March 10th, 2025

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency (OCC)
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System (Fed)
20th Street and Constitution Avenue NW
Washington, DC 20551

James P. Sheesley, Assistant Executive Secretary
Attention: Comments—RIN 3064-ZA39
Federal Deposit Insurance Corporation (FDIC)
550 17th Street NW
Washington, DC 20429

RE: Regulatory Publication and Review under the Economic Growth and Regulatory Paperwork Reduction Act, Real Estate Appraisals

ValuSight Consulting[1] is pleased to offer its views in connection with the above-captioned proceeding before the OCC, Fed, and FDIC. Per the Agencies' description, this process identifies "areas of regulations that are outdated, unnecessary, or unduly burdensome."

To that end, we believe that regulations affecting Real Estate Appraisals[2], promulgated as a final rule on Jule 7,1994, should be rescinded by the Agencies based on the subsequent burden imposed on appraisers; abuse of the exemptions granted under the final rule; the inability of the Agencies' to rely on deference in a post-*Chevron* environment; and the harms caused through capture of the appraisal process by those covered entities.

At a minimum, we believe that the exemptions afforded to appraisal requirements imposed by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), along with the drastic increase in 1994 (to $250,000) in the threshold beneath which appraisals of real estate in connection with mortgage lending activity are not

[1] ValuSight Consulting provides full-service business development and growth services to individuals and organizations connected with the valuation profession. Additionally, our principal has over 15 years of extensive legislative and policy experience related to appraisal issues.
[2] See [Federal Register: June 7, 1994]

required far exceeded both the intent of Congress and the Agencies' authority to engage in rulemaking under their FIRREA authority. Were these rules rescinded, we suggest the reapplication of Title XI's appraisal requirements to all covered entities, and a resetting of the appraisal threshold to $100,000 adjusted for inflation (approximately $214,352[3]).

The 1994 Rules Allowed for Covered Entities to Develop Their Own Unique Appraisal Requirements – Imposing Significant Compliance Burdens on Appraisers as Small Businesses

Congress clearly stated its intent regarding real estate appraisals under Title XI of FIRREA:

> The purpose of this title is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.[4]

The key phrase regarding Congress' intent is "federally related transactions", defined subsequently as:

> …any real estate-related financial transaction which— (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and (B) requires the services of an appraiser.[5]

Practically speaking, Congress wanted to see written appraisals performed by competent appraisers to uniform standards underpin most mortgage lending transactions. While each agency or instrumentality can proscribe "appropriate standards[6]" that exceed the statutory minimums and establish the types of assignments that require a state certified or licensed appraiser[7], there is no explicit authority under Title XI for the Agencies to exempt regulated entities from Title XI's appraisal requirements entirely.

Instead, the Agencies relied on the outdated belief that guarantor and GSE appraisal policies would remain sufficient as to meet or exceed those requirements imposed by Title XI – a notion challenged today, particularly by the GSEs. This abdication of Congress' intent has, over time, allowed for the injection of widely differing appraisal practices across guarantors and the GSEs alike, all to the detriment of the practicing appraiser – who often is a small business or solo practitioner.

Rather than a broad application of consistent appraisal requirements across all "federally related transactions", appraisers must navigate widely differing and complex requirements

---

[3] Calculated using Inflation Calculator | Find US Dollar's Value From 1913-2025.
[4] 12 USC 3331.
[5] 12 USC 3350.
[6] 12 USC 3339.
[7] 12 USC 3341.

when performing work for federal guaranty programs or for sale to the government-sponsored enterprises.

Using artificial intelligence[8], we compared the available appraisal requirements of the following entities:

- Fannie Mae
- Freddie Mac
- Federal Housing Administration
- Veterans Administration Home Loan Program
- Department of Agriculture Rural Housing Program

We asked the model to identify similarities and differences between each entity, and to identify across several broad categories what those looked like.

[8] OpenAI ChatGPT 4o, provided the handbook, selling guide, or property requirements of each of the listed entities, asked to analyze each document and identify key differences.

The table below breaks down at a high level the distinctions between each of the entities:

Criteria	Fannie Mae	Freddie Mac	FHA (HUD)	VA	USDA
Appraiser Qualifications	State-certified/licensed, adheres to Appraiser Independence Requirements (AIR)	State-certified/licensed, follows AIR and USPAP	State-certified/licensed, must be on FHA Roster	State-certified/licensed, must be VA-approved and on VA panel	State-certified/licensed, must comply with USPAP
Appraisal Scope	Focus on market value and eligibility for secondary market	Focus on marketability and property eligibility for secondary market	Determines market value and ensures safety, soundness, security	Ensures MPRs are met for veteran safety and soundness	Ensures home meets safety and market value standards in eligible rural areas
Required Forms	Uniform Residential Appraisal Report (URAR)	URAR	URAR + FHA-specific addenda	URAR + VA-specific appraisal report	URAR + additional rural housing documentation
Inspection Protocols	Interior and exterior inspection required, but lender discretion on repairs	Standard visual inspection required; lender discretion on condition concerns	Thorough interior and exterior inspection required	Detailed interior and exterior inspection required	Comprehensive visual inspection required
Property Standards and	No strict MPRs; appraisers flag deficiencies affecting value	No strict MPRs; appraisers report defects	Strict MPRs; property must meet HUD's minimum safety standards	Strictest MPRs; homes must meet VA's stringent habitability rules	Moderate MPRs; must be structurally sound, safe, and in a rural area
Repair Requirements	Lender discretion on repairs; can be handled post-closing	Repairs handled at lender's discretion	Mandatory repairs before loan approval for safety, soundness, security issues	Mandatory repairs required before loan closing	Repairs typically required before loan approval
Appraisal Waivers & Flexibility	Allows appraisal waivers and AVMs in some cases	Allows some appraisal waivers and AVMs	Rarely allows waivers; requires full appraisal for most loans	No appraisal waivers; strict full appraisal requirement	Rarely allows waivers; full appraisal required in most cases

When asked to assign percentages of similarity between each set of requirements (and using Fannie Mae's requirements as the baseline), it found the following:

Freddie Mac: ~88.6% similarity (very close alignment)
FHA (HUD): ~50.7% similarity (moderate differences, stricter on property condition)
VA: ~41.4% similarity (most different, strictest on property standards and repairs)
USDA: ~50.0% similarity (like FHA but with rural-specific considerations)

Even if an appraiser only performed assignments for the GSEs (Fannie and Freddie), there exists enough difference between their requirements to inject a level of compliance risk. This risk is exacerbated once an appraiser begins providing appraisal work to FHA, VA, and USDA, caused by their heightened focus on property conditions, habitability, and required repairs before loan closing.

That appraisers manage to navigate these varied requirements daily is testament to their professionalism and competency. However, placing this burden on professionals who often work alone or as part of small firms imposes substantial compliance costs. For example, appraisers are compelled to obtain complex appraisal software to support their work along with adequate professional liability insurance to cover costs related to errors, omissions, or other complaints – both at significant expense to the appraiser. This says nothing of other costs, such as "technology fees" and "portal fees" charged by appraisal management companies, or AMCs.

Were the appraisal market like other professional service markets, where fees for services have appreciated over time to absorb increasing costs, a reasonable offset of operating expenses would occur. Unfortunately, many appraisal fees have remained in the $300-$500 range over the past decade, affected by cost overlays imposed by third parties like AMCs. While the fee structure has remained fixed, costs related to the provision of appraisal services have only increased.

In an alternate universe where the 1994 rules had never taken effect, one could imagine all these entities working together to coalesce around a common appraisal solution with subtle nuances to meet individual needs. Instead, today's appraisers must invest more in solutions to meet the ever-growing complexity and disparity between requirements, all while fees for services remain flat.

In short, individual appraisers or their small businesses carry the load for fulfilling these diverse needs, imposing a compliance burden that far outstrips any benefits that may have resulted from allowing each entity to go down its own appraisal requirements pathway. Continuing to ask appraisers to bear these burdens is unreasonable.

Notwithstanding the Burdens Involved, the Exemptions from Title XI's Requirements are Openly Abused and Run Counter to Clear Congressional Intent

A secondary effect of the exemptions afforded from Title XI's requirements has been the willingness of some entities to flaunt the requirement for appraisals entirely. The introduction of appraisal waivers by Fannie Mae and Freddie Mac are in direct contravention of Title XI's clearly stated intent: That appraisals will be performed in connection with most mortgage lending transactions.

While the 1994 rule did significant violence to clear Congressional intent, it was unforeseeable just how great the departure from intent would turn out. Today, both GSEs avail themselves of appraisal waiver options of their own creation on loans up to 97 percent loan-to-value ratio[9].

Setting aside the FIRREA argument, the 1994 rule itself speaks against the rationale behind allowing for appraisal waivers. In granting the GSEs an exemption from Title XI, the Agencies said:

> The agencies believe the appraisal standards of the U.S. government agencies or sponsored agencies established to maintain a secondary market in various types of loans are appropriate for these exempt transactions. Recently, Fannie Mae and Freddie Mac revised their 1-to-4 family residential appraisal standards and report forms to incorporate the USPAP as the minimum appraisal standards. Further, the appraisal standards and forms of Fannie Mae and Freddie Mac are recognized as the appraisal industry's standard for residential real estate appraisals. The agencies have concluded that those appraisal standards should protect federal financial and public policy interests in the loans that are eligible for purchase by U.S. government agencies or sponsored agencies. The agencies also believe that compliance with these standards will protect the safety and soundness of regulated financial institutions[10].

When the exemption was granted, there was simply no contemplation for the GSEs to offer any waiver from appraisal requirements. To leverage an exemption built on the perception of being the "industry's standard" to subvert both Title XI and the 1994 rule's expectations belies a lack of understanding of why the exemption was even provided.

Another instance where the GSEs use the exemption to controvert Title XI is in the use of property data collectors – non-appraiser individuals who collect and report on property characteristics, either in support of an appraisal waiver or as part of completing a hybrid appraisal assignment.

---

[9] While loans above 90 percent LTV require support from a property data collection, it immaterially changes the availability of the waiver product to the stated threshold.

[10] Real Estate Appraisals Final Rule, June 7, 1994.

While the collection and provision of objective property information itself may not be problematic, appraisers have expressed concerns that property data collectors are also expressing opinions related to the condition, quality, or other significant factors affecting an opinion of value. Title XI clearly states it is a violation to "knowingly contract for the performance of any appraisal by a person who is not a State certified or licensed appraiser[11]". Simply using the existing exemption to excuse acts and practices that may violate Title XI's clear wording further emphasizes how the exemption is being abused currently.

On the topic of the appraisal threshold, the move from $100,000 to $250,000 in 1994 seemed drastic on its face but occurred against a backdrop where obtaining an appraisal was typical regardless of whether the loan amount fell below the threshold. Per the 1994 rule itself:

> ...in many cases involving residential real estate, banks and thrifts will be required to obtain the equivalent of a Title XI appraisal in order to make the loan eligible for sale in the secondary market. According to HUD data, in 1992, secondary mortgage market purchasers, such as the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), purchased approximately 63 percent of all 1-to-4 family mortgages originated in the United States. In addition to the 63 percent that were purchased by major secondary mortgage market entities, other loans were originated so as to be eligible for sale to such entities. The agencies have concluded that the appraisal requirements of these government sponsored agencies should protect federal financial and public policy interests in the loans that are eligible to be purchased by them. The agencies also believe that compliance with these appraisal requirements will protect the safety and soundness of regulated financial institutions[12].

Today, these same promises of secondary market appraisal requirements as a backstop to an expanded appraisal threshold ring hollow. While the spread between the threshold and median home prices is closer today than in 1994[13], one can argue that there is greater likelihood of a mortgage loan being made without an appraisal today given how exemptions are being leveraged.

The Deference Afforded the Agencies at the Time of the 1994 Rule Does Not Exist Today, and Warrants Scrutiny

When the 1994 rule was promulgated, the *Chevron* doctrine[14] was the guiding legal principle regarding the Agencies' interpretation of Title XI. However, the Supreme Court overturned this deference in *Loper Bright Enterprises v. Raimondo*, stating instead that

---

[11] 12 USC 3349.

[12] Real Estate Appraisals Final Rule, June 7, 1994.

[13] See Median Sales Price of Houses Sold for the United States (MSPUS) | FRED | St. Louis Fed.

[14] See Chevron deference | Wex | US Law | LII / Legal Information Institute

ambiguity alone does not warrant deference by the courts to an agency's own interpretation of a statute.

Even if there were significant ambiguity in Title XI, the path down which the Agencies have traveled in allowing for broad exemptions from a law passed by Congress and signed into law by the president calls into question the permissibility of the 1994 rule. Even if *Chevron* were still guiding precedent, much of the 1994 rule's actions are unreasonable against the underlying statute that gave rise to the regulatory action.

Lastly, Title XI Never Contemplated Capture of the Appraisal Process by Its Covered Entities

As part of the oversight component of Title XI, Congress tasked the Appraisal Subcommittee (ASC) with monitoring:

> the requirements established by the Federal financial institutions regulatory agencies and the Resolution Trust Corporation with respect to—
>
> > (A) appraisal standards for federally related transactions under their jurisdiction, and
> >
> > (B) determinations as to which federally related transactions under their jurisdiction require the services of a State certified appraiser and which require the services of a State licensed appraiser[15];

This language expresses Congress' expectation that the ASC keep tabs on the standards by which appraisals are performed and the circumstances when different levels of credential would be required. Today that oversight is lacking, with great deference given to the GSEs and federal guarantor programs to make these determinations without subsequent monitoring by the ASC under its statutory authority.

Put differently, Congress did not want any one entity to have capture over their own appraisal process without ASC monitoring. The reality, however, is that appraisals – and appraisal practice – are almost entirely governed by the GSEs forms, formats, and datasets, with the guarantors inserting overlays to meet their specific needs.

Believing that the exemptions afforded in the 1994 rule would allow for such capture is misguided, and using the exemptions to manufacture capture of the appraisal process misconstrues both Title XI and the 1994 rule. Given other areas of abuse of the exemption, the only curative step would be to remove the exemptions – along with the rest of the 1994 rule.

---

[15] 12 USC 3332.

Conclusion

The 1994 rule has accomplished something extraordinary: It has entirely overridden clear Congressional intent, forcing appraisers to carry the burden of massive compliance risks for disparate appraisal processes that exist through exemptions and process capture. Beyond that burden lies actions that are contradictory with the stated intent of Title XI, in a rule that may be vulnerable to scrutiny under *Loper Bright*.

In short, the 1994 Real Estate Appraisals Final Rule should be rescinded, and the appraisal threshold reset to $100,000 adjusted for inflation (approximately $214,352).

If you have any questions or wish to discuss our views further, please contact John D. Russell, JD, Principal, at john@beyondthevalue.com or by phone at 202-550-8402.

Sincerely,

John D. Russell, JD
ValuSight Consulting