Banks May Defer Real Estate Appraisals and Evaluations Until After Closing for Certain Loans

April 15, 2020

Banks have been given permission to defer real estate appraisals and evaluations for up to 120 days following the closing of a loan for certain residential and commercial real estate loans. This relief has been granted to "allow for expeditious access to credit" in response to the COVID-19 pandemic.

The Office of the Comptroller of the Currency, the Federal Reserve Board and the Federal Deposit Insurance Corporation jointly issued an interim final rule (the "Rule") on April 14, 2020 providing this relief from current regulatory requirements. The Rule defers the requirement to obtain an appraisal or evaluation for up to 120 days following the closing of a transaction for all residential and commercial real estate transactions, excluding transactions for acquisition, development, and construction of real estate. The Rule states that banks should make "best efforts to obtain a credible valuation of real property collateral before the loan closing, and otherwise underwrite loans consistent with the principles in the agencies' Standards for Safety and Soundness and Real Estate Lending Standards."

The Rule states that these deferrals are not a waiver of the appraisal/evaluation requirement, because appraisals and evaluations are being deferred, not waived. Also, the Rule states that the deferrals are not a waiver of the requirements of the Uniform Standards of Professional Appraisal Practice ("USPAP"), 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 still be conducted in compliance with USPAP.

For purposes of risk-weighting of residential mortgage exposures, the Rule states that a bank's prudent underwriting estimation of the collateral value of the subject property will be considered to meet the agencies' appraisal and evaluation requirements during the deferral period. In addition, the agencies continue to expect banks 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. The Rule states that transactions for acquisition, development, and construction of real estate are being excluded because the repayment of those 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 agencies also expect banks to develop an appropriate risk mitigation strategy if the appraisal or evaluation ultimately reveals a market value significantly lower than the expected market value. A bank's risk mitigation strategy should consider safety and soundness risk to the bank, balanced with mitigation of financial harm to COVID-19-affected borrowers.

This relief becomes effective upon the Rule being published in the Federal Register, and expires on December 31, 2020 (unless extended). A copy of the interim final rule is available **here**.

The National Credit Union Administration issued a press release on April 14, 2020 stating that it will consider similar relief for credit unions.

If you have any questions regarding real estate appraisals or evaluations, or a financial institution's obligations during this time, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at **jsimon@cullenllp.com,** Elizabeth A. Murphy at (516) 296-9154 or via email at **emurphy@cullenllp.com,** or Mandy Xu at (516) 357-3850 or via email at **mxu@cullenllp.com**.

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Practices

- Banking and Financial Services

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