

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 722

RIN 3133-AE79

#### Real Estate Appraisals

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

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The NCUA Board (Board) is inviting comment on a proposed rule to amend the agency's regulation requiring real estate appraisals for certain transactions. The proposed rule would accomplish four objectives. First, the proposed rule would increase the threshold below which appraisals would not be required for non-residential real estate transactions from \$250,000 to \$1,000,000. Second, the proposed rule would restructure the NCUA's appraisal regulation to clarify its requirements for the reader. Third, the proposed rule would exempt from the NCUA's appraisal regulation certain federally related transactions involving real estate where the property is located in a rural area, valued below \$400,000, and no state certified or licensed appraiser is available. Finally, the proposed rule would also make certain conforming amendments to the definitions section.

**DATES:** Comments must be received on or before December 3, 2018.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *NCUA website:* <https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx>. Follow the instructions for submitting comments.

- *Email:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "[Your name] Comments on Proposed Rule part 722, Real Estate Appraisals" in the email subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for email.

- *Mail:* Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

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

*Public Inspection:* You may view all public comments on NCUA's website at <https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

#### FOR FURTHER INFORMATION CONTACT:

*Technical information:* Jeffrey Marshall, Program Officer, (703) 548-2415, Office of Examination and Insurance, or *legal information:* Rachel Ackman, Staff Attorney, (703) 518-6540, or John Brolin, Senior Staff Attorney, (703) 518-6540, Office of General Counsel, National Credit Union Administration, 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 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 then in effect of the other banking agencies, 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 qualifying business loans with transaction values of \$1 million or less.

<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); 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).

<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).

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

<sup>2</sup> "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 (OCC); the NCUA, and, formerly, the Office of Thrift Supervision. 12 U.S.C. 3350(6).

*B. The Other Banking Agencies 2017–2018 Rulemaking*

In July 2017, the other banking agencies invited comment on a notice of proposed rulemaking (2017 proposal or 2017 proposed rule)<sup>10</sup> that would have amended the other banking agencies' appraisal regulations promulgated pursuant to Title XI. Specifically, the 2017 proposal would have 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 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 2017 proposal 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>

In the other banking agencies' EGRPRA Report and proposed rule, they also 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 threshold for this category of transactions at this time based on three 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>13</sup> As reflected in the 2015 Home Mortgage Disclosure Act (HMDA) data,<sup>14</sup> at least 90 percent of residential mortgage loan originations had loan amounts at or below the threshold, were eligible for sale to GSEs, or were insured by the Federal Housing Administration or the United States Department of Veterans Affairs. Those transactions are not subject to the Title XI appraisal regulations, but the majority of those transactions are subject to the appraisal requirements of other government agencies or the GSEs. Therefore, raising the appraisal threshold for residential transactions in the Title XI appraisal regulations would have limited impact on burden.

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>15</sup> The consumer protection role of appraisals is reflected in amendments made to Title XI and the Truth in Lending Act (TILA)<sup>16</sup> through the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act),<sup>17</sup> governing the scope of transactions requiring the services of a state-certified or state-licensed appraiser. These include the addition of the Bureau of Consumer Financial Protection (BCFP) to the group of agencies assigned a role in the appraisal threshold-setting process for Title XI,<sup>18</sup> and a new TILA provision requiring

appraisals for loans involving "higher-risk mortgages."<sup>19</sup>

During the EGRPRA process, the staff of the other banking agencies conferred with the BCFP regarding comments the agencies received supporting an increase in the threshold for 1-to-4 family residential transactions. BCFP 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 that a change to the current \$250,000 threshold for residential mortgage loans would not be appropriate at the present time.

The NCUA concluded in its EGRPRA report that the agency would work with the other banking agencies to develop a proposal to increase the threshold level related to commercial real estate loans, and would consider any other recommendations developed by the other banking agencies. The NCUA, however, would still like to receive comments on whether there are other factors that should be considered in evaluating the current threshold for 1-to-4 family residential transactions and whether the threshold can and should be raised, consistent with consumer protection, safety and soundness, and reduction of unnecessary regulatory burden. The NCUA and the other banking agencies will continue to consider possibilities for relieving burden related to appraisals for residential mortgage loans, such as coordination of the agencies' Title XI appraisal regulations with the practices of HUD, the GSEs, and other federal participants in the residential real estate market.

The comment period for the other banking agencies' 2017 proposal closed

<sup>13</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>14</sup> See FFIEC, *Home Mortgage Disclosure Act*, [www.ffiec.gov/hmda/](http://www.ffiec.gov/hmda/).

<sup>15</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>16</sup> 15 U.S.C. 1601 *et seq.*

<sup>17</sup> Public Law 111–203, 124 Stat. 1376.

<sup>18</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)), as discussed earlier in the Supplementary Information section.

<sup>19</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).

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

<sup>11</sup> Public Law 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).

on September 29, 2017.<sup>20</sup> The other banking agencies collectively received over 200 comments from appraisers, appraiser trade organizations, financial institutions, financial institutions trade organizations, and individuals.

After carefully considering the comments and conducting further analysis, the other banking agencies issued a final rule in early 2018 (2018 final rule) that increased the commercial real estate appraisal threshold with three modifications from the 2017 proposal.<sup>21</sup> First, the other banking agencies decided to increase the commercial real estate appraisal threshold (non-QBLs) to \$500,000 rather than the \$400,000 proposed. Second, the 2018 final rule also made a conforming change to the section requiring state-certified appraisers to be used for federally related transactions that are commercial real estate transactions above the increased threshold. Third, the 2018 final rule changed the proposed definition of commercial real estate transaction, to no longer include construction loans secured by a single 1-to-4 family residential property, regardless of whether the loan is for initial construction only or includes permanent financing. Thus, under the 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>22</sup>

For real estate-related financial transactions that are exempt from the appraisal requirement because they are within the applicable thresholds or qualify for the exemption for certain existing extensions of credit,<sup>23</sup> the other banking agencies' appraisal regulations require financial institutions to obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices.<sup>24</sup> An evaluation should contain sufficient

information and analysis to support the financial institution's decision to engage in the transaction. However, evaluations need not be performed in accordance with USPAP or by certified or licensed appraisers. The NCUA and the other banking agencies have provided supervisory guidance for conducting evaluations in a safe and sound manner in the *Interagency Appraisal and Evaluation Guidelines* (Guidelines).<sup>25</sup>

### 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 Act) into law.<sup>26</sup> Section 103 of the 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>27</sup> The exemption provided in the 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.

## II. Legal Authority

Title XI<sup>28</sup> directs each federal financial institutions regulatory agency<sup>29</sup> 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>30</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>31</sup>

<sup>25</sup> 75 FR 77450 (Dec. 10, 2010).

<sup>26</sup> Public Law 115–174.

<sup>27</sup> *Id.* at sec. 103.

<sup>28</sup> 12 U.S.C. 3331 *et seq.*

<sup>29</sup> “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. 12 U.S.C. 3350(6).

<sup>30</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>31</sup> 12 U.S.C. 3331.

Title XI directs the NCUA to prescribe appropriate standards for Title XI appraisals under the NCUA's jurisdiction,<sup>32</sup> including, at a minimum that Title XI appraisals be: (1) Performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP);<sup>33</sup> (2) written appraisals, as defined by the statute; and (3) subject to appropriate review for compliance with USPAP. 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>34</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 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>35</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>36</sup>

The NCUA has exercised this authority by exempting several categories of real estate-related financial transactions from the Title XI appraisal requirements.<sup>37</sup> The NCUA has determined that these categories of transactions do not require appraisals by state-certified or state-licensed

<sup>32</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>33</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-dbf4-41b3-9878-fac35923d2af](http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbf4-41b3-9878-fac35923d2af).

<sup>34</sup> 12 U.S.C. 3350(4) (defining “federally related transaction”).

<sup>35</sup> 12 U.S.C. 3350(5).

<sup>36</sup> See 59 FR 29482 (June 7, 1994).

<sup>37</sup> See 12 CFR 722.3(a).

<sup>20</sup> 82 FR 35478 (July 31, 2017).

<sup>21</sup> 83 FR 15019 (April 9, 2018).

<sup>22</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.

<sup>23</sup> Transactions that involve an existing extension of credit at the lending institution are exempt from the Title XI appraisal requirements, but are required to have evaluations, provided that there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or there is no advancement of new monies, other than funds necessary to cover reasonable closing costs. See OCC: 12 CFR 34.43(a)(7) and (b); Fed: 12 CFR 225.63(a)(7) and (b); FDIC: 12 CFR 323.3(a)(7) and (b).

<sup>24</sup> See OCC: 12 CFR 34.43(b); Fed: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b).

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 federally insured credit unions.<sup>38</sup>

In the Dodd-Frank Act, Congress amended the threshold provision to require concurrence “from the BCFP that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences.”<sup>39</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. Section-by-Section Analysis

The Board is now proposing to amend part 722—Appraisals of the NCUA regulations to more clearly indicate for the reader when a written estimate of market value, an appraisal conducted by a state-licensed appraiser, or an appraisal conducted by a state-certified appraiser is required for a real estate-related financial transaction; incorporate the relevant changes in the Economic Growth, Regulatory Relief, and Consumer Protection Act; and, provide relief for appraisal requirements for non-residential real estate-related financial transactions.<sup>40</sup> In particular, the proposal would establish a new threshold—\$1,000,000 or more—for non-residential real estate-related financial transactions. The proposed new threshold for non-residential real estate-related financial transactions represents a significant increase from the current level of \$250,000.

Additionally, the NCUA is proposing to add or remove various definitions in support of the proposed changes and to improve clarity. Further, the NCUA proposes to substantially reorganize § 722.3 of the appraisal regulation to clarify and update requirements and

make it easier for credit unions to determine when an appraisal or written estimate of market value is required. The NCUA will consult with the BCFP regarding this proposal in developing a final rule.

#### Section 722.2 Definitions

The NCUA Board is proposing various changes to the terms and definitions applicable to part 722. The proposal would also make technical non-substantive amendments to the section, including removing the individual numbering of the definitions within the section to make edits of part 722 easier in the future. The definitions in the section would continue to be listed in alphabetic order. The following definitions would be added, removed, or amended under this proposed rule:

##### Complex

The proposal would amend current § 722.2(d) to remove the current definition for *complex 1- to 4-family residential property appraisal* and replace it with the shorter term *complex*. The proposed definition for *complex* real estate-related financial transaction is similar to the current definition for *complex 1- to 4-family residential property appraisal*, but would allow the term *complex* to be used more broadly in conjunction with other amendments being made in proposed § 722.3, which are discussed in more detail below. Accordingly, proposed § 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 proposed definition would also state that a regulated institution 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 would be moved from § 722.3(b)(3) as part of the overall restructuring of § 722.3.

##### Federal Financial Institutions Regulatory Agency

Proposed § 722.2 would add a definition for *federal financial institutions regulatory agency* in response to changes to Title XI under the Economic Growth, Regulatory Relief, and Consumer Protection Act.<sup>41</sup> Consistent with the definition provided

under Title XI, the proposal would define *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>42</sup>

##### Real Estate or Real Property

The proposal would amend current § 722.2(g) by adding 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 is intended by this technical amendment. Accordingly, proposed § 722.2 provides that 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. For consistency, the proposal uses the term real estate in place of the term real property.

##### Real Estate-Related Financial Transaction

Proposed § 722.2 would make minor, non-substantive technical amendments to the current § 722.2(h) and the definition of *real estate-related financial transaction*. In particular, the proposal would replace the words “real property” with the words “real estate” each place they occur within the definition for consistency. As discussed above, under the both the current rule and this proposal the terms “real property” and “real estate” have the same meaning and can be used interchangeably. Accordingly, proposed § 722.2 provides that real estate-related financial transaction means any transaction involving: The sale, lease, purchase, investment in or exchange of real estate, including interests in property, or the financing thereof; or the refinancing of real estate or interests in real estate; or the use of real estate or interests in property as security for a loan or investment, including mortgage-backed securities.

##### Residential Real Estate Transaction

The proposal would add a definition for the term *residential real estate transaction* to identify for the reader

<sup>38</sup> 12 U.S.C. 3341(b). See also, Housing and Community Development Act of 1992, Public Law 102–550, section 954, 106 Stat. 3894 (amending 12 U.S.C. 3341).

<sup>39</sup> Dodd-Frank Act, sec. 1473, 124 Stat. 2190 (amending 12 U.S.C. 3341(b)).

<sup>40</sup> See 83 FR 15019 (Apr. 9, 2018); see also OCC: 12 CFR 34.43(a)(5) and (a)(13); Fed: 12 CFR 225.63(a)(5) and (a)(14); and FDIC: 12 CFR 323.3(a)(5) and (a)(13).

<sup>41</sup> Public Law 115–174.

<sup>42</sup> 12 U.S.C. 3350(6).

which federally related transactions would still be subject to the \$250,000 appraisal threshold, which is discussed in more detail below. Proposed § 722.2 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>43</sup> 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>44</sup> Accordingly, the NCUA is proposing to take the same approach in its appraisal regulation by including any loan for construction of a one, two, three, or four individual dwelling units, including manufactured homes permanently affixed to the underlying land as a single 1- to 4-family residential property.

#### Staff Appraiser

For clarity, this proposal would add a new definition for *staff appraiser*, which is a term currently used in § 722.5 of the regulation. Proposed § 722.2 provides that staff appraiser means a state-certified or state-licensed appraiser that is an employee of the credit union.

#### Transaction Value

Proposed § 722.2 would make minor, non-substantive technical amendments to the current § 722.2(l) and the definition of *transaction value*. In particular, the proposal would replace the words "real property" with the words "real estate" each place they occur within the definition for consistency. As discussed above, under both the current rule and this proposal the terms "real property" and "real estate" have the same meaning and can be used interchangeably. Accordingly, proposed § 722.2 provides that 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 estate, the market value of the real estate interest involved; and 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.

<sup>43</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).

<sup>44</sup> Residential construction loans secured by more than one 1-to-4 family residential property would be considered commercial real estate transactions subject to the higher threshold. 83 FR 15019 (April 9, 2018).

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

The NCUA proposes to amend current § 722.3 to increase the threshold level at or below which appraisals would not be required for certain non-residential real estate transactions, incorporate relevant changes under the Economic Growth, Regulatory Relief, and Consumer Protection Act, and reorganize the section to make it easier for credit unions 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 the section, the NCUA believes that it is difficult for a reader to quickly determine whether a written estimate of market value is required, or whether an appraisal performed by a state-licensed or state-certified appraiser is required for certain real estate-related financial transactions. Accordingly, this proposal would reorder current § 722.3 to help the reader more readily determine: (a) Whether the real estate-related financial transaction does not require an appraisal or written estimate of market value 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 or Written Estimate of Value Under This Part

The NCUA is proposing to reorganize current § 722.3(a) to make it clearer upfront when no appraisal or written estimate of market value is required under part 722 for a real estate-related financial transaction. The proposal would also include language from current § 722.3(f), which merely serves as a cross reference to remind the reader that there are also Truth in Lending Act appraisal requirements under 12 CFR 1026.35 that apply to certain real estate-related financial transactions. Accordingly, proposed new § 722.3(a) states: 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 or written estimate of market value is not required for certain real estate-related financial transaction, which are described in more detail below.

#### 3(a)(1)–(6)

Proposed new § 722.3(a)(1)–(6) would incorporate and update the list of exempt transactions under current § 722.3(a)(1)–(9). As discussed in more detail below, proposed § 722.3(a)(1)–(6) would retain many of the transactions listed under current paragraph (a). But, because proposed paragraph (a) lists transactions that do not require an appraisal or written estimate of value, and current paragraph (a) includes transactions that require a written estimate of market value, the proposal would move certain provisions in current § 722.3(a) to proposed § 722.3(d). Accordingly, proposed § 722.3(a)(1)–(6) provides that an appraisal or written estimate of market value is not required for a real estate-related financial transaction under the following circumstances:

(a)(1). The transaction involves an existing extension of credit and is not considered a new loan under Generally Accepted Accounting Principles. The proposed (a)(1) would replace the current § 722.3(a)(5). The current paragraph (a)(5) exempts an existing extension of credit provided there was no advancement of new monies, other than funds necessary to cover reasonable closing costs; or 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 revised paragraph (a)(1) would provide, instead, that an existing extension of credit would not require an appraisal or written estimate of market value if the transaction is not considered a new loan under Generally Accepted Accounting Principles.<sup>45</sup> The

<sup>45</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

current § 722.3(a)(5) conditions can involve significant subjectivity, may be difficult to apply in practice, and do not necessarily align with financial reporting standards. While this proposed change varies somewhat from the respective provision in the other banking agencies' rules, linking this exemption to Generally Accepted Accounting Principles should increase consistency and better achieve the objectives of this regulation. Further, the NCUA does not believe a written estimate of market value needs to be required for all modifications, workouts, or troubled debt restructurings of existing loans. Credit unions should use sound judgement in determining when a written estimate of market value, or an appraisal, is warranted to support a loan workout. The Board does not believe that linking this exemption to Generally Accepted Accounting Principles will result in any substantial change from current practice. However, the Board recognizes that there may be rare circumstances that would result in an appraisal being required under this proposed rule that would not be required under the current rule due to linking the exemption to Generally Accepted Accounting Principles. Therefore, the Board is specifically seeking comment on this proposed change, and whether the current language in the regulation should be maintained.

The exemption provided under current paragraph (a)(1), for real estate-related financial transactions with a transaction value of \$250,000 or less, would be amended and moved to proposed § 722.3(b), (c), and (d) to reflect whether an appraisal or written estimates of market value is required based on the transactions value. Specific aspects of those changes are discussed in more detail below.

(a)(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. The proposal retains current § 722.3(a)(2) as proposed § 722.3(a)(2). The Board is not proposing

any substantive changes to this provision.

(a)(3). A lien on real estate has been taken for purposes other than the real estate's value. The proposal retains current § 722.3(a)(3) as proposed § 722.3(a)(3). The Board is not proposing any substantive changes to this provision.

(a)(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. The proposal retains current § 722.3(a)(4) as proposed § 722.3(a)(4). The Board is not proposing any substantive changes to this provision.

(a)(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. The proposal would move current § 722.3(a)(6) to proposed § 722.3(a)(5). The Board is not proposing any substantive changes to this provision.

(a)(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. The proposal moves current § 722.3(a)(8) to proposed § 722.3(a)(6). The Board is not proposing any substantive changes to this provision.

The proposed rule would remove the current § 722.3(a)(7). The proposal 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>46</sup> or U.S. government sponsored agency.<sup>47</sup> Under the current rule, any real estate-related financial transaction that is insured or guaranteed by a U.S. government agency or U.S. 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 is 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 U.S. 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.

When the other banking agencies (and subsequently the NCUA) adopted current § 722.3(a)(7) in 1994, it was based on the presumption that any U.S. government agency's or sponsored agency's insurance or guarantee program would have a prudent appraisal requirement.<sup>48</sup> The NCUA continues to believe this to be the case. The Board, however, notes it is possible that new insurance and guarantee programs could be developed, or existing ones modified, where any partial insurance or guarantee provided is small enough that the insurer/guarantor does not require an appraisal, and the uninsured or unguaranteed portion of the transaction could still be significant to the federally insured credit union or the borrower.

The proposed approach would better align the appraisal and written estimate of market value requirements to the potential risk to the federally insured credit union, and preserve the consumer protection benefits appraisals provide. While this proposed 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 U.S. government guaranty and insurance programs currently require appraisals, with limited exceptions. However, the Board is specifically seeking comment on this proposed change, and whether the current approach in the regulation should be maintained. In particular, the Board requests commenters note if and how a credit union's current use of a U.S. government agency's or sponsored agency's insurance or guarantee program(s) would be affected by this change.

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.

<sup>46</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>47</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.

<sup>48</sup> June 1994 final rule (59 FR 29482 June 7, 1994). Federal agencies insuring or guaranteeing loans are generally required to conduct real estate appraisal programs in a manner to reduce default risk to the federal government.

Additional discussion on the requirements for other transactions with government insurance or guarantees are in proposed § 722.3(b), (c), and (d) and are discussed below in subsequent sections.

As discussed, appraisal requirements for transactions that are partially or fully guaranteed by a U.S. government agency or a sponsored agency have been revised to no longer be categorical exemptions from the appraisal and written evaluation requirements of part 722. Instead, such transactions would be subject to the statutory threshold of \$1 million or more. Either the credit union or the United States government agency, or sponsored agency, would need to obtain an appraisal by a state-certified appraiser.<sup>49</sup> The Board believes that such transactions are currently required to have appraisals under the rules of the United States government agency, or sponsored agency, insuring or guaranteeing the transaction. Therefore, the Board considers this change to be clarifying and only a reflection of current industry practice.

The proposed rule would remove the current § 722.3(a)(9). The Board is proposing to eliminate the option for a Regional Director to grant a waiver from the appraisal requirement for a category of loans meeting the definition of a member business loan. The provision was removed due to the proposal's increase for the non-residential real estate-related financial transaction appraisal threshold to the requirement of \$1 million or more.

### 3(b) Real Estate-Related Financial Transactions Requiring an Appraisal by a State-Certified Appraiser

Proposed § 722.3(b) identifies the real estate-related financial transactions for which an appraisal performed by a state-certified appraiser is required. The proposal states that an appraisal performed by a state-certified appraiser is required for any real estate-related financial transaction not exempt under paragraph (a) in which:

#### 3(b)(1)

Proposed § 722.3(b)(1) requires an appraisal performed by a state-certified appraiser for transactions that are not exempt under paragraph (a) and the transaction value is \$1 million or more. This would increase the threshold at which non-residential 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 proposal that necessitates an appraisal for non-residential transactions not otherwise exempt,<sup>50</sup> as the current § 722.3(b)(2) is removed as part of the overall reorganization of § 722.3. This proposed increase in the threshold for non-residential real estate-related financial transactions would reduce regulatory burden by providing credit unions greater flexibility in commercial lending. For commercial real estate-related financial transactions with transaction values below \$1 million, credit unions would be 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 proposed approach aligns with the other banking agencies' appraisal requirements for QBLs with a transaction value of \$1 million or less.<sup>51</sup> The proposed 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.

In considering whether to propose an increased threshold for commercial real estate transactions that would require an appraisal by a state-certified appraiser, the NCUA considered the comments received through the EGRPRA process. The NCUA has also carefully considered the other banking agencies' 2017 proposed rule<sup>52</sup> and 2018 final rule<sup>53</sup> regarding real estate appraisals. The Board carefully considered whether changes to the threshold for requiring an appraisal by a state-certified appraiser would be appropriate to reduce regulatory burden, while consistent with public policy interests and safety and soundness.

The NCUA last modified the threshold for exempt transactions in 2001 and used the same threshold for both residential and commercial real estate.<sup>54</sup> Given increases in commercial property values since that time, 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 the EGRPRA commenters.

Based on supervisory experience and available data, the other risk mitigations incorporated into the proposal, and other regulatory requirements and supervisory expectations, the proposed increase to the threshold for requiring an appraisal by a state-certified appraiser for commercial real estate transactions would not pose a material threat to the safety and soundness of credit unions or create undue risk to the National Credit Union Share Insurance Fund (NCUSIF). A more detailed analysis supporting this conclusion is provided below in the Section *Analysis of Higher Commercial Appraisal Threshold*.

#### (b)(2)

Proposed § 722.3(b)(2) also requires an appraisal performed by a state-certified appraiser for a transaction that is not exempt where 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 U.S. government agency or U.S. government sponsored agency,<sup>55</sup> and the transaction does not qualify for the rural area exemption in paragraph (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 proposed § 722.3(b)(2) is regarding transactions that are partially insured or guaranteed by a U.S. government agency or U.S. government sponsored agency. Specifically, a complex residential real estate transaction that is partially insured or guaranteed by a U.S. government agency or U.S. government sponsored agency, but has \$250,000 or more of the transaction value not insured or guaranteed, would be required to have a state-certified appraisal under the proposed rule.<sup>56</sup> Such a transaction is exempt from appraisal requirements under the current rule.

The NCUA seeks comments on whether there are other factors that should be considered in evaluating the threshold for complex, residential real estate-related transactions and whether

<sup>50</sup> Unless so required to address safety and soundness concerns under current and proposed § 722.3(e).

<sup>51</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).

<sup>52</sup> 82 FR 35478 (July 31, 2017).

<sup>53</sup> 83 FR 15019 (Apr. 9, 2018).

<sup>54</sup> 66 FR 58656 (Nov. 23, 2001).

<sup>55</sup> The proposal 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 was done to ensure consistency within the regulation and with the relevant statutory requirements.

<sup>56</sup> As noted above, if the insurer or guarantor obtained an appraisal by a state-certified appraiser, the credit union could use that to satisfy this requirement.

<sup>49</sup> The Board notes that if the insurer/guarantor obtains the appraisal to support the transaction, the credit union need not obtain one as well.

the threshold should be raised, consistent with consumer protection, safety and soundness, and reduction of unnecessary regulatory burden.

**§ 722.3(c) Real Estate-Related Financial Transactions Requiring an Appraisal by Either a State-Certified or State-Licensed Appraiser**

Proposed § 722.3(c) reflects the provisions in current § 722.3(c) for when an appraisal performed by either a state-certified or state-licensed appraiser is required. Proposed § 722.3(c) includes terminology updates and clarifications and incorporates the proposed new approach to appraisal thresholds discussed above.

*3(c)(1)*

Proposed § 722.3(c)(1) would require an appraisal performed by a state-certified or state-licensed appraiser for a transaction that is not exempt where 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 U.S. government agency or U.S. government sponsored agency, and the transaction does not qualify for the rural area exemption in paragraph (f). This requirement would be 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 appraiser. 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 U.S. government sponsored agency. For clarity, this requirement would be explicit under the current rule, instead of implicitly including this requirement through the current § 722.3(c). The Board believes the proposal more clearly indicates when an appraisal conducted by a state-licensed appraiser or a state-certified appraiser is acceptable.

The NCUA seeks comments on whether there are other factors that should be considered in evaluating the threshold for non-complex residential real estate transactions and whether the threshold should be raised, consistent with consumer protection, safety and soundness, and reduction of unnecessary regulatory burden.

*3(c)(2)*

Proposed § 722.3(c)(2) reflects the provisions in current § 722.3(b)(3) for situations where, during the course of an appraisal performed by a state-licensed appraiser, the transaction is

determined to be complex. The language of this provision was simplified so as to be clearly based on the regulation's definition of complex. While the credit union is responsible for properly applying the complex transaction definition, the NCUA maintains interpretive authority with respect to the regulatory definition.

**§ 722.3(d) Real Estate-Related Financial Transactions Requiring a Written Estimate of Market Value**

Proposed § 722.3(d) reflects the provisions in current § 722.3(d) for when a written estimate of market value is required. Under proposed § 722.3(d), a written estimate of market value is required for a transaction that is (i) not fully insured or guaranteed by a U.S. government agency or U.S. government sponsored agency, (ii) not exempt under paragraph (a), and (iii) an appraisal performed by a state-certified or state-licensed appraiser has not been obtained.

For non-residential real estate transactions with a transaction value below \$250,000, the requirement would be the largely the same. For non-residential real estate transactions with a transaction value of \$250,000 or more, but less than \$1 million, credit unions would no longer be required to obtain an appraisal by a state-certified appraiser. Therefore, these transactions, if not fully insured or guaranteed or otherwise exempted, would need to be supported by a written estimate of market value.

A written estimate of market value would also be required for certain transactions that are partially insured or guaranteed by a U.S. government agency or U.S. government sponsored agency. The Board does not believe, as discussed above, this proposed requirement would represent a substantial burden on credit unions. The Board, however, is seeking comment on whether the NCUA should establish a de minimis threshold for transactions. For example, if the uninsured or unguaranteed dollar amount is below a de minimis threshold amount, such as \$50,000, should the transaction be exempt from written estimate of market value requirements.

The current requirements in § 722.3(d) that the individual performing the written estimate of market value have no direct or indirect interest in the property, and be properly qualified and experienced,<sup>57</sup> are incorporated into proposed § 722.3(d).

<sup>57</sup> Also see Interagency Appraisal and Evaluations Guidelines at 75 FR 77458.

Under proposed § 722.3(d), the independence standards for the individual performing the written estimate of market value have been amended to codify certain independence provisions in the Interagency Appraisal and Evaluations Guidelines (Guidelines). Specifically, the proposed rule incorporates the existing Guidelines that the individual performing a written estimate of market value be independent of the loan production and collection process. The Board believes that an enhanced independence requirement is an important prudential safeguard, as the proposed rule would permit non-residential real estate transactions that are less than \$1 million to have a written estimate of market value instead of a state-certified or state-licensed appraisal. The proposed rule further would clarify that 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.<sup>58</sup>

The Board notes a written estimate of market value needs to provide appropriate information to enable the institution to make a prudent decision regarding the transaction. Through the Guidelines, the NCUA has provided guidance to credit unions on the agency's safety and soundness expectations regarding when and how written estimates (evaluations) of market value should be used.<sup>59</sup> The Guidelines indicate that credit unions should develop policies and procedures for conducting written estimates. The policies and procedures should specify situations when the credit union will still obtain an appraisal by a state-licensed or state-certified appraiser.<sup>60</sup> Written estimates of market value may be completed by a credit union employee or by a third party.<sup>61</sup>

In evaluating this proposal, the NCUA considered the impact to credit unions and borrowers. Based on information from banking agency data, the cost of third-party evaluations of commercial

<sup>58</sup> Guidelines at 75 FR 77457–58. See also Valuation Independence rules in Regulation Z, which apply to all creditors and cover extensions of consumer credit that are or will be secured by a consumer's principal dwelling; Fed: 12 CFR 226.42; CFPB: 12 CFR 1026.42.

<sup>59</sup> Interagency Appraisal and Evaluations Guidelines, 75 FR 77450 (Dec. 10, 2010).

<sup>60</sup> Guidelines at 75 FR 77461.

<sup>61</sup> See Interagency Advisory on Use of Evaluations in Real Estate-Related Financial Transactions, OCC Bulletin 2016–8 (March 4, 2016); Fed SR Letter 16–05 (March 4, 2016); Supervisory Expectations for Evaluations, FDIC FIL–16–2016 (March 4, 2016).



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. Non-residential 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 evaluations 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.

**§ 722.3(f) Exemption From Appraisals of Real Property Located in Rural Areas**

Proposed § 722.3(f) incorporates a new exemption that was included in the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, signed on May 24, 2018. Under this provision, transactions involving real estate or an interest in real estate located in a rural area, as described in 12 CFR 1026.35(b)(2)(iv)(A) are exempt from appraisal requirements if certain conditions are met. The exemption provided in the 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. However, the Board proposes to incorporate the exemption explicitly into part 722 of the regulations for easier reference and does not intend to make any substantive changes to the statutory requirement.

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

**Analysis of Higher Commercial Appraisal Threshold**

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>62</sup> The Board does not believe that increasing the threshold that non-residential 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>63</sup> The statutory ceiling of 1.75 times net worth limits risk for credit unions granting all forms of commercial loans, of which non-residential real estate transactions are a subset. Therefore, increasing the threshold to \$1 million would not pose the same safety and soundness risk to credit unions as it would to similarly situated banking organizations, which do not have the same commercial lending restrictions.

Currently, commercial loans represent only 5.7 percent of the total assets of credit unions granting commercial loans, and less than 53 percent of total net worth of those credit unions. Comparatively, commercial loans in the banking industry represent 25 percent of total assets and 267 percent of tier one capital.<sup>64</sup>

Under the proposed rule, the increased threshold would not substantially reduce the total dollar amount of commercial real estate transactions that would be subject to appraisal requirements. The NCUA used the CoStar Comps database<sup>65</sup> to estimate the dollar volume and number of commercial real estate transactions that would potentially be exempted from obtaining an appraisal performed by a state-certified appraiser due to the proposed 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 proposed threshold change (*i.e.*, those commercial real estate transactions with transaction values of \$250,000 or more, but less than \$1 million).<sup>66</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>67</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 limitations for the purposes of evaluating the proposed increase,<sup>68</sup> it provides information that can be used to estimate the dollar volume and number of commercial real estate transactions that would potentially be exempted by the proposed threshold increase.

An analysis of the CoStar Comps database suggests that increasing the threshold to \$1 million would significantly increase the number of commercial real estate transactions exempted from appraisal requirements. The estimated percentage of commercial properties that would be exempted from the appraisal requirement would increase from 27 percent to 66 percent if the threshold were raised from \$250,000 to \$1 million. However, the total dollar amount of commercial real estate transactions that would be exempted is relatively small and would not expose credit unions to undue risk. The total dollar volume of loans for

<sup>63</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>64</sup> For non-residential real estate transactions, the NCUA does not propose to 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.

<sup>65</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>66</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>67</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.

<sup>68</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> 12 U.S.C. 3341.

commercial properties would only increase from 1.8 percent to 13 percent. Exempting an additional 39 percent of commercial real estate transactions would provide significant burden relief to credit unions, but would still cover almost 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 would be required for such transactions not requiring an appraisal.

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 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>69</sup> Supervisory experience and a review of material loss reviews<sup>70</sup> covering those decades suggest that factors other than faulty appraisals were the cause(s) for an institution's loss experience. For example, larger acquisition, construction, and development<sup>71</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>72</sup> The regulation streamlined standards and established principles-based requirements that instill appropriate discipline. Also, the Guidelines provide regulated institutions 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 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 non-residential 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. Request for Comment

The Board invites comment on all aspects of this proposed rulemaking. Throughout the section-by-section analysis of the preamble, the Board has requested information and comments on specific amendments outlined in this proposed rule. Additionally, the NCUA Board is specifically seeking comments on whether the proposed changes achieve the intended goal of clarifying the types of transactions that require an appraisal or written estimate of market value.

#### V. Regulatory Procedures

##### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed 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.

Data currently available to the NCUA are not sufficient to estimate how many small credit unions make commercial real estate loans in amounts that fall between the current and proposed thresholds. Therefore, the NCUA cannot estimate how many small entities may be affected by the increased threshold and how significant the reduction in burden may be for such small entities. The NCUA believes, however, that the proposed threshold increase will meaningfully reduce burden for small credit unions. Accordingly, the NCUA certifies that the proposed rule will not have a significant economic impact on a substantial number of small credit unions.

##### B. Paperwork Reduction Act

Certain provisions of the proposed rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995.<sup>73</sup> In accordance with the requirements of the PRA, an agency may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it

<sup>69</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/reports13/13-002EV.pdf>.

<sup>70</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).

<sup>71</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>72</sup> 12 CFR part 721.

<sup>73</sup> 44 U.S.C. 3501-3521.

displays a currently-valid Office of Management and Budget (OMB) control number. The OMB control number for the NCUA is 3133-0125, which will be extended, without revision. The NCUA concludes that the proposed rule does not contain any changes to the current information collections; however, the NCUA is revising the methodology for calculating the burden estimates. The information collection requirements contained in this proposed rulemaking have been submitted to OMB for review and approval under section 3507(d) of the PRA<sup>74</sup> and section 1320.11 of the OMB's implementing regulations.<sup>75</sup>

*Title of Information Collection:* Real Estate Appraisals.

*Frequency of Response:* Event generated.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Respondents:* Federally insured credit unions.

*General Description of Report:* For federally related transactions, Title XI requires regulated institutions to obtain appraisals prepared in accordance with USPAP promulgated by the Appraisal Standards Board of the Appraisal Foundation. Generally, these standards include the methods and techniques used to estimate the market value of a property as well as the requirements for reporting such analysis and a market value conclusion in the appraisal. The NCUA expects credit unions to maintain records that demonstrate that appraisals used in their real estate-related lending activities comply with these regulatory requirements. For commercial real estate transactions exempted from the Title XI appraisal requirements by the proposed rule, regulated institutions would still be required to obtain an evaluation to justify the transaction amount. The NCUA estimate that the recordkeeping burden associated with evaluations would be the same as the recordkeeping burden associated with appraisals for such transactions.

*Current Action:* The threshold change in the proposed rule will result in credit unions being able to use evaluations instead of appraisals for certain transactions. It is estimated that the time required to document the review of an appraisal or an evaluation is the same. While the rulemaking described in this proposed rule would not change the amount of time that federally insured credit unions spend complying with the Title XI appraisal regulation, the NCUA is using a more accurate methodology for calculating the burden of the information collections based on the

experience of the NCUA and the other financial institutions regulators (OCC, FDIC, Federal Reserve). Thus, the PRA burden estimates shown here are different from those previously reported. The NCUA is (1) using the average number of loans per institution as the frequency and (2) using 5 minutes as the estimated time per response for the appraisals or evaluations.

#### PRA Burden Estimates

*Estimated average time per response:* 5 minutes.

*Number of Respondents:* 3,449.

*Annual Frequency:* 477.

*Total Estimated Annual Burden:* 137,098 hours.

The NCUA invites comments on:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments regarding the information collection requirements of this rule should be sent to (1) Dawn Wolfgang, NCUA PRA Clearance Officer, National Credit Union Administration, 1775 Duke Street, Suite 5080, Alexandria, Virginia 22314, or Fax No. 703-519-8572, or Email at [PRACOMMENTS@ncua.gov](mailto:PRACOMMENTS@ncua.gov) and the (2) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.gov](mailto:OIRA_Submission@OMB.EOP.gov).

#### 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 proposal 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.

#### 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 September 20, 2018.

**Gerard Poliquin,**

*Secretary of the Board.*

For the reasons discussed above, the NCUA Board proposes to amend 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. Section 722.2 is revised 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*, when used in regards 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. A regulated institution may presume that appraisals of 1- to 4-family residential properties are not complex unless the institution has

<sup>74</sup> 44 U.S.C. 3507(d).

<sup>75</sup> 5 CFR part 1320.

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. Section 722.3 is revised 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 or written estimate of market value 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 or written estimate of market value is not required for a real estate-related financial transaction in which:

(1) The transaction involves an existing extension of credit and is not considered a new loan under generally accepted accounting principles;

(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.

(3) A credit union is not required to obtain an appraisal under this paragraph (b) if the United States government agency, or United States government sponsored agency, obtains an appraisal by a state-certified appraiser.

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

(1) 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.

(3) A credit union is not required to obtain an appraisal under this paragraph if the United States government agency, or United States government sponsored agency, obtains an appraisal.

(d) *Real estate-related financial transactions requiring a written estimate of market value.* Unless fully insured or guaranteed by a United States government agency or United States government sponsored agency, exempt under paragraph (a) of this section, or an appraisal performed by a state-certified or state-licensed appraiser was obtained, any real estate-related financial transaction must be supported by a written estimate of market value that was performed by an individual:

(1) 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);

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

(3) 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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## DEPARTMENT OF LABOR

### Wage and Hour Division

#### 29 CFR Part 541

#### White Collar Exemption Regulations; Public Listening Session

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Notice of public listening session.

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**SUMMARY:** The Department of Labor will conduct a public listening session to gather views on the Part 541 white collar exemption regulations. The Fair Labor Standards Act (FLSA) generally requires covered employers to pay their