



7535-01-U

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 722

**RIN: 3133-AE79**

### Real Estate Appraisals

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is amending the agency's rule requiring real estate appraisals for certain transactions. The final rule accomplishes four objectives: increasing the threshold below which appraisals are not required for commercial real estate transactions from \$250,000 to \$1,000,000; restructuring the rule to enhance clarity; exempting from the rule certain federally related transactions involving real estate in a rural area; and making conforming amendments to the definitions section.

**DATES:** The final rule is effective **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** *Technical information:* Jeffrey Marshall, Program Officer, (703) 548-2415, Lou Pham, Senior Credit Specialist, (703) 548-2745, Office of Examination and Insurance, or *Legal information:* Rachel Ackmann, Staff Attorney, (703) 518-

6540, Office of General Counsel, National Credit Union Administration, each at 1775 Duke Street, Alexandria, VA 22314.

## **SUPPLEMENTARY INFORMATION:**

### **I. INTRODUCTION**

#### *A. Background*

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI)<sup>1</sup> directs each federal financial institutions regulatory agency<sup>2</sup> to publish appraisal regulations for federally related transactions within its jurisdiction. In 1994, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (other banking agencies) established thresholds for all real estate-related financial transactions with a transaction value<sup>3</sup> of \$250,000 or less, as well as certain real estate-secured business loans (qualifying business loans or QBLs) with a transaction value of \$1 million or less.<sup>4</sup> Transactions below these established threshold levels were not required to have Title XI appraisals. QBLs are business loans<sup>5</sup> that are real estate-related

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<sup>1</sup> 12 U.S.C. 3331 *et seq.*

<sup>2</sup> “Federal financial institutions regulatory agencies” means the Board of Governors of the Federal Reserve System (Fed); the Federal Deposit Insurance Corporation (FDIC); the Office of the Comptroller of the Currency, Treasury (OCC); the NCUA, and, formerly, the Office of Thrift Supervision. 12 U.S.C. 3350(6).

<sup>3</sup> For loans and extensions of credit, the transaction value is the amount of the loan or extension of credit. For sales, leases, purchases, investments in or exchanges of real property, the transaction value is the market value of the real property. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of each loan or the market value of each real property, respectively. *See* OCC: 12 CFR 34.42(n); Fed: 12 CFR 225.62(n); and FDIC: 12 CFR 323.2(n).

<sup>4</sup> *See* 59 FR 29482 (June 7, 1994); *see also* OCC: 12 CFR 34.43(a)(1) and (5); Fed: 12 CFR 225.63(a)(1) and (5); and FDIC: 12 CFR 323.3(a)(1) and (5).

<sup>5</sup> The other banking agencies’ Title XI appraisal regulations define “business loan” to mean “a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.” OCC: 12 CFR 34.42(d); Fed: 12 CFR 225.62(d); and FDIC: 12 CFR 323.2(d).

financial transactions and that are not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment.<sup>6</sup>

Thereafter, first in 1995 and again in 2001, the NCUA promulgated rules similar to those of the other banking agencies then in effect, eventually establishing a similar Title XI appraisal threshold level for most real estate-related transactions.<sup>7</sup> In particular, the rulemakings established that all real estate-related financial transactions with a transaction value<sup>8</sup> of \$250,000 or less do not require appraisals.<sup>9</sup> The NCUA did not, however, adopt the separate exemption provided in the other banking agencies' appraisal regulations for QBLs with transaction values of \$1 million or less. In addition, both residential and commercial real estate related financial transactions, not otherwise exempt from the appraisal rule, are subject to the \$1 million threshold, which requires certified appraisals for all transactions with transaction values of \$1 million or more.

#### *B. The Other Banking Agencies 2017-2018 Rulemaking*

In July 2017, the other banking agencies invited comment on a notice of proposed rulemaking (OBAs commercial appraisal NPR)<sup>10</sup> that amended the other banking agencies' appraisal regulations promulgated pursuant to Title XI. Specifically, the OBAs commercial appraisal NPR increased the monetary threshold at or below which financial institutions that are regulated by the other banking agencies (regulated institutions) would not be required to obtain appraisals in connection with commercial real estate transactions (commercial real estate

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<sup>6</sup> See OCC: 12 CFR 34.43(a)(5); Fed: 12 CFR 225.63(a)(5); and FDIC: 12 CFR 323.3(a)(5).

<sup>7</sup> See 60 FR 51889 (Oct. 4, 1995) and 66 FR 58656 (Nov. 23, 2001).

<sup>8</sup> Transaction value means, 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. 12 CFR 722.2(l).

<sup>9</sup> 12 CFR 722.3(a)(1).

<sup>10</sup> 82 FR 35478 (July 31, 2017).

appraisal threshold) from \$250,000 to \$400,000. The other banking agencies consulted with the NCUA throughout the rule development process, and NCUA staff participated in interagency meetings and calls related to the rulemaking.

The OBAs commercial appraisal NPR followed the completion in early 2017 of the regulatory review process required by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).<sup>11</sup> During the EGRPRA process, the other banking agencies received numerous comments related to the Title XI appraisal regulations, including recommendations to increase the thresholds at or below which transactions are exempt from the Title XI appraisal requirements. Among other proposals developed through the EGRPRA process, the other banking agencies recommended increasing the commercial real estate appraisal threshold to \$400,000.<sup>12</sup>

The comment period for the OBAs commercial appraisal NPR closed on September 29, 2017.<sup>13</sup> The other banking agencies collectively received over 200 comments from appraisers, appraiser trade organizations, financial institutions, financial institutions trade organizations, and individuals. The other banking agencies issued a final rule in early 2018 (OBAs commercial appraisal final rule).<sup>14</sup> As compared to the OBAs commercial appraisal NPR, their final rule increased the commercial real estate appraisal threshold (non-QBLs) to \$500,000 rather than the \$400,000 proposed.

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<sup>11</sup> Pub. L. 104-208, Div. A, Title II, section 2222, 110 Stat. 3009-414, (1996) (codified at 12 U.S.C. 3311).

<sup>12</sup> See FFIEC, *Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act*, (March 2017), (EGRPRA Report), available at [https://www.ffiec.gov/pdf/2017\\_FFIEC\\_EGRPRA\\_Joint-Report\\_to\\_Congress.pdf](https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf).

<sup>13</sup> 82 FR 35478 (July 31, 2017).

<sup>14</sup> 83 FR 15019 (April 9, 2018).

### *C. Economic Growth, Regulatory Relief, and Consumer Protection Act*

On May 24, 2018, President Trump signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (the EGRRC Act) into law.<sup>15</sup> Section 103 of the EGRRC Act amends Title XI to exempt from appraisal requirements certain federally related, rural real-estate transactions valued below \$400,000 if no state-certified or state-licensed appraiser is available.<sup>16</sup> The exemption provided in the EGRRC Act is self-implementing so credit unions may avail themselves of the statute's exemption immediately, provided the transaction meets all of the requirements under section 103.

### *D. NCUA's Proposed Rule*

On October 3, 2018, the NCUA published a notice of proposed rulemaking (the proposed rule) to amend its appraisal regulation to, among other things, increase the threshold below which appraisals are not required for commercial real estate transactions from \$250,000 to \$1,000,000.<sup>17</sup> The proposed rule also would codify independence requirements for individuals providing written estimates of market value, incorporate the rural exemption under the EGRRC Act, and make other clarifying amendments. The comment period closed on December 3, 2018.

### *E. Threshold for Residential Real Estate-Related Financial Transactions*

In the other banking agencies' EGRPRA Report and commercial appraisal NPR, they addressed whether it would be appropriate to increase the current \$250,000 threshold for transactions secured by residential real estate. The other banking agencies determined that it would not be appropriate to increase the residential threshold at that time based on three

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<sup>15</sup> Pub. L. 115-174.

<sup>16</sup> *Id.* at sec. 103.

<sup>17</sup> 83 FR 49857 (Oct. 3, 2018). For purposes of this final rule, the term commercial means a real estate-related financial transaction that is not secured by a single 1-to-4 family residential property.

considerations. First, the other banking agencies observed that any increase in the threshold for residential transactions would have a limited impact on burden, as appraisals would still be required for the vast majority of these transactions pursuant to rules of other federal government agencies and the standards set by the government-sponsored enterprises (GSEs).<sup>18</sup>

Second, the other banking agencies determined that appraisals can provide protection to consumers by helping to assure the residential purchaser that the value of the property supports the purchase price and the mortgage amount.<sup>19</sup> The consumer protection role of appraisals is reflected in amendments made to Title XI and the Truth in Lending Act (TILA)<sup>20</sup> through the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act),<sup>21</sup> governing the scope of transactions requiring the services of a state-certified or state-licensed appraiser. These include the addition of the Consumer Financial Protection Bureau (CFPB) to the group of agencies assigned a role in the appraisal threshold-setting process for Title XI,<sup>22</sup> and a new TILA provision requiring appraisals for loans involving “higher-risk mortgages.”<sup>23</sup>

During the EGRPRA process, the staff of the other banking agencies conferred with the CFPB regarding comments the agencies received supporting an increase in the threshold for 1-

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<sup>18</sup> Other federal government agencies involved in the residential mortgage market include the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Veterans Affairs, and the Rural Housing Service of the U.S. Department of Agriculture. These agencies, along with the GSEs (which are regulated by the Federal Housing Finance Agency (FHFA)), have the authority to set separate appraisal requirements for loans they originate, acquire, or guarantee, and generally require an appraisal by a certified or licensed appraiser for residential mortgages regardless of the loan amount.

<sup>19</sup> The agencies posited in the 1994 amendments to the Title XI appraisal regulations that the timing of the appraisal may provide limited consumer protection. Changes to consumer protection regulations since 1994 now ensure that a consumer receives a copy of appraisals and other valuations used by a creditor to make a credit decision at least three business days before consummation of the transaction (for closed-end credit) or account opening (for open-end credit). See 12 CFR 1002.14 (for business or consumer credit secured by a first lien on a dwelling).

<sup>20</sup> 15 U.S.C. 1601 et seq.

<sup>21</sup> Pub. L. No. 111-203, 124 Stat.1376.

<sup>22</sup> Dodd-Frank Act, Pub. L. 111-203, Title XIV, sec. 1473(a), 124 Stat. 2190 (2010), (codified at 12 U.S.C. 3341(b)).

<sup>23</sup> “Higher-risk mortgages” are certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage. See Dodd-Frank Act, Pub. L. 111-203, Title XIV, sec. 1471, 124 Stat. 2185 (2010), which added section 129H to TILA, (codified at 15 U.S.C. 1639h). See also Appraisals for Higher-Priced Mortgage Loans, 78 FR 78520 (Dec. 26, 2013) (interagency rule implementing appraisal requirements for higher-priced mortgage loans).

to-4 family residential transactions. CFPB staff shared the view that appraisals can provide consumer protection benefits and their concern about potential risks to consumers resulting from an expansion of the number of residential mortgage transactions that would be exempt from the Title XI appraisal requirement.

Third, the other banking agencies considered safety and soundness concerns that could result from a threshold increase for residential transactions. As the EGRPRA Report noted, the 2008 financial crisis showed that, like other asset classes, imprudent residential mortgage lending can pose significant risks to financial institutions. For these reasons, the other banking agencies concluded in the EGRPRA Report and in their commercial appraisal NPR that a change to the current \$250,000 threshold for residential mortgage loans would not have been appropriate at that time.

Likewise, the Board did not propose increasing the appraisal threshold for residential real estate transactions in the proposed rule. The Board, however, specifically sought comment on whether the \$250,000 threshold for residential transactions can and should be raised, consistent with consumer protection, safety and soundness, and the reduction of unnecessary regulatory burden. Generally, those commenters that supported the proposed threshold also supported a higher residential threshold and those commenters opposed to the threshold were also opposed to increasing the residential threshold. Most of the commenters who supported increasing the residential threshold made reference to the other banking agencies' recent proposal to increase their residential threshold to \$400,000, as discussed more fully below.<sup>24</sup> A few credit unions recommended that the Board consider regional thresholds based on local housing markets.

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<sup>24</sup> 83 FR 63110 (Dec. 7, 2018).

Those commenters against increasing the residential threshold generally reiterated the same three reasons discussed above for not raising the residential threshold.

As alluded to above, on December 7, 2018, the other banking agencies issued a notice of proposed rulemaking inviting comment on a proposed rule to amend their appraisal regulations to increase the threshold level at or below which appraisals would not be required for residential real estate-related transactions from \$250,000 to \$400,000 (OBAs residential appraisal NPR).<sup>25</sup> The OBAs residential appraisal NPR, consistent with the requirement for other transactions that fall below applicable thresholds and do not require an appraisal, would still require regulated institutions to obtain an evaluation of the real property collateral, in lieu of an appraisal, that is consistent with safe and sound banking practices. The OBAs residential appraisal NPR would also, pursuant to the Dodd-Frank Act, amend their appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).<sup>26</sup> Comments for the OBAs residential appraisal NPR were due by February 5, 2019.

At this time, the Board is considering the comments received and is continuing to evaluate whether it is appropriate to increase the threshold level below which appraisals would not be required for credit unions' residential real estate-related transactions from \$250,000 to \$400,000.

## **II. LEGAL AUTHORITY**

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<sup>25</sup> 83 FR 63110 (Dec. 7, 2018).

<sup>26</sup> USPAP is written and interpreted by the Appraisal Standards Board of the Appraisal Foundation. Adopted by Congress in 1989, USPAP contains generally recognized ethical and performance standards for the appraisal profession in the United States, including real estate, personal property, and business appraisals. *See* [http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal\\_Standards/Uniform\\_Standards\\_of\\_Professional\\_Appraisal\\_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbfa-41b3-9878-fac35923d2af](http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbfa-41b3-9878-fac35923d2af).



Title XI directs each federal financial institutions regulatory agency to publish appraisal regulations for federally related transactions within its jurisdiction. The purpose of Title XI is to protect federal financial and public policy interests<sup>27</sup> in real estate-related transactions by requiring that real estate appraisals used in connection with federally related transactions (Title XI appraisals) be performed in accordance with uniform standards, by individuals whose competency has been demonstrated, and whose professional conduct will be subject to effective supervision.<sup>28</sup>

Title XI directs the NCUA to prescribe appropriate standards for Title XI appraisals under the NCUA's jurisdiction, including, at a minimum that Title XI appraisals be: (1) performed in accordance with the USPAP; (2) written appraisals, as defined by the statute; and (3) subject to appropriate review for compliance with USPAP.<sup>29</sup> All federally related transactions must have Title XI appraisals.

Title XI defines a "federally related transaction" as a real estate-related financial transaction that is regulated or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser.<sup>30</sup> A real estate-related financial transaction is defined as any transaction that involves: (i) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or financing thereof; (ii) the refinancing of real property

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<sup>27</sup> These interests include those stemming from the federal government's roles as regulator and deposit insurer of financial institutions that engage in real estate lending and investment, guarantor or lender on mortgage loans, and as a direct party in real estate-related financial transactions. These federal financial and public policy interests have been described in predecessor legislation and accompanying Congressional reports. *See* Real Estate Appraisal Reform Act of 1988, H.R. Rep. No. 100-1001, pt. 1, at 19 (1988); 133 Cong. Rec. 33047-33048 (1987).

<sup>28</sup> 12 U.S.C. 3331.

<sup>29</sup> 12 U.S.C. 3339. The NCUA's Title XI appraisal regulations apply to transactions entered into by the NCUA or by federally insured credit unions. 12 CFR 722.1(b).

<sup>30</sup> 12 U.S.C. 3350(4) (defining "federally related transaction").

or interests in real property; and (iii) the use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.<sup>31</sup>

The NCUA has authority to determine those real estate-related financial transactions that do not require the services of a state-certified or state-licensed appraiser and are therefore exempt from the appraisal requirements of Title XI. These real estate-related financial transactions are not federally related transactions under the statutory or regulatory definitions because they are not required to have Title XI appraisals.<sup>32</sup>

The NCUA has exercised this authority by exempting several categories of real estate-related financial transactions from the Title XI appraisal requirements.<sup>33</sup> The NCUA has determined that these categories of transactions do not require appraisals by state-certified or state-licensed appraisers in order to protect federal financial and public policy interests or to satisfy principles of safety and soundness.

In 1992, Congress amended Title XI, expressly authorizing the NCUA to establish a threshold level below which an appraisal by a state-certified or state-licensed appraiser is not required in connection with federally related transactions. The NCUA may establish a threshold level that the NCUA determines, in writing, does not represent a threat to the safety and soundness of credit unions.<sup>34</sup>

In the Dodd-Frank Act, Congress amended the threshold provision to require concurrence “from the [CFPB] that such threshold level provides reasonable protection for consumers who

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<sup>31</sup> 12 U.S.C. 3350(5).

<sup>32</sup> See 59 FR 29482 (June 7, 1994).

<sup>33</sup> See 12 CFR 722.3(a). For example, the following transactions do not require an appraisal: (1) a lien on real estate has been taken for purposes other than the real estate’s value; (2) a transaction that involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate; and (3) a lease of real estate is entered into, unless the lease is the economic equivalent of a loan.

<sup>34</sup> 12 U.S.C. 3341(b). See also, Housing and Community Development Act of 1992, Pub. L. 102-550, section 954, 106 Stat. 3894 (amending 12 U.S.C. 3341).

purchase 1–4 unit single-family residences.”<sup>35</sup> As noted above, transactions below the threshold level are exempt from the Title XI appraisal requirements and thus are not federally related transactions.

### **III. FINAL RULE AND PUBLIC COMMENTS ON THE PROPOSED RULE**

The NCUA received 87 comment letters in response to its October 3, 2018 proposed rule. These comment letters were received from credit unions, credit union trade associations, state credit union leagues, appraisal companies, appraisal trade organizations, individuals, and other industry organizations.

In general, all of the comments received from appraisers, appraisal companies, appraisal trade organizations, and bank trade organizations objected to the proposed \$1 million threshold for commercial real estate transactions. These commenters expressed concern that the proposal would reduce the safety and soundness of credit unions and would create an imbalance in the commercial real estate market between credit unions and banks, which are subject to a \$500,000 threshold for general commercial (non-QBL) real estate transactions. In contrast, comments received from credit unions, credit union trade associations, and state credit union leagues generally supported the proposal. Almost all such commenters supported the proposed \$1 million threshold for commercial real estate transactions and stated the proposed threshold would reduce regulatory burden, reduce member costs, and increase access to credit.

This final rule adopts the October 3, 2018 proposed rule with one material change; the final rule does not adopt the proposed modification to the exemption for existing extensions of credit. Accordingly, the final rule amends part 722–Appraisals of the NCUA’s regulations to: (1) more clearly indicate when a written estimate of market value, an appraisal conducted by a

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<sup>35</sup> Id., sec. 1473 (amending 12 U.S.C. 3341(b)).

state-licensed appraiser, or an appraisal conducted by a state-certified appraiser is required; (2) incorporate the relevant changes enacted by the EGRRC Act; and (3) provide relief from appraisal requirements for commercial real estate-related financial transactions. In particular, the final rule establishes a new threshold of \$1,000,000 or more for commercial real estate-related financial transactions. The new threshold for commercial real estate-related financial transactions represents a significant increase from the current level of \$250,000.

Additionally, the NCUA is adding and removing various definitions in support of the changes and for improved clarity. Further, the final rule substantially reorganizes §722.3 for ease of use.

These changes, along with related comments, are discussed in more detail below in the order in which they appear in the rule. In the Dodd-Frank Act, Congress amended the threshold provision to require “concurrence from the Bureau of Consumer Financial Protection that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences.”<sup>36</sup> The Board has received concurrence from the CFPB that the commercial real estate appraisal threshold being adopted provides reasonable protection for consumers who purchase 1-to-4 unit single family residential properties.

### *Section 722.2 Definitions*

The Board is amending the terms and definitions applicable to part 722. The final rule also makes technical, non-substantive amendments to section 722.2, including removing the individual numbering of the definitions within the section to make revisions to part 722 easier in the future. The following definitions are added, removed, or amended under this final rule:

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<sup>36</sup> Pub. L. No. 111–203, 124 Stat.1376, § 1473, 124 Stat. 2190 (amending 12 U.S.C. 3341(b)).

### *Complex*

The proposal included an amendment to current §722.2(d) to remove the definition for *complex 1-to-4 family residential property appraisal* and replace it with the shorter term *complex*. The proposed definition for *complex* was similar to the current definition, but allowed the term to be used more broadly in conjunction with other amendments being made in §722.3. One commenter recommended additional guidance or commentary on what attributes would constitute *complex*. The definition of *complex* remains substantively the same as the long-standing definition of *complex 1-to-4 family residential property appraisal*. Therefore, the Board does not believe further clarification is necessary.

Accordingly, §722.2 provides that *complex*, when used in regard to a real estate-related financial transaction, means a transaction in which the property to be appraised, the form of ownership, or market conditions are atypical. The definition also states that a credit union may presume that appraisals of 1-to-4 family residential properties are not *complex* unless the institution has readily available information that a given appraisal will be *complex*. This presumption is in the current rule and its addition to the definition of *complex* is not a substantive change in policy. The presumption is moved from §722.3(b)(3) as part of the overall restructuring of §722.3.

### *Federal Financial Institutions Regulatory Agency*

The proposed rule included a definition of *federal financial institutions regulatory agency* in response to changes to Title XI under the EGRRC Act.<sup>37</sup> The Board did not receive

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<sup>37</sup> Pub. L. 115-174.

any comments on the proposed definition and is finalizing the definition as proposed.

Accordingly, consistent with the definition provided under Title XI, the final rule defines *federal financial institutions regulatory agency* as the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC); the Office of the Comptroller of the Currency, Treasury (OCC); the NCUA, and, formerly, the Office of Thrift Supervision.<sup>38</sup>

#### *Real Estate or Real Property*

The proposal included an amendment to current §722.2(g) to add parentheses around the words “or real property” to help clarify for the reader that the terms *real estate* and *real property* can be used interchangeably and have the same meaning for purposes of part 722. No substantive change was intended by this technical amendment. The Board did not receive any comments on the proposed change and is finalizing it as proposed. Additionally, for consistency, the final rule uses the term *real estate* throughout the rule in place of the term *real property*.

#### *Real Estate-Related Financial Transaction*

The proposed rule included minor, non-substantive technical amendments to current §722.2(h) and the definition of *real estate-related financial transaction*. In particular, the proposal replaced the words “real property” with the words “real estate” each place they occur within the definition for consistency. The Board did not receive any comments on the proposed change and is finalizing it as proposed.

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<sup>38</sup> 12 U.S.C. 3350(6).

### *Residential Real Estate Transaction*

The proposal added a definition of the term *residential real estate transaction* to identify for the reader which federally related transactions are still subject to the \$250,000 appraisal threshold. One commenter stated that the definition should be modified such that properties being constructed for resale or non-owner occupancy should not be classified as residential even if it is secured by a 1-to-4 family residential property. Under the other banking agencies' 2018 final rule, a loan that is secured by a single 1-to-4 family residential property, including a loan for construction, remains subject to the \$250,000 threshold.<sup>39</sup> The NCUA is taking the same approach in its appraisal regulation by including any loan for construction of one, two, three, or four unit dwellings, including manufactured homes permanently affixed to the underlying land as a single 1-to-4 family residential property. Another commenter asked the Board to clarify that multifamily properties, those with five or more units, are not residential. The Board is therefore clarifying that multifamily properties are not residential. Accordingly, the final rule provides that a *residential real estate transaction* means a real estate-related financial transaction that is secured by a single 1-to-4 family residential property.<sup>40</sup>

### *Staff Appraiser*

For clarity, the proposal added a definition of *staff appraiser*, which is a term currently used, but undefined, in §722.5 of the regulation. The Board did not receive any comments on the proposed definition and is now finalizing it as proposed. Accordingly, section 722.2 of the final

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<sup>39</sup> Residential construction loans secured by more than one 1-to-4 family residential property are considered commercial real estate transactions subject to the higher threshold. 83 FR 15019 (April 9, 2018).

<sup>40</sup> A 1-to-4 family residential property is a property containing one, two, three, or four individual dwelling units, including manufactured homes permanently affixed to the underlying land (when deemed to be real property under state law).

rule provides that staff appraiser means a state-certified or state-licensed appraiser that is an employee of the credit union.

#### *Transaction value*

The proposed rule made minor, non-substantive technical amendments to current §722.2(l) and the definition of *transaction value*. In particular, the proposal replaced the words “real property” with the words “real estate” each place they occur within the definition for consistency. The Board did not receive any comments on the proposed change and is finalizing it as proposed.

#### *Section 722.3 Appraisals and Written Estimates of Market Value Requirements for Real Estate-Related Financial Transactions*

The final rule amends current §722.3 to increase the threshold level below which appraisals are not required for certain commercial real estate transactions, incorporates relevant changes under the EGRRC Act, and reorganizes the section to make it easier to determine when an appraisal or written estimate of market value is required. Current §722.3 provides the general requirement that all real estate-related financial transactions must have a state-certified or state-licensed appraisal unless the transaction qualifies for a listed exception. Under the current structure of this section, the NCUA believes that it is difficult for a reader to quickly determine whether a written estimate of market value or an appraisal performed by a state-licensed or state-certified appraiser is required. Commenters were generally in favor of the proposed formatting revisions. Accordingly, this final rule reorders current §722.3 to help the reader more readily determine: (a) whether the real estate-related financial transaction does or does not require an



appraisal under part 722; (b) when an appraisal required under part 722 must be prepared by a state-certified appraiser; (c) when an appraisal required under part 722 may be prepared by either a state-certified or state-licensed appraiser; and (d) when only a written estimate of market value is required.

### *3(a) Real Estate-Related Financial Transactions Not Requiring an Appraisal*

#### *3(a)(1)-(6)*

The final rule incorporates and updates the list of exempt transactions in current §722.3(a)(1)-(9). As discussed in more detail below, §722.3(a)(1)-(6) of the final rule retains many of the transactions currently exempted:

*(a)(1)*. The proposed rule exempted a transaction that is not considered a “new loan” under generally accepted accounting principles (GAAP).<sup>41</sup> This exemption replaced current §722.3(a)(5), which exempts certain existing extensions of credit. The Board believed these provisions were substantively similar, but proposed the modified exemption because the Board

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<sup>41</sup> ASC 320-20-20: Lending, committing to lend, refinancing or restructuring loans, arranging standby letters of credit, syndicating loans, and leasing activities are lending activities. A loan is a contractual right to receive money on demand or on fixed or determinable dates that is recognized as an asset in the creditor's statement of financial position. Examples include but are not limited to accounts receivable (with terms exceeding one year) and notes receivable. This definition encompasses loans accounted for as debt securities. ASC 310-20-35-9: If the terms of the new loan resulting from a loan refinancing or restructuring other than a troubled debt restructuring are at least as favorable to the lender as the terms for comparable loans to other customers with similar collection risks who are not refinancing or restructuring a loan with the lender, the refinanced loan shall be accounted for as a new loan. This condition would be met if the new loan's effective yield is at least equal to the effective yield for such loans and modifications of the original debt instrument are more than minor. Any unamortized net fees or costs and any prepayment penalties from the original loan shall be recognized in interest income when the new loan is granted. The effective yield comparison considers the level of nominal interest rate, commitment and origination fees, and direct loan origination costs and would also consider comparison of other factors where appropriate, such as compensating balance arrangements.

believed it would be more consistently implemented. The Board specifically sought comment on whether the current language of the regulation should be maintained. Credit union commenters had mixed opinions on whether the current or proposed language was preferable. Commenters in favor of the revision generally stated that the proposed language has less subjectivity and makes this exemption easier to implement. In contrast, commenters were opposed to the language for a variety of reasons. A few commenters believed that the GAAP definition is too complex and that the current standard is not too subjective. One commenter specifically stated that while the GAAP standard may be precise, it could require a complicated calculation that could lead to more errors than the current standard. A few commenters thought that the proposal reduced flexibility. These commenters stated that the current rule exempts a transaction involving an existing extension of credit under two separate prongs, but the proposal permitted the exemption under only a single scenario.

In response to the comments received, the final rule will not adopt the proposed language, and the Board will maintain the language in current §722.3(a)(5). The Board proposed the new language to reduce burden and increase consistency among credit unions. As many credit unions did not view the proposed language as less burdensome, and some believed it would result in less consistency than the current language, the Board has declined to adopt it. Therefore, the Board will maintain the current exemption for existing extensions of credit. Under the final rule, an appraisal is not required if the transaction involves an existing extension of credit provided that: (1) there is no advancement of new monies, other than funds necessary to cover reasonable closing costs; or (2) there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of new monies.

The Board notes that a written estimate of market value is required for any real-estate related financial transaction that is exempt from appraisal requirements under paragraph (a)(1). This policy is consistent with the current rule. The *Interagency Appraisal and Evaluations Guidelines (Guidelines)* provides additional guidance on the requirement to provide a written estimate of market value.<sup>42</sup>

(a)(2). The proposed rule did not include any changes to paragraph (a)(2) other than the term real estate is used instead of real property. The Board is finalizing this provision as proposed.

(a)(3). The proposed rule did not include any changes to paragraph (a)(3).

(a)(4). The proposed rule did not include any changes to paragraph (a)(4).

(a)(5). The proposal moved current §722.3(a)(6) to proposed §722.3(a)(5), however, it did not make any substantive changes, and the Board is finalizing this provision as proposed.

(a)(6). The proposal moved current §722.3(a)(8) to proposed §722.3(a)(6), however, it did not make any substantive changes to this provision. The Board is finalizing this provision as proposed.

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<sup>42</sup> Interagency Appraisal and Evaluations Guidelines at 75 FR 77458 (Dec. 10, 2010). The other banking agencies have also recently issued Frequently Asked Questions that credit unions may find useful if they have additional questions. See, *Frequently Asked Questions on the Appraisal Regulations and the Interagency Appraisal and Evaluation Guidelines*, available at <https://www.fdic.gov/news/news/financial/2018/fil18062a.pdf> (Oct. 16, 2018). The *Guidelines* also provide additional information on loan workouts and restructuring.

(a)(7) The final rule removes current §722.3(a)(7). The final rule changes the appraisal and written estimate of market value requirements for real estate-related financial transactions that are fully or partially guaranteed by a U.S. government agency<sup>43</sup> or government-sponsored agency.<sup>44</sup> Under the current rule, any real estate-related financial transaction that is insured or guaranteed by a U.S. government agency or government-sponsored agency (regardless of whether the insurance or guarantee is for the full transaction value or only a part of the transaction value) are exempt from appraisal and written estimate of market value requirements. In contrast, under the proposed rule, there was no categorical exemption for such transactions. Instead, a real estate-related financial transaction that is insured or guaranteed by a U.S. government agency or government-sponsored agency is only exempt from appraisal and written estimate of market value requirements if the transaction value is less than \$1 million and the transaction is fully insured or guaranteed. The Board specifically sought comment on this proposed change, and whether the current approach in the regulation should be maintained. A few commenters responded that the proposed change would not generally affect their use of such insurance or guarantee programs. One credit union trade organization stated that the proposal would contribute to regulatory burden without enhancing safety and soundness and stated that the NCUA did not present any evidence of safety and soundness concerns under the current rule.

A few other commenters expressed concerns about the exemption more generally. In particular, several commenters stated that GSE appraisal requirements are in flux and it is premature to make the proposed change at this time. Other commenters noted that not all

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<sup>43</sup> United States government agency means an instrumentality of the U.S. government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. government. U.S. government agency includes NCUA.

<sup>44</sup> United States government-sponsored agency means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress, but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

government agencies require appraisals. Another commenter was concerned that one of the underlying reasons for the exemption, that other agencies require appraisals in such circumstances, are being eroded. This commenter noted that both the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation have moved to waive appraisal requirements entirely for both purchase money mortgage transactions and refinance transactions.

The Board is finalizing this provision as proposed. Accordingly, transactions that are partially or fully guaranteed by a U.S. government agency or a sponsored agency are no longer categorical exemptions from the appraisal and written evaluation requirements of part 722. Instead, such transactions are subject to the \$1 million threshold. The Board continues to believe that the new approach better aligns the appraisal and written estimate of market value requirements to the potential risk to the credit union, and preserves the borrower protection benefits appraisals provide. While this change varies somewhat from the respective provisions in the other banking agencies' rules, in practice, the Board does not expect this change to result in a material difference in appraisal requirements or burden, given that most U.S. government guaranty and insurance programs currently require appraisals.

Finally, one commenter asked that the Board clarify whether insured or guaranteed transactions are exempt from appraisal requirements if a loan is repurchased by a credit union. The Board is clarifying that generally a repurchase falls within paragraph (a)(5) under the final rule and is exempt from appraisal requirements.

*(a)(9)* The proposed rule removed current §722.3(a)(9), which gave the Regional Director an option to grant a waiver from the appraisal requirement for a category of loans meeting the definition of a member business loan. One credit union commented that it has received previous

waivers, but does not object to the proposed change and noted that the proposed threshold provided most of the permissions granted under the previous waiver. Two credit union trade organizations questioned the removal of the waiver provision. The provision is removed due to the increase for the commercial appraisal threshold to the requirement of \$1 million or more. The Board no longer believes a waiver is necessary given the increase of this threshold. The Board is finalizing this provision as proposed.

*3(b). Real estate-related financial transactions requiring an appraisal by a state-certified appraiser.*

Section 722.3(b) of the final rule identifies the real estate-related financial transactions for which an appraisal performed by a state-certified appraiser is required.

*3(b)(1)*

The proposed rule increased the threshold at which commercial real estate-related financial transactions are exempt from appraisal requirements from \$250,000 to \$1 million. Of the 87 comments received from the proposed rule, 66 were opposed to the proposed \$1 million threshold and 21 supported the threshold. The majority of the comments opposed to the threshold were from appraisers, appraisal companies, appraisal trade organizations, and bank trade organizations. The majority of commenters in favor of the threshold were from credit unions, credit union trade associations, state credit union leagues, and other trade associations.

The majority of commenters opposed to the \$1 million threshold expressed concern that the proposal increased risk for commercial real estate transactions. These commenters generally discussed that appraisals offer an important safety and soundness tool because appraisals provide an unbiased opinion on the value of collateral, and without this valuation, credit unions are

exposed to increased risk. One commenter discussed that appraisals were an important safety and soundness standard during the last financial crisis. In contrast, a few commenters that supported the threshold believed that the proposal does not increase risk as credit unions would continue to use their judgement in deciding when, and if, appraisals are necessary. Another commenter stated that cash flow is the primary factor for the success of a commercial loan.

In addition to safety and soundness concerns, commenters also expressed strong opinions on the relationship of the proposed rule to the other banking agencies' 2018 final rule. Several commenters opposed to the proposed threshold expressed concern about an imbalance in the commercial real estate market that may be created between credit unions and banks. These commenters recommended that the Board adopt the same \$500,000 threshold as the other banking agencies. Specifically, a state credit union league stated that a \$500,000 threshold is appropriate as it would promote safe and sound lending practices, place credit unions on par with banks, and not expose the National Credit Union Share Insurance Fund to excessive risk. A credit union service organization (CUSO) also encouraged the Board to adopt the \$500,000 threshold for general commercial exposures, but to incorporate the \$1 million threshold for QBLs included in the other banking agencies' rules. In contrast, five commenters who supported the threshold stated that it increases parity with banks as banks benefit from the \$1 million threshold for certain QBLs.

A few other commenters opposed to the proposed threshold stated that most commercial loans under \$1 million are to small business owners. Those commenters generally stated that most small business owners are not experienced in commercial lending and benefit from the protection offered by appraisals. In contrast, other commenters stated that consumers benefit from increased access to credit and reduced costs under the proposed rule.

The NCUA has carefully considered the other banking agencies' commercial appraisal NPR<sup>45</sup> and final rule<sup>46</sup> regarding real estate appraisals. The Board also carefully considered whether changes to the threshold for requiring an appraisal by a state-certified appraiser are appropriate to reduce regulatory burden, while consistent with public policy interests and safety and soundness. Based on its supervisory experience and available data, the other risk mitigations incorporated into the final rule, and other regulatory requirements and supervisory expectations, the NCUA Board does not believe that the increased threshold poses a material threat to the safety and soundness of credit unions or creates undue risk to the National Credit Union Share Insurance Fund.

The Board also believes that the final rule benefits both members and credit unions as it reduces regulatory burden and may increase access to credit. The NCUA last modified the threshold for exempt transactions in 2001 and used the same threshold for both residential and commercial real estate.<sup>47</sup> Since 2001, the values of commercial property have increased and the current threshold requires credit unions to obtain Title XI appraisals on a larger proportion of commercial real estate transactions than in 2001. This increase in the number of appraisals required likely has contributed to the increased burden in time and cost described by some of the commenters. The Board believes that the final rule will reduce regulatory burden by providing credit unions greater flexibility in commercial lending. Additionally, the NCUA does not believe that given credit unions' limited origination of commercial mortgages that the final rule creates an imbalance in the commercial mortgage market.<sup>48</sup>

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<sup>45</sup> 82 FR 35478 (July 31, 2017).

<sup>46</sup> 83 FR 15019 (Apr. 9, 2018).

<sup>47</sup> 66 FR 58656 (Nov. 23, 2001).

<sup>48</sup> As of December 31, 2018 NCUA Call Report data, real-estate secured commercial loans and lines of credit total \$64 billion and compose only 6.1 percent of total loans and leases at all federally insured credit unions. In contrast,



Therefore, the NCUA is finalizing the \$1 million threshold as proposed. A more detailed analysis supporting this conclusion is provided below in the *Analysis of Higher Commercial Appraisal Threshold* section.

Under the final rule, an appraisal performed by a state-certified appraiser is required for transactions that are not exempt under paragraph (3)(a) and the transaction value is \$1 million or more. This increases the threshold at which commercial real estate-related financial transactions are exempt from appraisal requirements from \$250,000 to \$1 million.

The Board notes this is the only provision in the final rule that requires an appraisal for commercial real estate transactions not otherwise exempt,<sup>49</sup> as current §722.3(b)(2) is removed as part of the overall reorganization of §722.3. For commercial real estate transactions with transaction values below \$1 million, credit unions are able to use their judgment, consistent with safe and sound lending practices, to determine whether to use an appraisal or a written estimate of market value. This approach aligns with the other banking agencies' appraisal requirements for QBLs with a transaction value of \$1 million or less.<sup>50</sup> This approach provides more flexibility, however, than the commercial real estate appraisal threshold for non-QBLs, which the other banking agencies established at \$500,000 in their 2018 final rule.

(b)(2).

The final rule also requires an appraisal performed by a state-certified appraiser if the transaction is complex, involves residential real estate, and \$250,000 or more of the transaction

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Call Report data as of December 31, 2018 for FDIC institutions indicate real-estate secured commercial loans total \$2.3 trillion and compose 23.0 percent of total loans and leases.

<sup>49</sup> Unless so required to address safety and soundness concerns under §722.3(e).

<sup>50</sup> See 59 FR 29482 (June 7, 1994); see also OCC: 12 CFR 34.43(a)(1) and (5); Board of Governors of the Federal Reserve System: 12 CFR 225.63(a)(1) and (5); and FDIC: 12 CFR 323.3(a)(1) and (5).

value is not insured or guaranteed by a U.S. government agency or government-sponsored agency.<sup>51</sup> An appraisal is not required if the transaction is otherwise exempt under paragraph (3)(a) or qualifies for the rural area exemption in paragraph (3)(f). This requirement is similar to the requirement in current §722.3(b)(3) that complex residential transactions of \$250,000 or more have appraisals performed by a state-certified appraiser. The substantive difference between current §722.3(b)(3) and the final rule relates to transactions that are partially insured or guaranteed by a U.S. government agency or government-sponsored agency. Specifically, a complex residential real estate transaction that is partially insured or guaranteed by a U.S. government agency or government-sponsored agency, but has \$250,000 or more of the transaction value not insured or guaranteed, is required to have a state-certified appraisal in the final rule. Such a transaction is exempt from appraisal requirements under the current rule. The Board is finalizing this section as proposed.

Finally, the Board is removing the clarifying statement in the proposed rule text that a credit union is not required to obtain an appraisal if the United States government agency or United States government-sponsored agency obtains an appraisal by a state-certified appraiser. The Board does not intend any substantive change and is only removing the statement upon further consideration that it is unnecessary. If a credit union gets a certified appraisal as part of a loan that is insured or guaranteed by a U.S. government agency or sponsored agency, then it has also met its obligations under the final rule.

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<sup>51</sup> The final rule aligns all the dollar thresholds used as either the dollar amount “or more” (greater than or equal to), or “less than” the dollar amount. This ensures consistency within the regulation and with the relevant statutory requirements.

*§722.3(c) Real estate-related financial transactions requiring an appraisal by either a state-certified or state-licensed appraiser.*

3(c)(1)

The final rule requires an appraisal performed by a state-certified or state-licensed appraiser if the transaction is not complex, involves residential real estate, and \$250,000 or more of the transaction value is not insured or guaranteed by a U.S. government agency or government-sponsored agency.<sup>52</sup> An appraisal is not required if the transaction is otherwise exempt under paragraph (3)(a) or qualifies for the rural area exemption in paragraph (3)(f). This requirement is consistent with the current rule that non-complex residential transactions of \$250,000 or more require an appraisal from either a state-certified or state-licensed appraisal. The one substantive difference, which is discussed above, is the addition of certain transactions that are partially insured or guaranteed by a U.S. government agency or government-sponsored agency. For clarity, this requirement is explicit under the final rule, as opposed to implicitly through §722.3(c), as in the current rule. The Board believes the final rule more clearly indicates when an appraisal conducted by a state-licensed appraiser or a state-certified appraiser is acceptable. The Board also notes that if a transaction requires a certified appraisal under paragraph (b)(1), but also could qualify for a licensed appraisal under paragraph (c), the credit union must obtain a certified appraisal. The Board is finalizing this section as proposed.

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<sup>52</sup> The final rule aligns all the dollar thresholds used as either the dollar amount “or more” (greater than or equal to), or “less than” the dollar amount. This ensures consistency within the regulation and with the relevant statutory requirements.

3(c)(2)

The final rule states that if, during the course of an appraisal of a residential real estate transaction performed by a state-licensed appraiser, factors are identified that result in the transaction meeting the definition of complex, then the credit union may either ask the state-licensed appraiser to complete the appraisal and have a state-certified appraiser approve and cosign the appraisal, or engage a state-certified appraiser to complete the appraisal. The Board notes that while a credit union is responsible for properly applying the complex transaction definition, the NCUA maintains interpretive authority with respect to the regulatory definition and may determine that a transaction is complex and requires an appraisal. The Board is finalizing this provision as proposed.

As in paragraph 3(b), the clarifying paragraph stating that a credit union is not required to obtain an appraisal if the United States government agency or United States government-sponsored agency obtains an appraisal has been removed.

*§722.3(d) Real estate-related financial transactions requiring a written estimate of market value.*

The final rule requires a written estimate of market value for any real estate-related financial transaction unless: (1) an appraisal performed by a state-certified or state-licensed appraiser was obtained; (2) the transaction is exempt from appraisal requirements under paragraphs (a)(2) through (6) of this section; or (3) the transaction is fully insured or guaranteed by a United States government agency or United States government-sponsored agency.

Proposed paragraph (d) has been finalized as proposed with one material exception; under the final rule, a written estimate of market value is required for existing extensions of credit that are exempt from appraisal requirements. As discussed above, this is consistent with

the current rule. The change from the proposed rule reflects that the final rule did not adopt the proposed amendment to modify the exemption for existing extensions of credit to reference the GAAP definition of a new loan. Comments and the Board's consideration of the comments are more fully discussed below.

Most credit union-affiliated commenters did not comment on the written estimate of market value requirements, but a few did ask for clarifying information. A few credit unions asked for additional guidance on what is a safe and sound written estimate of market value. The Board notes that a safe and sound written estimate of market value contains sufficient information detailing the credit union's analysis, assumptions, and conclusions to support the credit decision. A written estimate of market value requires documentation of a property's market value. The term "market value" is defined under the appraisal rule and generally means the most probable price which a property should bring in a competitive and open market. To document a property's market value, a credit union must obtain and analyze appropriate available information, from multiple sources if practicable, to arrive at a valuation that is supported by property-specific and relevant market information. Additionally, a safe and sound written estimate of market value must be supported by a physical inspection of the property or any alternative method to confirm the property's condition, depending on transaction risks. Credit unions should refer to the *Guidelines* to develop policies and procedures for conducting written estimates of market value that are consistent with safety and soundness expectations.

The Board does not intend for valuation programs to be one size fits all, but rather risk-focused and commensurate with the complexity and nature of each credit union's real estate lending activities, risk profile, and business model. For example, a credit union that engages primarily in owner-occupied real estate lending in its local market area should tailor its valuation

program to reflect the size and nature of the loans and collateral. In contrast, a credit union that engages in significant commercial real estate lending or large acquisition, development, and construction projects should tailor its valuation program for these types of higher risk transactions.

Additionally, credit unions should establish policies and procedures for determining when to obtain an appraisal for transactions that may otherwise permit a written estimate of market value, such as for a higher risk transaction. One commenter stated that this suggestion to get an appraisal for certain transactions, even when a written estimate of market value is permitted, should be written in more definitive language. The Board has not made any changes to the rule and believes that the current rule provides flexibility to credit unions to obtain appraisals even if they are not required, based on the specific risk factors for a transaction.

Several appraisers, appraisal companies, and appraisal trade associations commented on written estimates of market value. These commenters generally discussed that evaluators are not subject to state oversight requirements or enforcement actions, credit union employee evaluators may be biased, and written estimates are not subject to the Uniform Standards of Professional Appraisal Practice. Under the final rule, a person must be qualified and experienced to perform written estimates of market value for the type and amount of credit being considered. A credit union must ensure that the individual possesses the requisite education, expertise, and experience to competently complete the written estimate of market value. For example, to meet this standard a person could have experience selling real estate, lending, or have attended professional training in which they acquired knowledge and expertise necessary to value real estate. Credit unions should establish criteria to select, evaluate, and monitor evaluation providers to ensure their valuations sufficiently meet NCUA standards.

Under the final rule, the person conducting the written estimate of market value must be capable of rendering an unbiased opinion and be independent. Specifically, the person performing the written estimate cannot have a direct, indirect, or prospective interest, financial or otherwise, in the property or the transaction. The final rule has also strengthened the independence requirements for persons performing written estimates of market value as compared to the current rule. The Board believes that an enhanced independence requirement for written estimates of market value is an important prudential safeguard, as the final rule permits commercial real estate transactions that are less than \$1 million to have a written estimate of market value instead of a state-certified appraisal. Accordingly, under the final rule, the individual performing a written estimate of market value must be independent of the loan production and collection process. If independence cannot be achieved, the credit union must 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 and collection process.

One CUSO asked whether a loan officer, other than the one handling the loan, could perform written estimates of market value under the independence standards. The Board is clarifying that a loan officer other than the one handling the loan could provide the written estimate of market value, provided that this person is qualified and experienced, independent of and has no interests in that loan transaction, and there is a review of the valuation by a person independent of the loan production process. For example, if the only expertise in the credit union to conduct a valuation is with individuals in the loan production process, a loan officer that is not originating the loan could perform the valuation. However, in such a case, the loan officer's valuation would be reviewed by an individual that is independent of the loan production process. For example, someone in the credit union's supervisory committee could review the

valuation. If adequate independence cannot be achieved internally, a credit union must engage a third party, such as an appraiser or real-estate broker, to provide for the written estimate of market value.

One commenter asked for additional information on what constitutes prudent safeguards for independence and asked if it is sufficient to eliminate the performance of written estimates from the reviewing officer's compensation. Under the final rule, persons who perform written estimates of market value cannot have direct or indirect or prospective interest, financial or otherwise, in the property or transaction. Additionally, the Board does not believe that one factor ensures independence across all credit unions. In contrast, the Board believes each credit union should take a comprehensive approach and consider its unique situation to ensure its collateral valuation is independent of influence from the loan production process.

In evaluating this final rule, the NCUA considered the impact to credit unions and borrowers. A couple of credit union commenters provided time and cost estimates of appraisals as evidence of borrowers' potential savings. Those commenters stated that commercial real estate appraisals generally cost between \$2,000 and \$5,000 and take between three to five weeks to receive. In contrast, a few commenters opposed to the proposal stated appraisals generally cost a few hundred dollars. Based on information from banking agency data, the cost of third-party evaluations of commercial real estate generally ranges from \$500 to over \$1,500, whereas the cost of appraisals of such properties generally ranges from \$1,000 to over \$3,000. Commercial real estate transactions with values above \$250,000, but below \$1 million (applicable transaction value range), are likely to involve smaller and less complex properties, and appraisals and written estimates of market value on such properties would likely be at the lower end of the cost range. This third-party pricing information suggests a savings of several



hundred dollars per transaction. The NCUA also notes there is a greater pool of individuals qualified to conduct written estimates of market value than state-certified appraisers, particularly in rural areas, thereby reducing the associated time and costs.

In the proposed rule, the Board sought comment on whether the NCUA should establish a *de minimis* threshold for which written estimates of market value are not required. Seven credit unions and credit union trade organizations supported a *de minimis* threshold. Suggestions ranged between \$25,000 and \$100,000. One credit union thought the threshold should apply on a transaction-by-transaction basis, rather than be applicable to all transactions under the threshold. One appraisal trade organization did not support a *de minimis* threshold. The Board has determined not to adopt a *de minimis* threshold at this time as the Board believes further consideration is warranted. The Board is considering a requirement for credit unions to document a valuation for secured property even if a written estimate of market value is not required. The Board is also considering whether residential transactions should be treated the same as commercial transactions. Under the member business loan rule, transactions below \$50,000 are generally exempt from the definition of commercial loan, and therefore exempt from the member business loan limit.<sup>53</sup> Accordingly, the Board believes there may be reason to exempt similarly sized loans under the appraisal rule. The Board also appreciates, however, that members who purchase residential properties with values below \$50,000 may benefit from valuations of their real-estate related transaction. The Board is also in the process of determining whether credit unions originate a substantial volume of commercial transactions under \$50,000 and whether a targeted *de minimus* exception would provide meaningful burden relief.

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<sup>53</sup> 12 CFR 723.2.

*§722.3(e) – Appraisals to address safety and soundness concerns*

The proposed rule did not include any amendments to the current requirement that the NCUA can require an appraisal whenever the agency believes it is necessary to address safety and soundness concerns. Two commenters, however, objected to this provision as potentially expensive and burdensome. The EGRRC Act refers to each agency's authority to require an appraisal whenever the agency believes it is necessary to address safety and soundness.<sup>54</sup> The Board interprets this reference as an important recognition of the safety and soundness benefits provided by this provision. The Board is not amending the current rule and believes this provision is an important prudential tool.

*§722.3(f) - Exemption from appraisals of real property located in rural areas.*

The final rule incorporates a new exemption that was included in the EGRRC Act. Under this provision, transactions involving real estate or an interest in real estate located in a rural area are exempt from appraisal requirements if certain conditions are met. The exemption provided in the EGRRC Act is self-implementing so credit unions may currently avail themselves of the statute's exemption. The Board only incorporated the exemption into part 722 for easier reference. This provision is being finalized as proposed.

The Board notes that if a transaction does not require an appraisal under §722.3(f), a written estimate of market value may still be required under §722.3(d).

*Analysis of Higher Commercial Appraisal Threshold.*

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<sup>54</sup> Pub. L. 115-174, sec. 103(d)(1).

Title XI expressly authorizes the agencies to establish a threshold level at or below which an appraisal by a state-certified or state-licensed appraiser is not required in connection with federally related transactions if the agencies determine in writing that the threshold does not represent a threat to the safety and soundness of financial institutions.<sup>55</sup> The Board does not believe that increasing the threshold that commercial real estate transactions are exempt from Title XI appraisals represents a threat to the safety and soundness of credit unions as there are several factors that inherently mitigate the risk from commercial loans in the credit union system.

Under the Federal Credit Union Act, most credit unions are restricted to holding no more than 1.75 times the credit union's total net worth for member business loans.<sup>56</sup> The statutory ceiling of 1.75 times net worth limits risk for credit unions granting all forms of commercial loans, of which commercial real estate transactions are a subset. Therefore, increasing the threshold to \$1 million does not pose the same safety and soundness risk to credit unions as it does to similarly situated banking organizations, which do not have the same commercial lending restrictions.

As of December 31, 2018 Call Report data, commercial loans represent only 4.9 percent of total assets and 43.3 percent of total net worth of federally insured credit unions. Comparatively, commercial loans represent 25.5 percent of total assets and 271.7 percent of tier one capital at institutions insured by the FDIC.<sup>57</sup>

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<sup>55</sup> 12 U.S.C. 3341.

<sup>56</sup> Some credit unions are subject to one of several exemptions under the Federal Credit Union Act. *See* 12 U.S.C. 1757a(b).

<sup>57</sup> For commercial real estate transactions, the NCUA does not differentiate between QBL and non-QBL commercial transactions like the other banking agencies. Based on credit union Call Report data, the NCUA estimates that \$17 billion of the \$57 billion of commercial real estate loans in the credit union system would meet the definition of a QBL and be subject to a \$1 million appraisal threshold under the rules for banks. Setting the threshold at \$1 million provides relief for credit unions and a simplified standard.

Under the final rule, the increased threshold does not substantially reduce the total dollar amount of commercial real estate transactions that are subject to appraisal requirements. The NCUA used the CoStar Comps database<sup>58</sup> to estimate the dollar volume and number of commercial real estate transactions that are potentially exempt from obtaining an appraisal performed by a state-certified appraiser due to the increase in the threshold. The CoStar Comps database provides sales value data on specific commercial real estate transactions. While there are some limitations regarding use of the CoStar Comps database, as detailed below, the database contains information on sales values for individual transactions. Thus, it can be used to estimate the number and percentage of transactions that would become exempt under the threshold change.<sup>59</sup>

The CoStar Comps database contains data for transactions involving nonresidential commercial mortgages, multifamily, and land, and is derived from sales data and reflects the total transaction amount, as opposed to the loan amount. For purposes of this analysis, the NCUA included only financed transactions and assumed a loan-to-value ratio of 85 percent for nonresidential and multifamily commercial mortgages and a loan-to-value ratio of 65 percent for raw land transactions<sup>60</sup> to arrive at an estimated loan amount, which would be equivalent to the “transaction value” under the appraisal regulation. While the CoStar Comps database has some

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<sup>58</sup> The CoStar Comps database is comprised of sales data involving commercial real estate properties. The agencies have limited their analysis to arms-length completed sales, where the price is provided. The agencies have also limited the sample to properties that were financed. Owner-occupied properties and sales of coops and condominiums were excluded. The sample was also limited to existing buildings. Land includes only raw land defined as land held for development or held for investment.

<sup>59</sup> This same analysis could not be performed using Call Report data because transactions reported for purposes of the Call Report are either reported in groupings of large value ranges or not reported by size at all.

<sup>60</sup> The Interagency Guidelines for Real Estate Lending provides that institutions’ loan-to-value limits should not exceed 85 percent for loans secured by improved property and 65 percent for loans secured by raw land. See OCC: 12 CFR part 34, subpart D, appendix A; Fed: 12 CFR part 208, appendix C; FDIC: 12 CFR part 365, subpart A, appendix A.

limitations for the purposes of evaluating the threshold increase,<sup>61</sup> it provides information that can be used to estimate the dollar volume and number of commercial real estate transactions that are potentially exempted by the threshold increase.

An analysis of the CoStar Comps database suggests that increasing the threshold to \$1 million significantly increases the number of exempted commercial real estate transactions. The estimated percentage of commercial properties that are exempted from the appraisal requirement increases from 27 percent to 66 percent if the threshold were raised from \$250,000 to \$1 million. However, the estimated total dollar amount of commercial real estate transactions that are exempted is relatively small and does not expose credit unions to undue risk. The total dollar volume of loans for commercial properties would only increase from 1.8 percent to 13 percent. Exempting an additional 39 percent of commercial real estate transactions provides significant burden relief to credit unions, but still covers 75 to 90 percent of the total dollar volume of such transactions. This incremental risk can be controlled through sound risk management practices. In particular, the Board notes that written estimates of market value are generally required for such transactions not requiring an appraisal.<sup>62</sup>

The NCUA's analysis of data reported on the Call Report suggests that the threshold for requiring an appraisal conducted by a state-certified appraiser for commercial real estate transactions could be raised and be comparable to the risk that these transactions posed when the current threshold was imposed on commercial real estate transactions in 2002. According to Bank Call Report data, when the threshold for real estate-related financial transactions was raised for banks from \$100,000 to \$250,000 in 1994, approximately 18 percent of the dollar volume of

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<sup>61</sup> For example, the database tends to underrepresent sales of smaller properties and transactions in rural markets, and includes transactions that are not financed by depository institutions.

<sup>62</sup> The Board notes that some transactions are exempt from written estimate of market value requirements. *See*, 12 CFR 722.3(d).

all non-farm, non-residential (NFNR) loans reported by banks had original loan amounts of \$250,000 or less. As of the fourth quarter of 2016, approximately 4 percent of the dollar volume of such loans had original loan amounts of \$250,000 or less. The NCUA does not possess similar data for credit unions; however, this analysis generally suggests that a larger proportion of commercial real estate transactions now require appraisals than when the threshold was last established and, therefore, the threshold could be raised without unduly affecting the safety and soundness of credit unions.

Also, the Board notes that many variables beyond appraisal requirements, including market conditions and various loan underwriting and credit administration practices, affect an institution's loss experience. For credit unions, the \$250,000 threshold has been applicable to commercial real estate transactions since March 2002. Analysis of supervisory information concerning losses on commercial real estate transactions suggests that faulty valuations of the underlying real estate collateral have not been a material cause of losses. In the last three decades, the banking industry suffered two crises in which poorly underwritten and administered commercial real estate loans were a key feature in elevated levels of loan losses, and bank and credit union failures.<sup>63</sup> Supervisory experience and a review of material loss reviews<sup>64</sup> covering those decades suggest that factors other than faulty appraisals were the cause(s) for an

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<sup>63</sup> See, e.g., FDIC, *History of the Eighties – Lessons for the Future, Chapter 3: Commercial Real Estate and the Banking Crises of the 1980s and Early 1990s*, available at [https://www.fdic.gov/bank/historical/history/137\\_165.pdf](https://www.fdic.gov/bank/historical/history/137_165.pdf); FDIC, Office of the Inspector General, EVAL-13-002, *Comprehensive Study on the Impact of the Failure of Insured Depository Institutions* 50, Table 6 (January 2013), available at <https://www.fdicig.gov/reports/13/13-002EV.pdf>.

<sup>64</sup> Section 38(k) of the FDI Act, as amended, provides that if the Deposit Insurance Fund incurs a “material loss” with respect to an IDI, the Inspector General of the appropriate regulator (which for the OCC is the Inspector General of the Department of the Treasury) shall prepare a report to that agency, identifying the cause of failure and reviewing the agency’s supervision of the institution. 12 U.S.C. 1831o(k).

institution's loss experience. For example, larger acquisition, construction, and development<sup>65</sup> transactions were more likely to be troublesome. This is due to the lack of appropriate underwriting and administration of issues unique to larger properties, such as longer construction periods, extended "lease up" periods (the time required to lease a building after construction), and the more complex nature of the construction of such properties.

Additionally, effective January 1, 2017, NCUA implemented a modernized commercial lending regulation and supervisory program.<sup>66</sup> The regulation streamlined standards and established principles-based requirements that instill appropriate discipline. Also, the *Guidelines* provide regulated institutions, including credit unions, with guidance on establishing parameters for ordering Title XI appraisals for transactions that present significant risk, even if those transactions are eligible for written estimates of market value under the regulation. Regulated institutions, including credit unions, are encouraged to continue using a risk-focused approach when considering whether to order an appraisal for real estate-related financial transactions.

The NCUA believes statutory limits, combined with appropriate prudential and supervisory oversight, offset any potential risk that could occur by raising the appraisal threshold for commercial real estate-related transactions. Therefore, the Board concludes that increasing the commercial real estate appraisal threshold to \$1 million does not pose a threat to safety and soundness.

#### **IV. REGULATORY PROCEDURES**

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<sup>65</sup> Acquisition, development and construction refers to transactions that finance construction projects including land, site development, and vertical construction. This type of financing is typically recorded in the land or construction categories of the Call Report.

<sup>66</sup> 12 CFR part 721.

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rule, an agency prepare a final regulatory flexibility analysis that describes the impact of a rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than \$100 million) and publishes its certification and a short, explanatory statement in the Federal Register together with the rule.

The NCUA believes that the threshold increase will meaningfully reduce burden for small credit unions as the threshold for commercial appraisals is increased from \$250,000 to \$1 million. Accordingly, the NCUA certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number.

In accordance with the PRA, the information collection requirements included in this final rule has been submitted to OMB for approval under control number 3133-0125.



### *C. Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

### *D. Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.

### *E. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) generally provides for congressional review of agency rules.<sup>67</sup> A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by Section 551 of the APA.<sup>68</sup> An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a “major rule.”<sup>69</sup> The NCUA does not believe this rule is a “major rule” within the meaning of the relevant sections of SBREFA. As

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<sup>67</sup> 5 U.S.C. 801-804.

<sup>68</sup> 5 U.S.C. 551.

<sup>69</sup> 5 U.S.C. 804(2).

required by SBREFA, the NCUA has submitted this final rule to the Office of Management and Budget (OMB) for it to determine if the final rule is a “major rule” for purposes of SBREFA. The OMB determined that the rule is not major. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

### **List of Subjects in 12 CFR Part 722**

Appraisal, Appraiser, Credit unions, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

By the National Credit Union Administration Board on July 18, 2019.

Gerard Poliquin,  
Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR part 722 as follows:

#### **PART 722—APPRAISALS**

1. The authority citation for part 722 is revised to read as follows:

**Authority:** 12 U.S.C. 1766, 1789, and 3331 *et seq.* Section 722.3(a) is also issued under 15 U.S.C. 1639h.

2. Revise § 722.2 to read as follows:

## **§722.2 Definitions.**

*Appraisal* means 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 Foundation* means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

*Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

*Complex* means a transaction in which the property to be appraised, the form of ownership, or market conditions are atypical. A credit union may presume that appraisals of 1-to-4 family residential properties are not complex unless the institution has readily available information that a given appraisal will be complex.

*Federal financial institutions regulatory agency* means the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC); the Office of the Comptroller of the Currency, Treasury (OCC); the NCUA, and, formerly, the Office of Thrift Supervision.

*Federally related transaction* means any real estate-related financial transaction entered into on or after August 9, 1990 that:

- (1) The National Credit Union Administration, or any federally insured credit union, engages in or contracts for; and
- (2) Requires the services of an appraiser.

*Market value* means 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 is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) 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.

*Real estate* (or *real property*) means an identified parcel or tract of land, including easements, rights of way, undivided or future interests and similar rights in a parcel or tract of land, but does not include mineral rights, timber rights, and growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

*Real estate-related financial transaction* means any transaction involving:

(1) The sale, lease, purchase, investment in or exchange of real estate, including interests in property, or the financing thereof; or

(2) The refinancing of real estate or interests in real estate; or

(3) The use of real estate or interests in property as security for a loan or investment, including mortgage-backed securities.

*Residential real estate transaction* means a real estate-related financial transaction that is secured by a single 1-to-4 family residential property.

*Staff appraiser* means a State-certified or a State-licensed appraiser that is an employee of the credit union.

*State-certified appraiser* means any individual who has satisfied the requirements for certification in a state or territory whose criteria for certification as a real estate appraiser currently meet the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation. No individual shall be a state-certified appraiser unless such individual has achieved a passing grade upon a suitable examination administered by a state or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of a state or territory are inconsistent with title XI of FIRREA. The National Credit Union Administration may, from time to time, impose additional qualification criteria for certified appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

*State-licensed appraiser* means any individual who has satisfied the requirements for licensing in a state or territory where the licensing procedures comply with title XI of FIRREA and where the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI. The NCUA may, from time to time, impose additional qualification criteria for licensed appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

*Tract development* means a project of five units or more that is constructed or is to be constructed as a single development.

*Transaction value* means:

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

3. Revise § 722.3 to read as follows:

**§722.3 Appraisals and written estimates of market value requirements for real estate-related financial transactions.**

(a) *Real estate-related financial transactions not requiring an appraisal under this part.*

Provided the transaction is not a “higher-priced mortgage loan” under 12 CFR 1026.35, which must meet separate appraisal requirements under section 129H of the Truth in Lending Act, 15 U.S.C. 1639h, an appraisal is not required for a real estate-related financial transaction in which:

(1) The transaction involves an existing extension of credit at the lending credit union, provided that:

(i) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs; or

(ii) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of new monies;

(2) A lien on real estate has been taken as collateral through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien;

(3) A lien on real estate has been taken for purposes other than the real estate's value;

(4) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(5) The transaction involves 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 estate, including mortgage-backed securities, and each loan or interest in a loan, pooled loan, or real estate interest met the requirements of this regulation, if applicable, at the time of origination; or

(6) The transaction either qualifies for sale to a United States government agency or United States government-sponsored agency, or involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate.

(b) *Real estate-related financial transactions requiring an appraisal by a state-certified appraiser.* An appraisal performed by a state-certified appraiser is required for any real estate-related financial transaction not exempt under paragraph (a) of this section in which:

(1) The transaction value is \$1,000,000 or more; or

(2) The transaction is complex, involves a residential real estate transaction, \$250,000 or more of the transaction value is not insured or guaranteed by a United States government agency or United States government-sponsored agency, and the transaction does not meet the criteria in paragraph (f) of this section.

(c) *Real estate-related financial transactions requiring an appraisal by either a state-certified or state-licensed appraiser.* (1) An appraisal performed by a state-certified appraiser or a state-licensed appraiser is required for any real estate-related financial transaction not exempt under paragraph (a) of this section in which the transaction is not complex, involves a residential real estate transaction, \$250,000 or more of the transaction value is not insured or guaranteed by a United States government agency or United States government-sponsored agency, and the transaction does not meet the criteria in paragraph (f) of this section.

(2) If, during the course of an appraisal of a residential real estate transaction performed by a state-licensed appraiser, factors are identified that result in the transaction meeting the definition of complex, then the credit union may either:

(i) Ask the state-licensed appraiser to complete the appraisal and have a state-certified appraiser approve and cosign the appraisal; or

(ii) Engage a state-certified appraiser to complete the appraisal.

(d) *Real estate-related financial transactions requiring a written estimate of market value—*  
(1) *Applicability.* Any real estate-related financial transaction must be supported by a written estimate of market value, unless:

(i) An appraisal performed by a state-certified or state-licensed appraiser was obtained;

(ii) An appraisal is not required under paragraphs (a)(2) through (6) of this section; or

(iii) The transaction is fully insured or guaranteed by a United States government agency or United States government-sponsored agency.

(2) *Requirements.* All written estimates of market value required under this paragraph must be performed by an individual:



(i) Independent of the loan production and collection processes (if independence cannot be achieved, the credit union must 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 and collection process);

(ii) Having no direct, indirect, or prospective interest, financial or otherwise, in the property or the transaction; and

(iii) Qualified and experienced to perform such estimates of value for the type and amount of credit being considered.

(e) *Appraisals to address safety and soundness concerns.* The NCUA reserves the right to require an appraisal under this subpart whenever the agency believes it is necessary to address safety and soundness concerns.

(f) *Exemption from appraisals of real estate located in rural areas.* (1) Notwithstanding any other provision of law, an appraisal in connection with a federally related transaction involving real estate or an interest in real estate is not required if:

(i) The real estate or interest in real estate is located in a rural area, as described in 12 CFR 1026.35(b)(2)(iv)(A);

(ii) The transaction value is less than \$400,000;

(iii) Any party involved in the transaction that meets the definition of mortgage originator must be subject to oversight by a Federal financial institutions regulatory agency; and

(iv) Not later than three days after the date on which the Closing Disclosure Form, made in accordance with 12 CFR parts 1024 and 1026, relating to the federally related transaction is given to the consumer, the credit union (or other party involved in the transaction that acts as the mortgage originator) or its agent, directly or indirectly:

(A) Has contacted not fewer than three state-certified appraisers or state-licensed appraisers, as applicable, on the credit union's (or other party involved in the transaction that acts as the mortgage originator) approved appraiser list in the market area in accordance with 12 CFR part 226; and

(B) Has documented that no state-certified appraiser or state-licensed appraiser, as applicable, was available within five business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments, as documented by the credit union (or other party involved in the transaction that acts as the mortgage originator) or its agent.

(2) A credit union (or other party involved in the transaction that acts as the mortgage originator) that makes a loan without an appraisal under the terms of paragraph (f)(1) of this section shall not sell, assign, or otherwise transfer legal title to the loan unless:

(i) The loan is sold, assigned, or otherwise transferred to another party by reason of the credit union's (or mortgage originator's) bankruptcy or insolvency;

(ii) The loan is sold, assigned, or otherwise transferred to another party regulated by a Federal financial institutions regulatory agency, so long as the loan is retained in portfolio by the other party;

(iii) The sale, assignment, or transfer is pursuant to a merger of the credit union (or mortgage originator) with another party or the acquisition of the credit union (or mortgage originator) by another party or of another party by the credit union (or mortgage originator); or

(iv) The sale, loan, or transfer is to a wholly owned subsidiary of the credit union (or mortgage originator), provided that, after the sale, assignment, or transfer, the loan is considered to be an asset of the credit union (or mortgage originator) under generally accepted accounting principles.

(3)(i) For purposes of this paragraph (f), the term *transaction value* means the amount of a loan or extension of credit, including a loan or extension of credit that is part of a pool of loans or extensions of credit; and

(ii) The term *mortgage originator* has the meaning given the term in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

(4) This paragraph (f) does not apply if:

(i) The NCUA requires an appraisal under paragraph (e) of this section; or

(ii) The loan is a high-cost mortgage, as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

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