

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

RIN 3133-AF17

Real Estate Appraisals

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The NCUA Board (Board) is adopting this interim final rule to amend its regulations requiring appraisals of real estate for certain transactions. The interim final rule defers the requirement to obtain an appraisal or written estimate of market value for up to 120 days following the closing of a transaction for certain residential and commercial real estate transactions, excluding transactions for acquisition, development, and construction of real estate. Credit unions should make best efforts to obtain a credible valuation of real property collateral before the loan closing, and otherwise underwrite loans consistent with safety and soundness principles. The Board is providing this relief to allow credit unions to expeditiously extend liquidity to creditworthy households and businesses in light of recent strains on the U.S. economy as a result of the National Emergency declared in connection with coronavirus disease 2019 (COVID-19). The interim final rule is substantially identical to a recent interim final rule issued by the Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (FRB); and Federal Deposit Insurance Corporation (FDIC) (collectively, the other banking agencies) that also defers the requirement to obtain an appraisal

or evaluation for up to 120 days following the closing of a transaction for certain residential and commercial real estate transactions.

DATES: The interim final rule is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER] through December 31, 2020. Comments on the interim final rule must be received no later than [INSERT 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit written comments, identified by RIN 3133-AF17, 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.
- Fax: (703) 518-6319. Include “[Your Name]—Comments on Interim Final Rule: Real Estate Appraisals” in the transmittal.
- Mail: Address to Gerard 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 the Federal eRulemaking Portal at <http://www.regulations.gov> as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect through at least April 30, 2020, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518-6540 or e-mailing

OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Uduak Essien, Director - Credit Markets, (703) 518-6399, and Lou Pham, Senior Credit Specialist, (703) 548-2745, Office of Examination and Insurance. *Legal information:* Rachel Ackmann, Senior Staff Attorney, (703) 548-2601, Office of General Counsel, National Credit Union Administration, each at 1775 Duke Street, Alexandria, VA 22314.

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I. Introduction

A. Background

Impact of COVID-19 on appraisals and written estimates of market value. Due to the impact of COVID-19, businesses and individuals have a heightened need for additional liquidity. Being able to quickly access equity in real estate could help address this need. However, government restrictions on non-essential movement and health and safety advisories in response to the National Emergency declared in connection with COVID-19,¹ including those relating to social distancing, have led to complications with respect to performing and completing real property appraisals and written estimates of market value needed to comply with federal appraisal regulations. As a result, some borrowers may experience delays in obtaining funds needed to meet immediate and near-term financial needs.

Title XI and the appraisal regulations. Title XI directs each Federal financial institutions regulatory agency to publish appraisal regulations for federally related transactions within its jurisdiction.² The purpose of Title XI is to protect federal financial and public policy interests³ in real estate-related transactions by requiring that real estate appraisals used in connection with federally related transactions (Title XI appraisals) are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.⁴

¹ Proclamation 9994, 85 FR. 15337 (March 18, 2020).

² The term “Federal financial institutions regulatory agencies” means the FRB, the FDIC, the OCC, the National Credit Union Administration, and, formerly, the Office of Thrift Supervision. 12 U.S.C. 3350(6).

³ 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).

⁴ 12 U.S.C. 3331.

Title XI directs the Board to prescribe appropriate standards for Title XI appraisals under its jurisdictions.⁵ At a minimum, the statute provides that a Title XI appraisal must be:

(1) performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP); (2) a written appraisal, as defined by the statute; and (3) subject to appropriate review for compliance with USPAP.⁶ While appraisals are ordinarily completed before a lender and borrower close a real estate transaction, there is no specific requirement in USPAP that appraisals be completed at a specific time relative to the closing of a transaction.

All federally related transactions must have Title XI appraisals. Title XI defines a “federally related transaction” as a real estate-related financial transaction⁷ that is regulated or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser.⁸ The Board has the authority to determine those real estate-related financial transactions that do not require the services of an appraiser and thus are not required to have Title XI appraisals.⁹ The Board has exercised this authority by exempting certain categories of real estate-related financial transactions from its appraisal requirements.¹⁰

The Board has used its safety and soundness authority to require written estimates of market value for a subset of transactions for which an appraisal is not required.¹¹ Under the

⁵ 12 U.S.C. 3339.

⁶ *Id.*

⁷ 12 U.S.C. 3350(5). 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 property as security for a loan or investment, including mortgage-backed securities.

⁸ 12 U.S.C. 3350(4).

⁹ Real estate-related financial transactions that the Board has exempted from its appraisal requirement are not federally related transactions under its appraisal regulations.

¹⁰ *See* 12 CFR 722.3(a). The NCUA has determined that these categories of transactions do not require appraisals by state-certified or state-licensed appraisers in order to protect federal financial and public policy interests or to satisfy principles of safety and soundness.

¹¹ *See* 12 CFR 722.3(d).

appraisal regulations, for these transactions, credit unions must obtain an appropriate written estimate of market value that is consistent with safe and sound practices.¹²

Authority to defer appraisals and written estimates of market value. In general, the Board requires that Title XI appraisals for federally related transactions occur prior to closing of a federally related transaction.¹³ The Interagency Guidelines on Appraisals and Evaluations provide similar information about written estimates of market value.¹⁴ Under this interim final rule, deferrals of appraisals and written estimates of market value will allow for expeditious access to credit. The deferrals, which will be temporary, are offered in response to a National Emergency. Credit unions that defer receipt of an appraisal or written estimate of market value are still expected to conduct their lending activity consistent with safe and sound underwriting principles, such as the ability of a borrower to repay a loan and other relevant laws and regulations.¹⁵ These deferrals are not an exercise of the NCUA's waiver authority, because appraisals and written estimate of market value are being deferred, not waived. The deferrals are also not a waiver of USPAP requirements, given that (1) USPAP does not address the completion of an appraisal assignment with the timing of a lending decision; and (2) the deferred appraisal must be conducted in compliance with USPAP.

The deferral of written estimates of market value reflects the same considerations relating to the impact of COVID-19 as the deferral of appraisals. The Board requires written estimates of

¹² The NCUA and the other banking agencies have provided guidance on appraisals and evaluations (referred to as written estimates of market value in part 722) through the Interagency Guidelines on Appraisals and Evaluations. See 75 FR 77450 (December 10, 2010), available at <https://www.ncua.gov/files/letters-credit-unions/LCU2010-23Encl.pdf>.

¹³ See 12 CFR 722.3(a), 722.4(b)&(d) (requiring an appraisal to: (1) contain sufficient information and analysis to support the institution's decision to engage in the transaction, and (2) be based on the definition of market value in the regulation, which takes into account a specified closing date for the transaction).

¹⁴ See 75 FR 77450 (Dec. 10, 2010), available at <https://www.ncua.gov/files/letters-credit-unions/LCU2010-23Encl.pdf>

¹⁵ See, 12 U.S.C. 1786(b) and (e); and 12 CFR 723.4; 12 CFR 741.3(b).

market value for certain exempt transactions as a matter of safety and soundness. Written estimates of market value do not need to comply with USPAP, but must be sufficiently robust to support a valuation conclusion. A written estimate of market value can be less complex than an appraisal and usually takes less time to complete than an appraisal, but it also commonly involves physical property inspections. For these reasons, the Board also is using its safety and soundness authority¹⁶ to allow for deferral of written estimates of market value.

By the end of the deferral period, credit unions must obtain appraisals or written estimates of market value that are consistent with safe and sound practices as required by the NCUA's appraisal regulations.

B. Summary of the Interim Final Rule

The interim final rule allows a temporary deferral of the requirements for appraisals and written estimates of market value under the NCUA's appraisal regulations. The deferrals apply to both residential and commercial real estate-related financial transactions, excluding transactions for acquisition, development, and construction of real estate. The Board is excluding transactions for acquisition, development, and construction of real estate because these loans present heightened risks not associated with financing existing real estate.

Under the interim final rule, credit unions may close a real estate loan without a contemporaneous appraisal or written estimate of market value, subject to a requirement that credit unions obtain the appraisal or written estimate of market value, as would have been required under the appraisal regulations without the deferral, within a grace period of 120 days after closing of the transaction. While appraisals and written estimates of market value can be deferred, the Board expects credit unions to use best efforts and available information to develop

¹⁶ *Id.*

a well-informed estimate of the collateral value of the subject property. In addition, the Board continues to expect credit unions to adhere to internal underwriting standards for assessing borrowers' creditworthiness and repayment capacity, and to develop procedures for estimating the collateral's value for the purposes of extending or refinancing credit. Loans for acquisition, development, and construction of real estate are being excluded because repayment of loans for such transactions is generally dependent on the completion or sale of the property being held as collateral as opposed to repayment generated by existing collateral or the borrower. The Board also expects credit unions to develop an appropriate risk mitigation strategy if the appraisal or written estimate of market value ultimately reveals a market value significantly lower than the expected market value. A credit union's risk mitigation strategy should consider safety and soundness risk to the institution, balanced with mitigation of financial harm to COVID-19-affected borrowers. The temporary provision permitting credit unions to defer an appraisal or written estimate of market value for eligible transactions will expire on December 31, 2020 (a transaction closed on or before December 31, 2020 is eligible for a deferral), unless extended by the Board. The Board believes that the limited timeframe for the deferral will in some respects help to manage potential risk by balancing the need for immediate relief due to the National Emergency with safety and soundness concerns for risk to credit unions as lenders.

II. Revisions to the Title XI Appraisal Regulations

The interim final rule adds a new, temporary provision to the appraisal regulations in part 722 that provides a 120-day deferral of appraisal and written estimates of market value requirements for all transactions secured by commercial or residential real estate during the National Emergency related to the COVID-19 pandemic, excluding transactions for acquisition, development, and construction of real estate. The interim final rule does not revise any of the

existing appraisal exceptions or any other requirements with respect to the performance of written estimates of market value.

The interim final rule will allow credit unions to quickly provide liquidity to owners of commercial and residential property. The temporary provision allowing credit unions to defer appraisals or written estimates of market value for covered transactions will expire on December 31, 2020, unless extended by the Board.

III. Effective Date

The interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

IV. Administrative Law Matters

A. Administrative Procedure Act

The Board is issuing this interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).¹⁷ Pursuant to the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹⁸

¹⁷ 5 U.S.C. 553.

¹⁸ 5 U.S.C. 553(b)(B).

The Board believes that the public interest is best served by implementing the interim final rule as soon as possible. As discussed above, recent events have suddenly and significantly affected global economic activity, increasing businesses' and households' need to have timely access to liquidity from real estate equity. In addition, the spread of COVID-19 has greatly increased the difficulty of performing real estate appraisals and written estimates of market value in a timely manner. This relief will allow credit unions to better focus on supporting lending to creditworthy households and businesses in light of recent strains on the U.S. economy as a result of COVID-19, while reaffirming the safety and soundness principle that valuation of collateral is an essential part of the lending decision. For these reasons, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.¹⁹

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.²⁰ Because the rule relieves a restriction, the interim final rule is exempt from the APA's delayed effective date requirement.²¹ Additionally, the Board finds good cause to publish the interim final rule with an immediate effective date for the same reasons set forth above under the discussion of 5 U.S.C. 553(b)(B).

¹⁹ 5 U.S.C. 553(b)(B); 553(d)(3). For the same reasons, the Board is not providing the usual 60-day comment period before finalizing this rule. *See* NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2 and IRPS 15-1. 80 FR 57512 (Sept. 24, 2015).

²⁰ 5 U.S.C. 553(d).

²¹ 5 U.S.C. 553(d)(1).

While the Board believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, it is interested in the views of the public and requests comment on the interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a “major” rule.²² If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.²³

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.²⁴

For the same reasons set forth above with respect to APA requirements, the Board is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.²⁵ In light of

²² 5 U.S.C. 801 *et seq.*

²³ 5 U.S.C. 801(a)(3).

²⁴ 5 U.S.C. 804(2).

²⁵ 5 U.S.C. 808(2).

households' and businesses' immediate need to access liquidity from real estate equity, combined with the difficulty of obtaining appraisals during the ongoing COVID-19 outbreak, the Board believes that delaying the effective date of the rule would be contrary to the public interest.

As required by the Congressional Review Act, the Board will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden²⁶. For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

The information collection requirements of this part is approved under OMB control number 3133-0125, which require that a federal insured credit union retain a records of either the appraisal or estimate, which ever applies. The deferral to obtain an appraisal or estimate will not result in a change in burden; therefore, no submission will be made to OMB for review.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)²⁷ generally requires an agency to consider whether the rule it proposes will have a significant economic impact on a substantial number of small

²⁶ 44 U.S.C. 3507(d).

²⁷ 5 U.S.C. 601 *et seq.*

entities. For purposes of the RFA, the Board considers credit unions with assets less than \$100 million to be small entities.²⁸

The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).²⁹ As discussed previously, consistent with 5 U.S.C. 553(b)(B), the Board has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking. Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the Board seeks comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

E. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. § 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles.

This interim final rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The Board has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

²⁸ NCUA Interpretive Ruling and Policy Statement 15–1. 80 FR 57512 (Sept. 24, 2015).

²⁹ 5 U.S.C. 604(a).

F. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

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 April 16, 2020.

Gerard Poliquin

Secretary of the Board

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

1. The authority citation for part 722 continues 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 722.3 is amended by adding a new paragraph (g) as set forth below.

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

* * * * *

(g) *Deferrals of appraisals and written estimates of market value for certain residential and commercial transactions.*

(1) *120-day grace period.* The completion of appraisals and written estimate of market value required under paragraphs (b), (c), and (d) of this subpart may be deferred up to 120 days from the date of closing.

(2) *Covered transactions.* The deferrals authorized under subparagraph (g)(1) apply to all residential and commercial real estate-secured transactions, excluding transactions for acquisition, development, and construction of real estate.

(3) *Sunset.* The appraisal and written estimate of market value deferrals authorized by paragraph 722.3(g) will expire for transactions closing after December 31, 2020.

* * * * *