NATIONAL COMMUNITY REINVESTMENT COALITION NCRC

January 14, 2009

Office of the Comptroller of the Currency (OCC), Treasury
Docket ID [OCC-2008-0021]
Via email: regs.comments@occ.treas.gov

Board of Governors of the Federal Reserve System (FRB)
Docket No. [OP-1338]
Via email: regs.comments@federalreserve.gov

Federal Deposit Insurance Corporation (FDIC)
Via email: Comments@FDIC.gov

Office of Thrift Supervision (OTS), Treasury
Docket ID [OTS-2008-0012]
Via email: regs.comments@ots.treas.gov

National Credit Union Administration (NCUA)
Via email: regcomments@ncua.gov

Re: Proposed Interagency Appraisal and Evaluation Guidelines

To Whom It May Concern:

The National Community Reinvestment Coalition (NCRC) acknowledges the Office of the Comptroller 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) Proposed Interagency Appraisal and Evaluation Guidelines (proposed guidelines). The proposed guidelines are a step in the right direction in addressing appraisal fraud and overvaluation; however, they are not sufficiently robust to address unfair and deceptive appraisal practices that fueled the current mortgage crisis that has damaged communities across the country.

Unfair and deceptive appraisal practices are a pressing issue for consumers, communities, and the market as a whole. Appraisal fraud strips home equity and opportunities for intergenerational wealth fostered by homeownership. Entire neighborhoods have been overvalued, causing rampant foreclosure and depressed communities. Secondary market participants, who provide access to capital and credit, have also been negatively affected by irresponsible appraisal practices that threaten the safety and soundness of the market.

NCRC has closely monitored unfair and deceptive appraisal practices. Our National Homeownership Sustainability Fund works to mediate problematic or predatory mortgages, and consistently finds that reckless appraisal practices are pervasive. Many of our 600 member organizations also operate local programs that address appraisal fraud and valuation issues. NCRC's "Predatory Appraisals: Stealing the American Dream" (2005) documented the prevalence and harm caused by inflated appraisals. NCRC found that where there were incidences of appraisal fraud in either purchasing or refinancing, mortgage payments increased substantially over time[1]: 53 percent of borrowers subjected to appraisal fraud experienced a 20-50 percent increase on their monthly payments; 29 percent experienced up to a 20 percent increase on their monthly payments; and 18 percent experienced a 50 percent or higher increase on monthly payments.[2] Moreover, the study found that 83.3 percent of sampled consumers experiencing appraisal fraud resided in low- and moderate-income census tracts, strongly indicating that vulnerable low- and moderate-income communities have been targeted for appraisal fraud.[3]

Independence of the Appraisal and Evaluation Program

Ethical, accurate, and reliable appraisals are central to a healthy mortgage marketplace. Though the proposed guidelines take necessary steps to promote independence in the appraisal process, NCRC recommends adoption of the Appraiser Independence Safeguards of the revised Home Valuation Code of Conduct (HVCC) effective May 1, 2009. The revised HVCC, based on an agreement between Fannie Mae and Freddie Mac, the Federal Housing Finance Agency, and the New York State Attorney General Andrew Cuomo goes further than the proposed guidelines to encourage independence in the appraisal process and address safety and soundness concerns.

The proposed guidelines should be strengthened by adoption of the Appraiser Independence Safeguards outlined in the revised HVCC, Section 1. These safeguards help ensure appraisal independence while also promoting market efficiency. Specifically, NCRC strongly supports prohibiting lenders from providing appraisers with a target value for the property or loan amount requested by the borrowers. This provision strengthens the proposed guidelines requiring that information provided to the appraisers should unduly influence the appraisers. In addition, NCRC market participants must also be prohibited from unduly influencing appraisers through promises for future business or threats to withhold future business.

NCRC also strongly recommends that brokers be banned from involvement in selecting appraisers. Studies have found that the current foreclosure crisis was fueled in part by independent mortgage companies and brokers who were able to create and sell unfair and deceptive products because of lax oversight and failed regulation. While appraisers are paid on a per appraisal basis, brokers are paid based on the value of the loans they secure. Thus, brokers

1 NCRC, Predatory Appraisals: Stealing the American Dream, NCRC 2005 p.18
2 See n1.
3 See n1 at p. 17.

are incentivized to exert pressure on appraisers to inflate property values. Adoption of the HVCC broker ban provision is critical to ensuring that appraisals are conducted free from undue influence.

Evaluations in Lieu of Appraisals

NCRC suggests that the federal regulatory agencies lower the loan amount threshold that triggers an appraisal. The agencies propose that an appraisal conducted by a state certified or licensed appraiser be conducted for loans in amounts of excess of $250,000. However, the Office of Thrift Supervision (OTS) requires savings and loans in troubled condition to obtain appraisals when the loan amount is $100,000 or more. The OTS threshold should be adopted across the board for all financial institutions. One of the major causes of the current foreclosure crisis was fraudulent and inflated appraisals conducted by individuals and companies that lacked the requisite professional standards of technical skill and integrity. Thus, in order to ensure that fraudulent appraisal practices do not recur, NCRC believes that appraisals, rather than evaluations, must cover a wider range of properties.

NCRC also recommends that the agencies offer a clear line that requires appraisals instead of evaluations in the cases of renewals, refinances, loan modifications, and any other subsequent transaction. One of the proposed guidelines that allows evaluations in these transactions is the absence of “obvious or material changes in market conditions.” During the current foreclosure crisis, appraisal fraud and price inflation most likely occurred in geographical areas that experienced substantial price appreciation. Therefore, appraisals should be required for renewals, refinances, and loan modifications when home prices have appreciated at or below the national median amount.

The establishment of this clear line would require appraisals in the “hottest” markets or the markets most prone to fraud when evaluations are not conducted by skilled professionals. Also, appraisals should be conducted in markets that experience median or below-median price appreciation, since it is prudent to err on the side of inclusion in light of the proliferation of fraudulent appraisals in recent years. It would seem prudent to relax the requirement for appraisals only in markets that have relatively little price appreciation, such as markets that are in the lowest quartile in terms of price appreciation.

NCRC believes that the agencies should change the proposed guidelines that do not require either an appraisal or evaluation for loan modifications or home repair loans. For loan modifications, the guidelines state that a lender “may” require an evaluation or appraisal. NCRC suggests that the agencies adopt our clear line for determining when appraisals should be conducted for home repair loans and loan modifications. Evaluations should be conducted for home repair and loan modifications in cases not meeting NCRC’s proposed clear line.

Because of the urgency of modifying loans for borrowers in serious delinquency during the current foreclosure crisis, it is acceptable to conduct appraisals or evaluations after loan modifications as proposed by the federal agencies. Alternatively, instead of conducting the appraisal after the modification, the lender can lock in loan terms and conditions while waiting for a modification. In cases involving bulk refinances under TARP or other government-supervised programs, the guidelines should specify procedures for conducting appraisals or evaluations that do not unduly slow down modifications.

Secondary Market Transactions

NCRC recommends that audit procedures must be required to review a representative sample of appraisals to ensure that appraisals meet specified guidelines when institutions are engaged in secondary market transactions. A significant contributor to the current crisis was a lack of due diligence in mortgage back securities (MBS) and other secondary market transactions. The agencies must therefore require rigorous due diligence in appraisal guidelines.

The proposed guidelines are confusing: one paragraph states that institutions should "employ audit procedures" in secondary market transactions, while a subsequent paragraph allows institutions to rely on prospectus statements that assert proper appraisal procedures for "investment grade" securities. Since substantial amounts of "investment grade" securities had ratings that were inflated during the current crisis, NCRC recommends that no secondary market transactions be exempted from due diligence. Moreover, NCRC recommends that the Federal Reserve Board eliminate its exemptions for bank holding companies and their nonbank subsidiaries from demonstrating that MBS comply with appraisal guidelines.

In conclusion, rigorous regulation ensuring appraisal independence is critical for preventing future foreclosure crises caused by over-valuation and lax underwriting standards. The proposed guidelines are a helpful start, but NCRC recommends a significant strengthening of the provisions regarding appraisal independence, provisions regarding the requirement of appraisals instead of the requirement of evaluations, and due diligence procedures in the secondary market. After adoption of these guidelines, NCRC believes that the agencies must ultimately update and enact strong regulation that mandates that appraisals be conducted with the utmost professionalism and integrity.

Should you have any questions, please contact me at (202) 628-8866 or jtaylor@ncrc.org, or contact David Berenbaum, NCRC Executive Vice President, at (202) 464-2702.

Sincerely,

John Taylor

President and CEO
National Community Reinvestment Coalition

The National Community Reinvestment Coalition (NCRC) is a non-profit association comprising more than 600 community-based organizations that promote access to basic banking services, including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families. Our members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority- and women-owned business associations, and local and social service providers from across the nation. Visit NCRC's Web site at www.ncrc.org.