

Federal Banking Agencies Propose to Exempt Commercial Real Estate Transactions of \$400,000

August 1, 2017

The Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (the “Agencies”) have issued a proposal to raise the threshold for a commercial real estate transaction requiring an appraisal to \$400,000 (the “Proposal”). The Agencies believe this increase from the current \$250,000 threshold will significantly reduce the number of transactions requiring an appraisal and “will not pose a threat to the safety and soundness of financial institutions.”

I. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 directs each federal financial institution's regulatory agency to publish appraisal regulations for federally related transactions within its jurisdiction.

The purpose of Title XI is to protect federal financial and public policy interests in real estate-related financial 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.

Title XI Appraisals must be (1) performed in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”); (2) written appraisals, as defined by the statute; and (3) subject to appropriate review for compliance with USPAP.

The Agencies have the authority to exempt several categories of real estate-related financial transactions from the appraisal requirements. In 1992, Congress amended Title XI, expressly authorizing the Agencies to establish a threshold level at which an appraisal by a state certified or licensed appraiser is not required in connection with federally related transactions if the Agencies determine that the threshold does not “represent a threat to the safety and soundness of financial institutions.”

The current thresholds, which were established by rulemaking in 1994, state that all real estate-related financial transactions with a transaction value of \$250,000 or less, as well as certain real estate-secured business loans with a transaction value of \$1 million or less, do not require appraisals. For real estate-related financial

transactions that are exempt from the appraisal requirement, the regulations require financial institutions to obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices. Evaluations need not be performed in accordance with USPAP or by certified or licensed appraisers.

II. The EGRPRA Process

In early 2017, the Agencies completed a review of their regulations pursuant to the Economic Growth and Regulatory Paperwork Reduction Act (“EGRPRA”). As part of the EGRPRA review, the Agencies received numerous comments from bankers, banking trade associations, associations of appraisers, and other commenters related to Title XI Appraisals. The comments noted that the current thresholds have not been adjusted since they were established in 1994, even though property values have increased. Additionally, some commentators noted that it is difficult to find a state certified and licensed appraisers to complete appraisals for properties in rural areas.

III. Current Proposal

As a result of the EGRPRA review, the Agencies are to raise the threshold for a commercial real estate transaction requiring an appraisal to \$400,000. The proposed \$400,000 threshold would apply only to transactions defined as “commercial real estate transactions.” The definition of “commercial real estate transactions” includes any “real estate-related financial transaction,” as defined in the Title XI appraisal regulations, excluding any loans secured by a 1-to-4 family residential property, but including loans that finance the construction of buildings with 1-to-4 dwelling units and that do not include permanent financing.

The Agencies propose to require that institutions entering into commercial real estate transactions at or below the proposed \$400,000 threshold obtain evaluations that are consistent with safe and sound banking practices. An evaluation provides a general estimate of the value of the real estate but is not subject to the same requirements as a Title XI Appraisal. Evaluations should be performed by persons who are competent and have the relevant experience and knowledge of the market, location, and type of real property being valued. Evaluations may be completed by a bank employee or by a third party and need not be completed by a state licensed or certified appraiser. An evaluation should provide an estimate of the property’s market value or sufficient information and analysis to support the credit decision.

The Agencies estimate that the number of commercial real estate transactions that would be exempted by the Proposal is expected to increase by approximately 11 percent.

In the EGRPRA report from earlier this year, the Agencies also addressed whether it would be appropriate to increase the current \$250,000 threshold for transactions secured by residential real estate. The Agencies declined to decrease the threshold for residential real estate but are interested in receiving comments on whether there are certainly additional factors that should be considered in evaluating the threshold for 1-to-4 family residential transactions.

Although the National Credit Union Administration (“NCUA”) did not join in this Proposal, the Agencies coordinated with the NCUA in developing the Proposal and have indicated that the NCUA is evaluating options to

develop a separate proposal to provide comparable relief for federally insured credit unions.

IV. Further Information

Comments on the Proposal must be submitted by September 29, 2017.

If you have any questions regarding the Proposal or appraisal requirements under Title XI in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jSimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, or Diana R. Acosta at 516-357-3739 or via email at dacosta@cullenanddykman.com.

1. 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.
2. 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

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