DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC-2018-0038]

RIN 1557-AE57

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No.]

RIN

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

RIN   3064-AE87

Real Estate Appraisals

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The OCC, Board, and FDIC (collectively, the agencies) are inviting comment on a proposed rule to amend the agencies' regulations requiring appraisals for certain real estate-related transactions. The proposed rule would increase the threshold level at or below which appraisals would not be required for residential real estate-related transactions from $250,000 to $400,000. Consistent with the requirement for other transactions that fall below applicable thresholds, regulated institutions would be required to obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices. The proposed rule would

make conforming changes to add transactions secured by residential property in rural areas that have been exempted from the agencies' appraisal requirement pursuant to the Economic Growth, Regulatory Relief and Consumer Protection Act to the list of exempt transactions. The proposed rule would require evaluations for these exempt transactions. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the proposed rule would amend the agencies' appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice.

DATES: Comments must be received by [INSERT DATE 60 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the agencies. Commenters should use the title "Real Estate Appraisals" to facilitate the organization and distribution of comments among the agencies. Interested parties are invited to submit written comments to:

Office of the Comptroller of the Currency: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Real Estate Appraisals" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- <u>Federal eRulemaking Portal—"Regulations.gov"</u>: Go to *www.regulations.gov*. Enter "Docket ID OCC-2018-0038" in the Search Box and click "Search." Click on "Comment Now" to submit public comments.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- E-mail: *regs.comments@occ.treas.gov*.

- Mail: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- Hand Delivery/Courier: 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- Fax: (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2018-0038” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the Regulations.gov website without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- Viewing Comments Electronically: Go to *www.regulations.gov*. Enter “Docket ID OCC-2018-0038” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen.

- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- Viewing Comments Personally: You may personally inspect comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board of Governors of the Federal Reserve System: You may submit comments, identified by [Docket No. XXXX and RIN No. XXXX], by any of the following methods:

- Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

- E-mail: regs.comments@federalreserve.gov. Include the docket number and RIN number in the subject line of the message.

- Fax: (202) 452-3819 or (202) 452-3102.

- Mail: Address to Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street, NW. (between 18th and 19th Streets NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Federal Deposit Insurance Corporation: You may submit comments, identified by RIN 3064-AE87, by any of the following methods:

- Agency Website: *https://www.FDIC.gov/regulations/laws/federal*.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.
- Hand Delivery/Courier: The guard station at the rear of the 550 17th Street, NW, building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- E-mail: Comments@FDIC.gov. Comments submitted must include "FDIC" and "RIN 3064-AE87 - Real Estate Appraisals." Comments received will be posted without change to *https://www.FDIC.gov/regulations/laws/federal*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: G. Kevin Lawton, Appraiser and Real Estate Specialist, (202) 649-6670, or Mitchell E. Plave, Special Counsel, (202) 649-5490, for persons who are deaf or hearing impaired, TTY, (202) 649-5597, or Joanne Phillips, Counsel, (202) 649-5500, Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

Board: Anna Lee Hewko, Associate Director, (202) 530-6260, or Peter Clifford, Manager Risk Policy Section, (202) 785-6057, or Carmen Holly, Senior Supervisory Financial Analyst, (202) 973-6122, Division of Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452-2272, Gillian Burgess, Senior Counsel, (202) 736-5564, Matthew Suntag, Counsel, (202) 452-3694, or Kirin Walsh, Attorney, (202) 452-3058, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869.

FDIC: Beverlea S. Gardner, Senior Examination Specialist, Division of Risk Management and Supervision, (202) 898-3640, *BGardner@FDIC.gov*; Benjamin K. Gibbs, Counsel, (202) 898-6726; Lauren Whitaker, Senior Attorney, (202) 898-3872; or Ryan M. Goodstein, Senior Financial Economist, (202) 898-6863, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. For the hearing impaired only, TDD users may contact (202) 925-4618.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

The agencies are inviting comment on a proposal to increase the threshold level at or below which appraisals would not be required for residential real estate-related transactions from $250,000 to $400,000. The proposal would continue to require evaluations that are consistent with safe and sound business practices for transactions exempted by the increased threshold. Additionally, the proposal would require regulated institutions to obtain evaluations for transactions secured by residential property in rural areas that have been exempted from the agencies' appraisal requirement pursuant to the Economic Growth, Regulatory Relief and

Consumer Protection Act[1] (rural residential appraisal exemption), and would fulfill the requirement to add appraisal review to the minimum standards for an appraisal, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2]

The proposal to raise the residential threshold is based on consideration of available information on real estate transactions secured by a single 1-to-4 family residential property (residential real estate transactions), supervisory experience, and comments received from the public in connection with the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA)[3] process, and the rulemaking to increase the appraisal threshold for commercial real estate appraisals (CRE Final Rule). The agencies believe that the proposed increase to the appraisal threshold for residential real estate transactions would reduce burden in a manner that is consistent with federal public policy interests in real estate-related transactions and the safety and soundness of regulated institutions.

The agencies have long recognized that the valuation information provided by appraisals and evaluations assists financial institutions in making informed lending decisions and mitigating

[1] Pub. L. 115-174, Title I, section 103, codified at 12 U.S.C. 3356. Effective May 24, 2018, section 103 provides that a Title XI appraisal is not required if the real property or interest in real property is located in a rural area, as described in 12 CFR 1026.35(b)(2)(iv)(A), and if the transaction value is $400,000 or less. In addition, the mortgage originator or its agent, directly or indirectly must have contacted not fewer than three state certified or state licensed appraisers, as applicable, on the mortgage originator's approved appraiser list in the market area, in accordance with 12 CFR part 226, not later than three days after the date on which the Closing Disclosure was provided to the consumer and documented that no state certified or state licensed appraiser, as applicable, was available within five business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments.
[2] *See* Dodd-Frank Act, § 1473(e), Pub. L. No. 111-203, 124 Stat. 1376, 2191.
[3] Pub. L. 104–208, Div. A, Title II, section 2222, 110 Stat. 3009-414, (1996) (codified at 12 U.S.C. 3311). EGRPRA requires that, not less than once every 10 years, the Federal Financial Institutions Examination Council (FFIEC), Board, OCC, and FDIC conduct a review of their regulations to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions.

risk. The agencies also recognize and support the role that appraisers play in helping to ensure a safe and sound real estate lending process. The agencies acknowledge as well that appraisals can provide protection to consumers by facilitating the informed use of credit and helping to ensure that the estimated value of the property supports the mortgage amount. However, the agencies also are aware that the cost and time of obtaining an appraisal can, in some cases, result in delays and higher expenses for both regulated institutions and consumers.

In addition, the agencies are proposing several conforming and technical amendments to their appraisal regulations. The agencies are also proposing to define a residential real estate transaction as a real estate transaction secured by a single 1-to-4 family residential property, which is consistent with current references to appraisals for residential real estate in the agencies' appraisal regulations and in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI).[4] Adding this definition would not change any substantive requirement, but would provide clarity to the regulation. The agencies are also proposing to add the rural residential appraisal exemption[5] to the list of transactions that do not require appraisals. The proposed rule would require evaluations for transactions exempted from the agencies' appraisal requirement by this exemption, which is consistent with the requirement for regulated institutions to obtain an evaluation for certain other exempt residential real estate transactions (which in practice are generally retained in their portfolios). This proposed requirement reflects the agencies' judgment that valuation information concerning the real estate collateral for these

[4] 12 U.S.C. 3331 *et seq.*
[5] *See supra* note 1.

transactions assists financial institutions in making informed lending decisions and is consistent with safe and sound banking practices.[6]

Further, the agencies are proposing to implement the appraisal review provision in Section 1473(e) of the Dodd-Frank Act,[7] which amended Title XI to require that the agencies' appraisal regulations include a requirement for institutions to subject appraisals for federally related transactions to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).[8] The proposed rule would implement this statutory requirement, which is consistent with the agencies' long-standing recognition of the importance of appropriate appraisal reviews for safety and soundness.[9]

Under Title XI, the agencies must receive BCFP concurrence that the proposed threshold level provides reasonable protection for consumers who purchase 1-to-4 unit single-family residences.[10] Accordingly, the agencies are consulting with the BCFP regarding the proposed threshold increase and will continue this consultation in developing the final rule.

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[6] *See* 59 FR 29482 (June 7, 1994) (adopting the $250,000 threshold and the requirement for evaluations for certain exempt transactions).

[7] Dodd-Frank Act, § 1473(e).

[8] USPAP is written and interpreted by the Appraisal Standards Board of the Appraisal Foundation. USPAP contains generally recognized ethical and performance standards for the appraisal profession in the United States, including real estate, personal property, and business appraisals. *See* http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbfa-41b3-9878-fac35923d2af.

[9] *See Interagency Appraisal and Evaluation Guidelines* (Guidelines), at Section XV, 75 FR 77450 (December 10, 2010) (addressing appraisal review).

[10] Dodd-Frank Act, § 1473(a), Pub. L. No. 111-203, 124 Stat. 2190 (amending 12 U.S.C. 3341(b)).

A. Background

Title XI directs each Federal financial institutions regulatory agency[11] to require regulated institutions to obtain appraisals meeting minimum standards (Title XI appraisals) for certain real estate-related transactions. The purpose of Title XI is to protect federal financial and public policy interests[12] in real estate-related transactions[13] by requiring that 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.[14]

Title XI directs the agencies to prescribe appropriate standards for Title XI appraisals under the agencies' respective jurisdictions.[15] At a minimum, Title XI appraisals must be: (1) performed in accordance with USPAP; (2) written appraisals, as defined by the statute; and (3) subject to appropriate review for compliance with USPAP.

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[11] The term "Federal financial institutions regulatory agencies" means the Board, the FDIC, the OCC, the National Credit Union Administration (NCUA), and, formerly, the Office of Thrift Supervision. 12 U.S.C. 3350(6).

[12] 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).

[13] 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. 12 U.S.C. 3350(5).

[14] 12 U.S.C. 3331.

[15] 12 U.S.C. 3339. The agencies' Title XI appraisal regulations apply to transactions entered into by the agencies or by institutions regulated by the agencies that are depository institutions or bank holding companies or subsidiaries of depository institutions or bank holding companies. OCC: 12 CFR 34, subpart C; Board: 12 CFR 225.61(b); 12 CFR part 208, subpart E; FDIC: 12 CFR part 323.

A federally related transaction[16] is a real estate-related financial transaction that the agencies or a financial institution regulated by the agencies engages in or contracts for, for which the agencies require a Title XI appraisal. The agencies have authority to determine those real estate-related financial transactions that do not require Title XI appraisals. Real estate-related financial transactions that are exempt from the agencies' appraisal requirement are not federally related transactions under the agencies' appraisal regulations. The agencies have exercised this authority by exempting several categories of real estate-related financial transactions from the agencies' appraisal requirement, including transactions at or below certain designated thresholds.[17] Other significant exemptions include exemptions for loans that are wholly or partially insured or guaranteed by, or eligible for sale to, a U.S. government agency or U.S. government-sponsored agency.[18]

Title XI expressly authorizes the agencies to establish thresholds at or below which Title XI appraisals are not required if: (1) the agencies determine in writing that the threshold does not represent a threat to the safety and soundness of financial institutions; and (2) the agencies receive concurrence from the BCFP that such threshold level provides reasonable protection for consumers who purchase 1-to-4 unit single-family residences.[19] Under the current thresholds,

[16] 12 U.S.C. 3350(4).

[17] *See* OCC: 12 CFR 34.43(a); Board: 12 CFR 225.63(a); FDIC: 12 CFR 323.3(a). The agencies have 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 safe and sound banking.

[18] *See* OCC: 12 CFR 34.43(a)(9) and (10); Board: 12 CFR 225.63(a)(9) and (10); and FDIC: 12 CFR 323.3(a)(9) and (10). The NCUA also exempts these loans from its appraisal requirements. *See* 12 CFR 722.3(a)(7) and (8).

[19] 12 U.S.C. 3341(b).

residential real estate transactions[20] with a transaction value[21] of $250,000 or less, certain real estate-secured business loans (qualifying business loans)[22] with a transaction value of $1 million or less, and commercial real estate (CRE) transactions with a transaction value of $500,000 or less do not require Title XI appraisals.[23] The appraisal threshold applicable to residential real estate transactions has not been changed since 1994.[24]

For real estate-related financial transactions at or below the applicable thresholds and for certain existing extensions of credit exempt from the agencies' appraisal requirement,[25] the Title XI appraisal regulations require regulated institutions to obtain an appropriate evaluation of the

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[20] While the $250,000 threshold explicitly applies to all real estate-related financial transactions with transaction values of $250,000 or less, it effectively only applies to residential real estate transactions because all other real estate-related financial transactions are subject to higher thresholds.

[21] 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(m); Board: 12 CFR 225.62(m); and FDIC: 12 CFR 323.2(m).

[22] Qualifying business loans are business loans 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. The 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. *See* OCC: 12 CFR 34.42(d); Board: 12 CFR 225.62(d); and FDIC: 12 CFR 323.2(d).

[23] *See* OCC: 12 CFR 34.43(a)(1), (5), and (13); Board: 12 CFR 225.63(a)(1), (5) , and (14); and FDIC: 12 CFR 323.3(a)(1), (5) , and (13).

[24] *See* 59 FR 29482 (June 7, 1994). The NCUA promulgated a similar rule with similar thresholds in 1995. 60 FR 51889 (October 4, 1995). The OCC, Board, and FDIC had previously raised the appraisal threshold to $100,000. OCC: 57 FR 12190-02 (April 9, 1992); Board: 55 FR 27762 (July 5, 1990); FDIC: 57 FR 9043-02 (March 16, 1992).

[25] Transactions that involve an existing extension of credit at the lending institution are exempt from the agencies' appraisal requirement, 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); Board: 12 CFR 225.63(a)(7) and (b); and FDIC: 12 CFR 323.3(a)(7) and (b).

real property collateral that is consistent with safe and sound banking practices.[26] An evaluation should contain sufficient information and analysis to support the financial institution's decision to engage in the transaction.[27]

In preparing the proposed rule, the agencies conducted analyses using 2017 data reported under the Home Mortgage Disclosure Act (HMDA),[28] which requires a variety of financial institutions to maintain, report, and publicly disclose loan-level information about residential mortgage originations.[29] Information reported under HMDA includes various data points relevant to the agencies' analyses, including loan size, loan type, property type, property location, and secondary market purchaser. While the HMDA data has limitations, including that certain low-volume originators and originators located in rural areas are not required to report,[30] the agencies believe it provides a reasonably representative sample of the universe of mortgage originations, including transactions subject to the agencies' appraisal requirement. In addition, the agencies are not aware of any other data source that would better inform these analyses.

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[26] *See* OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); and FDIC: 12 CFR 323.3(b). An evaluation is not required when real estate-related financial transactions meet the threshold criteria and also qualify for another exemption from the agencies' appraisal requirement where no evaluation is required by the regulation.

[27] Evaluations are not required to be performed in accordance with USPAP or by state certified or state licensed appraisers by federal law. The agencies have provided supervisory guidance for conducting evaluations in a safe and sound manner in the Guidelines and the *Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions* (Evaluations Advisory). *See* 75 FR 77450 (December 10, 2010); OCC Bulletin 2016-8 (March 4, 2016); Board SR Letter 16-5 (March 4, 2016); and *Supervisory Expectations for Evaluations*, FDIC FIL-16-2016 (March 4, 2016).

[28] 12 U.S.C. 2801 *et seq.*

[29] *See* FFIEC, *Home Mortgage Disclosure Act*, www.ffiec.gov/hmda/.

[30] Although originators located in rural areas are not required to report HMDA information, originators not located in rural areas that make loans in rural areas are required to report.

As described in further detail below, the agencies used the 2017 HMDA data[31] to estimate the coverage of the proposed threshold increase in terms of number of transactions and dollar volume of transactions that would be affected relative to: (1) total HMDA originations[32] and (2) only those transactions originated by FDIC-insured institutions and affiliated institutions[33] that were not sold to the government-sponsored enterprises (GSEs) or otherwise insured or guaranteed by a U.S. government agency[34] (regulated transactions).[35] The agencies compared these coverage estimates with the coverage of the current threshold both now and when the current threshold was adopted in 1994. The agencies used these analyses to estimate the number and dollar volume of loans that could be affected by the threshold increase, including the expected number and dollar volume of loans in rural areas, and to assess the potential impact of the threshold increase on burden reduction and on the safety and soundness of financial institutions.

[31] The HMDA analyses described in this document are limited to first-lien originations secured by single-family residential mortgage properties. Originations with loan amounts greater than $20 million are excluded.

[32] The total number of first-lien, single-family originations reported under HMDA in 2017 is approximately 6.9 million.

[33] FDIC-insured institutions and affiliated institutions include those that report under HMDA to the OCC, the Board, the FDIC, or the BCFP (excluding institutions that are not supervised by the OCC, Board, or FDIC).

[34] Some loans sold to the GSEs may not be observable in HMDA, for example if the sale occurred after calendar year 2017, or if the loan was sold to another entity that in turn sold the loan to a GSE.

[35] Regulated transactions are the only residential real estate transactions subject to the appraisal threshold, because transactions originated by regulated institutions but sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency are separately exempted from the agencies' appraisal requirement and transactions originated by non-regulated institutions are not subject to the agencies' appraisal regulations.

B. Reducing Burden Associated with Appraisals

The agencies are proposing to increase the appraisal threshold for residential real estate transactions in an effort to reduce regulatory burden, while maintaining federal public policy interests in real estate-related transactions and the safety and soundness of regulated institutions. The agencies' appraisal regulations were identified as an opportunity to reduce regulatory burden by commenters to the EGRPRA process that concluded in early 2017. The agencies concluded in the joint EGRPRA report to Congress (EGRPRA Report)[36] that a change to the current $250,000 appraisal threshold for residential real estate transactions would not be appropriate at that time, citing three reasons: a limited impact on burden reduction due to appraisals still being required for the vast majority of these transactions pursuant to the rules of other federal government agencies and the GSEs; safety and soundness concerns; and consumer protection concerns.[37] However, the EGRPRA Report stated that the agencies would continue to consider possibilities for relieving burden related to appraisals for residential mortgage loans.[38]

In response to comments received during the EGRPRA process, the agencies published a Notice of Proposed Rulemaking to increase the CRE appraisal threshold (CRE NPR).[39] In connection with the CRE NPR, the agencies restated the reasons set forth in the EGRPRA Report for declining to propose an increase to the residential threshold, and invited comment on other factors that should be considered in evaluating the appraisal threshold for residential real estate

[36] *See* EGRPRA Report, *available at* https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf. The NCUA is also named on the EGRPRA Report, though it was not required to participate in the review process. NCUA elected to participate in the EGRPRA review, conducted its own parallel review of its regulations, and included its own report in a separate part of the EGRPRA Report. The NCUA is not a participant in this rulemaking.
[37] *Id*.
[38] *Id*.
[39] 82 FR 35478 (July 31, 2017).

transactions and on whether the threshold can and should be raised, consistent with consumer protection, safety and soundness, and reduction of unnecessary regulatory burden.[40]

The comments received in the EGRPRA process and in response to the CRE NPR reflect different perspectives on the appraisal threshold for residential real estate transactions.[41] Some of the commenters supported the agencies' decision not to propose an increase in the appraisal threshold for residential real estate transactions. Other commenters supported increasing the appraisal threshold for residential real estate transactions to reduce regulatory burden.

To consider the probable effect on burden reduction, the agencies assessed the potential impact of the proposed threshold increase on the entire mortgage market and on regulated transactions.[42] The agencies estimate that increasing the appraisal threshold from \$250,000 to \$400,000 would have exempted an additional 214,000 residential real estate originations[43] at regulated institutions from the agencies' appraisal requirement, which represent only three percent of total HMDA originations (first-lien, single-family) in 2017. However, they represent 16 percent of regulated transactions. This increase in the number of loans that would no longer require appraisals would provide meaningful burden reduction for regulated institutions.

After considering all of the comments and further analysis by the agencies, the agencies are proposing an increase to the appraisal threshold for residential real estate transactions in

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[40] 82 FR 35478, 35481-82, 35487 (July 31, 2017).
[41] *See, e.g.,* 83 FR 15019, 15029-30 (April 9, 2018).
[42] As noted earlier, for this SUPPLEMENTARY INFORMATION section, regulated transactions are residential mortgage originations by FDIC-insured institutions and affiliated institutions that were not sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency.
[43] The 214,000 originations represent transactions originated by FDIC-insured institutions or affiliated institutions, excluding transactions that were sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency; transactions for which the value was equal to or below the current \$250,000 appraisal threshold; and transactions that exceeded the proposed \$400,000 threshold.

order to reduce regulatory burden, particularly in rural areas, in a manner that is safe and sound and consistent with consumer protection.

Cost and Time Savings. Commenters to the EGRPRA process and in response to the CRE NPR that supported a residential threshold increase noted that obtaining an appraisal for a residential real estate transaction adds to the cost of the transaction, which is often passed on to the consumer, and can delay the closing of a transaction when an appraiser cannot complete the appraisal on the preferred schedule and increase the consumer's costs. Thus, reducing regulatory burden by increasing the appraisal threshold for residential real estate transactions may provide both transaction cost and time savings for both regulated institutions and consumers.

As described in the CRE NPR, available information suggests that evaluations for CRE properties typically cost significantly less than Title XI appraisals for the same properties.[44] Further, some of the comments to the CRE NPR indicated that evaluations in general cost substantially less than appraisals.[45]

The United States Department of Veterans Affairs' appraisal fee schedule[46] for a single-family residence reflects that the typical cost of an appraisal generally ranges from $375 to $900, depending on the location of the property. The limited information available on the cost of evaluations and appraisals suggests that there could be material cost savings in connection with the valuation of the property for regulated institutions and consumers where an evaluation, as opposed to an appraisal, is obtained.

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[44] 82 FR at 35487 (July 31, 2017).
[45] 82 FR at 15028 (April 9, 2018).
[46] *See VA Appraisal Fee Schedules and Timeliness Requirements*, *available at* https://www.benefits.va.gov/HOMELOANS/appraiser_fee_schedule.asp.

Question 1. ***The agencies invite comment on the cost data for evaluations and appraisals detailed above. Should the agencies consider other data and data sources in assessing the costs of appraisals and evaluations to regulated institutions and consumers?***

The agencies also considered the amount of time associated with performing and reviewing appraisals and evaluations. There may be less delay in finding appropriate personnel to perform an evaluation than to perform a Title XI appraisal, particularly in rural areas. As described in the Guidelines, financial institutions should also review the property valuation prior to entering into the transaction.[47] The agencies estimate that, on average, the review process for an evaluation would take substantially less time than the review process for an appraisal.[48] Thus, for affected transactions, the proposed rule could reduce the time required for employees to review transactions, potentially reducing delay and increasing cost savings of obtaining an evaluation instead of an appraisal.

Question 2. ***The agencies invite comment on the time associated with performing and reviewing appraisals versus evaluations. Should the agencies consider other data and data sources in assessing the time associated with performing and reviewing appraisals and evaluations?***

In considering the aggregate effect of this proposed rule, the agencies considered the number of affected transactions. As discussed in the ***Coverage of the Threshold*** section below, the agencies estimate that under the proposed rule, the share of the number of regulated transactions exempted from the agencies' appraisal requirement would increase from 56 percent to 72 percent. Thus, while the precise number of affected transactions and the precise cost

[47] Guidelines, 75 FR at 77461.

[48] The agencies have heard from commenters that evaluations can, in some cases, require more time to review than appraisals due to the limited information contained in some evaluations.

reduction per transaction is difficult to determine, the proposed rule is expected to lead to cost and time savings for regulated institutions and could benefit consumers.

Consumer Protection. Through the EGRPRA process and in response to the CRE NPR, the agencies received comments stating that appraisals provide some measure of consumer protection, and that increasing the appraisal threshold for residential real estate transactions could raise consumer protection issues. Indeed, the Dodd-Frank Act's amendment to Title XI adding the BCFP to the group of agencies assigned a role in the appraisal threshold-setting process indicates Congressional views that appraisals can play a role in providing protection to consumers who purchase 1-to-4 unit single-family residences.[49] The agencies recognize that appraisals can provide protection to consumers by helping to ensure that the estimated value of the property supports the purchase price and the mortgage amount. Consumer protection considerations contributed to the agencies' reluctance to propose increasing the appraisal threshold for residential real estate transactions immediately after the EGRPRA process.[50]

One consideration in assessing consumer protection issues related to this rulemaking is that the agencies have long required evaluations in lieu of appraisals for many transactions, including those transactions exempted by an appraisal threshold. An evaluation must be

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[49] 12 U.S.C. 3341(b). The Dodd-Frank Act also required the BCFP to engage in rulemakings under amendments to Title XI, including standards for appraisal management companies (12 U.S.C. 3353) and automated valuation models (12 U.S.C. 3354). In addition, as discussed further in this **Supplementary Information**, the Dodd-Frank Act amended two consumer protection laws, – the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, and Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.* – to establish new requirements for appraisals and other valuation types. *See* 15 U.S.C. 1639e and 1639h (TILA) and 15 U.S.C. 1691e (ECOA).

[50] *See* EGRPRA Report, *available at* https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.

consistent with safe and sound banking practices[51] and should contain sufficient information and analysis to support the decision to engage in the transaction,[52] although it may be less structured than an appraisal. The agencies noted in the Guidelines[53] and the Evaluations Advisory that individuals preparing evaluations should be qualified, competent, and independent of the transaction and the loan production function of the institution. The agencies believe that evaluations prepared accordingly could provide a level of consumer protection for transactions at or below the proposed appraisal threshold.

Another consideration is the availability of property valuation information to consumers in residential real estate transactions. In this regard, the Dodd-Frank Act amended the Equal Credit Opportunity Act[54] (ECOA) to require creditors to provide applicants free copies of appraisals and other types of valuations prepared in connection with first-lien transactions secured by a dwelling, which include evaluations.[55] When obtained, evaluations must be provided to consumers and, thus, provide some consumer protection.[56]

The agencies also note that consumers have significantly more access to information relevant to residential real estate values than when the appraisal threshold was last increased in 1994. For example, property records are often available to the public through the internet.

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[51] OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); and FDIC: 12 CFR 323.3(b).
[52] Guidelines, 75 FR at 77461.
[53] Guidelines, 75 FR at 77457-58.
[54] 15 U.S.C. 1691 *et seq*.
[55] *See* 15 U.S.C. 1691(e), implemented by the BCFP at 12 CFR 1002.14. The Dodd-Frank Act also amended TILA to require creditors to provide applicants free copies of appraisals prepared in connection with certain higher-priced mortgage loans (HPMLs). *See* 15 U.S.C. 1639h(c), implemented jointly by the OCC, Board, FDIC, NCUA, Federal Housing Finance Agency (FHFA), and BCFP at OCC: 12 CFR 34.203(f); Board: 12 CFR 226.43(f); BCFP: 12 CFR 1026.35(c)(6); NCUA: 12 CFR 722.3(f); FHFA: 12 CFR 1222, subpart A (HPML Appraisal Rule). The FDIC adopted the HPML Appraisal Rule as published in the BCFP's regulation. *See* 78 FR 78520, 10370, 10415 (December 26, 2013).
[56] 12 CFR 1002.14.

These records may include not only a particular property's tax assessed value, but also the property's historical sale activity.[57] Consumers also may voluntarily obtain an appraisal before engaging in the transaction. Consumers can use this valuation information to become better informed before entering into an agreement to purchase a specific property.

At the same time, the agencies recognize that these options might not be readily available to or used by some consumers, and that appraisals provide more property information to a consumer than an evaluation. Given that evaluations are not required to be in a standard form and specific content is not mandated, it is also possible that some evaluations might be more difficult for consumers to understand or lack information about the property typically included in an appraisal that could be useful to a consumer.

Question 3. What valuation information, if any, would consumers lose in practice if more evaluations are performed rather than appraisals? What additional comments, if any, are there relative to the presentation or content of evaluations for residential real estate transactions in practice? Please provide data or other evidence to support any comments.

Question 4. To what extent do appraisals or evaluations provide benefits or protections for consumers that are purchasing 1-to-4 unit single-family residences? What are the nature and magnitude of the differences, if any, in consumer protection, including any differences in credibility, arising from the use of evaluations rather than appraisals, especially with respect to residential real estate transactions of $400,000 or less? For example, are there any differences with respect to negotiating the price of a home or canceling a transaction

[57] Some states (or counties within states) do not publish sale amounts, but do provide estimates based on loan amounts or mortgage transfer taxes, which could be substantially different from the actual sale amount.

when an evaluation rather than an appraisal is obtained? Please provide data or other evidence to support any comments.

Question 5. To what extent is useful property valuation information readily available to consumers through public sources?

Another consideration is that under federal law, individuals performing evaluations are not required to have professional credentials for valuing real estate. The agencies acknowledge that expanding the appraisal exemption for more residential transactions might therefore raise concerns about the accountability of individuals performing evaluations and could limit the options for recourse available to consumers. For example, the Dodd-Frank Act required establishment of a national hotline for complaints against state-certified and state-licensed appraisers,[58] and state appraisal regulatory agencies have authority to discipline appraisers that violate USPAP.[59]

A further consideration is that appraisal and valuation rules put into place to protect consumers would remain unchanged. As noted, under ECOA, creditors must provide to consumers in first-lien, dwelling-secured transactions free copies of valuations, including evaluations, in connection with their applications for credit.[60] In addition, appraisals would still

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[58] The Dodd-Frank Act instituted a number of reforms to ensure the legitimacy, independence, and oversight of appraisals. *See* Dodd-Frank Act, Title XIV, Subtitle F—Appraisal Activities, Pub. L. 111-203, 124 Stat. 1376, 2185.

[59] USPAP is written and interpreted by the Appraisal Standards Board of the Appraisal Foundation. USPAP contains generally recognized ethical and performance standards for the appraisal profession in the United States, including real estate, personal property, and business appraisals. *See* http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbfa-41b3-9878-fac35923d2af.

[60] *See* 15 U.S.C. 1691(e), implemented by the BCFP at 12 CFR 1002.14.

be required, regardless of transaction amount, for certain HPMLs, pursuant to the HPML Appraisal Rule.[61]

Further, the interim final rule on valuation independence (IFR on Valuation Independence), also implementing TILA, applies to all types of valuations (other than valuations produced solely using an automated model or system) used in connection with a consumer-purpose transaction secured by a consumer's principal dwelling.[62] Creditors using evaluations for transactions covered by this rule must meet standards for independence that carry civil liability, regardless of transaction size. On this point, the agencies note that one of the benefits of evaluations over appraisals that institutions have cited is that they can more readily be performed in-house. There are concerns, however, that ensuring the independence of financial institution staff performing evaluations from the loan production function might be difficult to achieve in practice, particularly in smaller institutions.

In the Evaluations Advisory, the agencies also observed that evaluations may be completed by a bank employee or by a third party.[63] The agencies further observed that, in smaller communities, bankers and third-party real estate professionals have access to local

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[61] *See supra* note 55. Transactions covered by the HPML Appraisal Rule are limited due to significant exemptions from the requirements, including an exemption for qualified mortgages. *See*, *e.g.*, 78 FR 10368, 10418-20 (February 13, 2013).

[62] The Board issued the IFR on Valuation Independence in 2010 (effective April 2011) establishing independence rules for consumer purpose residential mortgage loans secured by a consumer's primary dwelling. *See* 75 FR 66554 (October 28, 2010) and 75 FR 80675 (December 23, 2010) (implementing Dodd-Frank Act amendments to TILA at 15 U.S.C. 1639e); Board: 12 CFR 226.42; and BCFP: 12 CFR 1026.42. Under the Dodd-Frank Act, the IFR on Valuation Independence is deemed to have been prescribed jointly by the OCC, Board, FDIC, NCUA, BCFP and FHFA. *See* 15 U.S.C. 1639e(g)(2).

[63] Evaluations Advisory at 2.

market information and may be qualified to prepare evaluations for an institution.[64] The evaluation preparer should be knowledgeable, competent, and independent of the transaction.

Question 6. How often do institutions use their own internal staff to prepare evaluations? What challenges, if any, to meeting requirements and standards for independence, particularly in smaller institutions, do internally-prepared evaluations present? Similarly, what challenges, if any, to meeting requirements and standards for independence are presented by evaluations prepared by third parties?

Finally, if the proportion of residential mortgage transactions subject to the Title XI appraisal requirements increases in the future, the proposed threshold increase could exempt a larger percentage of the overall market of residential mortgage originations, which may have an effect on consumer protection. As noted above, loans that are wholly or partially insured or guaranteed by, or eligible for sale to, a U.S. government agency or U.S. government-sponsored agency, are not subject to the agencies' appraisal requirement.[65] Other federal agencies, such as the U.S. Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, and the Rural Housing Service of the U.S. Department of Agriculture, and the GSEs, which are regulated by the Federal Housing Finance Agency (FHFA), have their own authority to establish appraisal rules and standards, and generally require appraisals by a certified or licensed appraiser for residential real estate transactions that they originate, acquire, insure, or guarantee, regardless of the value of the loan. The percentage of the market comprising loans subject to the requirements of these other entities has fluctuated historically. Currently, these loans account for more than 6 in 10 of all first-lien, single-family mortgage originations in the

[64] *See id.*
[65] *See supra* note 18.

United States, a level considerably higher than the share in the years prior to the most recent financial recession.[66]

Question 7. Are there any other consumer protection concerns raised by the proposal that the agencies should consider?

Burden Relief in Rural Areas. Many commenters in the EGRPRA process and to the CRE NPR noted that the requirement to obtain appraisals has increased costs and resulted in delays, particularly in rural areas. With the rural residential appraisal exemption, Congress added an exemption to the agencies' appraisal requirement for certain mortgage loans under $400,000 secured by property in rural areas, but the exemption is only available where regulated institutions can document that they are unable to obtain an appraisal at a reasonable cost and within a reasonable timeframe, among other requirements.[67] The proposed rule is broader in scope and would eliminate the agencies' appraisal requirement for all residential real estate transactions at or below $400,000. The proposed threshold would include all such transactions in rural areas without requiring regulated institutions to meet the other criteria of the rural residential appraisal exemption.

The 2017 HMDA data show that the proposed rule would provide significant burden relief in rural areas. The agencies estimate that increasing the appraisal threshold to $400,000 would potentially increase the share of exempt transactions from 82 percent to 91 percent of the

[66] This figure is based on an analysis the agencies conducted using 2017 HMDA data. *See supra* note 29. *See also Housing Finance at a Glance*, Monthly Chartbook, The Urban Institute, October 2018, p.8. According to this source, between 2001 and 2017, the share of first-lien originations sold to the GSEs or guaranteed or insured by the FHA or VA ranged from about 35 percent in 2005 to nearly 90 percent in 2009. *See id*.

[67] *See supra* note 1.

number and from 43 percent to 58 percent of the dollar volume of regulated transactions that were secured by residential property located in a rural area.[68]

II. REVISIONS TO THE TITLE XI APPRAISAL REGULATIONS

A. Threshold Increase for Residential Real Estate Transactions

Level of Appraisal Threshold Increase

The agencies propose to increase the appraisal threshold from $250,000 to $400,000 for residential real estate transactions. In determining the level of the proposed increase, the agencies considered the comments received through the EGRPRA process and in response to the CRE NPR, as well as a variety of house price and inflation indices. In particular, the agencies analyzed the Standard & Poor's Case-Shiller Home Price Index (Case-Shiller Index)[69] and the FHFA Index,[70] as well as the Consumer Price Index (CPI).[71]

These house price indices reflect that prices for residential real estate have increased since 1994. Table 1 shows the expected sales price at about its highest amount in 2006, at about

[68] Estimates based on 2017 HMDA. For the purposes of the HMDA analysis, a property is considered to be located in a "rural" area if it is in a county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, based on 2013 Urban Influence Codes (UIC) published by the United States Department of Agriculture. Any loans from Census tracts that are missing geographical identifiers or undefined in the 2013 UIC have been excluded from the analysis of burden relief in rural areas.

[69] The Case-Shiller Index reflects changes in home prices from a base of $250,000 in June 1994, based on the Standard & Poor's Case-Shiller Home Price Index. *See* Standard & Poor's CoreLogic Case-Shiller Home Price Indices, *available at* https://us.spindices.com/index-family/real-estate/sp-corelogic-case-shiller.

[70] The FHFA Index reflects changes in home prices from a base of $250,000 in June 1994, based on the FHFA House Price Index. *See* FHFA House Price Index, *available at* https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index.aspx.

[71] The CPI, which is published by the Bureau of Labor Statistics, is a measure of the average change over time in the prices paid by urban consumers for a market basket of goods and services. *See* https://www.bls.gov/cpi/.

its lowest amount in 2011, and about its current amount in 2018 relative to a residential property that sold for $250,000 in 1994 for each index.

Table 1 Year	Case-Shiller	FHFA	CPI
1994	250,000	250,000	250,000
2006	578,813	511,636	341,109
2011	445,152	414,629	379,997
2018	641,191	611,700	424,031

Table 1: Inflation Adjustments of $250,000 at June 30, 1994, for the Case-Shiller Index and the FHFA Index, and July 1, 1994 for the CPI Index.

In proposing to raise the appraisal threshold for residential real estate transactions to $400,000, the agencies are approximating housing prices on an indexed basis at the low point of the most recent cycle, which generally occurred in 2011. For example, the Case-Shiller Index reflects that home prices fell from about $578,000 in December 2006 to their lowest point of about $445,000 in December 2011. The FHFA Index also reflects a similar decline in housing prices, which fell from about $512,000 to $415,000 during this same time period. This more conservative approach takes into consideration the potential risk exposure to institutions that engage in residential real estate lending. In addition, the increased appraisal threshold in the proposed rule is consistent with general measures of inflation across the economy reflected in the CPI since 1994, when the current appraisal threshold of $250,000 was set.

Question 8. ***Is the proposed level of $400,000 for the threshold at or below which regulated institutions would not be required to obtain appraisals for residential real estate transactions appropriate?***

Safety and Soundness Considerations for Increasing the Appraisal Threshold for Residential Real Estate Transactions

Under Title XI, in setting a threshold at or below which an appraisal performed by a state certified or state licensed appraiser is not required, the agencies must determine in writing that such a threshold level does not pose a threat to the safety and soundness of financial institutions.[72] As noted in the Coverage of the Threshold section below, the agencies estimate that approximately 72 percent of regulated transactions in 2017 would have been exempt from the appraisal requirement under the proposal. However, analysis of supervisory experience and available data, taking into account the continuing evaluation requirement for transactions that would be exempted by the threshold, indicates that the proposed threshold level of $400,000 for residential real estate transactions is unlikely to pose a threat to the safety and soundness of financial institutions. Specifically, the agencies examined data reported on the Consolidated Reports of Condition and Income (Call Report)[73] to determine net charge-off rates[74] for residential real estate transactions. The agencies also examined the number and dollar volume of residential real estate transactions covered by the existing threshold and the increased threshold.

Supervisory Experience

Based on supervisory experience and analysis of material loss reviews,[75] the agencies observe that the substantial increase in losses on residential real estate transactions during the recent recession has been attributed to a number of factors, such as a weakening economy, declining home values, overstating the market value of homes in appraisal reports, increasing

[72] 12 U.S.C. 3341(b).

[73] The agencies used data reported on Schedule RC-C of the Call Report, which includes the dollar volume of all loans secured by real estate, including loans secured by residential properties with fewer than five dwelling units (RCFD 1797, 5367, and 5368). *See* FFIEC, *Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices – FFIEC 031, available at* https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_201703_f.pdf.

[74] Net charge-offs are charge-offs minus recoveries. Net charge-offs represent losses to financial institutions, which, in the aggregate, can pose a threat to safety and soundness.

[75] Section 38(k) of the Federal Deposit Insurance Act, as amended, provides that if the Deposit Insurance Fund incurs a "material loss" with respect to an insured depository institution (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).

demand for residential mortgage backed securities, relaxing underwriting practices, and the expanded use of higher risk loan products. For example, prior to the onset of the most recent recession, the financial industry expanded its use of non-traditional mortgage products that did not consider borrowers' ability to repay on a fully indexed and fully amortizing basis. An FDIC study notes, "Many of the banks that failed did so because management relaxed underwriting standards and did not implement adequate oversight and controls. For their part, many borrowers who engaged in commercial or residential lending arrangements did not always have the capacity to repay loans."[76]

Similar concerns are detailed in the material loss review for Downey Savings and Loan,[77] which partly attributed its failure to management engaging in higher risk underwriting practices, such as offering option adjustable rate mortgages (which give borrowers the option of making monthly payments that do not cover the interest charges accrued), reducing or not requiring any documentation of borrowers' income or assets, accepting lower borrower credit scores, and layering two or more of these features in the same loan product. Likewise, the material loss review of IndyMac Bank, FSB[78] listed poor loan underwriting, such as offering nontraditional mortgage products, failing to verify borrowers' income or assets, and lending to borrowers with poor credit histories, among the core weaknesses that ultimately caused the thrift to fail. Both material loss reviews also noted some concerns with appraisals.

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[76] *See* FDIC, Office of the Inspector General (OIG), EVAL-13-002, *Comprehensive Study on the Impact of the Failure of Insured Depository Institutions* 50, Table 6 (January 2013), *available at* https://www.fdicoig.gov/sites/default/files/publications/13-002EV.pdf.

[77] *See* Audit Report OIG-09-039, *Material Loss Review of Downey Savings and Loan, FA* (June 15, 2009), *available at* https://www.treasury.gov/about/organizational-structure/ig/Documents/OIG09039.pdf .

[78] *See* Audit Report OIG-09-032, *Material Loss Review of IndyMac Bank, FSB* (Feb. 26, 2009), *available at* https://www.treasury.gov/about/organizational-structure/ig/Documents/oig09032.pdf.

In its final report, the National Commission on the Causes of the Financial and Economic Crisis in the United States documents the pressure appraisers were under from mortgage lenders, brokers, and others with an interest in generating loan volume, to meet target values in order to complete loan transactions.[79] As noted earlier, among Congressional measures taken in response to the crisis, the Dodd-Frank Act instituted a number of reforms to ensure the legitimacy, independence, and oversight of appraisals.[80] The federal financial institution regulatory agencies also issued the Interagency Guidance on Nontraditional Mortgage Product Risks[81] in response to concerns with the higher risk attributes of nontraditional mortgage products.

The agencies do not have data that show that raising the appraisal threshold would result in increased loss rates. The agencies note that loss rates did not increase in the 13 years after the threshold was raised from $100,000 to $250,000 in 1994 and returned to more historical levels in 2014 after the implementation of more prudent underwriting practices in 2009. The agencies also note that a majority of residential real estate transactions are sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency, which reduces the impact of the agencies' appraisal requirement to an estimated three percent of all first-lien, single-family mortgage transactions in the United States, based on 2017 HMDA data.[82] Accordingly, the agencies' supervisory experience suggests that an increase in the threshold is unlikely to pose a safety and soundness risk to financial institutions.

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[79] Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, *available at* https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.
[80] Dodd-Frank Act, Title XIV, Subtitle F—Appraisal Activities, Pub. L. 111-203, 124 Stat. 1376, 2185.
[81] *See* 71 FR 58609 (October 4, 2006).
[82] Estimates based on first-lien, single-family mortgage transactions reported in 2017 HMDA data.

Analysis of Charge-off Rates

The agencies assessed trends in the loss rate experience of residential real estate transactions. While the agencies do not regularly collect data on rates of loss for residential real estate by the size of loans, they do collect net charge-off data for residential real estate loans on the Call Report. The agencies considered aggregate net charge-off rates for residential real estate loans in determining whether the threshold would pose a threat to the safety and soundness of financial institutions.

To evaluate the impact of residential real estate transactions on the safety and soundness of the banking system, the agencies compared the peak net charge-off rates from 1991 to 2018, which includes two recessionary periods. The net charge-off rate for residential real estate transactions did not increase after the increase in the appraisal threshold from $100,000 to $250,000 in June 1994, which indicates that the 1994 threshold increase did not have a negative impact on the safety and soundness of regulated institutions. As discussed above, housing prices have increased substantially since the last increase of this threshold, and the agencies are proposing an increase close to the lower bound of the estimate of current value of a residential property that sold for $250,000 in 1994.

The historical loss information in the Call Reports also reflects that the net charge-off rate for residential real estate transactions did not increase during and after the recession in 2001 through year-end 2007. During this timeframe, the net charge-off rate ranged from 8 basis points to 30 basis points. However, the net charge-off rate for residential real estate transactions increased significantly from 2008 through 2013, which was during and immediately after the recent recession, ranging from 63 basis points to 204 basis points. This data suggests that the loss experience associated with residential real estate loans generally stayed at a relatively consistent low rate except during the most recent crisis.

To evaluate whether the loss experience on residential real estate loans had an impact on the safety and soundness of regulated institutions of varying sizes, the agencies examined peak charge-off rates on such loans for all regulated institutions, as well as those with total assets under one billion dollars, total assets between one billion dollars and ten billion dollars, and total assets of more than ten billion dollars. The analysis showed that aggregate peak net charge-off rates for residential real estate loans over the most recent cycle were generally much worse than those recorded before the prior cycle, with larger regulated institutions experiencing a higher loan loss rate than regulated institutions with less than $1 billion in total assets. However, the loss rates declined to historical levels for all regulated institutions in 2014, indicating that the increase in the appraisal threshold in 1994 was not a significant contributing factor to the safety and soundness of regulated institutions, regardless of their size, during the recent recession.

Coverage of the Threshold

The agencies examined the 2017 HMDA data, as explained above, to estimate the number and dollar volume of residential real estate transactions covered by the existing and proposed residential appraisal thresholds. An analysis using the 2017 HMDA data shows that transactions subject to the agencies' current appraisal requirement continue to comprise only a small portion of all reported mortgage originations. The agencies estimate that approximately 91 percent of all mortgages originated in the United States are not subject to the agencies' appraisal requirement due to their not being originated by regulated institutions, being sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency, or having transaction amounts at or below the current $250,000 threshold.

Table 2 shows the aggregate number and dollar volume of regulated transactions in 2017 for loans that would have been exempted under the current threshold, that would be newly exempted under the proposed threshold increase, the totals exempted under the proposed threshold increase, and the totals not exempted by the proposed threshold increase.

Table 2[83] **Regulated Transactions by Transaction Amount**	**Exempted by current threshold of $250,000**	**Newly exempted by proposed increase to $400,000**	**Total exempted by proposed increase to $400,000**	**Total not exempted by proposed increase to $400,000**
Number of Transactions				
Number of Transactions	750,000	214,000	965,000	379,000
% of Total	56%	16%	72%	28%
Dollar Volume				
Dollar Volume ($billions)	96	68	164	305
% of Total	20%	14%	35%	65%

As shown, the agencies estimate that increasing the residential appraisal threshold to $400,000 would raise the share of the number of regulated transactions that would be exempt from 56 percent to 72 percent and the share of the dollar volume of regulated transactions from 20 percent to 35 percent. Thus, the aggregate dollar volume of exempted transactions would remain a modest percentage of regulated transactions.

When the threshold was raised in 1994, the agencies estimated that the aggregate dollar volume of exempted transactions due to the threshold increase was 85 percent of all new home sales, and 82 percent of all existing home sales.[84] Thus, the agencies expect the proposed threshold level to have a much smaller impact on the dollar volume of transactions and, therefore

[83] Numbers and dollar volumes are based 2017 HMDA data, and include first lien, conventional originations on single-family residential properties by FDIC-insured institutions and affiliated institutions that are not sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency. Originations with loan amounts greater than $20 million are excluded. Subtotals may not add to totals due to rounding.
[84] 59 FR at 29486 (June 7, 1994).

would be less likely to pose a safety and soundness risk than the current threshold level did when it was introduced in 1994.

Question 9. Is the data used in this analysis appropriate? Are there alternative sources of data that would be appropriate for this analysis?

Evaluation Requirement

The agencies note that evaluations consistent with safe and sound banking practices would continue to be required for residential real estate transactions exempted by the increased threshold. Evaluations prepared by qualified, competent, and independent individuals who provide appropriate supporting information can provide an estimate of market value that regulated institutions and consumers can consider. The agencies have issued guidance to assist regulated institutions in obtaining evaluations.[85] Regulated institutions and consumers also may voluntarily obtain appraisals for exempt transactions when deemed appropriate such as higher risk transactions that may pose a threat to safety and soundness. The agencies also retain the ability to require an appraisal whenever "necessary to address safety-and-soundness concerns."[86] The agencies expect regulated institutions to follow general guidelines for safety and soundness found in the Interagency Guidelines for Real Estate Lending Policies[87] and the Interagency Guidelines Establishing Standards for Safety and Soundness.[88]

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[85] *E.g.*, Guidelines, Evaluations Advisory and *Frequently Asked Questions on the Appraisal Regulations and the Interagency Appraisal and Evaluation Guidelines* (October 16, 2018), OCC Bulletin 2018-39; Board SR Letter 18-9; FDIC FIL-62-2018.

[86] *See*, OCC: 12 CFR 34.43(c); Board: 12 CFR 225.63(c); and FDIC: 12 CFR 323.3(c).

[87] OCC: 12 CFR part 34, subpart D; Board: 12 CFR part 208.51 and part 208, Appendix C; and FDIC: 12 CFR part 365, subpart A, Appendix A.

[88] OCC: 12 CFR part 30, Appendix A; Board: 12 CFR 208 subpart E and Appendix C and D-1; FDIC: 12 CFR part 364, Appendix A.

B. Use of Evaluations

As discussed above, the Title XI appraisal regulations require regulated institutions to obtain evaluations for four categories of real estate-related financial transactions that the agencies have determined do not require a Title XI appraisal, including residential real estate transactions at or below the current $250,000 threshold. Under the proposal, residential real estate transactions exempted by the proposed increase to a $400,000 threshold would be required to obtain appropriate evaluations that are consistent with safe and sound banking practices.

The Guidelines describe the transactions for which financial institutions are required to obtain an evaluation and advise that institutions should develop policies and procedures for identifying when to obtain appraisals for such transactions.[89] An evaluation provides an estimate of the market value of real estate, but is not subject to the same requirements as a Title XI appraisal. An evaluation should provide appropriate information to enable the institution to make a prudent decision regarding the transaction. Through the Guidelines, the agencies have provided guidance to regulated institutions on their expectations regarding when and how evaluations should be used.

The Guidelines provide guidance on obtaining appropriate evaluations that are consistent with safe and sound banking practices.[90] As described in the Guidelines, 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.[91] Evaluations may be completed by an independent bank employee or by a third party, as explained by the Guidelines[92] and the

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[89] Guidelines, 75 FR at 77460.
[90] *Id.*, at 77461.
[91] *Id.*, at 77458.
[92] *Id*.

Evaluations Advisory.[93] Guidance on achieving independence in the collateral valuation program can be found in the Guidelines, among other sources.[94] The Guidelines state that an evaluation should provide an estimate of the property's market value and have sufficient information and analysis to support the credit decision.[95] The Guidelines also describe the content that an evaluation should contain.[96]

Question 10. Will institutions expand their use of evaluations if the proposal to raise the residential threshold is finalized or continue to use appraisals for the additional residential real estate transactions of $400,000 or less that are eligible for this exemption? How frequently do lenders obtain evaluations for eligible residential real estate transactions in practice? For what types of eligible residential real estate transactions are lenders likely to obtain evaluations? Please provide data or other evidence to support any comments.

C. Conforming and Technical Amendments

Definition of Residential Real Estate Transaction. In the CRE Final Rule, the agencies defined a CRE transaction as a real estate-related financial transaction that is not secured by a single 1-to-4 family residential property. The agencies are proposing to extend this definitional framework by defining "residential real estate transaction" as a real estate-related financial transaction that is secured by a single 1-to-4 family residential property. The agencies are also proposing to clarify in the regulatory text that the proposed $400,000 threshold applies to

[93] Evaluations Advisory at 2.
[94] Guidelines, 75 FR at 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: Board: 12 CFR 226.42; BCFP: 12 CFR 1026.42.
[95] Guidelines, 75 FR at 77457.
[96] *Id.*, at 77461.

residential real estate transactions. The agencies are proposing this approach to provide regulatory clarity and believe that this change would not affect any substantive requirement.

Question 11. Is the proposed definition of a residential real estate transaction appropriate?

Increase in the threshold for the use of state certified appraisers for complex residential real estate transactions and other conforming changes. The agencies' appraisal regulations require that all complex 1-to-4 family residential property appraisals rendered in connection with federally related transactions shall have a state certified appraiser if the transaction value is $250,000 or more.[97] In order to make this paragraph consistent with the other proposed changes to the agencies' appraisal regulations, the agencies are proposing changes to its wording to incorporate the proposed definition of "residential real estate transaction," to introduce the $400,000 threshold, and to make other technical and conforming changes. The agencies are also proposing to amend the definitional term "complex 1-to-4 family residential property appraisal" to "complex appraisal for a residential real estate transaction" to conform to the definition of residential real estate transaction. The amendments to these provisions would be conforming changes that would not alter any substantive requirements.

Evaluations for transactions exempted by the rural residential appraisal exemption. Congress recently amended Title XI to exclude loans made by a financial institution from the requirement to obtain a Title XI appraisal if certain conditions are met.[98] The property must be located in a rural area; the transaction value must be less than $400,000; the financial institution must retain the loan in portfolio, subject to exceptions; and not later than three days

[97] OCC: 12 CFR 34.43(d)(3); Board: 12 CFR 225.63(d)(3); FDIC: 12 CFR 323.3(d)(3).
[98] *See supra* note 1.

after the Closing Disclosure is given to the consumer, the financial institution or its agent must have contacted not fewer than three state certified or state licensed appraisers, as applicable, and documented that no such appraiser was available within five business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments.[99]

The proposed rule would amend the agencies' appraisal regulations to reflect the rural residential appraisal exemption in the list of transactions that are exempt from the agencies' appraisal requirement. The amendment to this provision would be a technical change that would not alter any substantive requirement, because the statutory provision is self-effectuating. In addition, the proposed rule would require evaluations for transactions that are exempt from the agencies' appraisal requirement under the rural residential appraisal exemption. The agencies are proposing that financial institutions obtain evaluations for these transactions that will be retained in their portfolios, because evaluations protect the safety and soundness of financial institutions. Since the early 1990's, the agencies' appraisal regulations have required that regulated institutions obtain evaluations for certain other exempt residential real estate transactions (which in practice are generally retained in their portfolios). Requiring evaluations for transactions exempted by the rural residential appraisal exemption reflects the agencies' long-standing view that safety and soundness principles require institutions to obtain an understanding of the value of real estate collateral underlying most real estate-related transactions they originate. As discussed earlier, evaluations should contain sufficient information and analysis

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[99] 12 U.S.C. 3356. The mortgage originator must be subject to oversight by a Federal financial institutions regulatory agency. Further, the exemption does not apply to loans that are high-cost mortgages, as defined in section 103 of TILA, or if a Federal financial institutions regulatory agency requires an appraisal because it believes it is necessary to address safety and soundness concerns. *Id.*

to support the financial institution's decision to engage in the transaction and are important to safety and soundness.

Question 12. What challenges, if any, are posed by using evaluations for transactions that are exempt from the agencies' appraisal requirement due to the rural residential appraisal exemption?

Appraisal review. Section 1473(e) of the Dodd-Frank Act amended Title XI to add that appraisals be subject to appropriate review for compliance with USPAP to the minimum standards that the agencies must require for appraisal for federally related transactions.[100] The proposed rule would make a conforming amendment to the minimum requirements in the agencies' appraisal regulations to add appraisal review. The agencies propose to mirror the statutory language for this standard. As outlined in the Guidelines, which provide guidance on the review process, the agencies have long recognized that appraisal review is consistent with safe and sound banking practices.[101]

Question 13. What, if any, concerns are posed by adding a requirement to review appraisals that is consistent with the statutory language for this standard to the minimum requirements for an appraisal?

III. REQUEST FOR COMMENTS

The agencies invite comment on all aspects of the proposed rulemaking.

[100] Dodd-Frank Act, section 1473, Pub. L. 111-203, 124 Stat. 1376.
[101] Guidelines, 75 FR at 77461.

IV. REGULATORY ANALYSIS

A. Proposed Waiver of Delayed Effective Date

The agencies propose to make all provisions of the rule, other than the evaluation requirement for transactions exempted by the rural residential appraisal exemption[102] and the appraisal review provision (as discussed below), effective the first day after publication of the final rule in the Federal Register. The agencies propose to waive the 30-day delayed effective date required under the Administrative Procedure Act (APA) for these provisions, pursuant to 5 U.S.C. 553(d)(1), which provides for waiver when a substantive rule grants or recognizes an exemption or relieves a restriction. The amendments proposed to increase the residential threshold would exempt additional transactions from the agencies' appraisal requirement, which would have the effect of relieving restrictions. Consequently, the agencies propose that all provisions of this rule, except the evaluation requirement for transactions exempted by the rural residential appraisal exemption and the appraisal review provision, meet the requirements for waiver set forth in the APA.

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration (SBA) to include commercial banks and savings institutions, and trust companies, with assets of $550

[102] *See supra* note 1.

million or less and $38.5 million or less, respectively) and publishes its certification and a brief explanatory statement in the Federal Register together with the rule.

The OCC currently supervises 1,260 institutions (commercial banks, trust companies, federal savings associations, and branches or agencies of foreign banks) of which approximately 886 are small entities.[103] The OCC estimates that the proposed rule may impact approximately 797 of these small entities.

The proposal to increase the residential threshold may result in cost savings for impacted institutions. For transactions at or below the proposed threshold, regulated institutions would be given the option to obtain an evaluation of the property instead of an appraisal. While the cost of obtaining appraisals and evaluations can vary and may be passed on to borrowers, evaluations generally cost less to perform than appraisals, given that evaluations are not required to comply with USPAP. In addition to costing less than an appraisal, evaluations may require less time to review than appraisals because evaluations typically contain less detailed information than appraisals.

In addition to savings relating to the relative costs associated with appraisals and evaluations, the proposed rule may also reduce burden for institutions in areas with appraiser shortages. In the course of the agencies' most recent Economic Growth and Regulatory Paperwork Reduction Act review, commenters contended that it can be difficult to find state

[103] The OCC bases this estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC includes the assets of affiliated financial institutions when determining whether to classify an OCC-supervised institution as a small entity. The OCC used December 31, 2017, to determine size because a "financial institution's assets are determined by averaging the assets reported in its four quarterly financial statements for the preceding year." *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

certified and licensed appraisers, particularly in rural areas, which results in delays in completing transactions and sometimes increased costs for appraisals.[104] For this reason, substituting evaluations for appraisals may reduce burden for institutions in areas with appraiser shortages.[105]

The proposal to require institutions to obtain an evaluation for transactions that qualify for the rural residential appraisal exemption could be viewed as a new mandate. However, because the proposed rule would increase the residential threshold to $400,000 for all residential transactions, institutions would not need to comply with the detailed requirements of the rural residential appraisal exemption in order for such transactions to be exempt from the agencies' appraisal requirement. Therefore, complying with the evaluation requirement for below-threshold transactions would be significantly less burdensome than complying with the requirements of the rural residential appraisal exemption.

Because the proposal does not contain any new recordkeeping, reporting, or significant compliance requirements, the OCC anticipates that costs associated with the proposal, if any, will be *de minimis*. Therefore, the OCC certifies that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

Board: The Regulatory Flexibility Act (RFA),[106] requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed threshold increase applies to certain IDIs and non-bank entities that make loans secured by

[104] *See* EGRPRA Report, *available at* https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.
[105] While the proposed threshold may decrease costs for institutions, the extent to which institutions will employ evaluations instead of appraisals is uncertain, given that institutions retain the option of using appraisals for below-threshold transactions.
[106] 5 U.S.C. 601 *et seq*.

residential real estate.[107] The SBA establishes size standards that define which entities are small businesses for purposes of the RFA.[108] The size standard to be considered a small business is: $550 million or less in assets for banks and other depository institutions; and $38.5 million or less in annual revenues for the majority of non-bank entities that are likely to be subject to the proposed regulation.[109] Based on the Board's analysis, and for the reasons stated below, the proposed rule may have a significant positive economic impact on a substantial number of small entities. Accordingly, the Board is publishing an initial regulatory flexibility analysis. The Board will consider whether to conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

The Board requests public comment on all aspects of this analysis.

A. Reasons for the Proposed Rule

As discussed in sections I and II of the **Supplementary Information**, the agencies are proposing to increase the threshold from $250,000 to $400,000 at or below which a Title XI appraisal is not required for residential real estate transactions in order to reduce regulatory burden in a manner that is consistent with the safety and soundness of financial institutions. To ensure that the safety and soundness of regulated institutions is protected, the agencies are proposing to require evaluations for transactions that qualify for the residential appraisal threshold exemption and rural residential appraisal exemption. In order to fulfill the agencies'

[107] For its RFA analysis, the Board considered all Board-regulated creditors to which the proposed rule would apply.
108 U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at* https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.
[109] Asset size and annual revenues are calculated according to SBA regulations. *See* 13 CFR 121 *et seq*.

statutory responsibility under the Dodd-Frank Act, the agencies are proposing to add the requirement that appraisals be subject to appropriate review for compliance with USPAP.

B. Legal Basis

As discussed above, Title XI explicitly authorizes the agencies to establish a threshold level at or below which a Title XI appraisal is not required if the agencies determine in writing that the threshold does not represent a threat to the safety and soundness of financial institutions and receive concurrence from the BCFP that such threshold level provides reasonable protection for consumers who purchase 1-to-4 unit single-family residences.[110] For transactions exempted by the proposed residential appraisal threshold increase and the rural residential appraisal exemption, the agencies are proposing to require evaluations pursuant to their authority to prescribe standards for safe and sound banking practices, including for credit underwriting and real estate lending,[111] under the Federal Deposit Insurance Act. For transactions that remain subject to the agencies' appraisal requirement, the agencies are proposing to add the requirement that such appraisals be subject to appropriate review for USPAP, as required by Title XI.[112]

C. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Board's proposed rule would apply to state chartered banks that are members of the Federal Reserve System (state member banks), as well as bank holding companies and nonbank subsidiaries of bank holding companies that engage in lending. There are approximately 607 state member banks and 77 nonbank lenders regulated by the Board that meet the SBA definition of small entities and would be subject to the proposed rule. Data currently available to the Board do not allow for a precise estimate of the number of small entities that would be affected by the

[110] 12 U.S.C. 3341(b).
[111] 12 U.S.C. 1831p-1; 12 U.S.C. 1844(b).
[112] 12 U.S.C. 3339(1).

proposed threshold increase and by the rural residential appraisal exemption, because the number of small entities that would engage in residential real estate transactions qualifying for these exemptions is unknown. The requirement that Title XI appraisals be subject to appropriate review would apply to all small entities regulated by the Board that engage in real estate lending; however, the Board does not believe this requirement would impose a significant additional burden on such institutions.

For the small entities that are affected by the threshold increase, the proposed rule would reduce reporting, recordkeeping, and other compliance requirements. For transactions at or below the proposed threshold, regulated institutions would be required to obtain an evaluation of the property instead of an appraisal. Unlike appraisals, evaluations may be performed by a lender's own employees and are not required to comply with USPAP. As previously discussed, the cost of obtaining appraisals and evaluations can vary and may be passed on to borrowers. Because of this variation in cost and practice, it is not possible to precisely determine the cost savings that regulated institutions will experience due to the decreased cost of obtaining an evaluation rather than an appraisal. However, based on information available to the Board, small entities and borrowers engaging in residential real estate transactions could experience significant cost reductions.

In addition to costing less to obtain than appraisals, evaluations also require less time to review than appraisals because they contain less detailed information. As previously discussed, the agencies estimate that, on average, the review process for an evaluation would take substantially less time than the review process for an appraisal. Thus, for affected transactions, the proposed rule could reduce the time required for employees to review transactions, potentially reducing delay and increasing cost savings of obtaining an evaluation instead of an appraisal.

The Board estimates that the number of residential real estate transactions exempted by the threshold would increase by approximately 29 percent under the proposed rule.[113] The Board expects this percentage to be higher for small entities, because a higher percentage of their loan portfolios are likely to be made up of small, below-threshold loans than those of larger entities. Thus, while the precise number of transactions that will be affected and the precise cost reduction per transaction cannot be determined, the proposed rule may have a significant positive economic impact on small entities that engage in residential real estate lending.

With respect to transactions that qualify for the rural residential appraisal exemption, the proposal to require that institutions obtain an evaluation could be viewed as an additional burden. However, because the agencies also proposed to increase the residential threshold to $400,000 for all residential transactions, regulated institutions, including small entities, would not need to comply with the detailed requirements of the rural exemption in order for such transactions to be exempt from the appraisal requirements. The Board believes that complying with the requirements of the threshold exemption would be significantly less burdensome than complying with the requirements of the rural residential threshold exemption, even if no evaluation was required for the latter.

Because the agencies' appraisal requirements already require that Title XI appraisals be performed in compliance with USPAP, the proposed requirement that such appraisals be subject

[113] As shown in Table 2, approximately 750,000 transactions are exempted under the current $250,000 threshold, and an additional 214,000 transactions would be exempted under the proposed $400,000 threshold, representing an increase of approximately 29 percent over the number of transactions exempted by the current threshold.

to appropriate review for compliance with USPAP is not expected to impose a significant additional burden on regulated institutions, including small entities. Additionally, due to the proposed threshold increase, fewer transactions would be subject to the agencies' appraisal requirement and, thus, the review requirement.

Overall, the Board expects that the proposed rule may provide a significant burden reduction for small entities and borrowers that engage in real estate transactions.

D. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revisions.

E. Discussion of Significant Alternatives

The agencies considered additional burden-reducing measures, such as increasing the residential threshold to a higher dollar amount, but have not proposed such a measure at this time for the reasons previously discussed. For transactions exempted from the Title XI appraisal requirements, the proposed rule would require regulated institutions to obtain an evaluation. The agencies are proposing this provision to protect the safety and soundness of financial institutions and to protect consumers, which is a legal prerequisite to the establishment of any threshold. The Board is not aware of any other significant alternatives that would reduce burden on small entities without sacrificing the safety and soundness of financial institutions or consumer protections.

FDIC: The Regulatory Flexibility Act (RFA) generally requires that, in connection with a proposed rule, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the rulemaking on small entities.[114] 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. The Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets less than or equal to $550 million.[115] The FDIC supervises 3,643 depository institutions,[116] of which 2,840 are defined as small banking entities by the terms of the RFA.[117] In 2017, 1,216 small, FDIC-supervised institutions reported originating residential real estate loans. However, beginning in 2017, FDIC-supervised institutions ceased reporting residential loan origination data in compliance with HMDA if they originated less than 25 loans per year. Therefore, in order to more accurately assess the number of institutions that could be affected by the proposed rule we counted the number of existing institutions who reported any residential loan origination in 2015, 2016, or 2017. Thus, of the 2,840 small, FDIC-supervised entities, 1,524 (53.6 percent) are estimated to be affected by the proposed rule.[118]

The proposed rule is likely to reduce loan valuation-related costs for small, covered institutions. By increasing the residential real estate appraisal threshold, the proposed rule is expected to increase the number of residential real estate loans eligible for an evaluation, instead

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[114] 5 U.S.C. 601 *et seq.*

[115] The SBA defines a small banking organization as having $550 million or less in assets, where "a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." 13 CFR 121.201 n.8 (2018). "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. . . ." 13 CFR 121.103(a)(6) (2018). Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is "small" for the purposes of RFA.

[116] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[117] Call Report, December 31, 2017.

[118] HMDA data, December 2015-2017.

of an appraisal. The FDIC estimates that, on average, the review process for an appraisal would take approximately forty minutes, but only ten minutes, on average, for an evaluation. Therefore, the FDIC estimates that the proposed rule would reduce loan valuation-related costs for small, FDIC-supervised institutions by 30 minutes per transaction. According to the 2017 HMDA data, approximately eight percent of residential real estate loans originated by FDIC-insured institutions and affiliated institutions are subject to the Title XI appraisal requirements and have loan amounts between $250,000 and $400,000. Additionally, of the small, FDIC-supervised institutions that reported residential loan originations, the average number of originations per year was approximately 116. Using the average number of originations and the percent exempt from the rule, approximately an additional nine originations per year per small, FDIC-supervised institution may have an evaluation in lieu of an appraisal. Thus, by using evaluations instead of appraisals, a small, FDIC-supervised institution may reduce its total annual residential real estate transaction valuation-related labor hours by 4.5 hours. The FDIC estimates this will result in a potential cost savings for small, FDIC-supervised institutions of $321.75 per year, per institution.[119] The estimated reduction in costs would be smaller if lenders opt to not utilize an evaluation and require an appraisal on residential real estate transaction greater than $250,000 but not more than $400,000. The cost savings per institution represents

[119] 4.5 hours * $71.50 per hour = $321.75. 4.5 hours * $71.50 per hour = $321.75. The FDIC estimates that the average hourly compensation for a loan officer is $71.50 an hour. The hourly compensation estimate is based on published compensation rates for Credit Counselors and Loan Officers ($44.70). The estimate includes the May 2017 75th percentile hourly wage rate reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment and Wage Estimates for the Depository Credit Intermediation sector. The reported hourly wage rate is grossed up by 159.9 percent to account for non-monetary compensation as reported by the June 2018 Employer Costs for Employee Compensation Data. 4.5 hours * $71.50 per hour = $321.75. 4.5 hours * $71.50 per hour = $321.75.

less than 0.01 percent of non-interest expense per small, FDIC-supervised institution.[120] Thus, the FDIC believes the proposed rule will not have a significant economic impact on small, FDIC-supervised institutions.

The proposed rule is likely to reduce residential real estate transaction valuation-related costs for the parties involved. By increasing the residential real estate appraisal threshold, the proposed rule is expected to increase the number of residential real estate loans eligible for an evaluation, instead of an appraisal. As discussed previously, the United States Department of Veterans Affairs' appraisal fee schedule[121] for a single-family residence reflects that the cost of an appraisal generally ranges from $375 to $900, depending on the location of the property. While the FDIC does not have definitive information on the cost of evaluations, some of the comments from financial institutions and their trade associations to the CRE NPR indicated that evaluations cost substantially less than appraisals. For example, one commenter noted that third-party evaluations cost approximately 25 percent of the cost of an appraisal. Therefore, making more residential real estate transactions eligible for evaluations instead of appraisals is likely to reduce transaction valuation-related costs. However, the FDIC assumes that most, if not all, of these costs reductions are passed on to residential real estate buyers. Therefore, this effect of the proposed rule is likely to have little or no effect on small, FDIC-supervised entities.

The proposed rule is not likely to have any substantive effects on the safety and soundness of small, FDIC-supervised institutions. As discussed previously, historical loss information in the Call Reports reflect that the net charge-off rate for residential transactions did not increase after the increase in the appraisal threshold from $100,000 to $250,000 in June

[120] Call Report, December 31, 2017.
[121] *See* https://www.benefits.va.gov/HOMELOANS/appraiser_fee_schedule.asp.

1994, or during and after the recession in 2001 through year-end 2007. During this timeframe, the net charge-off rate ranged from 8 basis points to 30 basis points. However, the net charge-off rate for residential transactions increased significantly from 2008-2013, which was during and immediately after the recent recession, ranging from 63 basis points to 204 basis points. The increase in the net charge-off rate for loans secured by single 1-to-4 family residential real estate during the recent recession has been attributed to a number of factors, such as a weakening economy, declining home values, overstating the market value of homes in appraisal reports, increasing demand for residential mortgage backed securities, relaxing underwriting practices, and expanding the use of higher risk loan products. Therefore, data related to net charge-offs of loans secured by 1-to-4 family residential real estate at financial institutions suggests that an increase in the threshold would not pose a safety and soundness risk. The FDIC believes the proposed rule is unlikely to pose significant safety and soundness risks for small, FDIC-supervised entities.

The proposed rule is likely to pose relatively larger residential real estate valuation-related transaction cost reductions for rural buyers and small, FDIC-supervised institutions lending in rural areas, however these effects are difficult to accurately estimate. Home prices in rural areas are generally lower than those in suburban and urban areas. Therefore, residential real estate transactions in rural areas are likely to utilize evaluations more than appraisals, under the proposed rule. Additionally, there may be less delay in finding qualified personnel to perform an evaluation than to perform a Title XI appraisal, particularly in rural areas.

As described in the Guidelines, financial institutions should review the property valuation prior to entering into the transaction. As described previously, the FDIC estimates that financial institutions require less time to review evaluations than to review appraisals, because evaluations contain less detailed information. However, the relative distributional effects of the proposed rule for small, FDIC-supervised institutions engaging in residential real estate transactions in rural areas is difficult to accurately estimate because it depends on the current and future characteristics of rural residential real estate markets, future characteristics of residential collateral involved in transactions, the propensity of lenders to require an appraisal for transactions between $250,000 but not more than $400,000, among other things.

Finally, by potentially reducing valuation-related costs associated with residential real estate transactions for properties greater than $250,000 but not more than $400,000, the proposed rule could result in a marginal increase in lending activity of small, FDIC-supervised institutions for properties of this type. However, the FDIC assumes that this effect is likely to be negligible given that the potential cost savings of using an evaluation rather than an appraisal, represents between 0.05-0.15 percent of the median home price.[122]

For the reasons described above and under section 605(b) of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

C. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[123] the agencies may not conduct or sponsor, and a respondent is not required to respond to, an

[122] $325/$597,147 = 0.0544 percent; $900/$597,147 = 0.1507 percent.
[123] 44 U.S.C. 3501-3521.

information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The agencies have reviewed this proposed rule and determined that it would not introduce any new or revise any collection of information pursuant to the PRA. Therefore, no submissions will be made to OMB for review.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[124] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[125]

The agencies recognize that the requirement to obtain an evaluation for transactions exempted by the rural residential appraisal exemption[126] could be considered a new requirement for IDIs, despite the longstanding requirements for IDIs to obtain evaluations for transactions exempt from agencies' appraisal requirement under a threshold exemption. The agencies also recognize that the requirement for an appraisal review could be considered a new requirement for

[124] 12 U.S.C. 4802(a).
[125] *Id.* at 4802(b).
[126] *See supra* note 1.

IDIs. Accordingly, with respect to the requirement that financial institutions obtain evaluations for transactions exempted by the rural residential appraisal exemption and the requirement for appraisal review, the agencies are proposing an effective date of the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, consistent with RCDRIA.

Otherwise, the proposed rule would reduce burden and would not impose any reporting, disclosure, or other new requirements on IDIs. For transactions exempted from the agencies' appraisal requirement by the proposed rule (*i.e.*, residential real estate transactions between $250,000 and $400,000), lenders would be required to get an evaluation if they chose not to get an appraisal. However, the agencies do not view the option to obtain an evaluation instead of an appraisal as a new or additional requirement for purposes of RCDRIA. First, the process of obtaining an evaluation is not new since IDIs already obtain evaluations for transactions at or below the current $250,000-threshold. Second, for residential real estate transactions between $250,000 and $400,000, IDIs could continue to obtain appraisals instead of evaluations. Because the proposed rule would impose no new requirements on IDIs, the agencies are not required by RCDRIA to consider the administrative burdens and benefits of the rule or delay its effective date (other than the evaluation provision for transactions exempted by the rural residential appraisal exemption or and the appraisal review provision, as discussed above).

Because delaying the effective date of the proposed rule's threshold increase is not required and would serve no purpose, the agencies propose to make the threshold increase and all other provisions of the proposed rule, other than the evaluation requirement for transactions exempt under 103 and the appraisal review provision, effective on the first day after publication of the final rule in the Federal Register. Additionally, although not required by RCDRIA, the agencies did consider the administrative costs and benefits of the rule while developing the proposal. In designing the scope of the threshold increase, the agencies chose to align the definition of residential real estate transaction with industry practice, regulatory guidance, and the categories used in the Call Report in order to reduce the administrative burden of determining which transactions were exempted by the rule. The agencies also considered the cost savings that IDIs would experience by obtaining evaluations instead of appraisals and set the proposed threshold at a level designed to provide significant burden relief without sacrificing safety and soundness.

The agencies note that comment on these matters has been solicited in the **Supplementary Information**, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies invite any other comments that further will inform the agencies' consideration of RCDRIA.

E. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[127] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner and invite comment on the use of plain language. For example:

• Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?

• Are the requirements in the proposed rule clearly stated? If not, how could the proposed rules be more clearly stated?

[127] Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999).

• Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?

• Would more, but shorter, sections be better? If so, which sections should be changed?

• What other changes can the agencies incorporate to make the regulation easier to understand?

F. Unfunded Mandates Act

OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). As discussed in the OCC's Regulatory Flexibility Act section, the costs associated with the proposed rule, if any, would be *de minimis.* Therefore, the OCC concludes that the proposed rule, if adopted as final, would not result in an expenditure of $100 million or more annually by state, local, and tribal governments, or by the private sector.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Capital planning, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing

12 CFR Part 323

Banks, banking, Mortgages, Reporting and recordkeeping requirements, Savings associations.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

For the reasons set forth in the joint preamble, the OCC proposes to amend part 34 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1, 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 *et seq.*, 5101 *et seq.*, and 5412(b)(2)(B), and 15 U.S.C. 1639h.

2. Section 34.42 is amended by:

   a. Revising paragraph (f);

   b. Redesignating paragraphs (k) through (n) as (l) through (o), respectively; and

   c. Adding a new paragraph (k).

The revisions and addition read as set forth below.

§ 34.42 Definitions.

* * * * *

(f) Complex appraisal for a residential real estate transaction means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

* * * * *

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

*** * * * ***

3. Section 34.43 is amended by:

   a. Revising paragraphs (a)(1), (b), and (d)(3);

   b. Removing the word "or" at the end of paragraph (a)(12);

   c. Removing the period at the end of paragraph (a)(13) and adding "; or" in its place; and

   d. Adding paragraph (a)(14).

The addition and revisions read as set forth below.

§ 34.43 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(1) The transaction is a residential real estate transaction that has a transaction value of $400,000 or less;

* * * * *

(14) The transaction is exempted from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. 3356.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5), (a)(7), (a)(13), or (a)(14) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

* * * * *

(d) * * *

(3) *Complex appraisals for residential real estate transactions of more than $400,000*. All complex appraisals for residential real estate transactions rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is more than $400,000. A regulated institution may presume that appraisals for residential real estate transactions are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

*** * * * ***

4. Section 34.44 is amended by:

   a. Reprinting the introductory text for reader reference;

   b. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

   c. Adding a new paragraph (c).

The addition reads as set forth below.

§ 34.44 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

* * *

(c) Be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice;

*** * * * ***

Federal Reserve Board

For the reasons set forth in the joint preamble, the Board amends part 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

5. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331 *et seq.*, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

6. Section 225.62 is amended by:

a. Revising paragraph (f);

b. Redesignating paragraphs (k) through (n) as (l) through (o), respectively; and

c. Adding a new paragraph (k).

The revisions and addition read as set forth below.

§ 225.62 Definitions.

* * * * *

(f) Complex appraisal for a residential real estate transaction means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

* * * * *

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

*** * * * ***

7. In Subpart G, section 225.63 is amended by:

    a. Revising paragraphs (a)(1), (b), and (d)(3);

    b. Removing the word "or" at the end of paragraph (a)(13);

    c. Removing the period at the end of paragraph (a)(14) and adding "; or" in its place; and

    d. Adding paragraph (a)(15).

The addition and revisions read as set forth below.

§ 225.63 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(1) The transaction is a residential real estate transaction that has a transaction value of $400,000 or less;

* * * * *

(15) The transaction is exempted from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. 3356.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5), (a)(7), (a)(14), or (a)(15) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

*** * * * ***

(d) * * *

(3) *Complex appraisals for residential real estate transactions of more than $400,000*. All complex appraisals for residential real estate transactions rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is more than $400,000. A regulated institution may presume that appraisals for residential real estate transactions are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

*** * * * ***

8. In Subpart G, section 225.64 is amended by:

    a. Reprinting the introductory text for reader reference;

    b. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

    c. Adding a paragraph (c).

The revisions and addition read as set forth below.

§ 225.64 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

* * *

(c) Be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice;

* * * * *

Federal Deposit Insurance Corporation

For the reasons set forth in the joint preamble, the FDIC amends part 323 of chapter III of title 12 of the Code of Federal Regulations as follows:

9. The authority citation for part 323 continues to read as follows:

Authority: 12 U.S.C. 1818, 1819(a) (“Seventh” and “Tenth”), 1831p–1 and 3331 *et seq*.

10. Section 323.2 is amended by:

a. Revising paragraph (f);

b. Redesignating paragraphs (k) through (n) as (l) through (o), respectively; and

c. Adding a new paragraph (k).

The revisions and addition read as set forth below.

§ 323.2 Definitions.

* * * * *

(f) Complex appraisal for a residential real estate transaction means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

* * * * *

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

* * * * *

11. In Subpart A, section 323.3 is amended by:

a. Revising paragraphs (a)(1), (b), and (d)(3);

b. Removing the word “or” at the end of paragraph (a)(12);

c. Removing the period at the end of paragraph (a)(13) and adding "; or" in its place; and

d. Adding paragraph (a)(14).

The addition and revisions read as set forth below.

§ 323.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(1) The transaction is a residential real estate transaction that has a transaction value of $400,000 or less;

* * * * *

(14) The transaction is exempted from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. 3356.

(b) *Evaluations required*. For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5), (a)(7), (a)(13), or (a)(14) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

* * * * *

(d) * * *

(3) *Complex appraisals for residential real estate transactions of more than $400,000*. All complex appraisals for residential real estate transactions rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is more than $400,000. A regulated institution may presume that appraisals for residential real estate transactions are not complex, unless the institution has readily available information

that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

* * * * *

12. Section 323.4 is amended by

a. Reprinting the introductory text for reader reference;

b. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

c. Adding a paragraph (c).

The addition reads as set forth below.

§ 323.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

* * *

(c) Be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice;

* * * * *

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING TITLED “REAL ESTATE APPRAISALS.”]

Dated: [].

Joseph M. Otting

Comptroller of the Currency

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING TITLED “REAL ESTATE APPRAISALS.”]

By order of the Board of Governors of the Federal Reserve System, [].

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING TITLED “REAL ESTATE APPRAISALS.”]

Dated at Washington, DC on [date].

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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