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May 13, 2022

Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Dear Sir or Madam,

The Independent Community Bankers of America (ICBA)<sup>1</sup> welcomes the opportunity to provide written feedback to the Bureau of Consumer Financial Protection (CFPB or Bureau) regarding the Small Business Regulatory Enforcement Fairness Act (SBREFA) review panel that focused on an upcoming rulemaking on the evaluation of automated valuation models (AVMs) used during the mortgage origination process. ICBA represents community banks, many of which are designated as small entities for the purposes of the review panel. We therefore appreciate that the Bureau is attempting to better understand the unique challenges faced by small community lenders that want to continue to serve their customers and stay active in the challenging and competitive mortgage market.

Community banks strive to enable everyone in their community to achieve the dream of homeownership and use all the tools at their disposal to ensure that every step of the mortgage application and approval process is fair, transparent, efficient, and without any bias. This is certainly the case for appraisals and property evaluations more broadly. Though a relatively recent market development, AVMs are starting to become a critical part of this process for smaller institutions making underwriting decisions and identifying properties with comparable values.

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<sup>1</sup> The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.

With nearly 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding nearly \$5.9 trillion in assets, over \$4.9 trillion in deposits, and more than \$3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).

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These institutions conduct comprehensive due diligence when selecting third party vendors such as AVMs and numerous others. Although AVMs are a relatively new and niche product, they are nonetheless a useful and sometimes crucial tool for small mortgage lenders as they determine the value of collateral. Their inherent utility is a result of complex, and often proprietary algorithms hidden behind a “black box.”

ICBA’s primary concern in the proposal relates to the proposed fair lending evaluation requirements. There is a high likelihood that any such requirements will be excessively burdensome for community banks, especially those designated as small entities. They should not be required to vet and evaluate AVMs based any potential fair lending concerns pertaining to their in-house evaluations made on mortgage loans held in portfolio. In addition, ICBA suggests that portfolio loans under \$400,000 be exempt from the outlined requirements, consistent with the appraisal requirement exemption threshold currently in effect.

## **Recommendations**

### **1. Exempt Lenders from Fair Lending Evaluation Requirements for Portfolio Loans**

Community banks certainly recognize that AVMs must adhere to specific quality control standards and rely on data that does not result in unintended discrimination or bias. AVMs use complex algorithmic systems to determine a property evaluation, and the quality of the output is only as good as the models and data used by the AVM. However, requiring lending institutions, particularly smaller community banks, to assess and evaluate the models for potential fair lending concerns, prior to their use, would be unreasonable, redundant, and extremely costly. It would likely increase fees and result in additional staffing requirements to perform AVM analysis. Small lenders do not have access to the data being used by an AVM, nor do they have the knowledge or expertise to determine the accuracy or reverse-engineer the algorithms to assess any fair lending red flags. As it stands, this would be extremely challenging for almost any institution, regardless of size.

Moreover, lending institutions already adhere to the requirements of the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act, so the prospect of additional fair lending requirements applicable to an AVM evaluation would be especially redundant and onerous, likely resulting in more community banks electing not to use AVMs or exiting the mortgage business altogether. The onus should be shifted to the CFPB or a similarly capable organization to ensure that the providers of AVMs are adhering to robust fair lending standards.

## 2. Portfolio Loans Under \$400,000 Should Not Be Subject to AVM Evaluation Standards

In 2019, the Federal Deposit Insurance Corp., the Office of the Comptroller of the Currency, and the Board of Governors of the Federal Reserve determined that home mortgage loans not guaranteed or insured by a government sponsored agency or exceeding a \$400,000 sales price threshold, are not required to have an appraisal.<sup>2</sup> We believe that it makes sense to apply this same threshold to portfolio loans evaluated in-house by an AVM. In other words, a portfolio loan under \$400,000 that was evaluated by an AVM should not be subject to evaluation standards outlined in a proposed rule. A growing segment of the industry, including community banks, are starting to rely on AVMs to measure and account for the risks for mortgage loans they hold in portfolio. Furthermore, the ongoing shortage of appraisers, especially in rural and small-town markets, has driven more community banks to utilize in-house property evaluations, including AVMs.

As a trade association that represents many small lenders, and that had a member bank participate in the AVM review panel as a small entity representative, ICBA appreciates the opportunity to participate in and comment on the rulemaking on this important issue.

Sincerely,

Tim Roy  
AVP – Housing Finance Policy

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<sup>2</sup> [https://www.occ.gov/news-issuances/bulletins/2019/bulletin-2019-45.html#:~:text=Summary,transactions\)%20from%20%24250%2C000%20to%20%24400%2C000.](https://www.occ.gov/news-issuances/bulletins/2019/bulletin-2019-45.html#:~:text=Summary,transactions)%20from%20%24250%2C000%20to%20%24400%2C000.)