42(i), section 1026.42 applies only if the dwelling that will secure a consumer credit transaction is the principal dwelling of the consumer who obtains credit. Section 1026.42(i) applies if the dwelling that will secure a mortgage, as defined in § 1026.42(i)(2)(v), is the principal dwelling of the consumer who obtains credit, even if the mortgage is primarily for business, commercial, agricultural, or organizational purposes. The term ''dwelling'' is defined in § 1026.2(a)(19). Comments 2(a)(19)–4 and 42(b)(2)–1 discuss the term ''principal dwelling.''

42(b) Definitions

* * * * *

Paragraph 42(b)(2)

1. *Principal dwelling.* The term ''principal dwelling'' has the same meaning under § 1026.42(b) and (i) as under §§ 1026.2(a)(24), 1026.15(a), and 1026.23(a). *See* comments 2(a)(19)–4, 2(a)(24)–3, 15(a)(1)–5, and 23(a)–3. The term ''dwelling'' is defined in § 1026.2(a)(19).

* * * * *

42(i) Quality Control Standards for Automated Valuation Models

Paragraph 42(i)(2)(vi)

1. *Creditors.* The term mortgage originator includes creditors, notwithstanding that the definition of mortgage originator at 15 U.S.C. 1602(dd)(2) excludes creditors for certain other purposes.

2. *Servicers.* The term mortgage originator generally excludes servicers and their employees, agents, and contractors. However, a person is a servicer with respect to a particular transaction only after it is consummated, and that person retains or obtains its servicing rights. Therefore, the term mortgage originator includes a servicer and its employees, agents, or contractors when they perform mortgage originator activities for purposes of 15 U.S.C. 1602(dd)(2) with respect to any transaction that constitutes a new extension of credit, including a refinancing or a transaction that obligates a different consumer on an existing debt.

* * * * *

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Authority and Issuance

For the reasons discussed in the joint preamble, the Federal Housing Finance Agency proposes to amend 12 CFR part 1222 as set forth below:

PART 1222—APPRAISALS

■ 18. The authority citation for part 1222 is revised to read as follows:

Authority: 12 U.S.C. 3354(b); 12 U.S.C. 4501 *et seq.;* 12 U.S.C. 4526; and 15 U.S.C. 1639h.

■ 19. Add subpart C to part 1222 to read as follows:

Subpart C—Quality Control Standards For Automated Valuation Models

Sec.

§ 1222.27 Authority, purpose, and scope.
§ 1222.28 Definitions.
§ 1222.29 Quality control standards.

§ 1222. 27 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Federal Housing Finance Agency pursuant to 12 U.S.C. 4501 *et seq.,* 12 U.S.C. 4526, section 1125 of FIRREA, 12 U.S.C. 3354, as added by section 1473(q) of the Dodd-Frank Act.

(b) *Purpose and scope.* (1) The purpose of this subpart is to implement the quality control standards in section 3354 of title 12 for the use of automated valuation models in determining the value of collateral in connection with making a credit decision or covered securitization determination regarding a mortgage or mortgage-backed security. This subpart applies to entities regulated by the Federal Housing Finance Agency.

(2) This subpart does not apply to the use of automated valuation models in:

(i) Monitoring of the quality or performance of mortgages or mortgage-backed securities;

(ii) Reviews of the quality of already completed determinations of the value of collateral; or

(iii) The development of an appraisal by a certified or licensed appraiser.

§ 1222.28 Definitions.

As used in this subpart:

Automated valuation model means any computerized model used by mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralizing a mortgage.

Control systems means the functions (such as internal and external audits, risk review, quality control, and quality assurance) and information systems that are used to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel, including with respect to compliance with statutes and regulations.

Covered securitization determination means a determination regarding:

(1) Whether to waive an appraisal requirement for a mortgage origination in connection with its potential sale or transfer to a secondary market issuer, or

(2) Structuring, preparing disclosures for, or marketing initial offerings of mortgage-backed securitizations.

Credit decision means a decision regarding 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.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, factory-built housing, or manufactured home, if it is used as a residence. A consumer can have only one ''principal'' dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this subpart.

Mortgage means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in a consumer's principal dwelling.

Mortgage originator has the meaning given in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

Secondary market issuer means any party that creates, structures, or organizes a mortgage-backed securities transaction.

§ 1222.29 Quality control standards.

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:

(a) Ensure a high level of confidence in the estimates produced;

(b) Protect against the manipulation of data;

(c) Avoid conflicts of interest;

(d) Require random sample testing and reviews; and

(e) Comply with applicable nondiscrimination laws.

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on May 31, 2023.

James P. Sheesley,

Assistant Executive Secretary.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

Melane Conyers-Ausbrooks,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 2023–12187 Filed 6–20–23; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 7535–01–P; 8070–01–P; 4810–AM–P