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September 19, 2023

Ms. Melane Conyers-Ausbrooks  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

RE: Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations; Docket No. NCUA–2023–0061

Dear Ms. Conyers-Ausbrooks:

The Credit Union National Association (CUNA) represents America’s credit unions and their more than 135 million members. On behalf of our members, we are writing in response to the proposed Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations<sup>1</sup> issued by the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Federal Reserve), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Consumer Financial Protection Bureau (CFPB) (collectively the Agencies).

## Background

Research on appraisals has shown that appraisal valuations are more likely to fall below a contract price in Black and Latino census tracts than in White census tracts.<sup>2</sup> That research has also shown that Black and Latino mortgage loan applicants are more likely than White applicants to have an appraisal valuation that falls below the contract price.<sup>3</sup> These appraisal gaps are a focus of the Interagency Task Force on Property Appraisal and Valuation Equity (PAVE), which is looking at “the various forms of bias that can appear in residential property valuation practices” and actions that federal agencies can implement “to advance equity in the appraisal process[.]”<sup>4</sup>

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<sup>1</sup> 88 Fed. Reg. 47071 (July 21, 2023).

<sup>2</sup> See Freddie Mac, *Racial and Ethnic Valuation Gaps In Home Purchase Appraisal* (Sept. 2021), available at <https://www.freddiemac.com/research/insight/20210920-home-appraisals> (finding that applicants in majority Black and Latino census tracts receive appraisal values lower than the contract price in 12.5% and 15.5% of transactions, respectively, as opposed to 7.4% for majority White census tracts).

<sup>3</sup> See *id.* (finding that Black and Latino applicants receive appraisal values lower than the contract price in 8.6% and 9.5% of transactions, respectively, as opposed to 6.5% of White applicants).

<sup>4</sup> PAVE, *Action Plan to Advance Property Appraisal and Valuation Equity* (Mar. 2022) at 1, available at <https://pave.hud.gov/sites/pave.hud.gov/files/documents/PAVEActionPlan.pdf> (PAVE Report).

In line with the objectives of the PAVE, the CFPB blogged about how consumers can ask their lenders to review a valuation that the consumers believe is inaccurate.<sup>5</sup> The CFPB labeled this process as a reconsideration of value (ROV) and noted that “[b]orrowers can point out, for example, factual or other errors or omissions, inadequate comparable properties, or provide evidence that the appraisal was influenced by prohibited bias.”<sup>6</sup>

The Agencies then issued the proposed interagency guidance to help regulated entities understand how an ROV process can be used given the existing Federal appraisal requirements, including appraisal independence requirements, Federal consumer protections laws, and agency appraisal regulations. The proposed guidance identifies applicable statutes and regulations. It discusses the complaint resolution process and then provides examples of ROV-related policies, procedures, and control systems that regulated entities may want to consider developing.

CUNA commends the Agencies for undertaking this effort to provide regulated entities with guidance about how they can integrate ROVs into their appraisal processes.<sup>7</sup> Credit unions oppose discrimination in the appraisal process, and ROVs can benefit both credit unions and their members by addressing any potential errors in an appraisal. Accurate appraisal values are necessary to ensure that credit unions are making lending decisions in a safe and sound manner, and accurate appraisal values can affect members’ ability to build wealth through homeownership.

### **Clear and Understandable Policies and Procedures Governing ROVs are Vital to their Success**

Credit unions that elect to incorporate ROVs as part of their valuation process should have clear, plain language policies and procedures addressing the use of ROVs. These policies and procedures should include providing members with clear and readily understandable information about how they can request an ROV. The policies and procedures should instruct the different business units within a credit union about their roles in the ROV process. They should also address certain milestones in the process and by when those milestones may need to occur. The policies and procedures should establish criteria for when an additional appraisal might be ordered and set forth which party is responsible for the cost of any additional appraisals. These policies and procedures should include instructions for credit union staff about how to notify members about the status or result of an ROV request. These factors, which are described in the proposed guidance, are suitable considerations for a credit union to think about in assessing and altering its current ROV policies and procedures.

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<sup>5</sup> CFPB, Mortgage Borrowers Can Challenge Inaccurate Appraisals Through the Reconsideration of Value Process (Oct. 2022), available at <https://www.consumerfinance.gov/about-us/blog/mortgage-borrowers-can-challenge-inaccurate-appraisals-through-the-reconsideration-of-value-process/>.

<sup>6</sup> *Id.*

<sup>7</sup> CUNA applauds the Agencies for issuing this as guidance, which does not create binding legal obligations for credit unions. See Role of Supervisory Guidance, 86 Fed. Reg. 7949, 7956 (Feb. 3, 2021) (“the final rule reflects the NCUA’s position that the underlying legal principal of supervisory guidance is that it does not create[] binding legal obligation for either the public or an agency.”); 12 C.F.R. Part 791, Subpart D (codifying the use of supervisory guidance by NCUA).

While credit unions should consider whether there are aspects of their ROV process, including information requested, that act as an unreasonable barrier or discourage members from requesting an ROV, credit unions must be able to establish reasonable guidelines for information that members need to submit an ROV request. Credit unions are subject to appraisal independence requirements through NCUA's regulations and Regulation Z.<sup>8</sup> To satisfy those requirements while asking an appraiser to take another look at a completed appraisal, credit unions must point to additional factual information about the subject property or properties that might serve as better comparable properties. Consequently, credit unions must be able to develop reasonable thresholds for the information needed to request an ROV.

Another reason why credit unions must be permitted to develop reasonable thresholds for the information needed to request an ROV is because of investor or agency requirements. For example, the Department of Veterans Affairs (VA) has specific requirements for how a member can request an ROV,<sup>9</sup> including how information should be presented in an ROV request. Any final guidance on ROVs issued by the Agencies needs to provide credit unions with the flexibility to craft ROV policies and procedures in a way that also aligns with investor and agency requirements.

### **Proposed Policies and Procedures in the Proposed Guidance That Could Be Challenging**

The Agencies requested that commenters identify “[w]hich, if any, of the policies and procedures described in the proposed guidance could present challenges[.]”<sup>10</sup> Credit unions find two such policies and procedures. First, policies and procedures that require monitoring multiple channels for ROV requests could prove challenging for credit unions. Credit unions should be allowed to establish specific channels to receive ROV inquiries from borrowers rather than having to monitor all possible channels of member communication. One of the main benefits of an ROV is that it can address errors with an appraisal before an application is denied or before a credit applicant walks away. That benefit disappears if the real estate transaction underlying the loan application falls apart. Part of developing a consistent ROV process for members, credit union employees, and other stakeholders requires that all parties have clear expectations about how the ROV process is supposed to work. Like many of the error resolution regulations under the CFPB's jurisdiction that

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<sup>8</sup> See 12 C.F.R. Part 722; 2010 Interagency Appraisal and Evaluation Guidelines, *available at* <https://ncua.gov/files/letters-credit-unions/LCU2010-23Encl.pdf> (noting that credit unions should not “indirectly coerce, influence, or otherwise encourage an appraiser or a person who performs an evaluation to misstate or misrepresent the value of the property” but that credit unions can ask appraisers to consider additional information about the subject property or comparable properties or correct factual errors); 12 C.F.R. § 1026.42(c)(3) (similar).

<sup>9</sup> See generally VA, Lenders Handbook (Chapter 10) at 10-33, *available at* [https://www.benefits.va.gov/WARMS/docs/admin26/m26-07/Ch10\\_Appraisal\\_Process\\_NEW.docx](https://www.benefits.va.gov/WARMS/docs/admin26/m26-07/Ch10_Appraisal_Process_NEW.docx). See also VA, Reconsideration of Value Request Requirements, *available at* <https://benefits.va.gov/RODENVER/docs/ReconsiderationofValueRequestSOP.pdf> (providing requirements, including information and documentation relating to additional comparable sales, for ROVs submitted to Denver Regional Loan Center).

<sup>10</sup> 88 Fed. Reg. at 47073.

allow credit unions to specify exactly how a member should submit an error notice,<sup>11</sup> permitting credit unions to establish specific channels through which to receive ROVs can ensure that members know exactly what they need to do to request an ROV and that the requests can be reviewed in a timely manner. Moreover, having to monitor multiple channels does not align with NCUA’s previous guidance on handling consumer complaints.<sup>12</sup> CUNA urges NCUA and the other Agencies to exclude monitoring multiple channels for ROV requests as a proposed policy or procedure in the final guidance.

Second, policies and procedures that require credit unions to ensure that their lending and valuation staff are trained to identify prohibited discriminatory practices through the appraisal review process could also prove to be challenging to implement. While CUNA endorses “regulatory initiatives that promote the availability of credit to all creditworthy applicants[,]”<sup>13</sup> it worries that this type of requirement attempts to hold credit unions up to an impossible standard and goes beyond existing NCUA regulations. NCUA regulations prohibit federal credit unions from relying upon appraisals they know or should know are based upon consideration of a prohibited basis.<sup>14</sup> NCUA’s appraisal regulations require that appraisals conform to standards like the Uniform Standards of Professional Appraisal Practice (USPAP),<sup>15</sup> contain enough information to support a decision to make a loan to a member,<sup>16</sup> and are grounded in the concept of market value.<sup>17</sup> But short of explicit statements made by an appraiser—either written or oral—suggesting that the appraiser considered a prohibited basis in developing the appraisal or assessing the market value of the subject property, this kind of policy and procedure appears to attempt to hold credit unions strictly liable for any potential misconduct by an appraiser even if a credit union did not or should not have known that an appraisal was based on a prohibited basis. CUNA respectfully requests that NCUA and the Agencies exclude training staff to identify prohibited discriminatory practices through the appraisal review process as a proposed policy or procedure in the final guidance, or in the alternative to clarify that training to identify prohibited discriminatory practices is expressly limited to the language contained in an appraisal or other explicit statements made by an appraiser, because it goes beyond NCUA’s appraisal requirements and is unworkable.

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<sup>11</sup> See 12 C.F.R. § 1024.35(c) (“A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit a notice of error in accordance with the procedures in this section.”); 12 C.F.R. § 1005.11(b)(2) (“An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification.”).

<sup>12</sup> NCUA, Responding to Consumer Complaints (June 2015), *available at* <https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/improving-process-consumer-complaints> (recommending that credit unions “[e]stablish channels to receive consumer complaints and inquiries such as telephone numbers or email addresses dedicated to receiving [consumer complaints].”).

<sup>13</sup> CUNA, The Compendium of CUNA Policies on Legislative and Regulatory Issues (Feb. 2022), *available at* [https://www.cuna.org/content/dam/cuna/advocacy/actions/documents/CUNA\\_Compendium%20of%20Policies\\_DG.pdf](https://www.cuna.org/content/dam/cuna/advocacy/actions/documents/CUNA_Compendium%20of%20Policies_DG.pdf).

<sup>14</sup> 12 C.F.R. § 701.31(c).

<sup>15</sup> 12 C.F.R. § 722.4(a).

<sup>16</sup> 12 C.F.R. § 722.4(b).

<sup>17</sup> 12 C.F.R. § 722.4(e). Market value is defined in part 722 of NCUA’s regulations as “the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus.” 12 C.F.R. § 722.2.

## Conclusion

Thank you for this opportunity to provide input on the proposed Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations. If you have questions or if we can be of any assistance, please do not hesitate to contact me at (202) 603-1985 or [dpark@cuna.coop](mailto:dpark@cuna.coop).

Sincerely,

A handwritten signature in blue ink that reads "David Park". The signature is written in a cursive, flowing style.

David Park  
Senior Director of Advocacy & Counsel