May 13, 2022

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

Re: Small Business Advisory Review Panel for Automated Valuation Model (AVM) Rulemaking; Outline of Proposals and Alternatives Under Consideration

Dear Director Chopra:

The Mortgage Bankers Association (MBA)[1] thanks to the Consumer Financial Protection Bureau (CFPB, or "the Bureau") for its consideration of industry feedback on the proposals and considerations developed with the small business review panel convened regarding Automated Valuation Models (AVMs).[2] Greater industry adoption of AVMs holds potential to modernize and improve the valuation process, and MBA looks forward to working in partnership with the CFPB and other regulators on this crucial step in the lending process.

Mortgage lenders evaluate borrower eligibility based on an assessment of both credit risk and collateral risk – the extent to which value of the real property supports the mortgage. Understanding the market value of the collateral is essential to making and pricing a mortgage. The real estate industry in recent years has experienced two significant challenges with respect to the home valuation process – namely, appraiser shortages and concerns regarding bias in valuations.

The increased volume of lending in 2020 and 2021 exposed a shortage of appraisers in many markets, resulting in high costs and slow turn times. Borrowers suffered from the overextended appraiser infrastructure through delayed closings and unexpectedly high appraisal fees. MBA and its members have held numerous discussions with government and industry stakeholders on developing and implementing strategies to create efficiencies and

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] Consumer Financial Protection Bureau, "Small Business Review Panel on Automated Valuation Model (AVM) Rulemaking," February 23, 2022. Available at: https://files.consumerfinance.gov/f/documents/cfpb_avm_outline-of-proposals_2022-02.pdf.

relieve pressure on the appraisal system. Industry leaders agree that adoption of technologies and hybrid strategies for valuation could alleviate stress on the appraiser workforce. The CFPB and other regulators should consider these technological developments in valuation analysis and modeling when conducting any future appraisal-related rulemaking.

Increased use of new technologies and more robust data sources, including wider industry adoption of AVMs, also can help combat bias in the appraisal process. MBA understands the concern regarding entrenched patterns of undervaluation and the perpetuation of valuation disparities with any new technology or process, though this consideration reflects the need for proper safeguards as new technologies or processes advance – not a rejection of those technologies or processes. The use of AVMs may not eliminate all elements of bias in valuations, but it could improve upon the current system by removing conscious and unconscious human bias, which would be a welcome step forward as regulators and industry leaders continue to work to address systemic bias in the long term.

MBA appreciates the need for quality control and oversight with respect to AVMs, and strongly suggests that any such regulatory requirements be balanced against the need to promote advancements in technologies that reduce costs and broaden access to homeownership. The potential for valuation technologies, including AVMs, to alleviate appraiser shortages and safeguard against appraiser bias should remain in the forefront during any future rulemaking process.

Following a Principles-Based Approach

In constructing a framework for AVM oversight, CFPB should focus on a principles-based approach rather than a prescriptive approach. Allowing each institution using AVMs to adopt and maintain its own policies, practices, procedures, and control systems better recognizes differing business models and levels of AVM usage. Prescriptive rules could become outdated if they cannot evolve with technological developments, hindering advancements in the industry. They also may present an undue burden on smaller institutions.

Any regulatory framework should apply consistently to entities engaging in covered uses of AVMs, rather than specify different requirements for institutions that the statute places under the authority of the CFPB (i.e., apply the same rules for independent mortgage banks and depository lenders). The CFPB should ensure its rule does not create any inappropriate competitive effects.

A principles-based approach better recognizes varying levels of AVM use and business practices, reflective of the risk appetite of covered institutions. Many factors determine the tolerances and confidence levels associated with AVMs and their practical applications. There may be AVM covered uses that are greatly enhanced when layered with other valuation methods like an exterior assessment of the subject property. Each covered institution should have the flexibility to establish processes and procedures related to AVM usage that reflect its risk assessment of these factors and potential enhancements. An overly prescriptive approach is unlikely to accommodate these differing practices and views throughout the industry.

Definitions and Uses

In the outline, the CFPB proposes various options for definitions under the rule, as well as options for covered uses of AVMs. MBA largely supports the Bureau's primary outlined approaches. MBA agrees that definitions should be linked to existing laws and regulations (e.g., Dodd-Frank, Regulation Z) to the greatest extent possible. MBA suggests that in addition to the terms the CFPB outlined for definition, the CFPB and other regulators clarify and align definitions for AVMs, property condition assessments, and property inspectors.

MBA also agrees that this rulemaking should apply to underwriting decisions where a new mortgage is originated under the definition. This should include refinances and increases in home equity lines of credit. The CFPB proposes that AVM uses covered under the rule exclude: loan modifications, securitizations, scenarios in which appraisal waivers are granted, marketing, portfolio monitoring, reviews of appraisals, credit line reductions, or use by appraisers in developing an appraised value. MBA agrees that there are not compelling arguments to include any of these uses under the rulemaking. MBA suggests the CFPB and other regulators consider exemptions or tailored requirements for AVM use with respect to construction loans and properties in federally-declared natural disaster areas.

MBA suggests, furthermore, that the rule should not be applied to servicing activity solely because it is conducted by a company which also originates or engages in secondary market issuance. Regulatory references to mortgage originators and secondary market issuers should not lead the rule to apply to any instance or activity in which those entities use an AVM – only when they apply AVMs for covered uses. Application of these requirements to servicing activities performed by institutions that also originate or issue securities, and excluding those servicers that do not, would lead to an unlevel playing field. Servicers that also originate or issue securities should not be subject to a different set of requirements relative to companies that only service loans.

Non-Discrimination Laws and "Fifth Factor"

AVM development and use should be undertaken in a manner that is compliant with all applicable non-discrimination laws, as is required today. AVMs, for example, are subject to the Equal Credit Opportunity Act and the Fair Housing Act.

In crafting a future proposed rule, the CFPB and other federal regulators should recognize the limitations of lenders and other users of AVMs in terms of access to the model design or underlying inputs. Lenders should be informed by the AVM provider of the model's guidelines for proper use (appropriate inputs, constraints of the model, etc.). Most lenders do not, however, have the resources to comprehensively back-test valuations produced by each model under consideration. Requiring comprehensive anti-discrimination reviews by lenders would deter smaller lenders from using AVMs, resulting in unbalanced competitive effects. If excessive review requirements effectively exclude small lenders from using AVMs, those lenders – and their customers – would be more severely impacted by appraiser shortages, loan pipeline backlogs, and high appraisal fees.

MBA suggests the CFPB consider alignment with existing OCC "sound practices for model risk management" as a guide when designing a regulatory framework for non-discrimination quality control of AVMs. These practices focus on processes for selecting vendors, receiving relevant information on the model from the vendor, monitoring model performance, and supplementing model results with other analysis and information. If lenders are following sound AVM model risk practices such as these, they should be deemed to have satisfied their responsibilities under the CFPB framework. AVM providers, conversely, should not be held responsible for misvaluations produced by use of the product outside of the provider's communicated parameters/guidelines (e.g., appropriate inputs, applications, limitations). Again, MBA suggests existing OCC guidelines on use of third-party models provide an appropriate framework that can guide a principles-based approach by the Bureau and other regulators.

Implementation

An adequate timeline for implementation is crucial for mortgage lenders to properly incorporate quality control standards required by any future rulemaking. Following feedback from our members, MBA requests that the Bureau and other regulators allow for an implementation period of at least 12 months.

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MBA once again thanks to the CFPB for the opportunity to comment on the proposals for an AVM quality control rulemaking. We are well aware of the many challenges associated with developing a system that promotes accurate and fair valuations and look forward to our work with the CFPB and other regulators to establish guardrails for AVM quality control while fostering advancements in data and technology.

Sincerely,

Pete Mills
Senior Vice President
Residential Policy and Strategic Industry Engagement
Mortgage Bankers Association