OHIO CREDIT UNION LEAGUE

August 21, 2023

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

Re: Quality Control Standards for Automated Valuation Models
RIN 3133–AE23

Dear Ms. Conyers-Ausbrooks,

The Ohio Credit Union League (OCUL) represents the collective interests of Ohio's 218 credit unions and their more than three million members. Of those 218 credit unions, 118 are federally chartered; 57 state-chartered, federally insured; and 43 state-chartered, privately insured, with an average asset size of $207 million. OCUL appreciates the opportunity to comment on the notice of proposed rulemaking regarding Quality Control Standards for Automated Valuation Models (AVMs) 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), Consumer Financial Protection Bureau (CFPB), and Federal Housing Finance Agency (FHFA) (collectively the Agencies).

The proposed rule would further expand the quality control standards mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (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. Under the proposal, the agencies would require institutions that engage in certain credit decisions or securitization determinations to adopt policies, practices, procedures, and control systems to ensure that AVMs used in these transactions to determine the value of mortgage collateral adhere to quality control standards designed to ensure a high level of confidence in the estimates produced by AVMs; protect against the manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and comply with applicable nondiscrimination laws.

OCUL appreciates the growing usage of AVMs, artificial intelligence (AI), and similar products in the financial services industry, as well as the need for safeguards to ensure their fair usage; however, OCUL cautions the NCUA and other regulators from promulgating rules that stifle genuine innovation, create undue burden on prudentially regulated financial cooperatives, and create an unlevel playing field in the name of consumer protection. OCUL offers the following suggestions on the proposed rule.

I. OCUL supports the narrowly tailored, principals-based approach and excluded uses employed for the proposed rule.

First, OCUL commends the NCUA for employing a principles-based approach to this proposed rulemaking.[1] This will give Ohio credit unions the ability to narrowly tailor their quality control standards to their unique circumstances and account for their size, complexity, and risk profile. The principles-based approach provides credit unions with more flexibility to choose how to incorporate AVMs as part

[1] 88 FR 40638, Section III(A)

of their lending programs and makes it less likely that requirements that are too prescriptive inhibit innovation and adoption. Additionally, this approach will benefit credit union members as AVMs can be a faster and more cost-effective valuation tool for mortgage origination and could make human discretion and implicit bias less of a factor in the valuation process.

Secondly, OCUL supports the exclusions built into the proposed rulemaking as adding the proposed quality control standards to AVMs that are used to review completed appraisals and evaluations would present duplicative and unnecessary operational challenges. The proposed exclusions align with the statutory direction of existing AVM quality control standards used by mortgage originators and secondary market issuers when determining collateral value. Specifically, OCUL supports excluding mortgage originators from having to implement AVM quality control standards that secondary market issuers use to determine whether a loan may be eligible for an appraisal waiver. Requiring credit unions to implement quality controls over the AVMs used by secondary market issuers could be redundant. Moreover, the secondary market issuers are in the best position to implement quality controls standards over that kind of usage. Additionally, the exclusions will provide institutions with the flexibility to use AVMs as a cost-effective tool in its appraisal review process when the appraisal is providing the underlying valuation for the collateral.

Thirdly, OCUL supports the NCUA's exclusion of AVMs used by appraisers to develop appraisals from the coverage of the proposed rule. Including that usage could adversely affect credit unions and consumers by potentially limiting who a credit union could use as an appraiser. In areas where there are appraiser shortages, limiting the size of the appraiser pool could delay closings and cause hardship for credit union members. Including this usage within the scope of the proposed rule is also unnecessary in that the appraisal rules promulgated by the banking agencies and the NCUA require a review process that can evaluate whether the appraisal is reasonable and well-supported.

II. OCUL cautions the NCUA from redefining "credit decision" as it creates duplicative, conflicting regulatory standards that may cause operational challenges at the members' expense.

OCUL recommends the NCUA not include loan modifications and line of credit reductions within the scope of a credit decision under the proposed rule. The broad breadth of the proposed rule's definition of credit decision, which includes modifications and decisions to change the limit on a line of credit, is concerning as it will create operational challenges without an articulable consumer safety need. For example, some credit unions order AVMs when considering a loan modification request from their members. In the context of loss mitigation, consumers benefit when their modification requests are processed in a timely manner. If credit unions need to apply the AVM quality control standards to AVMs used in the context of evaluating the collateral risk when determining whether to modify a loan to a member in financial distress, the credit union may be forced to either forgo valuations or move forward with a more expensive appraisal that takes more time and delays the completion of a modification.

Similarly, applying the proposed quality control standards to AVMs that may be used in decisions to reduce or suspend a credit line could negatively impact credit unions. Principles of prudent risk management may require reducing a credit limit on a home equity line of credit (HELOC)[2] in different scenarios, including when the value of property securing the line of credit drops far below the appraised value. While the proposed rule suggests that AVMs used to monitor a portfolio would not be covered by the rulemaking, the proposed rule expressly covers AVMs "used in deciding whether or to what

[2] 88 FR 40638, Section II(A)(1.)

extent to reduce or suspend a HELOC." If credit unions need to apply the AVM quality control standards to AVMs that are used to manage the collateral risk within its HELOC portfolio, it may become more difficult or more expensive to manage this risk if they are unable to keep using AVMs because of the difficulty in implementing the proposed quality control standards over AVMs used for this purpose.

The most basic benefit of AVM usage is efficiency; thus, to limit AVM usage without justification could potentially harm, or at least slow down the process, negating any perceived benefit to the member without providing any additional safety and soundness standards.

III. OCUL cautions the NCUA from adding the proposed fifth non-discrimination factor as this determination is already contemplated in the existing regulatory framework.

OCUL questions whether a fifth non-discrimination quality control standard ("account for any other such factor" that the agencies "determine to be appropriate")[3] is necessary considering the existing supervisory guidance that applies to the usage of AVMs by credit unions and banks. Credit unions are historically compliant, and supporters of, the Equal Credit Opportunity Act, the Fair Housing Act, "and regulatory initiatives that promote the availability of credit to all creditworthy applicants." Under this proposed rule, it is not apparent that the benefit to consumers of having a non-discrimination quality control factor outweighs the regulatory burden the additional quality control standard will place on credit unions.

The regulatory burden of requiring a non-discrimination quality control standard through the proposed rule will likely preclude some credit unions, especially smaller credit unions, from being able to use AVMs in the origination of a mortgage loan. To the extent that the quality control standards and the control systems expected to be implemented by a mortgage originator require fair lending testing of AVM values, it's conceivable that some current credit unions may not have large enough data sets to be able to do meaningful, statistically significant testing with their AVM results.

Aside from their own vendor due diligence, credit unions lack control over the proprietary inputs and the data that feed into AVMs. Moreover, credit unions simply do not have the bargaining power or the resources to examine the third-party proprietary algorithms that power AVMs. When credit unions ask AVM vendors about fair lending risk, the vendors may represent that their AVMs do not include discriminatory inputs or contractually agree to comply with all applicable law; however, credit unions do not have any legal ability to compel AVM vendors to disclose proprietary information about how the AVMs work.

The proposed non-discrimination quality control factor injects a level of uncertainty that could lead to the very real, unintended consequence of credit unions deciding that the most prudent course of action going forward is to stop using AVMs in the mortgage origination context. That decision, unfortunately, may prevent credit union members from being able to take advantage of the benefits of an AVM (e.g., quicker closings, fewer opportunities for human discretion, etc.). The harm ultimately caused to the member is unnecessary considering the existing supervisory expectations surrounding the use of AVMs by credit unions.

Specifically, the 2010 Interagency Appraisal and Evaluation Guidelines (IAEG) sets forth certain expectations for institutions under the jurisdiction of the OCC, Federal Reserve, FDIC, and NCUA, including federally-insured credit unions, with respect to AVM usage. Credit unions are expected to do

[3] 88 FR 40638, Section II(C)(2.)

the following:

- Perform due diligence before selecting an AVM for use so that they understand how AVM vendors test their models and data sets.
- Have controls in place to limit the use of an AVM when results may not be reliable (e.g., low confidence scores).
- Have policies and procedures regarding the validation of AVM results.

The IAEG is consistent with other supervisory guidance regarding the expectations regarding third-party risk management and model risk management. In short, the IAEG and NCUA's third-party risk management expectations guide credit unions on what is needed to understand the AVMs they use, including an AVM's limitations; have controls in place to mitigate the risks that may arise from the use of a third-party AVM (e.g., compliance with laws); and monitor the relationship and the results to ensure that the AVM is working the way it is designed to work and being used the way it is designed to be used.

When comparing a non-discrimination quality control standard with the IAEG and other existing guidance, the former offers uncertainty while the latter provides familiarity. The IAEG and the existing regulatory guidance have also worked in practice thus far, questioning the need for the proposed non-discrimination factor. There have been no public enforcement actions related to AVM usage by a covered entity in the time since the IAEG was issued. In other words, the benefits of having a non-discrimination quality control factor as part of the rulemaking may not outweigh the regulatory burden placed on credit unions. OCUL suggests a better alternative might be for all the agencies herein to formally adopt the IAEG.

OCUL appreciates the opportunity to engage with the NCUA on ways to protect the safety and soundness of the credit union industry from threats, trends, and unregulated operational service opportunities. Moreover, OCUL cautions the NCUA from adding duplicative, unnecessary, and overly burdensome regulations on already prudentially regulated, financial cooperatives without clear justification of need when unregulated entities continue to drive the majority of consumer protection issues.

Respectfully,

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President

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