TABLE 1.—REREGISTRATION ELIGIBILITY DECISION DOCKETS OPENING

Registration Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, and E-mail Address
Chromated arsenicals, 0132	EPA–HQ–OPP–2003–0250	Lance Wormell, (703) 603–0523, *wormell.lance@epa.gov*
Pentachlorophenol, 2505	EPA–HQ–OPP –2004–0402	Diane Isbell, (703) 308–8154, *isbell.diane@epa.gov*
Creosote, 0139	EPA–HQ–OPP–2003–0248	Jacqueline Campbell-McFarlane, (703) 308–6416, *campbell-mcfarlane.jacqueline@epa.gov*

Although the chromated arsenicals, pentachlorophenol, and creosote REDs were signed on September 25, 2008, certain components of the document, which did not affect the final regulatory decision, were undergoing final editing at that time. These components, including the list of additional generic and product-specific data requirements, appendices, minor typographical edits, and other relevant information, have been added to the chromated arsenicals, pentachlorophenol, and creosote RED documents.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, chromated arsenicals, pentachlorophenol, and creosote were reviewed through the full 6–Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for chromated arsenicals, pentachlorophenol, and creosote.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is not issuing the chromated arsenicals, pentachlorophenol, and creosote REDs for public comment because they were reviewed through the full 6-phase process which included two 60–day comment periods.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests, antimicrobials, heavy duty wood preservatives.

Dated: November 12, 2008.

Joan Harrigan Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

FR Doc. E8–27307 Filed 11–18–08; 8:45 am

BILLING CODE 6560–50–S

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2008–0021]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1338]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2008–0012]

NATIONAL CREDIT UNION ADMINISTRATION

RIN 3133–AD38

Proposed Interagency Appraisal and Evaluation Guidelines

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (FRB); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

ACTION: Notice with request for comment.

SUMMARY: The OCC, FRB, FDIC, OTS, and NCUA (the Agencies), request comment on the proposed Interagency Appraisal and Evaluation Guidelines (proposed Guidelines). The proposed Guidelines, which would supersede the 1994 Interagency Appraisal and Evaluation Guidelines (1994 Guidelines), reflect revisions to the Uniform Standards of Professional Appraisal Practice (USPAP) and the evolution of collateral valuation practices, such as the use of automated valuation models (AVMs). The proposed Guidelines also incorporate refinements made by the Agencies to the supervision of regulated institutions' appraisal and evaluation programs since 1994 and reflect the participation of the NCUA, which was not a party to the 1994 Guidelines. The proposed Guidelines are intended to clarify the Agencies' real estate appraisal regulations and promote a safe and sound real estate collateral valuation program.

DATES: Comments must be submitted on or before January 20, 2009.

ADDRESSES: Comments should be directed to:

OCC: You may submit comments by any of the following methods:

- *E-mail: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2008–0021'' in your comment. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials by any of the following methods:

• *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

• *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FRB: You may submit comments, identified by Docket No. OP–1338, by any of the following methods:

• *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.

• *Fax:* 202/452–3819 or 202/452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the FRB's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed in electronic or paper form in Room MP–500 of the FRB's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

• *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.

• *E-mail: Comments@FDIC.gov.* Include ''Proposed Interagency Appraisal and Evaluation Guidelines'' in the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

OTS: You may submit comments, identified by docket number ID OTS–2008–0012, by any of the following methods:

• *E-mail: regs.comments@ots.treas.gov.* Please include ID OTS–2008–0012 in the subject line of the message and include your name and telephone number in the message.

• *Fax:* (202) 906–6518.

• *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ID OTS–2008–0012.

• *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: ID OTS–2008–0012.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change, including any personal information provided. Comments including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

• *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods (Please send comments by one method only):

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html* Follow the instructions for submitting comments.

• *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Proposed Interagency Appraisal and Evaluation Guidelines,'' in the e-mail subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's website at *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/comments.html* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *_OGCMail @ncua.gov*.

FOR FURTHER INFORMATION CONTACT:

OCC: Doreen Ledbetter, Credit Risk Specialist, or Vance S. Price, Director, Credit and Market Risk Division, (202) 874–5170; Christopher Manthey, Counsel, Bank Activities and Structure, or Mitchell Plave, Counsel, Legislative and Regulatory Activities, (202) 874–5300.

FRB: Virginia M. Gibbs, Senior Supervisory Financial Analyst, (202) 452–2521; or Sabeth I. Siddique, Assistant Director, (202) 452–3861, Division of Banking Supervision and Regulation; or Walter McEwen, Senior

Counsel, (202) 452–3321, or Benjamin W. McDonough, Senior Attorney, (202) 452–2036, Legal Division. For users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

FDIC: Beverlea S. Gardner, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–6790, or Janet V. Norcom, Counsel, Legal Division, (202) 898–8886.

OTS: Debbie Merkle, Project Manager, Credit Risk, Risk Management, (202) 906–5688, or Marvin Shaw, Senior Attorney, Regulations and Legislation Division (202) 906–6639.

NCUA: Moisette Green, Staff Attorney, (703) 518–6540 or Robert C. Leonard, Program Officer, (703) 518–6396.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) [1] requires each Agency to prescribe appropriate standards for the performance of real estate appraisals in connection with ''federally related transactions,'' [2] which are defined as those real estate-related financial transactions that an Agency engages in, contracts for, or regulates and that require the services of an appraiser.[3] These rules must require, at a minimum, that real estate appraisals be performed in accordance with generally accepted uniform appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of The Appraisal Foundation (Appraisal Standards Board), and that such appraisals be in writing.[4] Such appraisals are to be performed by an individual whose competency has been demonstrated and whose professional conduct is subject to effective state supervision. An Agency may require compliance with additional appraisal standards if it makes a determination that such additional standards are required in order to properly carry out its statutory responsibilities.[5] Each of the Agencies has adopted additional appraisal standards.[6]

The OCC, FRB, FDIC, and OTS jointly issued the 1994 Guidelines to provide further guidance to regulated financial institutions on prudent appraisal and evaluation policies, procedures, practices, and standards.[7] The 1994 Guidelines address supervisory matters relating to real estate appraisals and evaluations used to support real estate-related financial transactions and provide guidance to both examiners and regulated institutions about prudent appraisal and evaluation programs. In particular, the 1994 Guidelines provide clarification of expectations for written evaluations of real estate collateral in certain transactions that do not require the services of an appraiser under the Agencies' regulations.

Over the years, the Agencies have issued several additional supervisory guidance documents to promote sound practices in regulated institutions' appraisal and evaluation programs, including independence in the appraisal and evaluation functions, the appraisal of residential tract development, and compliance with revisions to USPAP.[8]

Since the issuance of the 1994 Guidelines, there have been some significant developments concerning appraisals and advancements in regulated institutions' collateral valuation practices. Advances in technology, for example, have prompted increased use of AVMs to derive values for residential transactions that do not require the services of an appraiser under the appraisal regulations. Further, in 2006, the Appraisal Standards Board issued significant revisions to USPAP, adopting the USPAP Scope of Work Rule and deleting the USPAP Departure Rule. For these reasons, the Agencies are issuing the proposed Guidelines to provide further clarification of supervisory expectations for regulated institutions' appraisal and evaluation programs.

Independent and reliable collateral valuations are core to a regulated institution's real estate credit decisions. Therefore, the proposed Guidelines are intended to re-enforce the importance of sound collateral valuation practices that the Agencies' appraisal regulations mandate. The Agencies believe that the proposed Guidelines further clarify their long standing expectations for an institution's appraisal and evaluation program, which are necessary to promote safe and sound real estate lending activity.

II. Principal Elements of the Guidelines

The proposed Guidelines provide guidance on elements of a safe and sound appraisal and evaluation program, including the Agencies' supervisory expectations concerning the independence of an institution's appraisal and evaluation program from influence by the borrower or the loan production staff, the competence of individuals who perform appraisals and evaluations, standards for the development and reporting of appraisals and evaluations, and an institution's collateral review function. The proposed Guidelines also provide guidance and expectations for risk management principles and control measures for institutions' appraisal and evaluation programs.

The proposed Guidelines would supersede the 1994 Guidelines and reflect guidance issued by the Agencies over the past several years on independence of the appraisal and evaluation program, appraisals for residential tract developments, and the USPAP Scope of Work Rule. The core principles of the 1994 Guidelines have been retained. Further, the format of the 1994 Guidelines has been retained in the proposed Guidelines to make it easier for regulated institutions and examiners to find the material that has not been revised.

The following discussion summarizes the proposed major revisions to the 1994 Guidelines.

Independence of the Appraisal and Evaluation Program. The proposed Guidelines emphasize the importance of the independence of an institution's appraisal and evaluation program from influence by the loan production process or borrower. For small and rural institutions, where complete separation of the collateral valuation function and the loan production process may not be possible, the proposed Guidelines discuss prudent minimal safeguards and clarify that lending staff should abstain from the approval of the loan on which

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[1] Public Law 101–73, 103 Stat. 183 (1989).

[2] 12 U.S.C. 3339.

[3] 12 U.S.C. 3350(4).

[4] 12 U.S.C. 3339.

[5] *Id.*

[6] OCC: 12 CFR part 34, subpart C; FRB: 12 CFR part 208, subpart E and 12 CFR part 225, subpart G; FDIC: 12 CFR part 323; OTS: 12 CFR part 564; and NCUA: 12 CFR part 722.

[7] *See* OCC: Comptroller's Handbook, Commercial Real Estate and Construction Lending (1998) (Appendix E); FRB: 1994 Interagency Appraisal and Evaluation Guidelines (SR letter 94–55); FDIC: FIL–74–94; and OTS: 1994 Interagency Appraisal and Evaluation Guidelines (Thrift Bulletin 55a).

[8] This includes: The 2003 Interagency Statement on Independent Appraisal and Evaluation Functions, OCC: Advisory Letter 2003–9; FRB: SR letter 03–18; FDIC: FIL–84–2003; OTS: CEO Memorandum No.184; and NCUA: NCUA Letter to Credit Unions 03–CU–17; the 2005 Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions, OCC: OCC Bulletin 2005–6; FRB: SR letter 05–5; FDIC: FIL–20–2005; OTS: CEO Memorandum No. 213: and NCUA: NCUA Letter to Credit Unions 05–CU–06; the 2005 Interagency FAQs on Residential Tract Development Lending, OCC: OCC Bulletin 2005–32; FRB: SR letter 05–14; FDIC: FIL–90–2005; OTS: CEO Memorandum No. 225: and NCUA: NCUA Letter to Credit Unions 05–CU–12; and the 2006 Interagency Statement on the 2006 Revisions to the Uniform Standards of Professional Appraisal Practice, OCC: OCC Bulletin 2006–27; FRB: SR letter 06–9; FDIC: FIL–53–2006; OTS: CEO Memorandum No. 240: and NCUA: Regulatory Alert 06–RA–04. Each of these guidance documents continues to be in effect.

they perform, order, or review an appraisal or evaluation.

Minimum Appraisal Standards. The proposed Guidelines provide further clarification of the five appraisal standards in the Agencies' appraisal regulations, as follows. First, the Agencies' appraisal regulations provide that USPAP sets the minimum appraisal standards for federally related transactions. The proposed Guidelines provide clarification of those appraisal standards above and beyond USPAP that are required by the Agencies' appraisal regulations. Second, the Agencies' appraisal regulations require that appraisals for federally related transactions be written and contain sufficient information to support the institution's credit decision. The proposed Guidelines reflect an expanded discussion of the Agencies' expectations for the content of appraisals that will satisfy this requirement. Third, the Agencies' appraisal regulations require that appraisals analyze and report deductions and discounts for a loan to finance proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units. The proposed Guidelines provide more detail on the application of this standard by property type, both commercial and residential. Fourth, the Agencies' appraisal regulations require that appraisals be based upon the regulatory definition of market value. The discussion of market value in the 1994 Guidelines has been expanded in the proposed Guidelines to link the appraisal regulatory definition of market value with the definition of value in the Agencies' real estate lending standards guidelines.[9] The proposed Guidelines also address the definition of ''market value'' in an appraisal for a loan to finance a development and construction real estate project. Fifth, the Agencies' appraisal regulations require that an institution use the services of a state-certified or licensed appraiser. The proposed Guidelines remind institutions that an appraiser's credential is not the sole determination of competency and that institutions should consider the appraiser's education and experience to assess his or her competency for a given appraisal assignment. Further, the proposed Guidelines remind institutions to convey to an appraiser that the requirements of the Agencies' minimum appraisal standards are considered assignment conditions for an appraiser under USPAP.

Appraisal Development and Appraisal Reports. These sections were revised to reflect revisions to USPAP that the Appraisal Standards Board implemented in July 2006 to eliminate the USPAP Departure Rule and to adopt the USPAP Scope of Work Rule. The proposed Guidelines incorporate the guidance provided by the Agencies in the June 2006 Interagency Statement on the 2006 Revisions to USPAP.[10] The proposed Guidelines remind institutions that while the appraiser is responsible for complying with USPAP and its Scope of Work Rule, the institution is responsible for complying with the Agencies' appraisal regulations and should discuss its needs and expectations for the appraisal with the appraiser. Further, the discussion on appraisal reports no longer refers to specific USPAP reporting formats (that is, self-contained, summary, and restricted appraisal reports). Rather, the discussion addresses the level and adequacy of information and analysis in the report that is necessary to comply with both USPAP and the regulatory appraisal requirement to provide sufficient information to support the institution's credit decision. Reference to the revised USPAP terminology has been included in a new proposed Appendix C, which provides a glossary of terms. The Agencies understand that the Appraisal Standards Board may consider revisions to the USPAP reporting formats so this discussion was worded broadly to allow for possible USPAP changes.

Evaluation Content. Under the Agencies' appraisal regulations, an institution may obtain or perform an evaluation of real property collateral in lieu of an appraisal for transactions that qualify for certain appraisal exemptions. This section describes the Agencies' expectations on the information and analysis that should be included in an evaluation. An institution should obtain more detailed evaluations for higher risk real estate-related financial transactions or as its portfolio risk increases. Further, this section was revised to reflect the inclusion of a new appendix (Appendix B) in the proposed Guidelines on evaluation alternatives. This new appendix provides a discussion of appropriate practices and controls regarding an institution's use of AVMs and tax assessment valuations as evaluation alternatives. This section also addresses the Agencies' expectations for institutions to establish a process and procedures for determining the appropriate use of evaluation alternatives for a given transaction or lending activity, considering associated risk.

Reviewing Appraisals and Evaluations. This is a new section in the proposed Guidelines and is based on material in the Program Compliance section in the 1994 Guidelines, the 2003 Interagency Statement on Independent Appraisal and Evaluation Functions, and a related statement issued by the Agencies in 2005 addressing frequently asked questions.[11] While the proposed Guidelines retain a Program Compliance section concerning effective internal controls, the new section emphasizes the importance of an institution's review function to promote quality appraisals and evaluations. The Agencies expect institutions to maintain a robust review process for ensuring that appraisals and evaluations support their credit decisions. The program should provide for an increasingly comprehensive review of appraisals supporting transactions that pose higher credit risk to the institution. This expectation for a risk-based program recognizes the importance of the collateral valuation process to promoting sound credit underwriting decisions. As explained in the proposed Guidelines, the scope of the review will depend upon the type and risk of the transaction and the process through which the appraisal or evaluation is obtained. The proposed Guidelines provide guidance on the review process, including documentation, independence, review procedures, and reviewers' qualifications. The proposed Guidelines also indicate that an institution with prior approval from its primary regulator may employ various techniques, such as automated tools or sampling methods, for performing pre-funding reviews of appraisals or evaluations supporting lower risk single-family residential mortgages. Finally, the proposed Guidelines outline expectations for a compliance program to establish effective internal controls that promote compliance with the Agencies' appraisal regulations, supervisory guidelines and institutions' internal policies.

Portfolio Monitoring and Updating Collateral Valuations. This section was revised to emphasize the importance of sound portfolio monitoring principles that set forth criteria for when an institution should replace or update collateral valuations for existing real

[9] OCC 12 CFR part 34, subpart D; FRB: 12 CFR part 208, Appendix C; FDIC 12 CFR part 365; and OTS 12 CFR 560.100 and 560.101. NCUA's general lending regulation addresses residential real estate lending by federal credit unions, and its member business loan regulation addresses commercial real estate lending. 12 CFR 701.21; 12 CFR part 723.

[10] *See supra*, note 8.

[11] *See supra*, note 8.

estate loans. In establishing criteria, an institution should consider the appropriateness of the valuation tool or methodology, the age of the original appraisal or evaluation, property type, current market conditions, and current use of the property. Further, the proposed Guidelines remind institutions that as the reliance on real estate becomes more important on an existing credit, there is a need for timely information to assess the value of the real estate collateral and the associated risk to the institution. This section also explains that examiners have the right to require an institution to obtain an appraisal or evaluation when there are safety and soundness concerns on an existing real estate secured credit.

Appraisal Exemptions (Appendix A). This new appendix provides further clarification on real estate-related financial transactions exempted from the Agencies' appraisal regulations. This discussion is based on the preamble to the Agencies' 1994 regulations and responds to the questions the Agencies have received over the years concerning exemptions to their appraisal requirements.

Evaluation Alternatives (Appendix B). This new appendix reflects the discussion on the use of AVMs and tax assessment valuations as evaluation alternatives in the Interagency Credit Risk Management Guidance for Home Equity Lending.[12] Appendix B provides guidance on the process for selecting and validating a model. The appendix also provides a framework, in the form of a set of questions, that institutions may consider for determining when an AVM may be an acceptable evaluation alternative for a given transaction.

Glossary of Terms (Appendix C). The proposed Guidelines contain a new glossary of various terms used in the Guidelines and appraisal practice to aid institutions in understanding the Guidelines. Many of these terms are already defined in the Agencies' appraisal regulations and in USPAP.

III. Request for Comment

The Agencies are requesting public comment on all aspects of the proposed Guidelines. In particular, the Agencies request comment on the clarity of the proposed Guidelines regarding the interpretations of the thirteen appraisal exemptions discussed in Appendix A.[13] The Agencies further request comment on the appropriateness of risk management expectations and controls in the evaluation process including those discussed in Appendix B of the proposed Guidelines. The Agencies also seek comment on the expectations in the proposed Guidelines on reviewing appraisals and evaluations. In particular, the Agencies seek specific comment on whether the use of automated tools or sampling methods that the proposed Guidelines allow for reviews of appraisals or evaluations supporting lower risk single-family residential mortgages is appropriate for other low risk mortgage transactions and whether appropriate constraints can be placed on the use of these tools and methods to ensure the overall integrity of the institution's appraisal process for those low risk mortgage transactions.

The text of the proposed Guidelines, entitled proposed 2008 Interagency Appraisal and Evaluation Guidelines, is as follows:

Purpose

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (the Agencies) are jointly issuing these Interagency Appraisal and Evaluation Guidelines (Guidelines), which supersede the 1994 Interagency Appraisal and Evaluation Guidelines. These Guidelines address supervisory matters relating to real estate appraisals and evaluations used to support real estate-related financial transactions.[14] Further, these Guidelines provide federally regulated institutions and examiners clarification on the Agencies' expectations for prudent appraisal and evaluation policies, procedures, and practices.

Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)[15] requires each Agency to prescribe appropriate standards for the performance of real estate appraisals in connection with ''federally related transactions,''[16] which are defined as those real estate-related financial transactions that an Agency engages in, contracts for, or regulates and that require the services of an appraiser.[17] The Agencies' appraisal regulations must require, at a minimum, that real estate appraisals be performed in accordance with generally accepted uniform appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board, and that such appraisals be in writing.[18] An Agency may require compliance with additional appraisal standards if it makes a determination that such additional standards are required in order to properly carry out its statutory responsibilities.[19] Each of the Agencies has adopted additional appraisal standards.[20]

The Agencies' real estate lending regulations and guidelines,[21] issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), require each institution to adopt and maintain written real estate lending policies that are consistent with principles of safety and soundness and that reflect consideration of the real estate lending guidelines issued as an appendix to the regulations.[22] The real estate lending guidelines state that an institution's real estate lending program should include an appropriate real estate appraisal and evaluation program.

Supervisory Policy

An institution's real estate appraisal and evaluation policies and procedures will be reviewed as part of the examination of the institution's overall real estate-related activities. Examiners will consider the institution's size and nature of its real estate-related activities when assessing the appropriateness of its program.

When analyzing individual transactions, examiners will review an appraisal or evaluation to determine whether the methods, assumptions, and value conclusions are reasonable. Examiners also determine whether the appraisal or evaluation complies with the Agencies' appraisal regulations and

[12] OCC: 2005–22; FRB: SR letter 05–11; FDIC: FIL 45–2005; OTS: CEO Memorandum No. 222; and NCUA: NCUA Letter to Credit Unions 05–CU–07.

[13] In light of recent events in the residential mortgage market, the Agencies are interested in comments on the exemption from the regulatory appraisal requirements for residential real estate transactions involving U.S. government sponsored agencies.

[14] These Guidelines pertain to all real estate-related financial transactions originated or purchased by a regulated institution or its operating subsidiary for its own portfolio or as assets held for sale, including activities of commercial and residential real estate mortgage operations, capital markets groups, and asset securitization and sales units.

[15] Public Law 101–73, 103 Stat. 183 (1989).

[16] 12 U.S.C. 3339.

[17] 12 U.S.C. 3350(4).

[18] *Supra* to Note 3.

[19] *Id.*

[20] OCC: 12 CFR part 34, subpart C; FRB: 12 CFR part 208, subpart E, and 12 CFR part 225, subpart G; FDIC: 12 CFR part 323; OTS: 12 CFR part 564; and NCUA: 12 CFR part 722.

[21] OCC: 12 CFR part 34, subpart D; FRB: 12 CFR part 208, subpart E; FDIC: 12 CFR part 365; and OTS: 12 CFR 560.100 and 560.101.

[22] NCUA's general lending regulation addresses residential real estate lending by federal credit unions, and its member business loan regulation addresses commercial real estate lending. 12 CFR 701.21; 12 CFR part 723.

supervisory guidelines as well as the institution's policies. Examiners will review the steps taken by an institution to ensure that the persons who perform the institution's appraisals and evaluations are qualified and are not subject to conflicts of interest. Institutions that fail to maintain a sound appraisal and evaluation program or to comply with the Agencies' appraisal regulations and supervisory guidelines will be cited in supervisory letters or examination reports and may be criticized for unsafe and unsound banking practices. Deficiencies will require appropriate corrective action.

Appraisal and Evaluation Program

An institution's board of directors or its designated committee is responsible for adopting and reviewing policies and procedures that establish an effective real estate appraisal and evaluation program. The program should:

- Provide for the independence of the persons ordering, performing, and reviewing appraisals or evaluations;
- Establish selection criteria and procedures to evaluate and monitor the ongoing performance of persons who perform appraisals or evaluations;
- Ensure that appraisals contain sufficient information to support the credit decision;
- Maintain criteria for content and appropriate use of evaluations;
- Provide for the receipt and review of the appraisal or evaluation report in a timely manner to facilitate the credit decision;
- Develop criteria to assess the validity of existing appraisals or evaluations to support subsequent transactions;
- Implement internal controls that promote compliance with these program standards; and
- Establish criteria for obtaining appraisals or evaluations for transactions that are not otherwise covered by the appraisal requirements of the Agencies' appraisal regulations.

Independence of the Appraisal and Evaluation Program

An institution should maintain standards of independence as part of an effective collateral valuation program (both appraisal and evaluation functions) for all of its real estate lending activity. The collateral valuation program is an integral component of the credit underwriting process and, therefore, should be isolated from influence by the institution's loan production staff. An institution should establish reporting lines independent of loan production for staff that order, accept, and review appraisals and evaluations.

Persons who perform appraisals must be independent of the loan production and collection processes and have no direct or indirect interest, financial or otherwise, in the property or transaction. These standards of independence also should apply to persons who perform evaluations. While the information provided to the appraiser by the institution should not unduly influence the appraiser, the institution may provide a copy of the sales contract for purchase transactions. Further, an institution's policies and controls should ensure that the institution does not communicate a predetermined, expected, qualifying, or owner's estimate of value, or a loan amount or target loan-to-value ratio to a person performing an appraisal or evaluation.

For a small or rural institution or branch, it may not always be possible or practical to separate the collateral valuation program from the loan production process. If absolute lines of independence cannot be achieved, an institution should be able to demonstrate clearly that it has prudent safeguards to isolate its collateral valuation program from influence or interference from the loan production process. In such cases, another loan officer, other officer, or director of the institution may be the only person qualified to analyze the real estate collateral. To ensure their independence, such lending officials, officers, or directors should abstain from any vote or approval involving loans on which they performed, ordered, or reviewed the appraisal or evaluation.[23]

Selection of Persons Who May Perform Appraisals and Evaluations

An institution's collateral valuation program should establish criteria to select, evaluate, and monitor the performance of persons who perform an appraisal or evaluation. The criteria should ensure that:

- The institution's selection process is nonpreferential and unbiased;
- The person selected possesses the requisite education, expertise, and competence to complete the assignment;
- The work performed by persons providing appraisal and evaluation services is periodically reviewed by the institution;
- The person selected is capable of rendering an unbiased opinion;
- The person selected is independent and has no direct, indirect, or prospective interest, financial or otherwise, in the property or the transaction; and
- The person selected to perform an appraisal holds the appropriate state certification or license.

Under the Agencies' appraisal regulations, an institution or its agent must directly select and engage appraisers. There also should be independence in the selection of persons who perform evaluations. Further, the person who selects or oversees the selection of appraisers or persons providing evaluation services should be independent from the loan production area. Independence is compromised when a borrower or loan production personnel recommends or selects a person to perform an appraisal or evaluation. An institution's use of a borrower-ordered appraisal violates the Agencies' appraisal regulations.

Institutions should use written engagement letters when ordering appraisals, particularly for large, complex, or out-of-area commercial real estate properties. An engagement letter facilitates communication with the appraiser and documents the expectations of each party to the appraisal assignment. An institution should include the engagement letter in its permanent credit file. To avoid the appearance of any conflict of interest, appraisal or evaluation development work should not commence until the institution has selected a person for the assignment.

Transactions That Require Appraisals

Although the Agencies' appraisal regulations exempt certain real estate-related financial transactions from the appraisal requirement, most real estate-related financial transactions over the appraisal threshold are considered federally related transactions and, thus, require appraisals.[24] The Agencies reserve the right to require an appropriate appraisal under their appraisal regulations to address safety and soundness concerns in a

[23] NCUA has recognized that it may be necessary for credit union loan officers or other officials to participate in the appraisal or evaluation function although it may be sound business practice to ensure no single person has the sole authority to make credit decisions involving loans on which the person ordered or reviewed the appraisal or evaluation. 55 FR 5614, 5618 (February 16, 1990), 55 FR 30193, 30206 (July 25, 1990).

[24] In order to facilitate recovery in designated major disaster areas, subject to safety and soundness considerations, Section 2 of the Depository Institutions Disaster Relief Act of 1992, Public Law 102–485, 106 Stat. 2771 (October 23, 1992) provides the Agencies with the authority to waive certain appraisal requirements for up to three years after a Presidential declaration of a natural disaster.

transaction. (See Appendix A—Appraisal Exemptions.) [25]

Minimum Appraisal Standards

The Agencies' appraisal regulations include the following five minimum standards for the preparation of an appraisal. (See Appendix C—Glossary for terminology used in these guidelines.)

The appraisal must:

• *Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation unless principles of safe and sound banking require compliance with stricter standards.*

Although allowed by USPAP, the Agencies' appraisal regulations do not permit an appraiser to appraise any property in which the appraiser has an interest, direct or indirect, financial or otherwise. Further, the appraisal must contain an opinion of market value as defined in the Agencies' appraisal regulations. Under USPAP, the appraisal must contain a certification that the appraiser has complied with USPAP. An institution may refer to the USPAP certification to confirm whether the appraiser is independent of the property and the transaction, as required by the Agencies' appraisal regulations. Under the Agencies' appraisal regulations, the result of an Automated Valuation Model (AVM), by itself, is not an appraisal, because a state-certified or licensed appraiser must perform an appraisal in conformance with USPAP and the Agencies' minimum appraisal standards.

• *Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction.*

An institution should obtain an appraisal that is appropriate for the particular federally related transaction, considering the risk and complexity of the transaction. The level of detail should be sufficient to understand the appraiser's analysis and opinion of the property's market value. As provided by the USPAP Scope of Work Rule, appraisers are responsible for establishing the scope of work to be performed in rendering an opinion of the property's market value and have three different reporting options available. (See Appendix C—Glossary of Terms describing reporting options.) However, an institution should ensure that the scope of work is appropriate for the assignment. The appraiser's scope of work should be consistent with the valuation methodology employed for similar property types, market conditions, and transactions. The content and format of the appraisal report must contain sufficient information and analysis to support the institution's decision to engage in the transaction. The appraisal report should contain sufficient disclosure of the nature and extent of inspection and research performed to verify the property's condition and support the appraiser's opinion of market value. The result of an AVM certified by an appraiser does not, by itself, meet this standard.

• *Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units.*

This standard is designed to avoid having appraisals prepared using unrealistic assumptions and inappropriate methods. An appraisal must include the market value of the property and should reflect the property's condition in its actual physical condition, use, and zoning designation, as of the effective date of the appraisal.

○ Proposed Construction or Renovation. For properties where improvements are to be constructed or rehabilitated, an institution may request a prospective market value as completed and as stabilized. While an institution may request the appraiser to provide the sum of retail sales for a proposed development, this value is not the market value of the property for the purpose of the Agencies' appraisal regulations.

○ Partially Leased Buildings. For proposed and partially leased rental developments, the appraiser must make appropriate deductions and discounts. Appropriate deductions and discounts should include items such as leasing commission, rent losses, tenant improvements, and entrepreneurial profit.

○ Non-market Lease Terms. For properties subject to leases with terms that do not reflect current market conditions, the appraiser must make appropriate deductions and discounts, which should be based on stabilized occupancy at prevailing market terms.

Tract Developments With Unsold Units

• Raw Land. The appraiser must provide an opinion of value for raw land based on its current condition and existing zoning that includes appropriate deductions and discounts. Appropriate deductions and discounts should include items such as holding costs, marketing costs, and entrepreneurial profit.

• Developed Lots. For proposed developments of five or more residential lots, the appraiser must analyze and report appropriate deductions and discounts. Appropriate deductions and discounts should reflect holding costs, marketing costs, and entrepreneurial profit during the sales absorption period for the sale of the developed lots. The estimated sales absorption period should reflect the expected holding period before development commences as well as the time frame for the actual development and sale of the lots.

• Attached or Detached Single-family Homes. For proposed construction and sale of five or more attached or detached single-family homes in the same development, the appraiser must analyze and report appropriate deductions and discounts. Appropriate deductions and discounts should reflect holding costs, marketing costs, and entrepreneurial profit during the sales absorption period of the completed units. If an institution finances construction on an individual unit basis, an appraisal of the individual units may be used if the institution can demonstrate through an independently obtained feasibility study or market analysis that all units collateralizing the loan can be constructed and sold within 12 months. However, the transaction should be supported by an appraisal that analyzes and reports appropriate deductions and discounts if any of the individual units are not completed and sold within the 12-month time frame.

• Condominiums. For proposed construction and sale of a condominium building with five or more units, the appraisal must reflect appropriate deductions and discounts. Appropriate deductions and discounts should include holding costs, marketing costs, and entrepreneurial profit during the sales absorption period of the completed units. If an institution finances construction of a single condominium building with less than five units or a condominium project with multiple buildings with less than five units per building, the institution may rely on appraisals of the individual units if the institution can demonstrate through an

[25] As a matter of policy, OTS uses its supervisory authority to require problem associations and associations in troubled condition to obtain appraisals for all real estate-related transactions over $100,000 (unless the transaction is otherwise exempt). NCUA requires a written estimate of market value for all real estate-related transactions valued at the appraisal threshold or less, or that involve existing credit where there is no advance of monies and material change in the condition of the property. 12 CFR 722.3(d).

independently obtained feasibility study or market analysis that all units collateralizing the loan can be constructed and sold within 12 months. However, the transaction should be supported by an appraisal that analyzes and reports appropriate deductions and discounts if any of the individual units are not completed and sold within the 12-month time frame.

- *Be based upon the definition of market value set forth in the appraisal regulation.*

Each appraisal must contain an estimate of market value, as defined by the Agencies' appraisal regulations. The Agencies' definition of market value assumes that the price is not affected by undue stimulus, which would allow the value of the real property to be increased by favorable financing or seller concessions. Further, the market value should not include a going concern value or a special value to a specific property user. An appraisal may contain separate opinions of value for such items so long as they are clearly identified and disclosed.

The estimate of market value should consider the real property's current physical condition, use, and zoning as of the appraisal date. For a transaction financing construction or renovation of a building, an institution would generally request an appraiser to provide the property's market value in its ''as is'' condition as of the appraisal's effective date and the property's ''prospective'' market values at the time development is expected to be completed and at the time stabilized occupancy is projected to be achieved.[26] Prospective market value opinions should be based upon current and reasonably expected market conditions. When an appraisal includes prospective value opinions, there should be a point of reference to the market conditions and time frame on which the appraiser based the analysis.[27]

- *Be performed by state-certified or licensed appraisers in accordance with requirements set forth in the appraisal regulation.*

In determining competency for a given appraisal assignment, institutions should consider an appraiser's education and experience. An institution should confirm that the appraiser holds a valid credential from the appropriate state appraiser regulatory authority. An institution should not base competency solely on the appraiser's credentialing. When ordering appraisals, an institution should convey to an appraiser that the Agencies' minimum appraisal standards must be followed. From the appraiser's perspective, these minimum appraisal standards are considered assignment conditions under USPAP.

Appraisal Development

The Agencies' appraisal regulations require appraisals for federally related transactions to comply with USPAP. Consistent with the USPAP Scope of Work Rule,[28] the appraisal must reflect an appropriate scope of work that provides for ''credible'' assignment results. The appraisal's scope of work should reflect the extent to which the property is identified and inspected, the type and extent of data researched, and the analyses applied to arrive at opinions or conclusions.

While an appraiser must comply with USPAP and establish the scope of work in an appraisal assignment, an institution is responsible for complying with the Agencies' appraisal regulations and obtaining an appraisal that provides sufficient information to support its decision to engage in the transaction. Therefore, to ensure that an appraisal is appropriate for the intended use, an institution should discuss its needs and expectations for the appraisal with the appraiser. Such discussions should assist the appraiser in establishing the scope of work and form the basis of the institution's engagement letter, as appropriate. An institution should not allow lower cost or the speed of delivery time to influence the appraiser's determination of an appropriate scope of work for an appraisal supporting a federally related transaction.

If applicable, the appraisal should include three approaches (cost, income, and sales comparison) to analyze the value of a property, and should reconcile the results of each approach to estimate market value. An appraisal also should reflect an analysis of the property's sales history and an opinion as to the highest and best use of the property. Further, USPAP requires the appraiser to disclose whether or not the subject property was inspected and whether anyone provided significant assistance to the appraiser signing the appraisal report.

Appraisal Reports

An institution is responsible for identifying the appropriate appraisal reporting option to support its credit decisions. The institution should consider the risk, size, and complexity of the transaction and the real estate collateral when determining its appraisal engagement instructions to an appraiser.

USPAP provides various reporting options that an appraiser may use to present the results of appraisals. The major difference among these reporting options is the level of detail presented in the report. A reporting option that merely states, rather than summarizes or describes the content and information required in an appraisal report, may lack sufficient supporting information and analysis to explain the appraiser's opinions and conclusions. Therefore, the Agencies believe that such reports will not be appropriate to support most federally related transactions. However, these less detailed reports may be appropriate for real estate collateral monitoring or in circumstances when an institution's collateral valuation program requires an evaluation. (See Appendix C—Glossary of Terms describing reporting options.)

Regardless of the reporting option, the appraisal report should contain sufficient detail to allow the institution to understand the scope of work performed. Sufficient information should include the disclosure of research and analysis performed, as well as disclosure of the research and analysis not performed together with the rationale for its omission.

Transactions That Require Evaluations

An institution may obtain or perform an evaluation of real property collateral in lieu of an appraisal for transactions that qualify for certain exemptions under the Agencies' appraisal regulations. These exemptions include a transaction that:

- Has a transaction value equal to or less than the appraisal threshold.
- Is a business loan with a transaction value equal to or less than the business loan threshold, and is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment.[29]
- Involves an existing extension of credit at the lending institution, provided that:
  - There has been no obvious and material change in the market conditions or physical aspects of the

[26] Under NCUA regulations, ''market value'' of a construction and development project is the value at the time a commercial real estate loan is made, which includes ''the appraised value of land owned by the borrower on which the project is to be built, less any liens, plus the cost to build the project.'' 68 FR 56537, 56540 (October 1, 2003) (referring to Office of General Counsel Opinion 01–0422 (June 7, 2001)); 12 CFR 723.3(b).

[27] *See* USPAP, Statement 4 on Prospective Value Opinions, for further explanation.

[28] *See* USPAP Scope of Work Rule, Advisory Opinions 28 and 29.

[29] NCUA regulations do not contain an exemption from the appraisal requirements specific to member business loans.

property that threaten the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

◦ There is no advancement of new monies other than funds necessary to cover reasonable closing costs.

Qualifications of Persons Who Perform Evaluations

An institution should select persons who are independent of the loan production process and the transaction, and have real estate-related training and experience to perform evaluations. These persons should have knowledge of the market and property type relevant to the subject property. Examples include persons with appraisal experience, real estate lending or sales professionals, agricultural extension agents, or foresters.

An institution should document the qualifications and relevant experience of persons selected to perform evaluations. An institution should have adequate controls to confirm that the person performing the evaluation is qualified and independent of the property, the transaction, and the loan production function. If an institution relies on an external, third party to perform an evaluation, the institution should communicate its evaluation criteria to the third party and have adequate controls to confirm compliance with its internal policies and these Guidelines. Although not required, an institution may use state-certified or licensed appraisers to perform evaluations. Institutions should refer to USPAP Advisory Opinion 13 for guidance on appraisers performing evaluations of real property collateral.

Evaluation Content

An evaluation should provide an estimate of the market value of the collateral to support the institution's credit decision or portfolio management. An institution should establish policies and procedures for determining an appropriate collateral valuation methodology for a given transaction considering associated risks. Further, these policies and procedures should address the process for selecting the most reliable evaluation method or tool for a transaction rather than using the method or tool that renders the highest value.

An evaluation should support the institution's decision to engage in the transaction. While evaluation methodologies and tools may vary, all evaluations, at a minimum, should:

- Identify the location of the property;
- Provide a description of the property and its current and projected use;
- Indicate the source(s) of information used to value the property, including, but not limited to:
  - External data sources;
  - Previous sales data;
  - Photos of the property;
  - Property tax assessment data;
  - Comparable sales information;
  - Description of the neighborhood; and
  - Local market conditions;
- Disclose the analysis that was performed and the supporting information used to value the property;
- Provide an estimate of the property's market value in its actual physical condition, use and zoning designation as of an effective date, with any limiting conditions, if applicable;
- Indicate the preparer's name and contact information; and
- Be documented in the credit file. Documentation content should be appropriate for the valuation methodology and tool used for the transaction.

The institution also should establish criteria for determining the extent to which an inspection of the collateral is necessary to determine that the property is in acceptable condition for its current or projected use. Further, an institution should obtain more detailed evaluations for higher risk real estate-related financial transactions, or as its portfolio risk increases. A more detailed evaluation may be necessary for certain transactions such as those involving:

- Loans with combined loan-to-value ratios in excess of the supervisory loan-to-value limits;
- Atypical properties;
- Properties outside the institution's traditional lending market;
- Properties in a transitional market or location;
- Subsequent transactions with significant risk to the institution; or
- Borrowers with high risk characteristics.

See Appendix B—Evaluation Alternatives for further guidance on evaluation alternatives such as AVMs and tax assessment values.

Accepting an Appraisal from Another Institution

An institution may use an appraisal that was prepared by an appraiser engaged directly by another regulated or financial services institution, provided the institution determines that the appraisal is valid, conforms to the Agencies' appraisal regulations, and is otherwise acceptable. Such determinations should be completed by the acquiring institution prior to accepting the appraisal and documented in the credit file.

Appraisals that support federally related transactions must meet the standards of independence within the Agencies' appraisal regulations. Among other considerations, when accepting an appraisal from another institution, the acquiring institution should obtain documentation that the appraiser was engaged directly by the institution transferring the appraisal and had no direct, indirect, or prospective interest, financial or otherwise, in the property or transaction. If an institution relies on a third party originator or its agent for the appraisal, the standard of independence still applies. For example, an engagement letter should confirm that the institution transferring the appraisal, not the borrower, was the original client that selected the appraiser and ordered the appraisal.

An institution must not accept an appraisal that has been readdressed or altered by the appraiser with the intent to conceal the original client. Altering an appraisal report in a manner that conceals the original client or intended users of the appraisal is misleading and violates the Agencies' appraisal regulations and USPAP.

Validity of Appraisals and Evaluations

The Agencies allow an institution to use an existing appraisal or evaluation to support a subsequent transaction. Therefore, an institution should establish criteria for assessing whether an existing appraisal or evaluation remains valid. Such criteria will vary depending upon the condition of the property and the marketplace, and the nature of the transaction. The documentation in the credit file should provide the facts and analysis to support the institution's conclusion that the existing appraisal or evaluation remains valid. Factors that could cause changes to originally reported values include:

- Passage of time;
- Volatility of the local market;
- Availability of financing;
- Inventory of competing properties;
- Improvements to the subject property or competing properties;
- Lack of maintenance of the subject or competing properties;
- Changes in zoning; or
- Environmental contamination.

Third Party Arrangements

Effective program oversight should address any arrangements with a third party, acting as agent for the institution, providing appraisal and evaluation services. An institution should monitor and periodically assess these arrangements for compliance with program standards and the Agencies' guidance on third party arrangements.[30] If deficiencies are discovered, the institution should take remedial action in a timely manner.

Reviewing Appraisals and Evaluations

The Agencies' appraisal regulations specify that appraisals must contain sufficient information and analysis to support an institution's decision to engage in a credit transaction. As part of the credit approval process, an institution should assess the acceptability of the appraisal or evaluation as well as compliance with the Agencies' appraisal regulations and Guidelines and its own internal policies. This review should be performed prior to the final credit decision and ensure that the appraisal or evaluation adequately supports approval of the credit. An institution's appraisal and evaluation review procedures should address the role, independence, and qualifications of the reviewer; the techniques, timing and level of review; documentation requirements; and the appropriate resolution of deficiencies. Review procedures also should address the reviewer's responsibility to verify that the methods, assumptions, data sources, and conclusions are reasonable and appropriate for the particular transaction and property.

Persons who review appraisals and evaluations should be independent of the transaction and possess the requisite education, expertise, and competence to perform the review commensurate with the complexity of the transaction. Small or rural institutions or branches with limited staff should implement prudent safeguards for accepting appraisals and evaluations when absolute lines of independence cannot be achieved. In these situations, the review may be part of the originating loan officer's overall credit analysis, as long as the originating loan officer abstains from directly or indirectly approving or voting to approve the loan.

Institutions should implement a risk-focused approach to determine the depth of the review needed to ensure that appraisals and evaluations are acceptable. The scope of review will depend upon the type and risk of the transaction and the process through which the appraisal and evaluation is obtained (whether directly or from another regulated or financial services institution). Appraisals and evaluations supporting complex properties or high-risk transactions should be reviewed more comprehensively to assess the technical quality of the appraiser's analysis prior to making a final credit decision. For example, a risk-focused approach for commercial mortgages should provide for a comprehensive review of those appraisals supporting transactions that pose higher credit risk to the institution. These transactions may include large-dollar credits, loans secured by complex or specialized properties, and properties outside the institution's traditional lending market. The depth to which reviews are completed for lower risk transactions should be commensurate with the size, type and complexity of the underlying credit transaction supported by the appraisal or evaluation.

With prior approval from its primary regulator, an institution may employ various techniques, such as automated tools or sampling methods, for performing pre-funding reviews of appraisals or evaluations supporting lower risk single-family residential mortgages. When using such techniques, an institution should maintain sufficient data and employ appropriate screening parameters to provide adequate quality assurance and should ensure that the work of all appraisers and persons performing evaluations is periodically reviewed.

The institution should document the content of the review in the credit file. This documentation may be presented in a checklist or narrative format as appropriate. If deficiencies are noted by the reviewer, they should be addressed by the person who prepared the appraisal or evaluation or another qualified, independent person. An institution should not accept appraisals or evaluations that do not adequately support the opinion of market value and should replace unreliable appraisals or evaluations prior to the final credit decision.

An appraisal review performed by a state-certified or licensed appraiser must comply with USPAP. Any changes to an appraisal's estimate of value are permitted only as a result of a review conducted by an appropriately qualified state-certified or licensed appraiser in accordance with USPAP.

Program Compliance

An institution's appraisal and evaluation policies should establish effective internal controls that promote compliance with the Agencies' appraisal regulations and supervisory guidelines. The compliance process should include a system of adequate controls, verification and testing that ensures the reliability of an institution's appraisals and evaluations. These controls should be commensurate with the risk of the institution's overall real estate lending activities. Further, the persons responsible for the compliance function should be insulated from any influence by loan production staff.

The compliance process should ensure that all appraisers and persons performing evaluations are subject to periodic evaluation of the quality of their work. This information should provide a basis for evaluating whether the institution should continue to retain the services of the appraiser or the person performing the evaluation.

Portfolio Monitoring and Updating Collateral Valuations

A prudent portfolio monitoring program should include criteria for determining when to obtain a new appraisal or evaluation in accordance with the Agencies' real estate lending standards. Among other considerations, these criteria may be based on changes in market conditions or deterioration in the credit since origination. Moreover, as an institution's reliance on collateral becomes more important, an institution's policies and procedures should ensure that timely information is available to management for assessing collateral and associated risk. The policy should delineate the valuation tool or methodology and consider the property type, current market conditions, current use of the property, and the age of the original appraisal or evaluation. For transactions that are otherwise exempt from the Agencies' appraisal requirements, institutions should establish policies for obtaining appraisals or evaluations to meet risk management objectives.

Under the Agencies' appraisal regulations, examiners have the right to require an institution to obtain an appraisal or evaluation when there are safety and soundness concerns on an existing real estate secured credit. Therefore, in determining the classification of a problem real estate credit, an examiner may direct an institution to obtain a new appraisal or evaluation in order to have sufficient information to understand the nature of the problems. Examiners would be

[30] *See* OCC Bulletin 2001–47, Third-Party Relationships (November 1, 2001); OTS Thrift Bulletin 82a, Third Party Arrangements (September 1, 2004); NCUA Letter to Credit Unions: 01–CU–20, Due Diligence Over Third Party Service Arrangements (November 2001), 07–CU–13, Supervisory Letter-Evaluation Third Party Relationships (December 2007), 08–CU–09, Evaluating Third Party Relationships Questionnaire (April 2008); and FDIC Financial Institution Letter 44–2008, Guidance for Managing Third-Party Risk (June 2008).

expected to provide an institution with a reasonable amount of time to obtain a new appraisal or evaluation.

Referrals

An institution should make referrals directly to state appraiser regulatory authorities when it suspects that a state-certified or licensed appraiser failed to comply with USPAP, applicable state laws, or engaged in other unethical or unprofessional conduct. Examiners finding evidence of unethical or unprofessional conduct by appraisers should forward their findings and recommendations to their supervisory office for appropriate disposition and referral to the state, as necessary.

Appendix A—Appraisal Exemptions

1. Appraisal Threshold

For transactions with a transaction value equal to or less than the appraisal threshold, the Agencies require an evaluation consistent with safe and sound banking practices in lieu of an appraisal.[31]

2. Abundance of Caution

An institution may take a lien on real estate and be exempt from obtaining an appraisal if the lien on real estate is taken by the lender in an abundance of caution. This exemption is intended to have limited application, especially for real estate loans secured by residential properties in which the real estate is the only form of collateral. In order for a business loan to qualify for the abundance-of-caution exemption, the Agencies expect the extension of credit to be well supported by the borrower's cash flow or collateral other than real property. The institution's credit analysis should verify the reliability of these repayment sources and conclude that knowledge of the market value of the real estate on which the lien has been taken as an abundance of caution is unnecessary in making the credit decision.

An institution should not invoke the abundance-of-caution exemption if its credit analysis reveals that the transaction would not be adequately secured by sources of repayment other than the real estate, even if the contributory value of the real estate collateral is low relative to the entire collateral pool. Similarly, the exemption should not be applied to a loan or loan program unless the institution verifies and documents the primary and secondary repayment sources. In the absence of verification of the repayment sources, this exemption should not be used merely to reduce the cost associated with obtaining an appraisal, to minimize transaction processing time, or to offer slightly better terms to a borrower than would be otherwise offered.

In addition, prior to making a final commitment to the borrower, the institution should document and retain in the credit file the analysis performed to verify that the abundance-of-caution exemption has been appropriately applied. If the operating performance or financial condition of the company subsequently deteriorates and the lender determines that the real estate will be relied upon as a repayment source, an appraisal should then be obtained.

3. Loans Not Secured by Real Estate

An institution is not required to obtain an appraisal on a loan that is not secured by real estate, even if the proceeds of the loan are used to acquire or improve real property.[32] For loans covered by this exemption, the real estate has no direct effect on the institution's decision to extend credit because the institution has no legal security interest in the real estate. This exemption is not intended to be applied to real estate-related financial transactions other than those involving loans. For example, this exemption should not be applied to a transaction such as an institution's investment in real estate for its own use.

4. Liens for Purposes Other Than the Real Estate's Value

This exemption allows institutions to take liens against real estate without obtaining an appraisal to protect legal rights to, or control over, other collateral. Institutions frequently take real estate liens to protect legal rights to other collateral rather than because of the contributory value of the real estate as an individual asset. In order to apply the exemption, the institution should determine that the market value of the real estate as an individual asset is not necessary to support its decision to extend credit. For example, an institution making a loan to a logging operation may take a lien against the real estate upon which the timber stands to ensure its access to the timber in the event of default.

5. Real Estate-Secured Business Loans

This exemption applies to business loans with a transaction value of $1 million or less when the sale of, or rental income derived from, real estate is not the primary source of repayment. To apply this exemption, the Agencies expect the institution to determine that the primary source of repayment for the business loan is operating cash flow from the business rather than rental income or sale of the property. For this type of exempted loan, the Agencies require an evaluation consistent with safe and sound banking practices in lieu of an appraisal.[33]

This exemption will not apply to transactions in which the lender has taken a security interest in real estate, but the primary source of repayment is provided by cash flow or sale of real estate in which the lender has no security interest. For example, a real estate developer cannot qualify for the exemption by showing that a real estate secured loan for one project, in which the lender has taken a security interest, will be repaid with the cash flow from real estate sales or rental income from other real estate projects, in which the lender does not have a security interest. (See Appendix C—Glossary of Terms for a definition of business loan.)

6. Leases

Institutions are required to obtain appraisals of leases that are the economic equivalent of a purchase or sale of the leased real estate. For example, an institution must obtain an appraisal on a transaction involving a capital lease, as the real estate interest is of sufficient magnitude to be recognized as an asset of the lessee for accounting purposes. Operating leases that are not the economic equivalent of the purchase or sale of the leased property do not require appraisals.

7. Renewals, Refinancing, and Other Subsequent Transactions

In general, renewals, refinancing, and other subsequent transactions may be supported by evaluations rather than appraisals. An evaluation is permitted for renewals of existing extensions of credit when either:

(1) No new funds are advanced (other than for reasonable closing costs); or

(2) No obvious and material changes in market conditions or the physical aspects of the property threaten the institution's real estate protection after the transaction.

An institution may engage in a subsequent transaction based on documented equity from a valid existing appraisal or evaluation if the above

[31] NCUA's appraisal regulation requires a written estimate of market value, performed by a qualified and experienced person who has no interest in the property, for transactions equal to or less than the appraisal threshold and transactions involving an existing extension of credit. 12 CFR 722.3(d).

[32] NCUA's regulations do not provide an exemption from the appraisal requirements specific to loans not secured by real estate.

[33] NCUA's regulations do not provide an exemption from the appraisal requirements specific to member business loans.

conditions are met. For example, to satisfy the condition for no material change in market conditions or the physical aspects of the property, the planned future use of the property should be consistent with the use identified in the appraisal or evaluation. If a property, however, has reportedly appreciated because of a planned change in use of the property such as rezoning, an appraisal should be performed for a federally related transaction unless another exemption applies.

Loan Workouts or Modifications: Loan workouts, debt restructures, loan assumptions, and similar transactions involving the addition or substitution of borrowers may qualify for the exemption for renewals, refinancing and other subsequent transactions. Use of this exemption depends on meeting the conditions described above. An institution also should take into consideration such factors as the quality of the underlying collateral and the validity of the existing appraisal or evaluation.

As noted above, an institution may advance new monies beyond closing costs when there are no material changes in the physical aspects of the property that threaten the adequacy of the collateral. The Agencies interpret this provision to not require a new appraisal or evaluation when an institution advances funds to protect its interest in a property, such as to repair damaged property, because these funds would be used to restore the damaged property to its original condition. If a loan workout involves modification of terms and conditions of an existing credit, including acceptance of new real estate collateral that facilitates the orderly collection of the credit, or reduces the institution's risk of loss, an appraisal or evaluation of the existing and new collateral may be prudent, even if it is obtained after the modification occurs.

Other Changes to Loan Terms: An institution may modify the terms of an existing credit without obtaining a new appraisal or evaluation. Such modifications should not involve any advancement of new funds, any material change in the borrower's creditworthiness, any change to the borrower's or guarantor's obligation on the credit, or any changes to the collateral pool or deterioration in collateral protection. For example, an institution may modify the rate on an existing credit, provide a short-term extension, or modify the repayment terms by increasing or reducing monthly payments without obtaining a new appraisal or evaluation, as long as the above conditions are met.

8. Transactions Involving Real Estate Notes

This exemption applies to appraisal requirements for transactions involving the purchase, sale, investment in, exchange of, or extension of credit secured by a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities. If each note or real estate interest meets the Agencies' regulatory requirements for appraisals at the time the real estate note was originated, the institution need not obtain a new appraisal to support its interest in the transaction. The institution should employ audit procedures and review a representative sample of appraisals supporting pooled loans or real estate notes in order to determine that the conditions of the exemption have been satisfied.

Principles of safe and sound banking practice require institutions to determine the suitability of purchasing or investing in existing real estate secured loans and real estate interests. These transactions should have been originated according to secondary market standards and have a history of performance. The information from these sources, together with original documentation, should be sufficient to allow institutions to make appropriate credit decisions regarding these transactions.

An institution may presume that the underlying loans in an investment grade, marketable, mortgage-backed security satisfy the requirements of the appraisal regulation whenever an issuer makes a public statement, such as in a prospectus, that the appraisals comply with the Agencies' appraisal regulations. To be considered investment grade, a security must be rated in one of the top four rating classifications of at least one nationally recognized statistical rating service. A marketable security is one that may be sold with reasonable promptness at a price that corresponds to its fair value.

If the mortgages that secure the mortgage warehouse loan are sold to Fannie Mae or Freddie Mac, the sale itself may be used to demonstrate that the underlying loans complied with the Agencies' appraisal regulations. In such cases, the Agencies expect an institution to monitor its borrower's performance in selling loans to the secondary market and take appropriate steps, such as increasing sampling and auditing of the loans and the supporting documentation, if the borrower experiences more than a minimal loan put-back rate.

9. Transactions Insured or Guaranteed by a U.S. Government Agency or U.S. Government-sponsored Agency

This exemption applies to transactions that are wholly or partially insured or guaranteed by a U.S. government agency or U.S. government-sponsored agency. The Agencies expect these transactions to meet all the underwriting requirements of the federal insurer or guarantor, including its appraisal requirements, in order to receive the insurance or guarantee.

10. Transactions that Qualify for Sale to, or Meet the Appraisal Standards of, a U.S. Government Agency or U.S. Government-sponsored Agency

This exemption applies to transactions that either (i) qualify for sale to a U.S. government agency or U.S. government-sponsored agency,[34] or (ii) involve a residential real estate transaction in which the appraisal conforms to Fannie Mae or Freddie Mac appraisal standards applicable to that category of real estate. An institution may engage in these transactions without obtaining a separate appraisal conforming to the Agencies' appraisal regulations.

10(i) Institutions that rely on exemption 10(i) should maintain adequate documentation that confirms that the transaction qualifies for sale to a U.S. government agency or U.S. government-sponsored agency. If the qualification for sale is not adequately documented, the transaction should be supported by an appraisal that conforms to the Agencies' appraisal regulations, unless another exemption applies.

10(ii) Transactions, such as jumbo or other residential real estate loans, that do not conform to all of Fannie Mae or Freddie Mac underwriting standards qualify for exemption 10(ii) provided they are supported by an appraisal that meets these government-sponsored agencies' appraisal standards.

11. Transactions by Regulated Institutions as Fiduciaries

A regulated institution acting as a fiduciary is not required to obtain appraisals under the Agencies' appraisal regulations if an appraisal is not required under other laws governing fiduciary responsibilities in connection

[34] These government-sponsored agencies would include Banks for Cooperatives; Federal Agriculture Mortgage Corporation; Federal Farm Credit Banks; Federal Home Loan Banks; Freddie Mac; Fannie Mae; Student Loan Marketing Association; and Tennessee Valley Authority.

with a transaction.[35] For example, if no other law requires an appraisal in connection with the sale of a parcel of real estate to a beneficiary of a trust on terms specified in a trust instrument, an appraisal is not required under the Agencies' appraisal regulations. However, when a fiduciary transaction requires an appraisal under other laws, that appraisal should conform to the Agencies' appraisal requirements.

12. Appraisals Not Necessary To Protect Federal Financial and Public Policy Interests or the Safety and Soundness of Financial Institutions

The Agencies retain the authority to determine when the services of an appraiser are not required in order to protect federal financial and public policy interests or the safety and soundness of financial institutions. This exemption is intended to apply to individual transactions rather than broad categories of transactions that would otherwise be addressed by an appraisal exemption. An institution would need to seek a waiver from its supervisory federal agency before entering into the transaction.

13. Transactions Involving Underwriting or Dealing in Mortgage-backed Securities

The FRB adopted this exemption in November 1998 to permit bank holding companies and their nonbank subsidiaries that engaged in underwriting and dealing in securities to underwrite and deal in mortgage-backed securities without having to demonstrate that the loans underlying the securities are supported by appraisals that meet the FRB's appraisal requirements.

Appendix B—Evaluation Alternatives

The Agencies recognize that evaluation alternatives are available to institutions for developing an estimate of market value. Therefore, institutions should maintain policies and procedures for determining whether an evaluation alternative is appropriate for a given transaction or lending activity, considering associated risk. Such procedures should address risk criteria such as transaction size and purpose, borrower creditworthiness, and leverage tolerance (loan-to-value).

An institution should demonstrate that an evaluation alternative, such as an automated valuation model or tax assessment valuation, provides a reliable estimate of the collateral's market value as of a stated effective date prior to the decision to enter into a transaction. Further, the institution should establish criteria for determining the extent to which an inspection of the collateral is necessary to determine that the property is in acceptable condition for its current or projected use.

An institution's policies and procedures also should address the use of multiple tools or methods for valuing the same property or to support a particular lending activity. These procedures should specify criteria for ensuring that the institution uses the most credible method or tool. An institution should not select a method or tool solely on the basis that it provides the highest value. Examiners will review an institution's policies, procedures, and internal controls to ensure that evaluation alternatives are appropriate and consistent with safe and sound lending practices.

Automated Valuation Model (AVM)

An institution may use an AVM as a valuation method for a transaction in which an evaluation is permitted by the Agencies' appraisal regulations.[36] An AVM may be used alone or in conjunction with other supplemental information. An institution should demonstrate, through testing, that the AVM's resulting value and any related information is credible and sufficient to support a credit decision, otherwise another valuation method or tool should be used. In selecting an AVM, an institution should perform appropriate due diligence to:

- Obtain relevant information about the data the model provider uses. Among other information, the institution should know the sources and types of data used in a model, frequency of updates, quality control performed on the data, and how data is obtained in states where public real estate sales data are not disclosed;
- Demonstrate an understanding of the modeling techniques of its external AVM providers. An institution should understand the inherent strengths and weaknesses of different model types (hedonic, index, and blended) as well as how a particular model or multiple AVMs perform for different properties;
- Evaluate the model provider's confidence score and determine its usefulness in assessing the model's reliability in determining market values for different properties; and
- Ascertain which model(s) provide the most credible values for an institution's lending activities.

An institution's policies should establish appropriate practices regarding the use of AVMs and indicate its AVM performance criteria. In establishing AVM practices, an institution should:

- Address the qualifications and responsibilities of persons designated to select, validate, and administer models;
- Establish standards and procedures for model validation testing and monitoring;[37]
- Maintain AVM performance criteria for reliability and suitability in a given transaction or lending activity based on the institution's risk tolerance;
- Establish procedures for selecting a different collateral valuation method if an institution's AVM performance criteria are not met; and
- Adopt criteria that includes establishing standards and procedures for validation testing, for the use of multiple AVMs (sometimes referred to as a cascade or waterfall) to ensure that results are credible.

Determining AVM Use In addition to evaluating the results of its model validation testing as noted below, an institution should establish specific criteria for determining whether an AVM is an appropriate evaluation alternative for a particular transaction. An institution may consider the following questions, among others, in determining whether an AVM may be appropriate for a given trans

- Property Type
  - Is the property homogeneous such as a detached 1-to-4 family residential dwelling in a typical neighborhood for its market?
  - Can the property's address be recognized by the model to ensure that the valuation will reflect the subject property?
- Property Location
  - Is the property located in a market with strong sales activity?
  - Are aspects about the property's location typical or average for its market (such as the view of the surrounding area or proximity to public or private facilities or services)?
- Property Condition
  - Is sufficient information available to assess whether the property is in average or above-average condition consistent with its intended use?
  - Is the area or neighborhood free of known adverse conditions that could affect the property's value (such as disrepair from a natural disaster or other events, defective building materials, or environmental concerns)?

[35] Generally, credit unions have limited fiduciary authority and NCUA's appraisal regulation does not specifically exempt transactions by fiduciaries.

[36] Credit unions may use an AVM to meet the requirement for a written estimate of value in conjunction with a review by a loan officer or a person with knowledge, training and experience in the real estate market where the loan is being made. *See* 12 CFR 722.3(d).

[37] *See* OCC Bulletin 2000–16, Risk Modeling—Model Validation (May 30, 2000).

- Property Price Range
  - Is the property's initial estimated value within the average price range for its market?
- Nature of the Transaction
  - Is the property in an area that is known to have minimal cases of fraud?
  - Does the frequency of sales of the subject property preclude concern that the property may have been subject to flipping or fraud?
  - Is the property owner-occupied?

Validating AVM Results Institutions should establish standards and procedures for independently validating an AVM's results on a periodic basis. The depth and extent of an institution's validation processes should be consistent with the materiality and complexity of the risk being managed. Institutions should not rely solely on validation testing representations provided by external AVM providers. Regardless of whether an institution relies on AVMs that are supported by value insurance or guarantees, an institution should still perform appropriate due diligence and model validation testing.

An institution should establish an independent model validation process. This process should specify, at a minimum:

- Expectations for an appropriate sample size;
- Level of geographic analysis;
- Testing frequency and criteria for re-testing;
- Standards of performance measures to be used; and
- Range of acceptable performance results.

To ensure unbiased test results, AVM values should be compared to data gathered from sales transactions prior to being recorded in public records. If an institution uses more than one AVM, the cascade also should be validated.

To assess the effectiveness of its AVM practices, an institution should verify whether loans in which an AVM was used to establish value met the institution's performance expectations. An institution should document the results of its validation testing and audit findings and use these findings to analyze and periodically update its practices regarding AVM use.

Tax Assessment Valuation (TAV)

An institution may use data provided by local tax authorities as a basis for establishing an estimate of market value for the collateral for a transaction in which an evaluation is permitted by the Agencies' appraisal regulations. TAVs differ among jurisdictions. Therefore, an institution should determine and document how the jurisdiction calculates the TAV and how frequently property revaluations occur.

An institution should perform an analysis to determine the relationship between the TAV and the market value within a tax jurisdiction. This analysis should be performed for each property type and price tier in a jurisdiction in which the institution considers the use of a TAV to meet or support evaluation requirements. As part of this process, an institution should test and document how closely TAVs correlate to market value. If a reliable correlation between the TAV and the market value can be established, the institution may use TAVs as a basis for an evaluation.

Appendix C—Glossary of Terms

Agent—The Agencies' appraisal regulations do not specifically define the term ''agent.'' However, the term is generally intended to refer to one who undertakes to transact some business or to manage some affairs for another. According to the Agencies' appraisal regulations, fee appraisers must be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transactions. The Agencies do not limit the arrangements that regulated institutions have with their agents, provided those arrangements do not place the agent in a conflict of interest that prevents the agent from representing the interests of the regulated institution.

Appraisal—As defined in the Agencies' appraisal regulations, a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

Appraisal Threshold—An appraisal is not required on transactions with a transaction value of $250,000 or less. As specified in the Agencies' appraisal regulations, institutions must obtain an evaluation of the real property collateral, if no other appraisal exemption applies.

Approved Appraiser List—A listing of appraisers that an institution has determined to be qualified and competent to perform appraisals in a particular market and on various property types.

''As Completed'' Market Value—See Prospective Market Value.

''As Is'' Market Value—The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal date.

''As Stabilized'' Market Value—See Prospective Market Value.

Automated Valuation Models—A computer program that analyzes data to determine a property's market value. Hedonic models use property characteristics (such as square footage, room count) on the subject and comparable properties to determine a value. Index models determine value based on repeat sales in the marketplace rather than property characteristic data. Blended or hybrid models use elements of both hedonic and index models.

Business Loan—As defined in the Agencies' appraisal regulations, a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, syndicate, sole proprietorship, or other business entity.[38]

Business Loan Threshold—A business loan with a transaction value of $1,000,000 or less does not require an appraisal if the primary source of repayment is not dependent on the sale of, or rental income derived from, the real estate. As specified in the Agencies' appraisal regulations, institutions must obtain an evaluation of the real property collateral, if no other exemption applies.[39]

Cascade—A model with specific performance rules that prioritizes an institution's multiple, independent AVMs in a defined sequence to provide an estimate of the collateral's market value.

Credible (Appraisal) Assignment Results—According to USPAP, credible means ''worthy of belief'' used in the context of the Scope of Work Rule. Under this rule, credible assignment results depend on meeting or exceeding both (1) the expectations of parties who are regularly intended users for similar assignments, and (2) what an appraiser's peers' actions would be in performing the same or a similar assignment.

Effective Date—USPAP requires that each appraisal report specifies the effective date of the appraisal and the date of the report. The date of the report indicates the perspective from which the appraiser is examining the market. The effective date of the appraisal establishes the context for the value opinion. Three categories of effective dates—retrospective, current, or prospective—may be used, according to the intended use of the appraisal assignment.

[38] NCUA's appraisal regulation, 12 CFR part 722, does not define ''business loan.'' A ''member business loan'' is regulated under 12 CFR part 723.

[39] NCUA's appraisal regulation, 12 CFR part 722, does not provide a higher appraisal threshold for loans defined as ''member business loans'' under 12 CFR part 723.

Engagement Letter—An engagement letter between an institution and an appraiser documents the expectations of each party to the appraisal assignment. For example, an engagement letter may specify, among other items, the property's location and legal description; intended use of the appraisal; the expectation that the appraiser will comply with applicable laws, regulations, guidelines and standards; reporting format; expected delivery date; and appraisal fee.

Evaluation—A valuation required by the Agencies' appraisal regulations for transactions that qualify for the appraisal threshold exemption, business loan exemption or subsequent transaction exemption.

Exposure Time—As defined in USPAP, a reasonable length of time that the property would have been offered on the market prior to the hypothetical consummation of sale on the appraisal's effective date. Exposure time is always presumed to precede the effective date of the appraisal. See USPAP Standard 1–2(c), Statements 6 and 10, and Advisory Opinion 7.

Federally Related Transaction—As defined in the Agencies' appraisal regulations, any real estate-related financial transaction in which the Agencies or any regulated institution engages or contracts for, and that requires the services of an appraiser.

Financial Services Institution—The Agencies' appraisal regulations do not contain a specific definition of the term ''financial services institution.'' The term is intended to describe entities that provide services in connection with real estate lending transactions on an ongoing basis, including loan brokers.

Loan Production Staff—Generally, all personnel responsible for generating loan volume or approving loans, as well as their subordinates and supervisors. This would include any employee whose compensation is based on loan volume. Employees responsible for credit administration or credit risk management are not considered loan production staff.

Marketing Time—According to USPAP Advisory Opinion 7, the time it might take to sell the property interest at the appraised market value during the period immediately after the effective date of the appraisal. An institution may request an appraiser to separately provide an estimate of marketing time in an appraisal. However, this is not a requirement of the Agencies' appraisal regulations.

Market Value—As defined in the Agencies' appraisal regulations, 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. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their own best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Prospective Market Value ''as Completed'' and ''as Stabilized''—A prospective market value may be appropriate for the valuation of a property interest related to a credit decision for a proposed development or renovation project. According to USPAP, an appraisal with a prospective market value reflects an effective date that is subsequent to the date of the appraisal report. Prospective value opinions are intended to reflect the current expectations and perceptions of market participants, based on available data. Two prospective value opinions may be required to reflect the time frame during which development, construction, and occupancy will occur. The prospective market value ''as completed'' reflects the property's market value as of the time that development is expected to be completed. The prospective market value ''as stabilized'' reflects the property's market value as of the time the property is projected to achieve stabilized occupancy. For an income-producing property, stabilized occupancy is the occupancy level that a property is expected to achieve after the property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties.

Put Back—Represents the ability of an investor to reject mortgage loans from a mortgage originator if the mortgage loans do not comply with the warranties and representations in their mortgage purchasing agreement.

Real Estate-Related Financial Transaction—As defined in the Agencies' appraisal regulations, any transaction involving:

- The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;
- The refinancing of real property or interests in real property; or
- The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

Regulated Institution—For purposes of the Agencies' appraisal regulations and these Guidelines, an institution supervised by the federal financial institutions regulatory Agencies. This includes a national or a state-chartered bank and its subsidiaries, a bank holding company and its non-bank subsidiaries, a federal savings association and its subsidiaries, a federal savings and loan holding company and its subsidiaries, and a credit union.

Restricted Use Appraisal Report—According to USPAP Standards Rule 2–2(c), a restricted use appraisal report briefly ''states'' information significant to solve the appraisal problem as well as a reference to the existence of specific work-file information in support of the appraiser's opinions and conclusions. The Agencies believe that the restricted use appraisal report will not be appropriate to underwrite a significant number of federally related transactions due to the lack of supporting information and analysis in the appraisal report. However, it may be appropriate to use this type of appraisal report for ongoing collateral monitoring of an institution's real estate transactions and under other circumstances when an institution's program requires an evaluation.

Sales Concessions—A cash or noncash contribution that is provided by the seller or other party to the transaction and reduces the purchaser's cost to acquire the real property. A sales concession may include, but is not limited to, the seller paying all or some portion of the purchaser's closing costs (such as prepaid expenses or discount points) or the seller conveying to the purchaser personal property which is typically not conveyed with the real property. Sales concessions do not include fees that a seller is customarily required to pay under state or local laws. In developing an opinion of market value, an appraiser must take into consideration the affect of any sales concessions on the market value of the real property. See ''market value'' above and USPAP Standards Rule 1–2(c).

Sales History and Pending Sales—According to USPAP Standards Rule 1–5, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business, analyze: (1) All current agreements of sale, options, and listings of the subject property as of the effective date of the appraisal, and (2) all sales of the subject property that occurred within three years prior to the effective date of the appraisal.

Scope of Work—According to USPAP Scope of Work Rule, the type and extent of research and analyses in an appraisal assignment. (See the Scope of Work Rule in USPAP.)

Self-Contained Appraisal Report—According to USPAP Standards Rule 2–2(a), a self-contained appraisal report ''describes'' all information significant to the solution of an appraisal problem and should include all significant data reported in comprehensive detail.

Sum of Retail Sales—A collateral valuation method for estimating a value of several properties based on the sum of the sales price of each property to an individual purchaser. The sum of retail sales is not the market value for purposes of meeting the minimum appraisal standards in the Agencies' appraisal regulations.

Summary Appraisal Report—According to USPAP Standards Rule 2–2(b), the summary appraisal report ''summarizes'' all information significant to the solution of an appraisal problem and should include all significant data reported in a tabular or abbreviated format.

Tract Development—As defined in the Agencies' appraisal regulations, a project of five units or more that is constructed or is to be constructed as a single development. For purposes of these Guidelines, ''unit'' refers to: A residential building lot, a detached single-family home, an attached single-family home, and a residence in a condominium building.

Transaction Value—As defined in the Agencies' appraisal regulations:

- For loans or other extensions of credit, the amount of the loan or extension of credit;
- For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and
- For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

For loans that permit negative amortization, the transaction value should be the institution's total committed amount, including any potential negative amortization.

If an institution enters into a transaction that is secured by several individual properties that are not part of a tract development and that have a value equal to or less than the appraisal threshold, the estimate of value of each individual property should determine whether an appraisal or evaluation would be required on each property in the collateral pool.

Uniform Standards of Professional Appraisal Practice (USPAP)—USPAP identifies the minimum set of standards that apply in all appraisal, appraisal review, and appraisal consulting assignments. These standards are promulgated by the Appraisal Standards Board of the Appraisal Foundation and are incorporated as a minimum appraisal standard in the Agencies' appraisal regulations.

Value (of Collateral for Use in Determining Loan-to-Value)—According to the Agencies' real estate lending standards guidelines, the term ''value'' means an opinion or estimate set forth in an appraisal or evaluation, whichever may be appropriate, of the market value of real property, prepared in accordance with the Agencies' appraisal regulations and these Guidelines. For loans to purchase an existing property, ''value'' means the lesser of the actual acquisition cost or the estimate of value.

Dated: October 10, 2008.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 12, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

Dated at Washington, DC, the 13th day of November, 2008.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: October 29, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

Dated: November 7, 2008.

By the National Credit Union Administration Board.

Hattie M. Ulan,

Acting Secretary of the Board.

[FR Doc. E8–27401 Filed 11–18–08; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: Thursday, November 20, 2008 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open To The Public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2008–16: Libertarian Party of Colorado, by Leah Kelley, Treasurer.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202)694–1040, at least 72 hours prior to the hearing date.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E8–27380 Filed 11–18–08; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011117–047.

Title: United States/Australasia Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; ANL Singapore Pte Ltd.; CMA–CGM; Compagnie Maritime Marfret S.A.; Hamburg-Süd; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Wallenius Wilhemsen Logistics AS as a party to the agreement effective November 22, 2008.

By the Commission.

Dated: November 14, 2008.

Karen V. Gregory,

Secretary.

[FR Doc. E8–27498 Filed 11–18–08; 8:45 am]

BILLING CODE 6730–01–P