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: Final rule.

SUMMARY: The OCC, Board, FDIC, NCUA, CFPB, and FHFA (collectively, the agencies) are adopting a final 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 final rule, institutions that engage in certain credit decisions or securitization determinations must 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: This final rule is effective the first day of the calendar quarter following **[INSERT DATE 12 MONTHS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT:

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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 (FIRREA or title XI)[1] to add a new section 1125 relating to quality control standards for AVMs used in valuing real estate collateral securing mortgage loans (section 1125).[2] In June 2023, the agencies invited comment on a notice of proposed rulemaking (proposal or proposed rule) to implement these quality control standards.[3] The agencies received approximately 50 comments concerning the proposed rule.

The term "automated valuation model" is commonly used to describe computer programs that estimate a property's value and are used for a variety of purposes, including loan underwriting and portfolio monitoring.[4] Section 1125 defines an AVM as

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[1] 12 U.S.C. 3331 *et seq.*
[2] Pub. L. 111–203, 124 Stat. 1376, 2198 (2010), *codified at* 12 U.S.C. 3354.
[3] 88 FR 40638 (June 21, 2023).
[4] *See Interagency Appraisal and Evaluation Guidelines*, 75 FR 77450, 77468 (Dec. 10, 2010).

"any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling."[5]

Section 1125 directs the agencies to promulgate regulations to implement quality control standards regarding AVMs.[6] 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 automated valuation models; (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."[7] As required by section 1125, the agencies consulted with the staff of the Appraisal Subcommittee and the Appraisal Standards Board of the Appraisal Foundation as part of promulgating this rule.[8]

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 Government Sponsored Enterprises or GSEs) use proprietary AVMs in their collateral valuation processes.

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[5] 12 U.S.C. 3354(d). This preamble uses the terms "worth" and "value" interchangeably when discussing mortgage collateral.
[6] 12 U.S.C. 3354(b).
[7] 12 U.S.C. 3354(a).
[8] *See* 12 U.S.C. 3354(b).

While advances in AVM technology and data availability have the potential to contribute to lower costs and shorten turnaround times in the performance of property valuations, it is important that institutions using such tools take appropriate steps, as required by section 1125, to ensure the credibility and integrity of the valuations produced by AVMs.

Existing Guidance Relating to the Use of AVMs and Enforcement of the Final Rule

Since 2010, the OCC, Board, FDIC, and NCUA have provided supervisory guidance on the use of AVMs by the institutions they regulate in Appendix B to the Interagency Appraisal and Evaluation Guidelines (Appraisal Guidelines).[9] The Appraisal 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 Appraisal 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.[10]

In addition to Appendix B of the Appraisal Guidelines, the OCC, Board, and FDIC have issued guidance on model risk management practices (Model Risk Management Guidance) that provides comprehensive supervisory guidance on validation

[9] *See supra* note 4. The Appraisal Guidelines were adopted after notice and comment.
[10] *Id.*

and testing of models.[11] While the NCUA is not a party to the Model Risk Management Guidance, the NCUA monitors the model risk management efforts of federally insured credit unions through its supervisory approach by confirming that the governance and controls over AVMs are appropriate based on the size and complexity of the transactions, the risk the transactions pose to the credit union, and the capabilities and resources of the credit union.

The CFPB and FHFA are also not parties to the Appraisal 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.[12]

The OCC, Board, FDIC, NCUA, CFPB, and FHFA 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.[13] For example, under the guidance issued

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[11] *See Comptroller's Handbook, Model Risk Management*, OCC Bulletin 2021-39 (Aug. 18, 2021); *Supervisory Guidance on Model Risk Management*, OCC Bulletin 2011-12 (Apr. 4, 2011); *Guidance on Model Risk Management,* Federal Reserve Board SR Letter 11-7 (Apr. 4, 2011); and *Adoption of Supervisory Guidance on Model Risk Management*, FDIC FIL-22-2017 (June 7, 2017).

[12] *See Supplement Guidance to Advisory Bulletin 2013-07 – Model Risk Management Guidance 2013-07*, FHFA Advisory Bulletin 2022-03 (Dec. 21, 2022) and *Model Risk Management Guidance*, FHFA Advisory Bulletin 2013-07 (Nov. 20, 2013).

[13] *See Third-Party Relationships: Interagency Guidance on Risk Management*, OCC Bulletin 2023-17 (June 6, 2023); *Interagency Guidance on Third-Party Relationships: Risk Management*, Federal Reserve Board SR Letter 23-4 (June 7, 2023); *Interagency Guidance on Third-Party Relationships: Risk Management,* FDIC FIL 29-2023 (June 6, 2023); *Guidance on Managing Outsourcing Risk,* Federal Reserve Board SR Letter 13-9 (Dec. 3, 2013); *Evaluating Third Party Relationships,* NCUA Supervisory Letter 07-01 (Oct. 2007); *Due Diligence Over Third Party Service Providers*, NCUA Letter 01-CU-20 (Nov. 2001); *Oversight of Third-Party Provider Relationships*, FHFA Advisory Bulletin 2018-08 (Sept. 28, 2018); CFPB, *Compliance Bulletin and Policy Guidance; 2016–02, Service Providers* (Oct. 31, 2016); and CFPB, *Examination Procedures—Compliance Management Review* (Aug. 2017). *See also, Third-Party Relationships: A Guide for Community Banks*, OCC Bulletin 2024-11 (May 3, 2024); *Third-Party Risk*

by the Federal banking agencies, regardless of whether activities are performed internally or using a third party, banking organizations are required to operate in a safe and sound manner and in compliance with applicable laws and regulations. A banking organization's use of third parties does not diminish its responsibility to meet these requirements to the same extent as if its activities were performed by the banking organization in-house. To operate in a safe and sound manner, a banking organization establishes risk management practices to effectively manage the risks arising from its activities, including from third-party relationships. These guidance documents address the characteristics, governance, and operational effectiveness of a banking organization's risk management program for outsourced activities.

Institutions that are not regulated by the agency or agencies providing the guidance may still look to the guidance for assistance with compliance. The OCC, FDIC, Federal Reserve, NCUA, CFPB, FHFA, FTC, and State attorneys general each have an important role in enforcing this rule as to their respective regulated entities or covered market participants.[14]

II. Brief Summary of the Proposed Rule, Comments, and the Final Rule

The proposed rule would have required 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 (as

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Management: A Guide for Community Banks, Federal Reserve Board SR Letter 24-2 (May 7, 2024); *Third-Party Risk Management, A Guide for Community Banks,* FDIC FIL-29-2024 (May 3, 2024).

[14] *See* 12 U.S.C. 3354(c); 12 U.S.C. 4631(a)(1).

defined below) 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) avoid conflicts of interest; 4) require random sample testing and reviews; and 5) comply with applicable nondiscrimination laws. The proposed rule would not have set specific requirements for how institutions are to structure these policies, practices, procedures, and control systems. The proposed rule stated that this approach would provide institutions with the flexibility to set quality controls for AVMs as appropriate based on the size, complexity, and risk profile of the institution and the transactions for which they would use AVMs covered by the proposed rule. The proposed rule further stated that, as modeling technology continues to evolve, this flexible approach would allow institutions to refine their policies, practices, procedures, and control systems as appropriate and that the agencies' existing guidance related to AVMs would remain applicable.

The agencies received approximately 50 comments on the proposed rule to implement the quality control standards for AVMs in title XI, including comments from financial institutions, financial institution trade associations, real estate trade associations, mortgage insurance trade associations, appraiser trade associations, nonprofit advocacy organizations, AVM developers, and appraisers. Most commenters recognized that quality control standards for AVMs are required by title XI and are important to the safety and soundness of mortgage lending and securitizations involving mortgages. Most commenters also expressed support for the flexibility in the proposed rule for institutions to set quality controls for AVMs as appropriate based on the size, complexity, and risk profile of the institution and the transactions for which they would use AVMs covered by the proposed rule.

While most commenters recognized the importance of ensuring that AVMs used by mortgage originators and secondary market issuers do not violate fair lending laws, some commenters expressed concern about how to implement the proposed quality control standards, particularly the fifth quality control factor on nondiscrimination, and suggested that additional guidance from the agencies may be needed in the future. Some commenters suggested that the rule should apply to AVM developers and vendors, rather than lending institutions, given that mortgage originators have no control over how AVMs are created. A number of commenters recommended that the agencies work with the private sector to develop a standard setting organization (SSO) for AVMs and an independent third-party entity responsible for testing AVMs for compliance with the proposed quality control standards.

The agencies are finalizing the proposed rule largely as proposed. The agencies are also making clarifying edits to the definition of the term "mortgage originator," adding a definition of "person" in response to comments received, and inserting the words "seek to" into the third quality control factor in order to match the language of section 1125, as discussed in the preamble to the proposed rule. The flexible approach to implementing the quality control standards provided by the final rule will allow the implementation of the standards to evolve along with changes in AVM technology and minimize compliance costs. Regarding the fifth quality control factor, the agencies note that existing nondiscrimination laws apply to appraisals and AVMs and that institutions have a preexisting obligation to comply with all Federal laws, including Federal nondiscrimination laws. Institutions will have flexibility to adopt approaches to implement this quality control factor in ways that reflect the risks and complexities of their individual business models. In addition, there is existing guidance on fair lending considerations to inform compliance with the nondiscrimination factor.[15]

Regarding commenters' suggestion to apply the rule to AVM developers and vendors, the agencies note that, while section 1125 applies to mortgage originators and secondary market issuers, financial institutions should be able to work with AVM developers and vendors to assist them with their compliance obligations under the rule, as they do with other third-party vendors in order to comply with relevant regulatory requirements. The agencies recognize that one or more SSOs and third-party AVM testing entities could be beneficial to effective compliance with the AVM rule. As long as financial institutions meet the obligations provided in the final rule, they are free to work with third parties to assist them with their compliance obligations.

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[15] *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.*

III. Discussion of the Proposed Rule, Comments Received, and the Final Rule

The following is a detailed discussion of the proposed rule, the comments the agencies received, the responses to the comments, and the final rule.

A. *Scope of the rule*

1. *AVMs used in connection with making credit decisions*

The proposed rule would have applied to AVMs used in connection with making a credit decision. The proposed rule would have defined "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 proposed rule would have expressly excluded 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 have been a credit decision under the proposed rule because the lending institution has already made the credit decision. The scope of the proposed rule included, for example, decisions regarding originating a mortgage; modifying the terms of an existing loan; and renewing, increasing, or terminating a home equity line of credit (HELOC). The proposed rule used the term "credit decision" to help clarify that the proposed rule would have covered these various types of decisions.

The proposal to limit the scope of the rule to credit decisions (or, as discussed below, covered securitization determinations) reflected 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."[16] The proposed rule distinguished 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 have covered a computerized tax assessment model used to verify the valuation made during the origination process).[17] The proposed rule focused on those aspects of mortgage and securitization transactions where the value of collateral is typically determined.

Most commenters expressed support for limiting the scope of the rule to AVMs used in connection with making credit decisions (or, as discussed below, covered securitization determinations) and excluding use of AVMs for portfolio monitoring, which does not involve credit decision-making. The commenters also stated that excluding portfolio monitoring would reduce some burdens and costs that may otherwise be passed on to borrowers. One commenter stated that these exclusions would permit lenders more certainty in using AVMs for purposes such as portfolio monitoring.

Some commenters argued that the rule should apply to the use of AVMs to value a consumer's principal dwelling for any purpose. For example, one commenter argued that the statutory definition of "automated valuation model" at section 1125 does not limit applicability only to AVMs used during underwriting.

The final rule limits the scope of the rule to credit decisions and, as discussed below, covered securitization determinations. This scope is consistent with the statutory

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[16] 12 U.S.C. 3354(d) (emphasis added).

[17] 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 43.34(a)(8) (OCC); 12 CFR 225.63(a)(8) (Board); 12 CFR 323.3(a)(8) (FDIC); 12 CFR 722.3(a)(5) (NCUA).

language in section 1125, which focuses on determinations of value. The focus on determinations of value made in connection with credit decisions or covered securitization determinations, and the exclusion of AVM use for portfolio monitoring, will also reduce the compliance costs associated with a broader application of the quality control standards.

Loan modifications and other changes to existing loans. The proposed rule would have defined a credit decision broadly to include, among other things, a decision regarding whether and under what circumstances to modify or to make other changes to a mortgage. As a result, the proposed rule would have covered AVMs used to determine the value of an existing mortgage secured by a consumer's principal dwelling in conjunction with a decision to modify or change the terms of that mortgage when such decision is made by a "mortgage originator," "secondary market issuer," or servicer working on behalf of a mortgage originator or secondary market issuer. For example, the proposed rule would have covered AVMs used by a "mortgage originator" or "secondary market issuer," or servicer working on behalf of a mortgage originator or secondary market issuer to deny a loan modification or to confirm the value of collateral in response to a request to change or release collateral.

The agencies received several comments on this topic. Two commenters asked the agencies to clarify how the rule would apply to certain credit decisions. The first of these commenters expressed support for treating a decision to modify a loan as a credit decision because, like an initial credit decision, when a mortgage originator assesses collateral value for a loan modification, the mortgage originator is assessing whether the value of the collateral is sufficient to support the decision to engage in the transaction. However, the commenter asked the agencies to strike the reference to “other changes” from the definition of “credit decision.” The commenter believed that this change would reduce ambiguity regarding the type of conduct covered by the definition of credit decision. The other commenter suggested that the agencies make clear that assumptions are a credit event and would fall under the rule. This commenter added that the use of assumptions may rise in the future, so the market would benefit from that clarity.

As discussed further below, the agencies have considered these two comments, but do not find it necessary to provide any additional clarification regarding how the rule applies to credit decisions. Section 1125 of FIRREA 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.”[18] As explained in the proposed rule, the agencies interpret the scope of section 1125 as covering the use of an AVM to make a credit decision, but not the use of an AVM to monitor, to verify, or to validate a prior determination of value. The proposed rule further provided that a “credit decision” is “a decision regarding whether and under what terms to originate, modify, terminate, or make other changes to a mortgage, including a decision on whether to extend new or additional credit or change the credit limit on a line of credit.” Striking the reference to “other changes” from the

[18] 12 U.S.C. 3354(d) (emphasis added).

definition of credit decision, as suggested by the first commenter, would be inconsistent with the agencies' interpretation of the scope of section 1125 because it would narrow the scope of the rule to apply only to origination, modification, and termination decisions. The agencies also find it unnecessary to clarify that assumptions are credit events that fall under the rule, as suggested by the second commenter, because the proposed definition of "credit decision" is broad enough to cover assumptions.

Several other commenters disagreed with applying the rule to AVMs used to modify or change the terms of an existing loan. One of these commenters suggested that covering loan modifications would present operational challenges and is unsupported by an articulated benefit to consumers. Another commenter stated that covering modifications could discourage the use of AVMs and push lenders to use appraisals for modifications, which are more costly and time-consuming. Two other commenters expressed concern that covering loan modifications could increase costs for borrowers already facing financial distress. One of these commenters further noted that covering loan modifications also could make the loss mitigation process take longer. Finally, another commenter stated that the proposal to include loan modifications should have minimal, if any, impact on the market because the majority of loan modifications do not require a valuation of the property. However, the commenter recommended that the rule align with the traditional practice described in the Truth in lending Act (TILA) of distinguishing the role of servicers from that of originators in cases where there is no new extension of credit. The commenter argued that, unless this rule's definition of credit decision excludes loan modifications that are not a new extension of credit, the regulatory framework for this rule could be misapplied to other regulations.

The agencies have considered these comments and are adopting the final rule as proposed. AVMs are often used to determine the value of collateral in connection with loan modifications and other changes to mortgages. Further, the agencies continue to view quality control standards for AVMs used to make credit decisions relating to loan modifications and other changes to mortgages as important both to safety and soundness and to consumer protection. As discussed below, many institutions have already set up quality control systems for AVMs and have third-party risk management programs in place. For those institutions, existing quality control systems and third-party risk management programs should mitigate the burden of implementing additional quality control standards for AVMs used to modify or to change the terms of existing loans as well as any related costs passed on to consumers. In addition, the flexibility the rule provides to institutions to design policies, practices, procedures, and control systems to implement the quality control standards should reduce the burden of implementing additional quality control standards for AVMs used to modify or to change the terms of existing loans. This flexibility should reduce any related costs passed on to consumers.

Finally, the agencies considered the comment recommending that the rule align with the traditional practice described in TILA of distinguishing the role of servicers from that of mortgage originators in cases where there is no new extension of credit. However, the agencies decline to adopt changes to the proposed rule based on the comment. Although, as discussed in detail in part III.C.7 of this **SUPPLEMENTARY INFORMATION**, the rule defines mortgage originator by adopting the full text of the TILA definition of the term with technical revisions, this rulemaking is being conducted pursuant to FIRREA and it is consistent with FIRREA for valuation requirements to apply to both new and existing extensions of credit. For example, under the appraisal regulations of the Federal banking agencies and NCUA, loan modifications that are real estate-related financial transactions must, in general, comply with appraisal requirements or obtain an evaluation (for entities regulated by the banking agencies) or a written estimate of market value (for credit unions) that is consistent with safe and sound banking practices. Therefore, it is consistent with the regulatory framework of FIRREA for the agencies to apply AVM requirements to transactions involving both new and existing credit.

Home equity line of credit (HELOC) reductions or suspensions. The proposed rule would have covered AVMs used in deciding whether or to what extent to reduce or suspend a HELOC. In the proposal, the agencies considered 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.

The agencies received several comments on this topic. Two commenters generally supported applying the rule to HELOCs, while two commenters opposed this application. These commenters expressed the concern that the burden and expense of compliance would outweigh the consumer protection and safety and soundness benefits. Another commenter requested further clarification regarding how the rule would apply when AVMs are used to make credit decisions relating to HELOC reductions and suspensions.

The agencies have considered these comments and are adopting the final rule as proposed. The agencies have determined that AVMs used to make credit decisions relating to HELOC reductions and suspensions are important both to safety and soundness and to consumer protection. As discussed below, many institutions have already set up quality control systems for AVMs and have third-party risk management programs in place. These existing quality control systems and third-party risk management programs should mitigate the burden and expense of implementing additional quality control standards for AVMs used to make credit decisions relating to HELOC reductions and suspensions as well as any related costs passed on to consumers. In addition, the flexibility provided to institutions under the final rule to design policies, practices, procedures, and control systems to implement the quality control standards should also reduce both the burden of implementing additional quality controls standards for AVMs used to make credit decisions relating to HELOC reductions and suspensions and any related costs passed on to consumers.

2. *AVMs used by secondary market issuers*

The language of section 1125 includes not only mortgage originators, but also secondary market issuers.[19] For this reason, the proposed rule would have extended to certain securitization activities, defined as “covered securitization determinations.”

Appraisal waivers by secondary market issuers. The proposed rule defined “covered securitization determination” to include determinations regarding, among other things, whether to waive an appraisal requirement for a mortgage origination (appraisal waiver decisions).[20] Under the proposed rule, a secondary market issuer that uses AVMs in connection with making appraisal waiver decisions would have been 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 have needed to ensure that the AVM used to support the waiver meets the rule’s quality control standards. This treatment is because the secondary market issuer would be using the AVM to make the appraisal waiver decision in this context, not the mortgage originator. The proposal noted that when mortgage originators submit loans to GSEs for appraisal waiver decisions, the mortgage

[19] 12 U.S.C. 3354(d).

[20] 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.*

originators offer an estimated value of the property, but do not make a determination of value.

Both GSEs have appraisal waiver programs and are the predominant issuers of appraisal waivers in the current mortgage market.[21] To determine whether a loan qualifies for an appraisal waiver under any 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 this information through its internal model(s), 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.[22]

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 have required the GSEs, as secondary market issuers, to maintain policies, practices, procedures, and control systems designed to ensure that their use of such

[21] *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*.
[22] *Id.*

AVMs adheres to the rule's quality control standards. On the other hand, the mortgage originator in this context 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. 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.

Most commenters agreed that the GSEs make the valuation decision in connection with appraisal waivers and should be covered by the quality control standards in the appraisal waiver context. One commenter requested clarification in cases where AVMs are used to determine eligibility for appraisal waivers and recommended that the proposed regulatory text align with the description in the preamble. Another commenter supported an exception for AVMs used to determine whether a loan may be eligible for an appraisal waiver. Another commenter stated that the Equal Credit Opportunity Act (ECOA) requires creditors to provide consumers with a copy of any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a GSE or by an AVM, a broker price opinion, or other methodology or mechanism. The commenter further stated that the GSEs should be obligated to provide a consumer with any valuation on which the waiver is based.

Many commenters stated that it would be very difficult for lenders to conduct quality control of the GSEs' AVMs for reasons including that the GSEs have treated their data, analytics, and testing as proprietary and have not shared information with the industry. Commenters also suggested that requiring lenders to conduct quality control of secondary market issuers' AVMs would be redundant because the secondary market issuers are already covered by the proposed rule and are better positioned to implement quality controls on their AVMs.

The agencies have determined that secondary market issuers are best positioned to conduct quality control for the AVMs they use in appraisal waiver decisions. This is because the secondary market issuer would be using the AVM to make the appraisal waiver decision in this context, not the mortgage originator. For this reason and after considering the comments, the final rule adopts the proposal to require the secondary market issuers, rather than mortgage originators, to implement the final rule for such AVM use.

Regarding providing to consumers copies of valuations used in connection with appraisal waiver decisions, the comment is on a matter outside the scope of this rulemaking. The agencies also note that the CFPB's rules in Regulation B implementing ECOA generally require creditors to provide applicants for first-lien loans on a dwelling with copies of written valuations developed in connection with an application.[23] "While some AVMs may use proprietary methods, the [2013 ECOA Valuations Final Rule] does not require the disclosure of these methods *per se*; rather, the [2013 ECOA Valuations

[23] *See* 12 CFR 1002.14; 78 FR 7216 (Jan. 31, 2013) (2013 ECOA Valuations Final Rule).

Final Rule] requires disclosure of the written valuations developed by the AVMs which are provided to the creditors."[24]

Other uses by secondary market issuers. As noted earlier, the language of section 1125 includes not only mortgage originators, but also secondary market issuers. Given that section 1125 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 have covered AVMs used in securitization determinations. In the proposal, the agencies stated that covering AVMs used in securitizations could potentially protect the safety and soundness of institutions and could protect consumers and investors by reducing the risk that secondary market issuers would misvalue homes. For example, misvaluation by secondary market issuers could, in turn, incentivize mortgage originators to originate misvalued loans when making lending decisions.[25] Such misvaluations could pose a risk of insufficient collateral for financial institutions and secondary market participants and could limit consumers' refinancing and selling opportunities.[26]

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[24] 78 FR at 7239. The 2013 ECOA Valuations Final Rule "does not apply to persons who are not creditors within the meaning of Regulation B, § 1002.2(l), and thus does not impose any obligation on a creditor to compel a third-party to provide a copy of such documentation to the applicant." *Id.* at 7239 n.89.

[25] 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.*

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

The proposed rule would have covered AVM usage when a secondary market issuer uses an AVM as part of a new or revised value determination in connection with a covered securitization determination. For example, the GSEs currently use the origination appraised value or the estimated value in appraisal waivers when issuing mortgage-backed securities (MBS). 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 have been considered covered securitization determinations because there are new or revised value determinations. As discussed below, the proposed rule would have distinguished 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 have been covered by the proposed rule.

Most commenters supported the proposal to cover AVMs used by secondary market issuers in connection with covered securitization determinations. One commenter expressed general support for covering securitizations, stating that transparency in how AVMs are tested, measured, and applied would allow for better valuations and more informed risk decision-making. Another commenter expressed support for consistent requirements across all activities by institutions, including secondary market issuers, stating that covering securitizations would alleviate the risk of an inconsistent approach to the development of quality control standards. Another commenter stated that it is important for the GSEs to be covered by the proposed rule because the GSEs 1) finance more than half of all purchase originations, and 2) the internalization of valuation risk by the GSEs poses a systemic threat to the housing finance system that could undermine investor confidence if questioned, especially if they exit conservatorship without an explicit Federal backstop.

One commenter echoed this point, stating that it is important to cover secondary market issuers because the issuers significantly influence how mortgage originators perform their underwriting. Similarly, another commenter stated it is important to cover the GSEs because they are two of the largest users and managers of AVMs in the market. The commenter stated further that there is additional potential for increased taxpayer risk if an AVM produces a property valuation that misprices or eliminates loan-level private mortgage insurance credit protection.

One commenter also suggested that, because AVMs are developed using data and models that reflect past and ongoing discrimination, the agencies should seek broad coverage of AVMs, including those used by the GSEs. Another commenter suggested that covering AVMs used by secondary market issuers also would promote financial stability. A number of commenters stated that Federal governmental support for the

GSEs and the Government National Mortgage Association provides an additional reason to apply quality control standards to AVMs used by these entities.

As stated in the proposal, covering secondary market issuers is consistent with the plain language of the statute and provides quality control for AVMs used in an expansive and crucial segment of the mortgage lending market. For these reasons and after considering the comments, the agencies are adopting the proposal to cover secondary market issuers' use of AVMs in covered securitization determinations.

3. *AVM uses not covered by the rule*

Use of AVMs by appraisers. The proposed rule would not have covered the use of an AVM by a certified or licensed appraiser in developing an appraisal.[27] This approach reflects the fact that, while appraisers may use AVMs in preparing appraisals, they must achieve credible results in preparing an appraisal under USPAP and its interpreting opinions.[28] 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

[27] 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 proposed 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 the Uniform Standards of Professional Appraisal Practice (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.

[28] *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.

collateral. The proposal stated that it also 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 whom they work.

Under the appraisal regulations issued by the OCC, Board, FDIC, and NCUA, lenders regulated by those agencies are required to obtain "evaluations," or "written estimates of market value" under the NCUA's regulations, for certain transactions that fall within exceptions specified in the appraisal regulations.[29] Such evaluations must be consistent with safe and sound banking practices.

The proposed rule would have covered AVMs used in the process of preparing evaluations. This distinction between application of the rule to appraisals versus evaluations reflects the fact 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 reflected the more extensive use of, and reliance on, AVMs within the evaluation function.

Most commenters agreed with the proposed exclusion of appraisals performed by licensed or certified appraisers from the scope of the rule. The commenters noted that appraisers are already subject to quality control standards and that exempting appraisers

[29] *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) (requiring that written estimates of market value be performed for transactions not requiring an appraisal and providing differing requirements for such estimates). *See also Appraisal Guidelines*, 75 FR at 77460 (discussing transactions that require evaluations under the appraisal rules and providing recommendations for evaluation development).

would avoid duplicative and burdensome regulation in an area where banks are already encountering shortages of appraisers. One commenter stated that the proposal's excluded uses do not involve credit decision making and suggested that excluding these uses will reduce burden and costs that may otherwise be passed on to consumers.

One commenter stated that, while appraisers often use an AVM or other tools to provide support and understanding for their opinions, appraisers are experts designated by Congress to protect public trust and they dedicate their lives to studying real estate data. Another commenter observed that appraisers do not use "lending grade" AVMs to develop full, traditional appraisals. The commenter stated that some appraisers may use AVMs to gauge a starting point for appraisals, but that appraisers have limited access to lending-grade AVMs. Another commenter noted that under USPAP, an AVM is a tool that appraisers may use for their work (such as for internal checks and balances), but not for the completion of an appraisal in determining the appraiser's opinion of value. The commenter expressed agreement with the statement in the preamble that 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. One commenter stated that AVM use by appraisers is low and infrequent and noted that higher quality AVMs are often cost prohibitive for appraisers to use. The commenter suggested that imposing compliance costs on use of AVMs by appraisers would discourage the use of AVMs as a check for obvious errors.

A small number of commenters argued that the quality control standards should be broadly applicable and advocated for removing the exclusions for development of appraisals by appraisers. For example, one commenter suggested that allowing appraisers to use AVMs that are not subject to quality control would create institutional and consumer confusion and a heightened risk of misapplication of AVM results. The commenter noted that USPAP provides that an appraiser may only use an AVM as part of the valuation process if the appraiser has a basic understanding of how the AVM works.

As discussed earlier, while appraisers may use AVMs in preparing appraisals, they must achieve credible results in preparing an appraisal under USPAP and its interpreting opinions. 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. In addition, it may be impractical for mortgage originators and secondary market issuers to adopt policies, practices, procedures, and control systems to ensure quality controls for AVMs used by the numerous independent appraisers with whom they work. For these reasons and after considering the comments, the final rule excludes from coverage the use of AVMs by a certified or licensed appraiser in developing an appraisal, consistent with the proposal. The agencies did not receive specific comments on covering evaluations. For the reasons stated above, the final rule covers AVMs used in preparation of evaluations.

Reviews of completed collateral valuation determinations. The proposed rule would not have covered AVMs used in reviews of completed collateral value determinations (completed 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, including those where an AVM is used in the review, serves as a separate and independent quality control function.[30]

Many commenters expressed support for not covering the use of AVMs for reviews of completed determinations in the rule. The commenters stated such exclusion would reduce some burdens and costs that may otherwise be passed on to borrowers. One commenter stated that an institution may, but is not required to, use an AVM to test the reasonableness of an appraisal or evaluation. The commenter recommended that the rule cover such AVM use. Other commenters suggested that AVMs used for appraisal review should be covered to avoid inconsistent standards, to ensure that discriminatory valuations are identified, or because all AVMs used in housing finance should be subject to quality control standards.

As discussed earlier, the agencies continue to view the focus on value determinations as consistent with section 1125. For this reason and those stated above, after considering the comments, the agencies are adopting the proposal to exclude reviews of completed determinations from the scope of the rule. The agencies note that the rule does not make distinctions based on the amount of time between the completed determination and the subsequent review; if an AVM is being used solely to review the

[30] 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.

completed determination, the AVM use is not covered by the rule regardless of when the AVM is used after that determination.

A. *Quality Control Standards*

1. *Proposed requirements for the first four quality control factors*

The proposed rule would have required 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 certain quality control standards. The proposed rule would have required those quality control standards be designed to 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. These four quality control factors would have implemented the minimum standards required by the statute. The proposal would have allowed mortgage originators and secondary market issuers covered by the proposal the flexibility to set their quality control standards for covered AVMs as appropriate based on the size, complexity, and risk profile of the institution and the transactions for which they would use AVMs covered by the proposed rule.

Most commenters supported the proposed flexibility for implementing the statutory quality control standards. These commenters agreed that mortgage originators and secondary market issuers should have the flexibility to adopt policies, practices, procedures, and control systems to implement the quality control standards based on size, complexity, and risk profile of the institution and the transactions for which they would use AVMs covered by the rule. One commenter stated that AVM models will continue to grow and evolve, making the flexible approach appropriate in order to allow institutions to make refinements as technology changes. The commenter also stated that the flexible approach would reduce regulatory burden and that a prescriptive approach could constrain meaningful use of AVMs. Another commenter stated that a more prescriptive rule might not adjust to changing industry developments.

One commenter stated that the principles-based approach of the rule would give credit unions flexibility to narrowly tailor their quality control standards to their unique circumstances. Another commenter stated that a prescriptive rule could present an undue burden on small institutions. Another commenter indicated that a principles-based option could mitigate compliance costs and foster innovation in the AVM space but suggested that there is a need for uniformity and consistency when determinations of relevancy and confidence levels are required. The commenter suggested that the rule specifically cite those determinations of relevance and confidence levels.

One commenter who supported the flexible approach stated that banks already adhere to supervisory guidance on model risk management, appraisals, and third-party risk management, making prescriptive regulation unnecessary. This commenter also suggested that a "one size fits all" approach would not work well, given the variety of mortgage originators and their business models. The commenter also argued that prescriptive AVM standards would impede technical innovation but suggested that it would be helpful for the agencies to provide guidance on the types of issues the agencies have identified with AVMs, as well as potential remedies of those issues, with narratives, analytical and quantitative examples, and case studies to inform stakeholders. Another commenter stated that flexible, transparent, principles-based approaches to AVM standards are relatively inexpensive and not time-consuming to incorporate and apply and that AVM testing and individual AVM model performance detail may be readily available through a firm's internal testing group or numerous third-party, independent testing organizations.

One commenter stated that principles-based quality control standards would help foster innovation that will ultimately benefit consumers and the housing market. The commenter stated that as AVM technology continues to develop, a prescriptive approach to regulation would likely become outdated and ineffective quickly, impeding innovation and limiting regulators' ability to protect consumers as technology evolves. The commenter suggested, however, that focused guidance is warranted to address issues such as testing of AVMs and consideration of whether the use of pricing information in AVM models is appropriate.

One commenter stated that the proposed quality control standards would not hinder competition among AVM developers, AVM users, or future innovation. The commenter stated further that the standards would empower AVM users to utilize risk management practices consistent with the Appraisal Guidelines.

Another commenter who expressed support for the nonprescriptive approach suggested that the wide variety of AVMs and the vast diversity in lender, investor, guarantor, and related stakeholder uses of AVMs would make a prescriptive approach difficult to fashion. This commenter expressed concerns about the unintended consequences of a prescriptive approach. Further, this commenter stated that different stakeholders across the U.S. housing finance industry will (and should) have different strategies, processes, and risk tolerances for the use of AVMs. The commenter also argued that a prescriptive approach would be ill-advised as technology is continuously evolving at an increasing pace, citing artificial intelligence as an example.

Another commenter stated that the proposed principles-based approach is appropriate because AVMs are constantly evolving and model development techniques, model deployment processes, data types, and data sources will change, AVMs will evolve, and risk mitigation, testing, and quality control will have to adapt.

Another commenter stated that the techniques used to train models, including AVMs, that rely on artificial intelligence and machine learning are developing rapidly, and that it would be imprudent to take an overly specific approach that may be incompatible with—or even deter the adoption of—advancements in AVM techniques that are likely to be forthcoming. The commenter stated further that a flexible and principles-based approach, on the other hand, will remain applicable regardless of changes in AVM methodologies, quality control best practices, and data availability. The commenter stated that this is especially true for the proposed nondiscrimination quality control factor, given that techniques for mitigating disparate impact, debiasing models, and searching for less discriminatory alternatives continue to develop. The commenter argued that a flexible, principles-based approach will encourage and enable entities to adopt the latest, most effective techniques for mitigating discrimination risk.

A minority of commenters preferred a more prescriptive approach to implementing the quality control standards. One commenter argued that the flexible approach would not likely help community banks that may prefer or require clear and simple instructions on how to comply with the quality control standards. Another commenter suggested that a prescriptive approach would create uniformity in the use of AVMs in the marketplace, provide broader consumer protection, and create a consistent level of safety and soundness when institutions rely on AVM conclusions.

One commenter suggested that the final rule include prescriptive standards for AVM testing, validation, and confidence needed to assess whether an AVM was appropriate to use for a particular transaction. Two commenters suggested that the agencies use a blended approach to quality control measures for AVMs, with some standardized reporting and testing requirements, while also allowing covered entities to develop tailored policies, practices, procedures, and control systems. One commenter suggested that AVMs need standardized confidence scores and standardized reporting formats to enable broader use and basic statistics on the temporality, proximity, and homogeneity of the data.

Another commenter stated that the rule should provide specific guidelines to explain how institutions are to structure policies, practices, procedures, and control systems, and should add specific minimum standards for the quality control standards in the final rule. The commenter stated that consumers deserve the same level of protection whether they are obtaining a loan from a larger or smaller originator and recommended that the agencies adopt the Appraisal Guidelines as a rule to make the Appraisal Guidelines stronger and more effective.

Two commenters noted that there was an inconsistency in the proposed rule concerning the third quality control factor relating to avoiding conflicts of interest. The commenters noted that the preamble referred to the third factor as "seek to avoid conflicts of interest" while the regulatory text used "avoid conflicts of interest." These commenters stated that the use of "seek" would be consistent with the statutory language in section 1125. As discussed in more detail below, some commenters also suggested that AVMs should be tested or certified by a third-party tester instead of, or as a supplement to, the approach taken in the proposed rule.

After considering the comments, the agencies have determined that the proposed method was appropriate, and that a flexible approach to implementing the quality control standards would allow the implementation of the standards to evolve along with AVM technology and reduce compliance costs. Different policies, practices, procedures, and control systems may be appropriate for institutions of different sizes with different business models and risk profiles, and a more prescriptive rule could unduly restrict institutions' efforts to set their risk management practices accordingly. As modeling technology continues to evolve, this flexible approach will allow institutions to refine their implementation of the rule as appropriate. The proposed and now adopted approach will allow mortgage originators and secondary market issuers the flexibility to set their quality control standards for covered AVMs as appropriate based on the size, complexity, and risk profile of their institution and the transactions for which they would use AVMs covered by the rule.

In regard to the suggestion by some commenters that fostering uniformity in the AVM market would benefit consumers and stakeholders, such uniformity could interfere with the appropriate current and future use of AVMs. In addition, the agencies determined that prescriptive rules would pose a challenge due to the inherent complexity of AVMs and their use cases and the differing size and activities of the institutions that use AVMs. The quality control standards adopted are clear and simple and a more prescriptive rule would become unmanageable over time due to rapidly evolving technology.

Moreover, the quality control standards are also consistent with practices that many participants in the mortgage lending market already follow and with the guidance described above that applies to many regulated institutions that will be subject to the final rule. For example, the Model Risk Management Guidance provides comprehensive suggestions for assessing and monitoring model risk, including on appropriate governance, policies, and procedures for model risk management. In addition, Appendix

B of the Appraisal 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 is also consistent with third-party risk guidance, as discussed earlier. Furthermore, in line with the agencies' service provider guidance, regardless of whether mortgage originators and secondary market issuers use their own AVMs or third-party AVMs, the final rule requires 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.

Regarding one commenter's suggestion that existing agency guidance be adopted as part of the rule, the agencies determined that doing so is not necessary at this time and could make it more difficult to adapt the guidance as new issues arise. As previously discussed, many of the institutions that will be covered by the final rule already consider existing guidance for assistance in structuring their quality control standards for AVM use. Furthermore, the agencies note that institutions that are not regulated by the agency or agencies providing the guidance may still look to the guidance for assistance with compliance. In addition, the statute does not require the agencies to set prescriptive standards for AVMs. For these reasons and those explained above, and after considering the comments, the agencies have concluded that a rule requiring institutions to develop policies, practices, procedures, and control systems designed to satisfy the requirement for quality control standards will more effectively carry out the purposes of section 1125 than a more prescriptive rule.[31] Therefore, the agencies are adopting the four quality control factors from the statute. The agencies are also making a technical correction to the regulatory text to match the factors with those in section 1125. The omission of "seek to" in regulatory text, as pointed out by two commenters, was inadvertent and has been added to the final text.

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."[32] Based on this authority, the agencies proposed to include a fifth quality control factor that would require mortgage originators and secondary market issuers to adopt policies, practices,

[31] 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) (providing guidelines on federally insured credit unions' requirement 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).

[32] 12 U.S.C. 3354(a)(5).

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. The agencies proposed that institutions would have the flexibility to design policies, procedures, practices, and control systems for AVMs that are in compliance with fair lending laws and take into account their business models, as discussed above regarding the first four quality control factors.

Many commenters expressed support for the fifth factor, agreeing that it is important to assess whether AVMs are consistent with fair lending laws and that existing law requires this step. Many commenters endorsed the proposal to add this fifth factor on nondiscrimination to highlight this element of existing laws and create an independent legal requirement for institutions to adopt policies, practices, procedures, and control systems for AVMs that comply with applicable nondiscrimination laws.

Many commenters stated that discrimination is an issue in valuations, including in AVMs, and that specifying a nondiscrimination factor would be useful for reinforcing the applicability of nondiscrimination laws to AVMs. Several commenters asserted that AVMs risk reproducing bias and perpetuating discrimination if they are not adequately examined and tested. These commenters stated that the information used to develop and train AVMs is often drawn from existing data sets that may reflect human biases and historical prejudices. One commenter stated that inclusion of the nondiscrimination factor for AVM models serves as an important reminder to AVM developers and users about the necessity of fair lending and fair housing to a functional marketplace, while another commenter stated that it would help ensure a level playing field. Some commenters asserted that the nondiscrimination factor would work in parallel and reinforce the other quality control factors. One commenter noted that nondiscrimination is implicitly included in the first four factors. This commenter stated further that the nondiscrimination quality control factor does not introduce a new requirement, but rather emphasizes the applicability of nondiscrimination laws to AVMs and is consistent with current law and existing fair lending guidance.

One commenter stated that nondiscrimination should be understood as a dimension of model performance and a required aspect of quality control. The commenter further asserted that discrimination should be understood as a safety and soundness risk. One commenter stated that banks fully support fair lending laws and currently implement fair lending requirements. The commenter stated further that they are aware of the unique considerations that AVMs present and that banks in their State rely on current fair lending requirements and underwriting and appraisal management guidance to guide their use of AVMs, for example through current model risk management guidance. Another commenter stated that the advantages of specifying the fifth factor are that it will emphasize the safe and effective use of AVMs and encourage expanded use of AVMs as a valuation tool in the industry, both on a stand-alone and independent basis where appropriate, as well as in concert with, and as additional support for, traditional, hybrid, and alternative approaches to value.

A number of commenters suggested that AVM use has the potential to reduce bias in valuations, given that AVMs do not take into account the race of the participants to a particular transaction. One commenter suggested that use of nondiscriminatory AVMs has the potential to provide significant benefits to industry and consumers. The commenter stated that, since AVMs do not know the racial composition of the borrower or neighborhood, an AVM may help provide a fair and unbiased estimate of value. The commenter stated further that the fifth quality control factor would encourage expanded use of AVMs as a valuation tool in the industry. The commenter also stated that specifying a nondiscrimination quality control factor in the rule would be useful in emphasizing the importance of providing support for nondiscrimination or analysis of the potential disparate impact in the use of AVMs.

Similar to the first four quality control factors, most commenters supported a nonprescriptive approach to the nondiscrimination factor. One commenter explained that a flexible approach would assist in the process of adapting existing policies into the framework of quality control standards. One commenter suggested that a principles-based approach would enable innovation while building a sustainable framework to reduce discrimination, advance fair lending and fair housing, and ensure accuracy in home valuation processes by requiring entities to align their policies and procedures with promulgated principles. Another commenter stated that a nonprescriptive approach would prevent interference with the industry developing innovative solutions to address discrimination. A few commenters stated that the principles-based approach would allow lenders to take into account changes in AVM technology. One commenter noted that there is a lack of consensus among stakeholders concerning how AVMs should be evaluated with respect to fair lending and suggested that the proposed flexible approach is best because it would account for the current level of uncertainty.

One commenter stated that agency guidance would be the appropriate venue to address the more nuanced issues of compliance, such as how to conduct particular types of testing, including outcomes-based testing for disparate impact, and how to evaluate potential less discriminatory alternatives to an AVM that results in disparate outcomes. The commenter suggested that the final rule should articulate baseline standards for nondiscrimination from applicable statutes and regulations, specifically the ECOA and Fair Housing Act's prohibitions on disparate treatment and disparate impact. The commenter also suggested that compliance with applicable antidiscrimination laws calls for more than simply avoiding the use of prohibited bases as predictive variables in an AVM and that a proper compliance program involves other forms of antidiscrimination testing, such as disparate impact and bias testing.

One commenter stated that existing compliance management systems and fair lending monitoring programs should be able to assess whether an AVM applies different standards or produces disparate valuations on a prohibited basis. A few commenters supported a more prescriptive approach and expressed a need for bias testing standards.

Commenters made additional recommendations, including that the agencies release loan-level data from the Uniform Appraisal Dataset to provide a robust data set to evaluate AVMs and identify less discriminatory alternatives. One commenter also suggested that the agencies organize and encourage private sector activities, such as conferences and research, to inform ongoing guidance on compliance with the quality controls standards. Other commenters suggested that the agencies issue guidance on how to implement the fifth quality control factor.

In contrast, several commenters opposed including the fifth factor. Commenters expressed various concerns, including that the factor would impose a significant compliance burden, lender systems are not able to assess whether an AVM discriminates, the factor is not required by statute, and the addition of the factor is unnecessary and duplicates existing law and the other quality control factors. Two commenters suggested that documented instances of bias in AVMs are not prevalent, and one of these commenters stated that it would be a mistake to attempt to eradicate through regulation the speculative possibility of bias in AVMs, which could reduce AVM use, when the use of this technology can remove the type of subjective, personal bias that traditional appraisals bring to the valuation process. In addition, some commenters stated that the agencies should use other tools to address AVM bias concerns and the onus should be on AVM vendors to ensure models comply with nondiscrimination laws. A few commenters stated that adding this factor may have unintended effects, such as increased loan costs for consumers and small institutions deciding to stop using AVMs altogether in mortgage origination due to uncertainty and the cost of compliance.

One commenter stated that banks support fair lending laws, dedicate considerable resources to comply with them, and are regularly examined for compliance with those laws. The commenter stated, however, that adding a fifth factor on nondiscrimination is not necessary. This commenter noted that long-standing fair lending laws have and will continue to apply to mortgage transactions and the agencies regularly assess banks' compliance management systems. According to this commenter, the agencies can ensure through their examinations that policies, procedures, and controls are in place to address fair lending risk in AVM use. The commenter stated that the agencies can heighten the awareness of fair lending risks without regulation through bulletins and policy guidance. The commenter also expressed concern that codifying the rule in Regulation Z could result in plaintiffs challenging originators with the private right of action and statutory damages set forth in the TILA, which could increase costs for banks and their customers. The commenter stated that Congress clearly did not intend such a result, given that it added the quality control requirements in FIRREA, not TILA.

Several commenters expressed concerns about the ability of lenders to apply quality control standards for fair lending to AVM models. Some commenters expressed concern about how small entities can assess fair lending issues in AVMs or know that they are violating the law. They asserted that existing compliance management systems and fair lending monitoring programs are not able to assess whether an AVM applies different standards or produces disparate valuations on a prohibited basis. They argued that small entities do not have access to an AVM's data or methodology, are unable to validate the algorithms that AVM providers use, and lack the staff to assess the AVM models results.

One commenter stated that most community banks lack in-house expertise needed to test for disparate impact and will lack the volume to yield the number of observations required for testing. The commenter stated that even many larger institutions lack sufficient mortgage lending activity to engage in testing and to justify the cost of disparate impact testing. Another commenter stated that the quality control factor for nondiscrimination may force community banks to shift to using appraisals because of the compliance challenges and uncertainty relating to implementation of the factor. The commenter stated that this will likely disincentivize mortgage lending in rural areas where AVMs can be utilized as a more cost-effective, efficient, and accurate option. The commenter stated that requiring community banks to assess and evaluate models for potential fair lending concerns would be unreasonable, redundant, and extremely costly. The commenter stated further that a community bank is unlikely to retain staff with sufficient expertise to determine valuation accuracy and reverse engineer the algorithms to assess any fair lending red flags.

One commenter stated that credit unions' existing systems are not able to assess whether AVMs discriminate and that the data and resources needed to undertake an analysis of AVMs, including analysis for discriminatory bias, would be significant. Another commenter argued that the inclusion of the factor may make it difficult for credit unions to use AVMs in originating loans. The commenter stated further that to the extent the quality control standards require fair lending testing of AVM values, small credit unions may not have large enough data sets to be able to do meaningful, statistically significant testing of their AVM results. The commenter stated that credit unions lack control over the proprietary inputs and data that feed into AVMs and lack bargaining power and resources to examine third-party proprietary algorithms that power AVMs.

Other commenters stated that the agencies should use other tools to address AVM bias concerns, including asserting supervisory authority over AVM vendors as service providers and utilizing Dodd-Frank Act authority to supervise nonbank companies that pose risks to consumers. Another commenter argued that fair lending guidelines and mandates should remain within the purview of the Interagency Fair Lending Examination Procedures, thereby creating clarity for compliance management systems and a consistent examiner approach.

Several commenters stated that the burden of compliance with the fifth factor should be placed on the AVM provider. Commenters argued that lenders do not have access to proprietary models used by third parties to be able to assess fair lending performance. One commenter argued that to place the burden on financial institutions would be excessive as financial institutions are obligated to comply with existing regulatory regimes under the ECOA and the Fair Housing Act. One commenter expressed concern regarding lender liability for violating nondiscrimination law when relying on third-party AVMs.

Several commenters requested additional guidance regarding compliance with the nondiscrimination factor. One commenter stated that the agencies have not provided a clear performance indicator by which a lender could discern any inherent bias within a data set. The commenter urged the agencies to provide clear guidance on discriminatory red flags in AVMs. The commenter stated that different industry players have access to varying quality of data, that the agencies should account for this in their guidance and recommendations, and that little legal clarity exists around practices in the AVM industry that may violate the Fair Housing Act.

As the agencies noted in the proposal, 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 ECOA and its implementing Regulation B bar discrimination on a prohibited basis in any aspect of a credit transaction.[33] The agencies have long recognized that this prohibition extends to using different standards to evaluate collateral,[34] which includes 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

[33] 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.

[34] *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).

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.[35]

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.[36] 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

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[35] 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.

[36] 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/.*

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 proposed 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 ensure compliance with applicable nondiscrimination laws, thereby further mitigating discrimination risk in their use of AVMs. Specifying a nondiscrimination factor will increase confidence in AVM estimates and support well-functioning AVMs. In addition, specifying a nondiscrimination factor will help protect against potential safety and soundness risks, such as operational, legal, and compliance risks, associated with failure to comply with nondiscrimination laws.

In proposing to add a fifth quality control factor on nondiscrimination, the agencies noted 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 sample testing, and review in section 1125. The first four factors do not, however, expressly address quality control measures relating to compliance with nondiscrimination laws.

The fifth quality control factor is 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 they will consider to identify discrimination.[37] 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

[37] *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.*

are understood and addressed."[38] 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.[39]

The agencies have determined that the fifth factor is important to the quality control of AVMs and to fair lending. As with the four statutory quality control factors, the agencies are aware of the concerns expressed by some commenters that implementation hurdles, such as access to AVM data and design, could complicate compliance, especially for small entities. However, the existing guidance, as discussed earlier, already addresses many of the elements of quality control for AVMs, including fair lending considerations. In addition, institutions will have the flexibility to adopt approaches to implement the fifth factor in ways that reflect the risks and complexities of institutions' business models.

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[38] *Id. Interagency Statement on the Use of Alternative Data in Credit Underwriting,* OCC Bulletin 2019-62 (Dec. 3, 2019); Federal Reserve CA Letter 19-11 (Dec. 12, 2019); FDIC FIL-82-2019 (Dec. 13, 2019); NCUA Letter 19-CU-04 (December 2019); CFPB, Federal Regulators Issue Joint Statement on the Use of Alternative Data in Credit Underwriting (Dec. 3, 2019) *available at https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-issue-joint-statement-use-alternative-data-credit-underwriting/* and *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.").

[39] 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).*

Regarding a commenter's concern about lender liability for third-party AVMs, the agencies remind institutions that make use of third-party providers that they remain responsible for ensuring that the third parties comply with applicable laws and regulations in performing their activities, including nondiscrimination laws and the safety and soundness requirements established by the OCC, Board, FDIC, and NCUA. As discussed earlier, the agencies have already provided guidance on implementing policies, practices, procedures, and control systems relating to model risk, third-party risk, AVMs, and nondiscrimination. Institutions should refer to relevant rules and statutes for the specific requirements which may apply. Regarding a commenter's concern that the CFPB codifying this rule in Regulation Z could result in plaintiffs challenging originators with a private right of action and statutory damages for some violations set forth in TILA, the CFPB notes that the statutory authority for this AVM rulemaking is FIRREA rather than TILA.

For these reasons and after considering the comments, the agencies are adopting the proposed quality control factor on nondiscrimination.

C. *Definitions*

1. *Automated valuation model*

Section 1125 of title XI defines "automated valuation model" 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."[40] The agencies proposed that the rule 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 was substantively identical to the definition in section 1125 but reflects common terminology and clarifies that the determination of value relates to the dwelling.

Most comments supported using the statutory definition of AVM as the basis for the definition in the proposed rule. A few commenters questioned the need to revise the statutory language for "plain English" purposes and to reflect current practice. Other commenters offered proposals to expand the definition. One commenter stated that the agencies should amend the definition to add the components of an AVM, such as comparable sales values. Another commenter suggested that the proposed definition be modified to clarify that an AVM means a model used without alteration of valuation results by a person and that the final rule should include the components of an AVM. Some commenters suggested that the definition should be drafted more broadly to include all market participants using AVMs in mortgage lending and securitization determinations, rather than limiting the scope to mortgage originators and secondary market issuers. One commenter stated that a consumer-facing definition of AVM is needed that discloses the significant uncertainty that exists when using AVMs.

The agencies have concluded that the nonsubstantive changes to the statutory definition of AVM make the definition set forth in regulatory text clearer and more

[40] 12 U.S.C. 3354(d).

understandable. Changes suggested by commenters (to identify components of an AVM, add usages by other market participants, and serve as a consumer-facing disclosure) would represent a significant departure from the statutory language. For these reasons, and after considering the comments, the agencies are adopting the proposed definition of automated valuation model.

2. *Control systems*

The proposal defined "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. Under the proposal, the agencies intended for institutions to use control systems that are appropriate for the size, complexity, and risk profile of the institution and the transactions for which they would use AVMs covered by the proposed rule.

Most commenters expressed support for the proposed definition of "control systems." One commenter suggested that adding further detail to the "control systems" definition could contribute to a misalignment of controls and complexity, given that the proposed rule allows entities to align control systems to the size, complexity, and risk profile of the institution and the transactions for which they would use covered AVMs. Another commenter stated that the definition should address the analytical and statistical nature of control systems designed for an AVM. The commenter suggested that the agencies provide more guidance to ensure a clear understanding of control expectations. Similarly, another commenter asked that the agencies provide more information on how the proposed rule relates to existing guidance about control systems and model usage. The commenter suggested that the agencies issue a compliance guide and frequently asked questions to facilitate implementation for small entities. One commenter stated that, while a “policies and procedures” requirement is the established, well-understood compliance implementation framework for this type of regulation, the proposed definition of control systems is nonstandard and overly defined. The commenter further stated that the rule’s related but undefined term “practices” is nonstandard. Other commenters suggested that the final rule include specific control standards.

As discussed earlier, guidance is already in place to assist regulated institutions in implementing policies, practices, procedures, and control systems relating to model risk, third-party risk, AVMs, and nondiscrimination. Institutions that are not regulated by the agency or agencies providing the guidance may still look to the guidance for assistance with compliance. Regarding the comments concerning the inclusion of control systems, the agencies note that policies, practices, procedures, and control systems are all part of ensuring that AVMs adhere to the rule’s requisite quality control standards. In addition, many institutions already employ control systems with respect to AVM use. These factors, in addition to the rule’s flexible approach to implementing the statute, should allow institutions to implement appropriate control systems and mitigate compliance costs, particularly for smaller institutions. For these reasons, and after considering the comments, the agencies are adopting the proposed definition of "control systems."

3. *Covered securitization determination*

The proposed rule defined "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 have been a covered securitization determination under the proposed rule. One commenter, however, stated that small entities do not securitize loans and remarked that the rule could create a cost burden and hinder access to the secondary market, particularly for small mortgage originators.

The agencies received few comments on the proposed definition of "covered securitization determination." As discussed earlier, commenters supported the application of the quality control standards to secondary market issuers and in the appraisal waiver context. The agencies did not receive comments asking for changes to the proposed definition of "covered securitization determination."

As discussed above, covering secondary market issuers' use of AVMs in covered securitization determinations—including determinations regarding appraisal waivers and structuring, preparing disclosures for, or marketing initial offerings of mortgage-backed securitizations—is consistent with protecting the safety and soundness of institutions and protecting consumers and investors by reducing the risk that secondary market issuers would misvalue homes. For these reasons and after considering the comments, the agencies are adopting the proposed definition of covered securitization determination.

4. *Credit decision*

The proposed rule would have defined the term credit decision to mean a decision regarding whether and under what terms to originate, modify, terminate, or make other changes to a mortgage, including a decision on whether to extend new or additional credit or change the limit on a line of credit. Monitoring the value of the underlying real estate collateral in loan portfolios would not have been a credit decision for the purposes of the proposed rule. This point reflects the fact that the collateral worth of a mortgage is generally determined in connection with credit decisions or covered securitization determinations, rather than when the value of the collateral supporting a mortgage is monitored or verified.

The commenters generally did not offer any suggestions for making the proposed definition of "credit decision" clearer, but one commenter stated that the phrase "make other changes to a mortgage" is ambiguous and should be excluded from the definition. The phrase "make other changes to a mortgage" in the definition is clarified by the context of other words in the definition (*i.e.*, "modify," "terminate," and "extend new or additional credit or change the credit limit"). Moreover, the phrase "make other changes to a mortgage" ensures that other types of credit decisions are appropriately encompassed within the rule's definition of credit decision. For example, one commenter stated that decisions regarding assumptions should be covered, and another commenter stated that decisions regarding private mortgage insurance and shared equity should also be covered. To the extent those are decisions regarding whether and under what terms to originate, modify, terminate, or make other changes to a mortgage, such decisions are credit decisions under the rule. Therefore, mortgage originators and secondary market issuers that engage in such decisions 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 AVMs used in these credit decisions adhere to the rule's requisite quality control standards.

For these reasons, and for the reasons stated earlier with respect to the scope of the rule and after considering the comments, the agencies are adopting the proposed definition of "credit decision."

5. *Dwelling*

The definition of AVM in section 1125 refers to a mortgage secured by a "consumer's principal dwelling."[41] The OCC, Board, FDIC, NCUA, and FHFA proposed to 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, if used as a residence, any individual condominium unit, cooperative unit, factory-built housing, or manufactured home. The proposed definition of "dwelling" provided that a

[41] 12 U.S.C. 3354(d).

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 a principal dwelling for purposes of this rule.[42]

The CFPB proposed to codify its AVM requirements in Regulation Z, 12 CFR part 1026, which generally implements TILA. The definition of "dwelling" proposed by the other agencies was consistent with the CFPB's existing Regulation Z.[43] Unlike TILA, however, title XI does not limit its coverage generally to credit transactions that are primarily for personal, family, or household purposes.[44] Because this rulemaking is conducted pursuant to title XI rather than TILA, the CFPB proposed to revise Regulation Z §§ 1026.1, 1026.2, 1026.3, and 1026.42, and related commentary, to clarify that the final AVM rule would apply when a mortgage is secured by a consumer's principal

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[42] 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 final rule. The definition of "dwelling" and the condition that the dwelling is or will be a principal dwelling within one year for purposes of this AVM final rule would not change what type of dwelling is considered to be a principal residence under the NCUA's regulation, § 701.21(g), the parameters of which are drawn directly from the Federal Credit Union Act. 12 U.S.C. 1757(5)(A)(i).

[43] *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.

[44] *See* 12 CFR 1026.2(a)(12) (definition of "consumer credit").

dwelling, even if the mortgage is primarily for business, commercial, agricultural, or organizational purposes.[45]

Several commenters suggested that the definition of “dwelling” should cover real property only and exclude AVMs used in lending for manufactured homes and recreational vehicles (RVs), trailers, and other structures that retain their mobility. These commenters similarly suggested that the final rule should exclude from coverage cost estimate guides and other valuation tools used to value such collateral that may be a consumer’s principal dwelling but is not real estate. One commenter asked that the final rule confirm that the rule does not apply to cost estimates like those used in complying with the higher-priced mortgage loan appraisal requirements of Regulation Z § 1026.35. In explaining its suggestion, the commenter stated that a cost estimate is derived from closed sales data and that the designation as a cost approach is significant as it does not rely on comparable sales and is simply the cost to make less depreciation.

The commenter stated further that cost estimates are not location (address or neighborhood) specific; they are region specific. The commenter noted that, for example, one cost estimate guide was developed exclusively for the factory built, manufactured housing industry and that manufactured homeowners, consumers, retailers, and lenders all rely on such independent cost estimates to confirm home values. The commenter further stated that the burden of attempting to comply with the AVM rule, should it be

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

read to cover these cost estimates, would be significant and nearly impossible, especially when compared with any negligible risk to consumers. Another commenter expressed similar concerns relating to valuation tools for non-real estate related loans. This commenter noted that lenders in some markets make non-real estate loans to meet the credit and housing needs of their customers, and, in making these loans, use different tools that might be considered AVMs under the proposed definition of dwelling. The commenter stated that the increased burden associated with complying with the rule could lead some lenders to exit this market.

One commenter expressed concern about the rule covering loans that are used for business purposes, but are secured by principal residences, suggesting that Congress intended to limit the statute to consumer-purpose credit given that the statute refers to a "consumer's principal dwelling."

In contrast, several other commenters recommended that the agencies adopt a broad definition of dwelling. One stated that coverage should extend to all mortgages involving loans for dwellings, including manufactured housing classified as personal property and accessory dwelling units. Two commenters suggested the agencies define dwelling in a way consistent with uses in the Fair Housing Act and in other relevant statutes. Another commenter suggested that it would be consistent with safe and sound practices to expand the scope of the rule to cover all dwellings, not only those that are principal dwellings. One commenter stated that the agencies should consider how the principal dwelling requirement may apply to active military personnel who are purchasing a home for their future permanent residence but who are assigned temporarily to a different duty station.

In response to these comments, the agencies note that section 1125 does not limit the definition of AVM to collateral that is deemed to be real property, nor does it limit coverage by the AVM requirements to credit transactions that are primarily for personal, family, or household purposes. Instead, the statute focuses on the valuation of a consumer's principal dwelling that secures a mortgage. In response to the comments on limiting the rule to a principal dwelling, the agencies note that the statute expressly defines an AVM as one used to value a consumer's principal dwelling. The final rule is consistent with the plain language of the statute and the agencies decline to expand the scope of the requirements beyond principal dwellings.

With respect to the commenters' argument that valuation tools used for manufactured homes, RVs, and boats are not AVMs, the definition of AVM in the statute covers "*any* computerized model" used to determine the value of a consumer's principal dwelling.[46] The agencies do not opine on whether any specific product, including a cost estimate and other valuation tool, is an AVM that would be covered under this rule. As noted by commenters, AVMs that rely on artificial intelligence, machine learning, and other technologies are developing rapidly. Since AVM modeling technology will continue to evolve, valuation products that do not currently meet the definition of an AVM may meet that definition in the future. As such, the agencies have determined that

[46] 12 U.S.C. 3354(d) (emphasis added).

a flexible and principles-based approach to this rule would be more appropriate than a prescriptive approach. Under this principles-based approach, mortgage originators and secondary market issuers will need to consider whether the valuation products that they are using are 1) automated (i.e., computerized); 2) a model;[47] and 3) designed to estimate the value of a consumer's principal dwelling collateralizing a mortgage.

With respect to the comment that the agencies consider the effect of the rule on servicemembers who are purchasing a home for their future permanent residence, but are assigned to temporary duty stations, the final rule will not have an effect on the place servicemembers designate as their principal dwelling.

For these reasons and after considering the comments, the agencies are adopting the proposed definition of "dwelling." Under the final rule, a dwelling is defined as a

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[47] For example, the *Supervisory Guidance on Model Risk Management*, issued by the OCC, Board, and FDIC describes a "model" as follows:

> [T]he term *model* refers to a quantitative method, system, or approach that applies statistical, economic, financial, or mathematical theories, techniques, and assumptions to process input data into quantitative estimates. A *model* consists of three components: an information input component, which delivers assumptions and data to the model; a processing component, which transforms inputs into estimates; and a reporting component, which translates the estimates into useful business information. Models meeting this definition might be used for analyzing business strategies, informing business decisions, identifying and measuring risks, valuing exposures, instruments or positions, conducting stress testing, assessing adequacy of capital, managing client assets, measuring compliance with internal limits, maintaining the formal control apparatus of the bank, or meeting financial or regulatory reporting requirements and issuing public disclosures. The definition of *model* also covers quantitative approaches whose inputs are partially or wholly qualitative or based on expert judgment, provided that the output is quantitative in nature.

Supervisory Guidance on Model Risk Management, OCC Bulletin 2011-12 at 3 (Apr. 4, 2011) (emphasis in original); *Guidance on Model Risk Management*, Federal Reserve SR Letter 11-7 (Apr. 4, 2011); *Adoption of Supervisory Guidance on Model Risk Management*, FDIC FIL-22-2017 (June 7, 2017). Institutions that are not regulated by the agency or agencies providing this guidance may still look to the guidance for assistance with compliance.

residential structure that contains one to four units, whether or not that structure is attached to real property. Mortgages secured by non-real estate property are covered by this rule if the property is used as the borrower's principal dwelling and the mortgage originator or secondary market issuer uses an AVM to determine the value of the collateral securing the loan.

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."[48] 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 defined "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 proposed to adopt, in part, the Regulation Z definition of "residential mortgage transaction,"[49] 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.

[48] 12 U.S.C. 3354(d).
[49] 12 CFR 1026.2(a)(24).

Most commenters who addressed the definition of “mortgage” in the proposal expressed support for the proposed language. Several commenters supported including purchase money security interests arising under installment sales contracts in the definition of “mortgage.” One commenter stated that consumers should have the same protection in these contracts as in other types of mortgage financing. The commenter also stated that TILA, the Real Estate Settlement Procedures Act, and the S.A.F.E. Act apply to installment sales contracts to the same extent as to traditional mortgage loans (depending on whether the originating lender makes a certain volume of transactions), so including installment contracts in the rule would be consistent with other current laws. The commenter stated further that including sales contracts in the AVM rule would ensure appropriate protections for these transactions that disproportionately impact homebuyers of color. The commenter also stated that sales contracts are typically made for smaller amounts and used to purchase less expensive homes, and thus AVMs are more likely to be used in these transactions.

Another commenter in support of covering installment contracts stated that a narrower definition would have a disparate impact on protected classes by excluding broad swaths of the market from the quality control standards. Similarly, a different commenter stated that applying quality controls for AVMs used in these contracts would provide consumer protection in a space where consumers are often vulnerable to coercive agreements.

Conversely, one commenter stated that, when combined with the proposed definitions of "consumer" and "dwelling," the definition of "mortgage" is not clear. The commenter stated that the rule proposes to adjust the definition of "primary use," removing the exception for business-purpose lending, among other exceptions, from Regulation Z § 1026.3. The commenter suggested that the proposed definitions and changes to the TILA rules will cause a disconnect in how organizations apply the rest of the TILA standards, which take the exceptions into consideration when applying the rule to mortgage transactions. The commenter stated further that the definitions would not align with the current Federal credit union definitions of mortgage. For those reasons, the commenter suggested that definitions of "consumer," "dwelling," and "mortgage" should only be applicable to AVM use, and not cause universal changes to Regulation Z. In addition, a different commenter suggested that the inclusion of sales contracts in the definition of "mortgage" should be decided separately from a consideration of AVM standards and requested that the agencies clarify whether the rule would include HELOCs and closed-end home equity loans.

The agencies have determined that the comprehensive coverage of the mortgage market that the proposed definition would bring about is the best way to implement the statutory language. The agencies agree with those commenters who stated that this definition will provide appropriate consumer protection for the often-vulnerable consumers in the installment sales contracts market. The agencies do not agree that this definition, and the others adopted in this rule, will interfere with the current interpretation of Regulation Z. The agencies note that these definitions apply to AVM compliance alone, and are not meant to alter the current definitions in Regulation Z. Furthermore, the definition of "mortgage" does not exclude HELOCs and closed-end home equity loans that are secured by a consumer's principal dwelling. For these reasons and after considering the comments, the agencies are adopting the proposed definition of "mortgage."

7. *Mortgage originator*

The proposal would have defined the term "mortgage originator" in the rule by cross reference to the TILA definition of "mortgage originator".[50] Thus, under the proposal, the term "mortgage originator" generally would have included 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.[51] The CFPB's proposal also would have added proposed Regulation Z comment 42(i)(2)(vi)-1 to its rule reflecting this clarification. Additionally, based on the exception provided at 15 U.S.C. 1602(dd)(2)(G), the term "mortgage originator" generally would have excluded servicers as defined by 15 U.S.C. 1602(dd)(7) as well as their employees, agents, and contractors. However, consistent with the interpretation published in the CFPB's 2013 Loan Originator Compensation Rule, the proposed rule would have applied to servicers as defined by 15 U.S.C. 1602(dd)(7) as well as their employees, agents, and

[50] 15 U.S.C. 1602(dd)(2).
[51] *Id.*

contractors if, in connection with new extensions of credit, they both use covered AVMs to engage in credit decisions and to perform any of the activities listed in 15 U.S.C. 1602(dd)(2)(A). The CFPB's proposal also would have added proposed Regulation Z comment 42(i)(2)(vi)-2 reflecting this clarification.

Although commenters generally supported this proposed definition, two commenters asked the agencies to consider making substantive changes to the definition. One of these commenters asked the agencies to amend the definition of "mortgage originator" in the final rule so that it would include servicing-only servicers in addition to the persons covered as mortgage originators under TILA § 103(dd)(2), 15 U.S.C. 1602(dd)(2). As explained in the proposal, the agencies proposed to define the term "mortgage originator" by cross reference to the TILA definition of "mortgage originator" because doing so "would maintain consistency in the usage of this term with other sections of title XI and the agencies' appraisal regulations."[52] Specifically, Congress adopted the TILA definition of "mortgage originator" by cross reference in a 2018 amendment to title XI (section 1127 on appraisals in rural areas)[53] and that the OCC, Board, and FDIC implemented the same definition in the appraisal exception for certain rural areas in their appraisal regulations.[54]

TILA § 103(dd)(2)(G), 15 U.S.C. 1602(dd)(2)(G), generally excludes servicers as well as their employees, agents, and contractors from TILA's definition of "mortgage

[52] *See* 12 CFR 34.43(a)(14) (OCC), 12 CFR 225.63(a)(15) (Board), and 12 CFR 323.3(a)(14) (FDIC).
[53] 12 U.S.C. 3356.
[54] *Id.*

originator" as long as they do not perform 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. Accordingly, the final rule does not expand the definition of "mortgage originator" to cover servicing-only servicers in the final rule. Relatedly, the CFPB adopts proposed Regulation Z comment 42(i)(2)(vi)-2, which clarifies the activities that can make a mortgage servicer a mortgage originator for purposes of the rule, as proposed but redesignates it as Regulation Z comment 42(i)(2)(vi)-1.

Another commenter noted that the proposed definition of "mortgage originator" does not align with the proposed changes to the term "principal dwelling" and the inclusion of business purpose loans. To address this issue, the final rule no longer cross references the TILA definition of "mortgage originator," but instead defines the term "mortgage originator" by incorporating the full text of the TILA definition of "mortgage originator" with several revisions as discussed herein.

The TILA definition of "mortgage originator" applies to persons performing activities relating to residential mortgage loans.[55] In relevant part, TILA defines the term

[55] The term "mortgage originator":

> *(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain--*
>
> > *(i) takes a* ***residential mortgage loan*** *application;*
> >
> > *(ii) assists a consumer in obtaining or applying to obtain a* ***residential mortgage loan****; or*
> >
> > *(iii) offers or negotiates terms of a* ***residential mortgage loan****;*

"residential mortgage loan" as "any **consumer credit transaction** that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan…."[56] A consumer credit transaction is "one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes."[57]

Title XI generally does not limit its coverage to consumer credit transactions.[58] As a result, the agencies intended the proposal to cover a mortgage, including a HELOC, secured by a consumer's principal dwelling, even if the mortgage were primarily for business, commercial, agricultural, or organizational purposes.[59] This intent is reflected in the proposal's discussion of the definition of the term "mortgage." In that discussion, the agencies explained that, although they based the proposal's definition of the term "mortgage" in part on TILA's definition of residential mortgage transaction, they proposed "to broadly cover the mortgage market as fully as the statute appears to envision."[60] As a result, the agencies proposed to define the term "mortgage" to cover

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> *(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A)….*

See 15 U.S.C. 1602(dd)(2)(A) and (B) (emphasis added).
[56] 15 U.S.C. 1602(dd)(5) (emphasis added).
[57] 15 U.S.C. 1602(i).
[58] 88 FR 40638 at 40645.
[59] *Id.*
[60] *Id.*

not only consumer credit transactions but any 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.[61]

The agencies' proposal intended the term "mortgage originator" to apply with breadth equal to that of the term "mortgage" and its application only to persons performing activities relating to residential mortgage loans was an oversight.

In defining "mortgage originator" by incorporating the full text of the TILA definition of "mortgage originator", the final rule replaces the term "residential mortgage transaction" with the term "mortgage" wherever it appears in the TILA definition. As discussed in the next section, the term "mortgage" retains its meaning from the proposal and 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." In line with the intent of the proposal, this change applies the term "mortgage originator" to any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain, takes a mortgage application, assists a consumer in obtaining or applying to obtain a mortgage, or offers or negotiates terms of a mortgage.

The final rule includes three additional conforming changes to the text of the TILA definition of "mortgage originator" as incorporated in the final rule's definition of

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[61] *Id*.

“mortgage originator.” First, the final rule removes the exclusion for seller financers provided at TILA § 103(dd)(2)(E), 15 U.S.C. 1602(dd)(2)(E), and replaces it with the seller financer exclusions contained in Regulation Z § 1026.36(a)(4) and (5). This change reflects that the seller financer exclusion in TILA § 103(dd)(2)(E) contains five elements, the last of which is that the transaction “meets any other criteria the Board may prescribe.” These additional criteria are incorporated into Regulation Z § 1026.36(a)(4) and (5),[62] and, therefore, the agencies, with the exception of the CFPB, are replacing the text from TILA § 103(dd)(2)(E) with the text from Regulation Z § 1026.36(a)(4) and (5) with minor, non-substantive changes, as necessary, to conform the text from Regulation Z § 1026.36(a)(4) and (5) with the paragraph structure of each agency’s final rule. Instead of replacing the text from TILA § 103(dd)(2)(E) with the text from Regulation Z § 1026.36(a)(4) and (5), the CFPB will provide a cross reference to Regulation Z § 1026.36(a)(4) and (5) in its version of the final rule.

Second, the final rule removes the exclusion provided at TILA § 103(dd)(2)(F), 15 U.S.C. 1602(dd)(2)(F). That exclusion provides that the term "mortgage originator” is inapplicable to creditors for purposes of TILA § 129B(c)(1), (2), and (4), 15 U.S.C. 1639b(c)(1), (2), and (4) (which relate to TILA’s prohibition on the payment of steering incentives).[63] Since the exclusion applies only with respect to TILA §129B(c)(1), (2), and (4), it is inapplicable in the context of the AVM rule and has been deleted in the final

[62] 78 FR 11280, 11309-11311 (Feb. 15, 2013).
[63] 15 U.S.C. 1639b(c)(1), (2), and (4).

rule. Because the definition of “mortgage originator” in the final rule does not contain the exclusion at TILA § 103(dd)(2)(F), proposed Regulation Z comment 42(i)(2)(vi)-1, which clarified that “[t]he 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,” is no longer necessary. As a result, the CFPB does not adopt proposed Regulation Z comment 42(i)(2)(vi)-1. Third, the final rule makes minor, nonsubstantive regulatory text changes and adjusts paragraph designations and cross-references incorporated from the full text of the TILA definition of “mortgage originator” as necessary to align the text with the paragraph structure of each agency’s final rule.

One commenter that noted that the proposed definition of “mortgage originator” does not align with the proposed changes to the term “principal dwelling” and the inclusion of business purpose loans also noted that some entities that make business purpose loans may not make consumer purpose loans and that, consequently, those entities may face uncertainty about their compliance obligations if, as proposed, they were mortgage originators for purposes of the rule. The agencies have considered this comment. However, because, as previously noted, title XI generally does not limit its coverage to consumer credit transactions, the agencies have determined that the final rule should broadly cover the mortgage market. Accordingly, the final rule applies the definition of “mortgage originator” to any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain, takes a mortgage application, assists a consumer in obtaining or applying to obtain a mortgage, or offers or negotiates terms of a mortgage secured by a consumer's principal dwelling, even if the mortgage is primarily for business, commercial, agricultural, or organizational purposes.[64]

The final rule includes another technical change relating to the definition of "mortgage originator." This technical change is the addition of a definition of person by cross reference to the definition of person in TILA. The addition of a stand-alone definition of "person" is needed because the final rule, unlike the proposed rule, does not define "mortgage originator" by incorporating by reference the definition of "mortgage originator" in TILA. As a result, the definition of "person," which is defined by cross reference within the TILA definition of "mortgage originator," is no longer part of the final rule's revised definition of "mortgage originator." The adoption of a stand-alone definition of "person" does not change the incorporated definition of person and is a technical change only. The agencies other than the CFPB provide this clarification to ensure that the definition of "mortgage originator" in the final rule covers both natural persons and organizations. The CFPB's final rule does not require this clarification because Regulation Z already defines the term "person" at § 1026.2(a)(22) in a manner that is consistent with the meaning provided in TILA § 103(e), 15 U.S.C. 1602(e).

[64] 88 FR 40638 at 40645; *see also, Frequently Asked Questions on the Appraisal Regulations and the Interagency Appraisal and Evaluation Guidelines* 4, OCC Bulletin 2018-39 (Oct. 16, 2018); Federal Reserve Board SR Letter 18-9 (Oct. 16, 2018); FDIC FIL-62-2018 (Oct. 16, 2018).

8. *Secondary market issuer*

The agencies proposed to define a "secondary market issuer" as any party that creates, structures, or organizes a mortgage-backed securities transaction. The agencies proposed the definition 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. The proposed definition was 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.

The agencies received two comments on the proposed definition of "secondary market issuer." One commenter expressed support for the definition as proposed. Another commenter stated that the rule should cover not only the GSEs, but also other secondary market issuers that structure and market residential mortgage-backed securities, such as in private-label securitization. The commenter asked that the agencies clarify that the final rule will apply beyond the GSEs to these other entities.

The agencies have determined that the proposed definition will ensure coverage of entities responsible for the core decisions required for the issuance of mortgage-backed securities. For this reason and after considering the comments, the agencies are adopting the proposed definition of "secondary market issuer," which includes not only the GSEs, but any other party that creates, structures, or organizes a mortgage-backed securities transaction.

9. *Comments regarding undefined terms*

One commenter stated that the terms "mortgage-backed securities transaction," "securitizations," and "mortgage-backed securitizations" should be defined. In response, the agencies note that related terms (*e.g.*, "mortgage-backed securities" and "securitization") are currently used without definition in other sections of title XI and throughout the agencies' appraisal regulations. Based on the agencies' experience, these terms have commonly understood meanings and have not caused confusion. For these reasons and after considering the comment, the final rule does not include definitions of these terms.

D. *Implementation Period*

The agencies proposed 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. The proposed extended effective date would have given institutions time to come into compliance with the rule. Most commenters expressed support for the proposed 12-month implementation period for the final rule. One commenter asked the agencies to consider an 18-month implementation period. Another commenter recommended a tiered implementation model with at least 24 months for credit unions to work with vendors, test systems, and train staff.

The agencies have determined that a 12-month effective date is appropriate, given that many institutions already have in place measures to assess AVMs for quality control and that the final rule provides flexibility to tailor policies, practices, procedures, and control systems as appropriate. For these reasons and after considering the comments, the final rule will be effective on the first day of the calendar quarter following the 12 months after publication in the *Federal Register*.

E. *Other comments*

1. *Uniform standards and independent testing*

A number of commenters suggested that the agencies work with the public to foster the development of an SSO for AVMs to create a level playing field for AVM users and to reduce regulatory burden. One commenter requested that the agencies engage in a full notice and comment rulemaking process if the use of an SSO is contemplated. Another commenter recommended that SSO members be comprised of AVM providers, consumer advocates, investors, mortgage guarantors, mortgage insurers, mortgage originators, underwriters, and servicers. The commenter also suggested that regulators participate in the SSO. A number of commenters called for the establishment of a separate, fully independent third-party nonprofit organization to test AVM systems for both accuracy and racial bias. Some commenters stated that SSOs and third-party testing would save lenders considerable time and effort and bolster quality control for AVMs. One commenter, for example, suggested that it would be useful to have a set of standards similar to USPAP for AVMs that includes key definitions, minimum reporting requirements, and required certifications.

One commenter stated that it would be beneficial to have some level of standardization of metrics used to measure an AVM's success or failure. The commenter suggested that the industry is best suited to continue working with developers and users of AVMs to promote consistency in AVM measurement and testing, such as by developing a consistent approach to confidence scores.

Another commenter suggested that regulated parties would greatly benefit from more transparency and access to data from the FHFA, the Uniform Collateral Data Portal, and the Uniform Mortgage Data Program. This commenter further suggested that Federal regulators should evaluate real estate data availability at the State and local level, as these data are essential for ensuring AVM credibility.

In contrast, one commenter stated that industry stakeholders, including originators, secondary market participants, and property valuation vendors have already established straightforward, transparent, and fair AVM testing and ranking (*i.e.*, cascading rule sets allowing for comparing predictions from different AVMs). The commenter stated further that flexible, transparent, principles-based approaches to AVM guidelines are relatively inexpensive and not time-consuming to incorporate and apply and that AVM testing and individual AVM model performance detail may be readily available through a firm's internal testing group or numerous third-party, independent testing organizations. In responding to the question in the proposal about the impact on small entities, that commenter stated that AVM testing is inexpensive and can be done easily by large or small entities. In addition, the commenter stated that cascading rule sets and platforms using multiple lending grade AVMs from quality providers are readily available. For these reasons, the commenter argued that quality control standards for AVMs would not disadvantage small entities.

Another commenter stated that AVM vendors already provide comprehensive information to financial institutions to demonstrate the quality control of their AVMs. The commenter further stated that financial institutions currently require AVM vendors to fill out numerous questionnaires (usually once to twice per year) to address large numbers of compliance issues and best practices, in addition to AVM developer, lender, and third-party testing. The commenter also stated that financial institutions require explanations and testing detail that documents how AVMs work, their accuracy, their multiple models, and the models' infrastructure. The commenter stated that the predominant purpose of the questionnaires is to address concerns that the financial institution has, and that the financial institution is following a process to protect its customers and its safety and soundness. In addition, another commenter recommended that there be education and training for users of AVMs.

The agencies recognize that SSOs and third-party AVM testing entities could be beneficial to effective compliance with the AVM rule. As long as financial institutions meet the obligations stated in the final rule, they are free to work with third parties to assist them with their compliance obligations. In regard to comments suggesting other methods to promote uniformity in metrics and policies, the agencies note that existing standards and guidance on model risk management and on testing of AVMs remain applicable, and can be used by institutions to assist with compliance.

2. *Potential for additional guidance*

A number of commenters suggested that the agencies issue guidance focused specifically on AVM quality control to help institutions, especially small institutions, implement the quality control standards. Many of these commenters acknowledged that existing guidance, such as model risk guidance and the Appraisal Guidelines, already address elements of how to implement the AVM rule, but a number of commenters requested additional guidance on how to evaluate AVMs, particularly with respect to how to assess AVMs for potential discrimination under the fifth factor. One commenter stated that the agencies should provide some structure or examples of policies, practices, procedures, or control systems. The commenter also stated that it should be made clear that lenders can rely on data and external reviews produced by the AVM provider to comply with this rule. In addition, one commenter suggested that the agencies facilitate further efforts to develop fair lending and fair housing testing for AVMs by making additional GSE data available to industry stakeholders, organizing hackathons and conferences, and encouraging academic research and similar engagements that leverage private sector expertise to inform ongoing guidance around AVM guidelines.

One commenter stated that additional guidance is not necessary, highlighting the current guidance on third-party and model risk management. However, the commenter suggested that commentary on how existing guidance applies to third-party oversight of the AVM quality control standards may be beneficial at some point in the future.

Another commenter stated that the Appraisal Guidelines and NCUA's third-party risk management expectations already advise credit unions that they need to understand the AVMs they use, including the AVM's limitations; have controls in place to mitigate risks (including with regard to non-discrimination laws); and monitor the relationship and results to ensure that the AVM is working and being used as designed.

As discussed earlier, many of the agencies have already provided guidance on implementing policies, practices, procedures, and control systems relating to model risk, third-party risk, AVMs, and nondiscrimination. As explained above, institutions that are not regulated by the agency or agencies providing the guidance may still look to the guidance for assistance with compliance. In addition, institutions should be able to work with AVM providers to assist them with their compliance obligations under the rule.

Under safety and soundness standards, and as reflected in related guidance, while institutions should not rely solely on testing and validation representations provided by an AVM vendor, an institution does not necessarily need to conduct its own testing and validation, provided that the institution's policies, practices, procedures, and control systems for evaluating the sufficiency of the vendor's testing and validation are appropriate based on the size, complexity, and risk profile of the institution and the transactions for which they would use AVMs covered by the rule.

As described above, the agencies have determined that a flexible approach to implementing the quality control standards would allow the implementation of the standards to evolve along with AVM technology and reduce compliance costs. Different policies, practices, procedures, and control systems may be appropriate for institutions of different sizes with different business models and risk profiles, and a more prescriptive rule could unduly restrict institutions' efforts to set their risk management practices accordingly. For these reasons and after considering the comments, the agencies are not issuing additional guidance at this time and recommend that institutions review and consider existing guidance when establishing and implementing appropriate policies, practices, procedures, and control systems for AVM quality control.

3. *Small entity compliance*

Several commenters asked the agencies to adopt a transaction threshold for application of the AVM quality control standards. For example, one commenter suggested that the agencies revise the proposed rule to exempt loans at or below $400,000 held in portfolio from the quality control requirements for AVMs, allow reliance on third-party certifications of AVM providers, or provide a safe harbor for small lenders. One commenter cited the appraisal thresholds as an example of how the agencies could reduce burden for smaller lenders.

Another commenter stated that small entities do not control the data that is used in the AVM and, therefore, do not have the ability to quality control the data or the algorithms used by AVM vendors. This commenter also argued that small businesses do not have the bargaining power that a large company may have to demand information from an AVM vendor and do not have the resources to assess the algorithms that are used by AVMs. The commenter suggested that it is unreasonable to hold small entities responsible for the actions of AVM vendors. The commenter stated further that if an exemption is not possible, the agencies should consider some type of safe harbor or a certification program where a third party reviews the AVM and provides an approval to assure small entities that the AVM complies with the regulatory requirements.

As discussed earlier, the flexibility in the rule will limit the burden of complying with the rule for institutions, particularly smaller entities. As explained above, the policies, practices, procedures, and control systems used to ensure compliance may vary based on the size, complexity, and risk profile of the institution and the transactions for which they would use AVMs covered by the rule. The agencies also note that section 1125 does not include safe harbors or exemptions, including for smaller entities. For these reasons and after considering the comments, the final rule does not include an exemption threshold, or other specific provision for smaller institutions.

IV. Paperwork Reduction Act

Certain provisions of the final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995.[65] In accordance with the requirements of the PRA, the agencies may not conduct or sponsor,

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[65] 44 U.S.C. 3501-3521.

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 agencies received three comments on estimated labor hours and costs for the information collection requirements of the proposed rule. One commenter stated that the agencies' estimate of the labor hours associated with recordkeeping by covered entities in years following implementation may be appropriate for documentation of policies and procedures, but suggested that the proposed rule underestimated other regulatory burdens associated with ongoing compliance. Another commenter stated that the agencies' estimate of labor hours associated with recordkeeping by covered entities seemed relatively low given the effort needed to establish control systems. Finally, one commenter stated that incorporating principles-based guidelines regarding AVMs is not costly or time consuming.

The agencies have carefully reviewed burdens associated with recordkeeping, reporting, and disclosure for each section of the rule in consideration of the comments received. The agencies note that, consistent with the PRA, the PRA burden estimates reflect only the burden related to recordkeeping, reporting, and disclosure requirements in the final rule. PRA burdens, like compliance costs, may vary across institutions, and the agencies' PRA burden estimates are meant to be overall averages. The agencies believe the estimates of burden hours are reasonable considering the recordkeeping requirements of the final rule. For further discussion of response to commenters, particularly related to other regulatory costs incurred by covered entities, please refer to the part titled

"Discussion of the Proposed Rule, Comments Received, and the Final Rule" within the **SUPPLEMENTARY INFORMATION** section of this document.

The final rule establishes 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 final rule requires 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) Seek to avoid conflicts of interest;

(d) Require random sample testing and reviews; and (e) Comply with applicable nondiscrimination laws.

The quality control standards in the final rule are applicable only to covered AVMs, which are AVMs as defined in the final rule. The final rule requires 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 final rule creates new recordkeeping requirements. The agencies therefore revised their current information collections related to real estate appraisals and evaluations. The OMB control numbers are for the OCC, 1557-0190; for the Board, 7100-0250; for the FDIC, 3064-0103; and for the NCUA, 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 final rule, the agencies are also updating and aligning their information collections with respect to the estimated burden hours associated with the Appraisal Guidelines.

The information collection requirements contained in this final 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[66] and section 1320.11 of the OMB's implementing regulations.[67] The Board reviewed the final rule under the authority delegated to the Board by OMB.

Comments are invited on:

[66] 44 U.S.C. 3507(d).
[67] 5 CFR 1320.

(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 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. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting "Currently under 30-day Review—Open for Public Comments'' or using the search function.

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 Information Collection:

For federally related transactions, title XI requires regulated institutions[68] to obtain appraisals prepared in accordance with USPAP as 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.

[68] 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.

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 final rule requires 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) Seek to avoid conflicts of interest;

(d) Require random sample testing and reviews; and

(e) Comply with applicable nondiscrimination laws.

Current Action: The final 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 final rule will result in an implementation burden of 40 hours and .33 responses per respondent and an annual ongoing burden of 5 hours and one response per respondent. In addition to accounting for the PRA burden incurred, as a result of this final rule, the agencies are also updating and aligning their information collections (IC) with respect to the estimated burden hours associated with the Appraisal Guidelines. This will 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)	4,560

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
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				**185,039**

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	706	498	5 minutes	29,299

Sections 225.61 - 225.67 for BHCs and nonbank subsidiaries of BHCs	4,516	409	5 minutes	153,920
Guidelines	5,222	1	10	52,220
Policies and Procedures AVM rule (Initial setup)	2,036	1	13.3	27,147
Policies and Procedures AVM rule (Ongoing)	2,036	1	5	10,180
Disclosure				
Guidelines	5,222	1	5	26,110
Total Annual Burden Hours				**298,876**

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)	2,936	259	5 minutes (0.083)	63,369
New IC 1 – AVM Rule – Policies and Procedures - Implementation (Mandatory)	Recordkeeping (Annual)	1,010	.33	40 hours	13,320
New IC 2 – AVM Rule – Policies and	Recordkeeping (Annual)	1,010	1	5 hours	5,050

Procedures – Ongoing (Mandatory)					
New IC 3 – 2010 Guidelines – Policies and Procedures – Ongoing (Mandatory)	Recordkeeping (Annual)	2,936	1	10 hours	29,360
New IC 4 – 2010 Guidelines - Disclosure – Ongoing (Mandatory)	Disclosure (Annual)	2,936	1	5 hours	14,680
Total Annual Burden Hours					**125,779**

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)	3,555	514	0.083	152,272
New IC 1 – AVM Rule – Policies and Procedures – Implementation	Recordkeeping (Annual)	356	1	13.33	4,745
New IC 2 – AVM Rule – Policies and Procedures – Ongoing	Recordkeeping (Annual)	356	1	5	1,780
New IC 3 – 2010 Guidelines – Policies and Procedures – Ongoing	Recordkeeping (Annual)	3,555	1	10	35,550

New IC 4 – 2010 Guidelines - Disclosure – Ongoing	Disclosure (Annual)	3,555	1	5	17,775
Total Annual Burden Hours					**212,122**

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 final 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 Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis describing the impact of the final 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 certify that the rule will not have a significant economic impact on a substantial number of small entities.

The OCC has assessed the burden of the final rule and has determined that the costs associated with the rule will be limited to reviewing the rule; ensuring that existing policies, 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 reviews the costs associated with the activities necessary to comply with the final rule. These include an estimate of the total time required to implement the final rule and the estimated hourly wage of bank employees who may be responsible for the tasks associated with achieving compliance with the rule. The OCC uses a bank employee compensation rate of $128 per hour.[69]

The OCC currently supervises approximately 636 small entities.[70] The final rule will impact approximately 590 of these small entities. The OCC estimates the annual cost for small entities to comply with the final rule will be approximately $23,040 per bank (180 hours × $128 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. The OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number. Thus, at present, 32 OCC-supervised small entities would constitute a substantial number. Based on these

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[69] To estimate wages, the OCC reviewed May 2022 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 $128.05 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (5.1 percent as of Q1 2023), plus an additional 34.3 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2022 for NAICS 522: credit intermediation and related activities).

[70] The OCC bases its estimate of the number of small entities on the SBA's size thresholds, which are $850 million or less in total assets for commercial banks and savings institutions, and $47 million or less in total assets for trust companies. 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, 2023, 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 U.S. Small Business Administration's *Table of Size Standards*.

thresholds, the OCC estimates that the final rule will have a significant economic impact on 24 small entities, which is below our substantial number threshold. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

B. Board

An initial regulatory flexibility analysis (IRFA) was included in the proposal in accordance with section 603(a) of the RFA.[71] In the IRFA, the Board requested comment on the effect of the proposed rule on small entities. The Board did not receive any comments on the IRFA. One commenter suggested that the Board's initial regulatory flexibility analysis failed to recognize the web of overlapping and duplicative laws and rules that apply to mortgage valuations.

The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

1. *Reasons action is being taken 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

[71] 5 U.S.C. 601 *et seq*.

regulations to implement specified quality control standards. The final rule serves to implement this statutory mandate.

2. *The objectives of, and legal basis for, the rule*

The final rule implements statutorily mandated quality control standards for the use of AVMs. The Board is adopting this rule pursuant to section 1125 of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.[72]

3. *Estimate of the number of small entities*

The final rule applies to Board-regulated small entities that are mortgage originators or secondary market issuers. There are approximately 462 state member banks and approximately 3,281 bank holding companies and savings and loan holding companies that qualify as small entities for purposes of the RFA.[73]

4. *Description of the compliance requirements of the rule*

The final rule requires 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

[72] 12 U.S.C. 3354.

[73] 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 December 31, 2023. Small entity information for bank holding companies and savings holding companies is based on average assets reflected in December 31, 2023 *Parent Company Only Financial Statements for Small Holding Companies* (FR Y-9SP) data.

control standards must 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 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 or would already be in compliance with the specified standards or could become compliant with relatively minor modifications to their current practices.[74]

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 $116.86.[75] The estimated aggregate initial administrative costs of the proposal to Board-supervised small entities amount to $8,638,291 or $18,697.60 per bank[76] and ongoing costs are expected to be small when measured by small entities'

[74] For example, the Board has provided guidance to most such entities on use of AVMs. *See* Appraisal Guidelines, 75 FR 77450, 77468.

[75] To estimate wages, the Federal Reserve reviewed May 2023 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 $116.86 per hour, which is based on the average of the 90th percentile for five occupations adjusted for inflation (2 percent as of Q1 2021), plus an additional 34.6 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2023 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.

[76] 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, 462, 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.

annual expenses. The Board also notes that, while section 1125 explicitly applies to mortgage originators and secondary market issuers, not third-party AVM vendors, financial institutions should be able to work with AVM developers and vendors to assist them with their compliance obligations under the rule, as they do with other third-party vendors in order to comply with relevant regulatory requirements.

5. *Consideration of duplicative, overlapping, or conflicting rules and significant alternatives to the proposal*

Although there are multiple statutes and regulations that apply to various aspects of real estate lending, the Board has not identified any Federal statutes or regulations that would duplicate, overlap, or conflict with the final rule's quality control standards for AVMs. 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.[77]

Therefore, the Board concludes that the final rule will not have a significant economic impact on a substantial number of small entities.

C. FDIC

The RFA generally requires an agency, in connection with a final rule, to prepare and make available for public comment a FRFA that describes the impact of the final rule on small entities.[78] However, a FRFA is not required if the agency certifies that the final

[77] 12 U.S.C. 3354.
[78] 5 U.S.C. 601 *et seq.*

rule will not 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.[79] Generally, the FDIC considers a significant economic impact 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 represent significant economic impacts for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The final rule applies to all FDIC-supervised insured depository institutions (IDIs) that are mortgage originators or secondary market issuers. As of the quarter ending December 31, 2023, the FDIC supervised 2,936 insured depository institutions, of which 2,221 are considered small entities for the purposes of the RFA. Of these, 2,183 FDIC-supervised small institutions reported a non-zero value for mortgages on their books.[80]

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[79] 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 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.

[80] Based on Call Reports data as of December 31, 2023. The variable LNRERES represents balances for 1–4 family residential real estate loans.

Therefore, the FDIC estimates that 2,183 small institutions could be subject to the final rule.

The FDIC lacks data on the number of small FDIC-supervised institutions that use AVMs for their mortgage originations. FDIC 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 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.

The final rule generally reflects 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.[81] The FDIC believes that institutions covered by the rule[82] 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 final 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

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[81] The FDIC provides guidance on the use of AVMs by their regulated institutions in Appendix B to the Appraisal Guidelines. 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* part I.A. of the **SUPPLEMENTARY INFORMATION** in this document.

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

that just 0.2 percent of the examinations flagged shortcomings in AVM management practices.[83] This suggests that the labor hours required to implement the four quality control standards would be relatively modest for small, FDIC-supervised institutions.

The final rule's 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 transaction.[84] Similarly, the Fair Housing Act[85] 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 small, FDIC-supervised institutions may not have fully integrated nondiscrimination laws directly into their AVM policies and risk management practices.

The FDIC lacks information on the labor hours and costs that will be incurred by covered institutions to comply with the final rule. Therefore, it assumes that small,

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[83] 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).

[84] 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.

[85] 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.

FDIC-supervised institutions will expend 120 labor hours, on average, to comply with the final rule during the first year of implementation, and 40 labor hours, on average, in each successive year. In the first year, the FDIC's estimates include the review of the newly enacted rule, conducting a review of existing policies, practices, procedures, and controls for their consistency with the rule; identifying any deficiencies; and implementing corrective action as needed. In the second year, the FDIC believes that 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 small FDIC-supervised IDIs into two types: 1) compliance with recordkeeping, reporting, and disclosure requirements under the PRA; and 2) hours for non-PRA compliance activities. According to supervisory experience, covered, small, FDIC-supervised IDIs using AVMs for originations or modifications would spend 40 hours in the first year and 5 hours in each subsequent year, on average for recordkeeping.

The FDIC believes small, FDIC-supervised IDIs affected by the final rule will incur additional labor hours and costs associated with compliance activities other than recordkeeping. 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 FDIC believes that compliance activities other than recordkeeping associated with the first four quality control standards in the final rule will be relatively modest for small, FDIC-supervised IDIs. As previously discussed, the 2010 Appraisal Guidelines already encourage small, FDIC-supervised IDIs to conduct such activities. The FDIC believes that small, FDIC-supervised IDIs may incur relatively greater labor hours and costs to comply with the fifth quality control standard initially. 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 compliance activities other than recordkeeping would average 80 hours per institution in the first year of the final rule's adoption and 35 hours in subsequent years.

This analysis estimates the total labor hours and costs incurred by small, FDIC-supervised IDIs associated with the final rule by adding compliance estimates associated with recordkeeping with activities other than recordkeeping. The FDIC estimates first year compliance labor hours per covered institution to be 120 on average,[86] and compliance labor hours to be 40 on average[87] for each subsequent year. As previously discussed, and for the purposes of this analysis, the FDIC assumes that 10 percent of small, FDIC-supervised IDIs that report non-zero value for mortgages on their books will incur costs to comply with the rule. Therefore, the FDIC estimates that small, FDIC-supervised IDIs will incur 26,196 labor hours in the first year[88] after the final rule becomes effective, and 8,732 labor hours in each subsequent year.[89] Employing a total

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[86] 40 labor hours + 80 labor hours = 120 labor hours
[87] 5 labor hours + 35 labor hours = 40 labor hours
[88] (2,183 * 10 percent AVM use rate) * 120 labor hours = 26,196 labor hours
[89] (2,183 * 10 percent AVM use rate) * 40 labor hours = 8,732 labor hours

hourly compensation estimate of $99.65[90] for the first year and an estimate of $92.07[91] for subsequent years, the FDIC estimates that small, FDIC-supervised IDIs will incur $2,610,431 compliance costs in the first year[92] after the final rule becomes effective, and $803,955 in compliance costs in each subsequent year.[93]

Further analysis shows that the estimated costs of the final rule would not impose a significant economic impact on a substantial number of small institutions. The analysis estimates that small, FDIC-supervised IDIs will incur approximately $11,960 in compliance costs on average in the first year[94] after the final rule becomes effective and approximately $3,680 in each subsequent year.[95] In the first year after the final rule becomes effective, estimated average costs exceed the 5 percent threshold of annual salaries and benefits for 6 (0.27 percent) small, FDIC-supervised IDIs, and 94 (4.23 percent) exceed the 2.5 percent threshold of total non-interest expense.[96] A combined total of 99 (4.46 percent) small, FDIC-supervised IDIs exceed either or both thresholds in

[90] 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). This combination of occupations results in an overall estimated hourly total compensation rate of $99.65. This average rate is derived from the BLS' Specific Occupational Employment and Wage Estimates, and BLS' Cost of Employee Compensation data.

[91] 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). This combination of occupations results in an overall estimated hourly total compensation rate of $92.07. This average rate is derived from the BLS' Specific Occupational Employment and Wage Estimates, and BLS' Cost of Employee Compensation data.

[92] (2,183 * 10 percent AVM use rate) * 120 labor hours * $99.65 per hour = $2,610,431

[93] (2,183 * 10 percent AVM use rate) * 40 labor hours * $92.07 per hour = $803,955

[94] 120 labor hours * $99.65 per hour = $11,958.00

[95] 40 labor hours * $92.07 per hour = $3,682.80

[96] Based on Call Report data as of December 31, 2023. The variable ESALA represents annualized salaries and employee benefits and the variable CHBALNI represents non-interest bearing cash balances.

the first year. In subsequent years, estimated average costs do not exceed the 5 percent threshold of annual salaries and benefits for any small, FDIC-supervised IDIs, and 13 (0.59 percent) exceed the 2.5 percent threshold of total non-interest expense. A combined total of 13 (0.59 percent) small, FDIC-supervised IDIs exceed either or both thresholds in subsequent years.

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.

Some commenters expressed concerns that the proposed rule would be costly and burdensome, especially for small entities and their ability to ensure that their policies and procedures meet the quality control standards. Some commenters cautioned that the proposed rule would create an uneven playing field between large and small companies and that some small entities would be at risk of going out of business. For additional discussion of the comments received on the proposed rule, please refer to part III (Discussion of the Proposed Rule, Comments Received, and the Final Rule) within the **SUPPLEMENTARY INFORMATION** of this document. The FDIC carefully considered the comments it received. The FDIC notes that compliance costs may vary across institutions but believes that they are unlikely to have a significant effect on a substantial number of small, FDIC-supervised IDIs. Finally, the FDIC notes that section

1125 does not provide for exemption authority and the FDIC does not believe that an exemption is necessary or appropriate.

In light of the foregoing, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small, supervised entities.

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.[97]

The RFA establishes terms for various subgroups that potentially qualify as a "small entity" – including "small business," "small organization," and "small governmental jurisdiction."[98] 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*.[99] The NCUA's Interpretive Ruling and Policy Statement (IRPS) 15–1 defined "small entity" as any FICU with less than $100 million in assets.[100] IRPS 15–1 (with this definition) was

[97] 5 U.S.C. 601 *et seq*.
[98] 5 U.S.C. 601.
[99] 5 U.S.C. 601(4).
[100] 80 FR 57512 (Sept. 24, 2015).

published in the *Federal Register*, and the NCUA solicited and reviewed public comments on this definition.[101]

FICUs tend to be much smaller than commercial banks. Indeed, at year-end 2023, median asset size was $55.9 million – less than one-sixth the median for U.S. commercial banks. As of December 31, 2023, there were 4,604 FICUs, of which 2,831 (61.5 percent) qualified as "small entities" by holding fewer than $100 million in assets.[102] Only 699 commercial banks (15.2 percent) fall beneath this threshold. For reasons noted below, the NCUA does not believe the regulatory amendments will have a *significant* economic impact on a *substantial* number of small entities.

1. Why *action is being considered.*

The final rule fulfills 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. As noted, this final rule follows publication of a June 23, 2023, proposed rule and takes into consideration the public comments received in response to the proposal. Interested readers are referred to the discussion elsewhere in this preamble of the significant issues raised by the public comments, the assessment of the agencies of such issues, and

[101] 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 NCUA's 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.

[102] These figures are based on data submitted by FICUs quarterly on their 5300 forms (call report).

changes made in the proposed rule as a result of such comments. Further, the RFA analysis provided by the CFPB elsewhere in this preamble responds to the comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule and provide a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

2. *Policy objectives of, and legal basis for, the final rule*

The NCUA is issuing this final rule 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 FIRREA, 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.[103] The statute charges the NCUA with enforcing the regulations with respect to financial institutions, defined in title XI to include FICUs, for which the NCUA is the primary Federal supervisor.[104]

3. *Description and estimate of the number of small institutions subject to final rule.*

[103] 12 U.S.C. 3354.
[104] *See* 12 U.S.C. 3350(7).

The final rule will apply to FICUs relying on AVMs in their residential mortgage-lending decisions. Year-end 2023 data indicate 1,789 small-entity FICUs held residential real-estate loans (1st or junior liens). This represents 63.2 percent of small credit unions.

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 prior AVM analysis, the FDIC estimated that as many as 10 percent of their supervised institutions currently use an AVM for mortgage origination decisions, loan modification decisions, and securitization decisions covered by the final rule.[105] Applying this 10 percent estimate suggests the final rule could apply to up to 178 "small entity" credit unions. The FDIC notes 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.[106] 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 final 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*.

[105] 88 FR 40638 at 40659 (June 23, 2023).
[106] Discussions with NCUA examiners and supervisors supported the notion 10 percent is a high upper bound.

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 Appraisal Guidelines.[107] The Appraisal 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.[108] The quality-control standards in the final rule are consistent with those in the Appraisal Guidelines, existing supervisory expectations, and statutory nondiscrimination requirements. The NCUA believes the final rule will 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 are 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 178 credit unions implies the aggregate compliance burden should not exceed 5,874 hours. To put this figure in context, the 1,789 credit unions under $100 million with residential mortgages on their books paid their employees an average of $33.13 per hour in salary and benefits.[109] The upper-bound compliance

[107] *See supra* note 4. The Appraisal Guidelines were adopted after notice and comment.
[108] 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.
[109] This figure was obtained by dividing 2023 total compensation expense for the 1,789 credit unions by the product of full-time equivalent employees, 52 weeks per years, and 40 hours per week.

estimate of 5,874 hours, therefore, implies an upper bound on aggregate cost of $194,606.[110] Viewed another way, this aggregate cost is only 0.008 percent of total 2023 non-interest expense for "small" credit unions. These figures suggest the compliance cost of the final rule will not impose a significant burden on a substantial number of "small entities."[111]

5. *An identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap with, or conflict with the final rule.*

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

6. *Any significant alternatives to the final rule that accomplish its stated objectives.*

As noted, the final 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 since institutions have a preexisting obligation to comply with all

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[110] There are other good reasons to believe 5,874 hours is an upper bound. The final 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 1,789 "small entities" with residential mortgages at year-end 2023 was *eight* – 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 for small credit unions to address).

[111] Of course, estimates of an extremely modest impact based on central tendency do not exclude the possibility the compliance costs will prove meaningful for *some* small credit unions.

federal law, including federal nondiscrimination laws. For the above reasons, the NCUA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

E. CFPB

The RFA[112] generally requires an agency to conduct an IRFA and a FRFA of any rule subject to notice-and-comment rulemaking requirements. These analyses must "describe the impact of the proposed rule on small entities."[113] 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.[114] If it will have such an impact, the CFPB is subject to certain additional procedures under the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)[115] and the Dodd-Frank Act, involving the convening of a panel (SBREFA Panel) to consult with small entity representatives (SERs) prior to proposing a rule for which an IRFA is required.[116]

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

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[112] 5 U.S.C. 601 *et seq.*
[113] 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).
[114] 5 U.S.C. 605(b).
[115] Pub. L. 104-121, 110 Stat. 857 (1996) (5 U.S.C. 609) (amended by Dodd-Frank Act section 1100G).
[116] 5 U.S.C. 609.

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. 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).[117] The proposal preamble included a discussion of the SBREFA Panel for this rulemaking.[118] The CFPB also published an IRFA in the proposal. Comments addressing individual provisions of the proposed rule are addressed in part III of the **SUPPLEMENTARY INFORMATION** of this document**.** Comments addressing the impact on small entities are discussed below. Many of these comments implicated individual provisions of the final rule and are also addressed in those parts.

The FRFA for this rulemaking follows this discussion. Section 604(a) of the RFA sets forth the required elements of the FRFA. Section 604(a)(1) requires the FRFA to contain a statement of the need for, and objectives of, the rule. Section 604(a)(2) requires the FRFA to contain a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments. Section 604(a)(3) requires the CFPB to respond to any

[117] 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.*

[118] 88 FR 40638 at 40649. 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.

comments filed by the Chief Counsel for Advocacy of the Small Business Administration (Advocacy)[119] in response to the proposed rule and provide a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

The FRFA further must contain a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.[120] Section 604(b)(5) requires a description of the projected reporting, recordkeeping, and other compliance requirements of the 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 the preparation of the report or record. In addition, the CFPB must describe any steps it has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.[121] Finally, as amended by the Dodd-Frank Act, RFA section 604(a)(6) requires that the FRFA include a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

[119] Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of the SBA.
[120] 5 U.S.C. 604(a)(4).
[121] 5 U.S.C. 604(a)(6). (So in original. Two paragraphs (6) were enacted).

1. *Statement of the need for, and objectives of, the rule*

As discussed in part I of the **SUPPLEMENTARY INFORMATION** section of this document, 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."[122] 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 final rule effectuates Congress's mandate to the agencies to adopt rules to implement quality control standards for AVMs.

The objectives of the final rule include protecting consumers and protecting Federal financial and public policy interests in real estate related transactions. To achieve these objectives, the final rule will 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 objectives of the final rule are further discussed in parts I and III of the **SUPPLEMENTARY INFORMATION** of this document.

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[122] 12 U.S.C. 3354(d).

2. *Statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule in the final rule as a result of such comments*

In the IRFA, the CFPB estimated the possible compliance cost for small entities with respect to a pre-statute baseline. Additionally, the IRFA discussed possible impacts on small entities.

Very few commenters specifically addressed the IRFA included in the proposal. Comments made by Advocacy related to the estimates included in the IRFA are addressed below in part V.E.3 of this document. This section addresses specific significant comments that affect the FRFA analysis.

Many industry commenters expressed concerns that the proposed rule would be costly and burdensome, especially for small entities and their ability to ensure that their policies and procedures meet the quality control standards. Some commenters even cautioned that the proposed rule would create an uneven playing field between large and small companies and that some small entities would be at risk of going out of business. These commenters did not provide specifics about the costs or burdens on small entities. The CFPB reviewed these comments and recognizes that small entities will experience some new compliance costs in the final rule. The CFPB accounted for these costs in the IRFA and therefore is not making any changes related to these concerns in the FRFA.

Some industry commenters provided feedback on the magnitude of the estimated burden hours, which form a core part of the IRFA analysis. Two commenters provided estimates for what they believe the burden hours will be. One of these commenters stated that a statistically-based, rigorous analytical approach would require between 100 and 400 hours a year and that, in particular, testing AVMs for compliance with nondiscrimination laws requires building a database, cleaning data, carefully building samples, and running regression tests. The commenter noted that if a company were to outsource their validation of AVMs, then the agencies' estimated burden hours might be adequate, but that there would be a cost to outsourcing. Another commenter stated that covered institutions would need to create some controls that would be based on statistical analysis and provided a rough estimate of 320 to 480 hours. The CFPB outlined the estimated burden hours that it uses in the IRFA analysis more explicitly in the SBREFA Panel Report: 69 hours for verifying compliance, 65 hours for drafting and developing policies, practices, procedures, and control systems, and 60 hours for training. Therefore, the total number of estimated hours in the first year is 194 and primarily includes costs for "Legal Services." In both the SBREFA Panel Report and the IRFA, the CFPB did not assume costs for statistician services. If a small entity needs statistician services, the SBREFA analysis "anticipates that most third parties would be able to provide institution-specific … service that accompanies an AVM." As discussed in part III.E.2 of the **SUPPLEMENTARY INFORMATION** of this document, as long as institutions adopt and maintain policies, practices, procedures, and control systems to ensure that

AVMs adhere to the rule's requisite quality control standards—and consistent with the flexibility to set their quality control standards as appropriate based on the size of their institution and the risk and complexity of transactions for which they will use covered AVMs—institutions should be able to work with AVM providers to assist them with their compliance obligations under the rule.

Furthermore, the SBREFA analysis states that "Whether small entities' costs increase depends ultimately on whether third-party service providers [such as AVM providers] pass along costs. For example, costs may increase if each third-party service provider has … to customiz[e] … for each small entity. Costs may not increase if third-party service providers can sell the same general set … to many small entities with little modification." The CFPB has considered the estimates provided by the commenters and either considers them consistent with the CFPB's estimates or deficient in showing that more burden hours are necessary. Therefore, the CFPB is not making any changes related to the estimated burden hours in the FRFA.

3. *Response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments*

Advocacy provided a formal comment letter to the agencies in response to the proposed rule. This letter stated that small entities should not be responsible for the actions of AVM providers, that the agencies should reduce the burden of the rule so that harm to small entities and consumers would be minimized, and that the nondiscrimination quality control factor should not be included in the final rule. Additionally, Advocacy suggested that small entities be exempt from the rule and, if that was not possible, that they should be allowed to rely on third-party certification of AVM providers or be provided a safe harbor for compliance. Finally, Advocacy asked that the agencies provide clear guidance to small entities to aid in compliance with the rule.

Small entities and AVM providers. Advocacy stated that small entities should not be responsible for the activities of AVM providers because they do not control those providers, and therefore cannot quality control the data or the algorithms used. In addition, Advocacy stated that small entities do not have the bargaining power to require AVM providers to take actions to be in compliance with the rule. As discussed above, the agencies believe that financial institutions, including small financial institutions, will be able to work with AVM providers to assist them with their compliance obligations under the rule, as they do with other third-party vendors in order to comply with relevant regulatory requirements.

Burden on small entities. Advocacy stated that the agencies should work to reduce the burden of the rule on small entities. Advocacy explained that it believed that the rule's costs would harm small entities and potentially reduce the use of AVMs, causing consumers to pay for more costly appraisals. As discussed above and below, in an effort to minimize the economic impact on small entities, the agencies considered and rejected a number of alternatives while drafting the final rule that otherwise would have resulted in greater costs to small entities than would the final rule. The CFPB recognizes that small entities will experience some new costs to comply with the final rule, but the CFPB does not believe that the burden of the rule is excessive. Furthermore, the CFPB believes that the rule will not reduce the availability of AVMs, and that it will benefit consumers by ensuring the quality and accuracy of the valuations provided.

Nondiscrimination quality control factor. Advocacy stated that the agencies should exclude the nondiscrimination quality control factor from the regulation. Advocacy stated that the statute does not specifically state that quality control standards for AVMs must address the issue of discrimination. In addition, Advocacy noted that at the SBREFA Panel outreach meeting, the SERs uniformly raised concerns regarding how they could assess fair lending issues in AVMs or know that they are violating the law. Moreover, Advocacy stated that there are other mechanisms to address the issue of discrimination. Advocacy explained that small entities are already required to comply with nondiscrimination and fair lending laws, and making small entities responsible for assessing fair lending issues in AVMs adds an extra layer of burden. As explained above, the agencies have the authority to account for any other such factor that the agencies determine to be appropriate. Moreover, while existing nondiscrimination law applies to an institution's use of AVMs, the CFPB believes that it is important to specify a fifth factor relating to nondiscrimination to heighten awareness among lenders of the applicability of nondiscrimination laws to AVMs. Given the existing obligation, the CFPB does not believe that the burden of the rule is excessive. Furthermore, as discussed above, the agencies believe that financial institutions, including small financial institutions, will be able to work with AVM providers to assist them with their compliance obligations under the rule, including compliance with the nondiscrimination factor, as they do with other third-party vendors in order to comply with relevant regulatory requirements.

Exemption, certification or safe harbor. Advocacy suggested that small entities be exempt from the rule and, if that was not possible, that they should be allowed to rely on third-party certification of AVM providers or be provided a safe harbor for compliance. The CFPB notes that section 1125 does not provide for exemption authority and the CFPB does not believe that an exemption is necessary or appropriate. Section 1125 requires quality controls for AVMs, and the CFPB believes that consumers who patronize small entities should benefit from the consumer protections that the rule provides, and the CFPB does not believe that the burden of the rule is excessive. In regard to the request for third-party certification, as explained above, the CFPB recognizes that third-party certification could be beneficial to effective implementation of the AVM rule and, as long as financial institutions meet the obligations stated in the rule, they are free to work with third parties to assist them with their compliance obligations. Finally, the CFPB does not believe that a safe harbor is warranted, as the burden on small entities will not be such that a simplified compliance method, which might be less protective of consumers, would be needed.

Clear guidance. Finally, Advocacy asked that the agencies provide clear guidance to small entities to aid in compliance with the rule. As explained above, the rule's quality control standards are consistent with the existing guidance described in part I of this **SUPPLEMENTARY INFORMATION** and institutions that are not regulated by the agency or agencies providing the guidance may still look to the guidance for assistance with complying with this final rule. In addition, the CFPB will consider issuing further guidance in the future, as implementation of the rule is carried out, depending on the need.

4. *Description of and an estimate of the number of small entities to which the final 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.[123] 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 final rule:

Table A: Estimated number of small entities by industry

[123] The current SBA size standards are found on SBA's website, Small Bus. Admin., *Table of size standards* (March 17, 2023), *https://www.sba.gov/document/support-table-size-standards*.

NAICS	Industry	SBA Small Entity Threshold	Est. Total Entities in 2017	Est. Number of Small Entities in 2017	Est. Number of Small Entities in 2023
522292	Real Estate Credit	$470m	3,289	2,904	3,881
522294	Secondary Market Financing	$470m	115	106	142
522390	Other Activities Related to Credit Intermediation	$28.5m	566	566	756
	Column Total		3,970	3,576	4,779

Note: *See* footnote 124 for methodology to extrapolate 2017 numbers to 2023.
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 will be affected by the final 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 may be covered by the final rule. The SBA established a revenue threshold for small entities of average annual receipts of less than $47 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 $47 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 will not be covered by the final rule if such credit is not secured by a consumer's principal dwelling. Lastly, due to a lack of more recent data in the Economic Census, the CFPB scales up the 2017 estimate by a factor of 1.3363 to obtain a 2023 estimate of 3,881 small entities.[124]

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 may be covered by the final rule. This industry has a size standard threshold of less than $47 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

[124] 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 March 28, 2024), from 2017 to 2023 (the latest available data at the time of writing), the finance sector (NAICS 52) gross output expanded from $2,807.7 billion to $ 3,752.0 billion, a 33.63 percent increase. Thus, the CFPB scales up the number of entities in 2017 by a factor of 1.3363 and rounds to the nearest whole number.

products, which will 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 1.3363 (same as before) to obtain a 2023 estimate of 142 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 will fall under the final 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: 1) Residential Mortgage Loans, and 2) 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 final 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 1.3363 (same as before) to obtain a 2023 estimate of 756 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 will be covered by the final rule. The remaining small entities may 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 percent (lower bound) and 100 percent (upper bound). Applying this assumption to the estimated total number of small entities results in the estimated range of covered small entities shown in the following table:

Table B: Estimated lower and upper bounds of covered small entities in 2023

	Lower Bound	**Upper Bound**
Est. Number of Covered Small Entities	478	4,779
Assumed Proportion of Small Entities Using AVMs	10%	100%

In summary, the CFPB estimates that between 478 and 4,779 small entities will be covered by the final rule.

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, thus, typically will not be covered by the final rule.

5. *Projected reporting, recordkeeping, and other compliance requirements of the final 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 the preparation of the report or record*

The final rule will not impose new reporting or recordkeeping requirements for CFPB respondents but will impose new compliance requirements on small entities subject to the rule. The final rule 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 will likely need to tailor guidance for each specific use case. Small entities will also likely have to implement training of staff that utilize AVM output for covered purposes.

Costs to small entities. The CFPB expects that the final rule may impose one-time and ongoing costs on small nondepository entities who use AVMs in valuing real estate collateral securing mortgage loans. The CFPB has identified three categories of costs that make up the components necessary for a nondepository institution to comply with the final rule. Those categories are drafting and developing policies, practices, procedures, and control systems; verifying compliance; and training staff and third parties. Nondepositories will incur the bulk of these costs in the first year. However, the CFPB anticipates that nondepositories will 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 will 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 will be the following: $7,000 for drafting and developing policies, practices, procedures, and control systems, $10,000 for verifying compliance, and $6,000 for training. Thus, the total costs per entity will be $23,000 in the first year and $7,667 for each subsequent year.

The CFPB calculates the overall market impact of the final 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 will be between $10,994,000 and $109,917,000. The

CFPB estimates that the overall market impact of ongoing costs in each subsequent year for covered small nondepositories will be between $3,664,826 and $36,640,593 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.

6. *Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected*

In an effort to minimize the significant economic impact on small entities, the CFPB considered a number of alternatives while drafting the final rule, including those considered as part of the SBREFA process. Many of the alternatives considered would have resulted in greater costs to small entities than would the final rule. For example, the CFPB considered proposing a prescriptive rule with more detailed and specific requirements, and the CFPB considered 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 final rule, they are not discussed here.

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

Coverage of loan modifications and other changes to existing loans. The CFPB considered a rule that would exclude AVMs used in loan modifications not resulting in new mortgage originations. As discussed in the proposal preamble and the SBREFA Panel Report, during the SBREFA process SERs generally favored that approach. The CFPB understands that the final rule's coverage of loan modifications and other changes to existing loans will introduce additional burden to small entities. However, the CFPB has determined that this coverage will 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 final rule during the loan modification process will be particularly important for their financial decision-making and outcomes, given they are already in financial distress. During the proposed rule stage, the CFPB requested comments on the likely impact of this coverage aspect of the rule on the compliance costs of small entities and did not receive specific feedback to warrant excluding AVMs used in loan modifications that do not result in new mortgage originations.

Coverage of credit line reductions or suspensions. The CFPB considered 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 the proposal preamble and the SBREFA Panel Report, 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 final rule's coverage of credit line reductions and suspensions will introduce additional burden to small entities. However, the CFPB has determined that this coverage will 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 final rule during the credit decision process is particularly important for these consumers, given the potential for improving consumer financial outcomes. During the proposed rule stage, the CFPB requested comments on the likely impact of this coverage aspect of the rule on the compliance costs of small entities and did not receive specific feedback to warrant excluding AVMs used in deciding whether or to what extent to reduce or suspend a home equity line of credit.

Nondiscrimination quality control factor. The CFPB considered a rule that would not specify a nondiscrimination quality control factor. As discussed in the proposal preamble and the SBREFA Panel Report, 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 final rule's nondiscrimination quality control factor will introduce additional burden to small entities. However, the CFPB has determined that this factor will 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.[125] 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.

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[125] 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*.

During the proposed rule stage, the CFPB requested comments on the likely impact of the nondiscrimination quality control factor of the rule on the compliance costs of small entities and did not receive specific feedback to warrant not specifying a nondiscrimination quality control factor.

7. *Description of the steps the agency has taken to minimize any additional 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 final 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 final rule in their credit pricing or credit extension decisions.

During the SBREFA process, the CFPB asked SERs (including community banks, credit unions, and non-depository mortgage lenders) about this possible impact, but they did not provide feedback on how their credit 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 analysis describing the regulation's impact on small entities.[126] FHFA need not undertake such an analysis if the Agency has certified that the regulation will not have a

[126] 12 U.S.C. 601 *et seq.*

significant economic impact on a substantial number of small entities.[127] FHFA has considered the impact of the final rule under the RFA and FHFA certifies that the 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[128] requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invited comment on how to make the rule easier to understand, but no such comments were received.

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),[129] 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

[127] 12 U.S.C. 605(b).
[128] Pub. L. No. 106–102, section 722, 113 Stat. 1338 1471 (1999).
[129] 12 U.S.C. 4802(a).

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.[130]

The agencies have considered the administrative burdens and the benefits of the proposed rule in preparing this final rule and have adopted a 12-month delayed effective date. The final rule will be effective on the first day of the calendar quarter following the 12 months after publication in the *Federal Register*.

VIII. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the final 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 final rule includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $183 million or more in any one year.[131]

The burden associated with the final rule will 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

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[130] 12 U.S.C. 4802.
[131] *Id.*

comply with applicable nondiscrimination laws. To estimate expenditures, the OCC reviews the costs associated with the activities necessary to comply with the final rule. These include an estimate of the total time required to implement the final rule and the estimated hourly wage of bank employees who may be responsible for the tasks associated with achieving compliance with the final rule. For the cost estimates, the OCC uses a compensation rate of $128 per hour.[132] Based on this approach, the OCC estimates that expenditures to comply with the final rule's mandates will be approximately $21 million (180 hours × $128 per hour × 909 banks = $20.94 million). Therefore, the OCC concludes that the final rule will not result in the expenditure of $183 million or more annually by state, local, and tribal governments, or by the private sector.

IX. NCUA Executive Order 13132 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 final rule will 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 final rule apply to federally insured, state-chartered credit unions, the NCUA does not believe that the rule

[132] *See supra* note 69 (providing information on how the OCC estimates wages and compensation costs associated with the rule).

will change the relationship between the NCUA and state regulatory agencies. The NCUA anticipates coordinating with state regulatory agencies to implement and enforce the rule as part of its ongoing coordination with these agencies. Accordingly, the NCUA believes that the effect of this change on the states will 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 Board has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.[133] As discussed, the final rule implements the quality control standards mandated by section 1125 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. Accordingly, the rule could potentially affect mortgage financing options regarding principal dwelling units purchased by a family. However, the potential effect on family well-being of these mortgage financing decisions is, at most, indirect.

[133] Pub. L. No. 105–277, 112 Stat. 2681 (1998).

XI. Severability

Each of the agencies intend that, if any provision of the final rule, 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, Banks, banking, 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.

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 amends 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. Add subpart I 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.

§ 34.220 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:

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:

(1) Means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain–

(i) Takes a mortgage application;

(ii) Assists a consumer in obtaining or applying to obtain a mortgage; or

(iii) Offers or negotiates terms of a mortgage;

(2) Includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in paragraph (1);

(3) Does not include any person who is–

(i) Not otherwise described in paragraph (1) or (2) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such paragraph; or

(ii) A retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable–

(A) Does not receive compensation or gain for engaging in activities described in paragraph (1) that is in excess of any compensation or gain received in a comparable cash transaction;

(B) Discloses to the consumer–

(*1*) In writing any corporate affiliation with any creditor; and

(*2*) If the retailer has a corporate affiliation with any creditor, at least 1 unaffiliated creditor; and

(C) Does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs);

(4) Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(5) Does not include a person that meets all of the following criteria:

(i) The person provides seller financing for the sale of three or fewer properties in any 12-month period to purchasers of such properties, each of which is owned by the person and serves as security for the financing;

(ii) The person has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person;

(iii) The person provides seller financing that meets the following requirements:

(A) The financing is fully amortizing;

(B) The financing is one that the person determines in good faith the consumer has a reasonable ability to repay;

(C) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR.

(6) Does not include a natural person, estate, or trust that meets all of the following criteria:

(i) The natural person, estate, or trust provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing;

(ii) The natural person, estate, or trust has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person;

(iii) The natural person, estate, or trust provides seller financing that meets the following requirements:

(A) The financing has a repayment schedule that does not result in negative amortization;

(B) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR.

(7) Does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a mortgage for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

Person 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.

§ 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) Seek to 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 amends 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.

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:

(1) Means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain–

(i) Takes a mortgage application;

(ii) Assists a consumer in obtaining or applying to obtain a mortgage; or

(iii) Offers or negotiates terms of a mortgage;

(2) Includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in paragraph (1);

(3) Does not include any person who is–

(i) Not otherwise described in paragraph (1) or (2) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such paragraph; or

(ii) A retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable–

(A) Does not receive compensation or gain for engaging in activities described in paragraph (1) that is in excess of any compensation or gain received in a comparable cash transaction;

(B) Discloses to the consumer–

(*1*) In writing any corporate affiliation with any creditor; and

(*2*) If the retailer has a corporate affiliation with any creditor, at least 1 unaffiliated creditor; and

(C) Does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs);

(4) Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(5) Does not include a person that meets all of the following criteria:

(i) The person provides seller financing for the sale of three or fewer properties in any 12-month period to purchasers of such properties, each of which is owned by the person and serves as security for the financing;

(ii) The person has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person;

(iii) The person provides seller financing that meets the following requirements:

(A) The financing is fully amortizing;

(B) The financing is one that the person determines in good faith the consumer has a reasonable ability to repay;

(C) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR.

(6) Does not include a natural person, estate, or trust that meets all of the following criteria:

(i) The natural person, estate, or trust provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing;

(ii) The natural person, estate, or trust has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person;

(iii) The natural person, estate, or trust provides seller financing that meets the following requirements:

(A) The financing has a repayment schedule that does not result in negative amortization;

(B) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR.

(7) Does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a mortgage for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

Person 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) Seek to 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 amends 12 CFR part 323 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.

(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:

(1) Means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain–

(i) Takes a mortgage application;

(ii) Assists a consumer in obtaining or applying to obtain a mortgage; or

(iii) Offers or negotiates terms of a mortgage;

(2) Includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in paragraph (1);

(3) Does not include any person who is–

(i) Not otherwise described in paragraph (1) or (2) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such paragraph; or

(ii) A retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable–

(A) Does not receive compensation or gain for engaging in activities described in paragraph (1) that is in excess of any compensation or gain received in a comparable cash transaction;

(B) Discloses to the consumer–

(1) In writing any corporate affiliation with any creditor; and

(2) If the retailer has a corporate affiliation with any creditor, at least 1 unaffiliated creditor; and

(C) Does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs);

(4) Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(5) Does not include a person that meets all of the following criteria:

(i) The person provides seller financing for the sale of three or fewer properties in any 12-month period to purchasers of such properties, each of which is owned by the person and serves as security for the financing;

(ii) The person has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person;

(iii) The person provides seller financing that meets the following requirements:

(A) The financing is fully amortizing;

(B) The financing is one that the person determines in good faith the consumer has a reasonable ability to repay;

(C) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR.

(6) Does not include a natural person, estate, or trust that meets all of the following criteria:

(i) The natural person, estate, or trust provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing;

(ii) The natural person, estate, or trust has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person;

(iii) The natural person, estate, or trust provides seller financing that meets the following requirements:

(A) The financing has a repayment schedule that does not result in negative amortization;

(B) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR.

(7) Does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a mortgage for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

Person 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) Seek to 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 set forth in the joint preamble, the NCUA Board amends 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 subpart A, consisting of §§ 722.101 through 722.107, to read as follows:

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.

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:

(1) Means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain–

(i) Takes a mortgage application;

(ii) Assists a consumer in obtaining or applying to obtain a mortgage; or

(iii) Offers or negotiates terms of a mortgage;

(2) Includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in paragraph (1);

(3) Does not include any person who is–

(i) Not otherwise described in paragraph (1) or (2) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such paragraph; or

(ii) A retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable–

(A) Does not receive compensation or gain for engaging in activities described in paragraph (1) that is in excess of any compensation or gain received in a comparable cash transaction;

(B) Discloses to the consumer–

(1) In writing any corporate affiliation with any creditor; and

(2) If the retailer has a corporate affiliation with any creditor, at least 1 unaffiliated creditor; and

(C) Does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs);

(4) Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(5) Does not include a person that meets all of the following criteria:

(i) The person provides seller financing for the sale of three or fewer properties in any 12-month period to purchasers of such properties, each of which is owned by the person and serves as security for the financing;

(ii) The person has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person;

(iii) The person provides seller financing that meets the following requirements:

(A) The financing is fully amortizing;

(B) The financing is one that the person determines in good faith the consumer has a reasonable ability to repay;

(C) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR.

(6) Does not include a natural person, estate, or trust that meets all of the following criteria:

(i) The natural person, estate, or trust provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing;

(ii) The natural person, estate, or trust has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person;

(iii) The natural person, estate, or trust provides seller financing that meets the following requirements:

(A) The financing has a repayment schedule that does not result in negative amortization;

(B) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR.

(7) Does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a mortgage for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

Person 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) Seek to 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 amends 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. Section 1026.1 is amended 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. Section 1026.2 is amended 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. Section 1026.3 is amended 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. Section 1026.42 is amended 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*:

(A) Means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

(*1*) Takes a mortgage application;

(*2*) Assists a consumer in obtaining or applying to obtain a mortgage; or

(*3*) Offers or negotiates terms of a mortgage;

(B) Includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in paragraph (A);

(C) Does not include any person who is not otherwise described in paragraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such paragraph;

(D) Does not include a retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable—

(*1*) Does not receive compensation or gain for engaging in activities described in paragraph (A) that is in excess of any compensation or gain received in a comparable cash transaction;

(*2*) Discloses to the consumer in writing any corporate affiliation with any creditor and, if the retailer has a corporate affiliation with any creditor, at least 1 unaffiliated creditor; and

(*3*) Does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs);

(E) Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(F) Does not include a person that meets the criteria for seller financers provided in § 1026.36(a)(4) & (5); and

(G) Does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a mortgage for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

(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) Seek to avoid conflicts of interest;

(iv) Require random sample testing and reviews; and

(v) Comply with applicable nondiscrimination laws.

17. In *Supplement I to Part 1026—Official Interpretations*:

a. Under *Section 1026.2—Definitions and Rules of Construction*, under *2(a)(19)—Dwelling*, paragraph 1 is revised, paragraphs 2 and 3 are republished, and paragraph 4 is added.

b. Under *Section 1026.3—Exempt Transactions*, paragraph 1 is republished and paragraph 2 is added.

c. Under *Section 1026.42—Valuation Independence*:

i. Under *42(a) —Scope*, paragraph 1 is republished and paragraph 2 is revised.

ii. Under *Paragraph 42(b)(2)*, paragraph 1 is revised.

iii. Heading *42(i) Quality Control Standards for Automated Valuation Models* is added.

iv. Under heading *42(i) Quality Control Standards for Automated Valuation Models* as added, heading *Paragraph 42(i)(2)(vi)* is added.

v. Under heading *Paragraph 42(i)(2)(vi)* as added, paragraph 1 is added.

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.)

2. *Use as a residence*. Mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers, and the like not used as residences are not dwellings.

3. *Relation to exemptions*. Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in § 1026.3(b).

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

1. *Relationship to § 1026.12*. The provisions in § 1026.12(a) and (b) governing the issuance of credit cards and the limitations on liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.

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

1. *Open- and closed-end credit*. Section 1026.42 applies to both open-end and closed-end transactions secured by the consumer's principal dwelling.

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. *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 stated in the joint preamble, the Federal Housing Finance Agency amends 12 CFR part 1222, of chapter 12 of title 12 of the Code of Federal Regulations as follows:

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:

(1) Means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain–

(i) Takes a mortgage application;

(ii) Assists a consumer in obtaining or applying to obtain a mortgage; or

(iii) Offers or negotiates terms of a mortgage;

(2) Includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in paragraph (1);

(3) Does not include any person who is–

(i) Not otherwise described in paragraph (1) or (2) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such paragraph; or

(ii) A retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable–

(A) Does not receive compensation or gain for engaging in activities described in paragraph (1) that is in excess of any compensation or gain received in a comparable cash transaction;

(B) Discloses to the consumer–

(*1*) In writing any corporate affiliation with any creditor; and

(*2*) If the retailer has a corporate affiliation with any creditor, at least one unaffiliated creditor; and

(C) Does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs);

(4) Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(5) Does not include a person that meets all of the following criteria:

(i) The person provides seller financing for the sale of three or fewer properties in any 12-month period to purchasers of such properties, each of which is owned by the person and serves as security for the financing;

(ii) The person has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person;

(iii) The person provides seller financing that meets the following requirements:

(A) The financing is fully amortizing;

(B) The financing is one that the person determines in good faith the consumer has a reasonable ability to repay;

(C) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR.

(6) Does not include a natural person, estate, or trust that meets all of the following criteria:

(i) The natural person, estate, or trust provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing;

(ii) The natural person, estate, or trust has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person;

(iii) The natural person, estate, or trust provides seller financing that meets the following requirements:

(A) The financing has a repayment schedule that does not result in negative amortization;

(B) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or SOFR.

(7) Does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a mortgage for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

Person 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) Seek to 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.
Ann E, Misback,
Secretary of the Board.

Federal Deposit Insurance Corporation.
By order of the Board of Directors.
Dated at Washington, DC, on June 20, 2024.
James P. Sheesley,
Assistant Executive Secretary.

Melane Conyers-Ausbrooks,
Secretary of the Board, National Credit Union Administration.

Rohit Chopra,
Director, Consumer Financial Protection Bureau.

Sandra L. Thompson,
Director, Federal Housing Finance Agency.