akerman

Practice Update

Federal Banking Agencies Defer Appraisals and Evaluations for Real Estate Transactions

April 15, 2020

By William P. Heller, Eric I. Goldberg, Alejandro P. Pacheco, and Thomas J. Kearney

On April 14, federal agencies announced a new interim final rule and interagency guidance relating to appraisals and evaluations for real estate related financial transactions affected by the COVID-19 pandemic. The Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve Board) (Banking Agencies) issued an interim final rule (IFR) allowing regulated financial institutions to defer obtaining appraisals or evaluations for up to 120 days after the closing of certain residential and commercial real estate loans. The Banking Agencies, the National Credit Union Administration (NCUA) and the Consumer Financial Protection Bureau (CFPB) also issued an *Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus* (Interagency Statement) outlining existing flexibilities in appraisal and evaluation regulations and highlighting temporary changes to Fannie Mae and Freddie Mac (GSE) appraisal standards.

Interim Final Rule

Dates. The IFR is effective immediately upon publication in the Federal Register and will expire for transactions closing after December 31, 2020. 12

Related People

Eric I. Goldberg
William P. Heller
Thomas J. Kearney
Alejandro P. Pacheco

Related Work

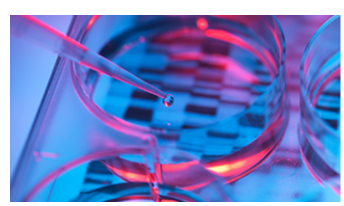
Consumer Financial Services, Data and Technology (CFS+)

Related Offices

Fort Lauderdale
Washington, D.C.

Coronavirus Resource Center

Visit the Resource Center



C.F.R. §§ 34.43(f)(3), 225.63(f)(3) and 323.3(g)(3). The Banking Agencies found good cause to forego the 30-day delayed effective date under the Administrative Procedure Act and the 60-day delayed effective date under the Congressional Review Act. 5 U.S.C. §§ 553(d)(1), 808(2).

Amendments. The IFR defers the requirement to obtain an appraisal or evaluation for up to 120 days following the closing of a transaction for certain residential and commercial real estate transactions. 12 C.F.R. §§ 34.43(f)(1), 225.63(f)(1) and 323.3(g)(1). Transactions for acquisition, development, and construction of real estate are explicitly excluded. 12 C.F.R. §§ 34.43(f)(2), 225.63(f)(2) and 323.3(g)(2).

Deferral of Appraisals. The IFR defers only those appraisals required under the amended regulations. Those regulations require that an appraisal be performed by a state certified or licensed appraiser for all real estate-related financial transactions, except for those in which:

- A lien on real estate has been taken as collateral in an abundance of caution;
- The transaction is not secured by real estate;
- A lien on real estate has been taken for purposes other than the real estate's value;
- A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;
- The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met Board regulatory requirements for appraisals at the time of origination;
- The transaction is wholly or partially insured or guaranteed by a U.S. government agency or government sponsored agency;

- The transaction either: (i) qualifies for sale to a U.S. government agency or government sponsored agency; or (ii) involves a residential real estate transaction in which the appraisal conforms to the GSE appraisal standards applicable to that category of real estate;
- The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or
- The regulatory agency determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

12 C.F.R. §§ 34.43(a), 225.63(a), 323.3(a). The Federal Reserve Board additionally excludes transactions that involve underwriting or dealing in mortgage-backed securities. 12 C.F.R. § 225.63(a)(12).

Although the IFR has no effect on these excluded transactions, the Interagency Statement provided institutions with information about existing flexibility:

Deferral of Evaluations. The IFR defers evaluations otherwise required for real estate-related financial transactions in which:

- The transaction is a residential real estate transaction that has a transaction value of $400,000 or less;
- The transaction is a business loan that: (i) has a transaction value of $1 million or less and (ii) is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;
- The transaction involves an existing extension of credit at the lending institution, provided there has been no (i) 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 (ii) advancement of new monies, other than funds necessary to cover reasonable closing costs;

- The transaction is a commercial real estate transaction with a value of $500,000 or less; or
- The transaction is exempt from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. § 3356.

12 C.F.R. §§ 34.43(a)(b), 225.63(a)(b), 323.3(a)(b).

NCUA Proposal. The NCUA did not join the FDIC, OCC and Federal Reserve Board in issuing the IFR on April 14, but will consider a similar proposal at its April 16 board meeting.

Interagency Statement

The Interagency Statement discusses existing flexibilities in appraisal, evaluation and physical inspection regulations and related guidance issued by the GSEs.

Existing Exceptions in Appraisal Regulations. The Banking Agencies encourage financial institutions to make use of existing appraisal or evaluation requirements that may be particularly useful and relevant during the COVID-19 emergency. The agencies highlight the same OCC, Federal Reserve Board, and FDIC appraisal and evaluation exceptions and the IFR issued by those agencies, summarized above. The agencies further highlight the NCUA's similar exceptions to appraisal by a certified or licensed appraiser. 12 C.F.R. § 722.3(a), (d).

Flexibility for Appraisals of GSE Loans. The Interagency Statement highlights Freddie Mac's March 23 and Fannie Mae's April 14 guidance to single-family sellers. That guidance states that desktop appraisals and exterior-only appraisals are acceptable for primary residence loans with up to 97 percent loan-to-value (LTV) and second homes and investment properties with 85 percent or less LTV. Exterior-only appraisals are acceptable for limited cash-out refinances where the mortgage being refinanced is owned by the GSE and the LTV is within the currently acceptable range.

Flexibility for Physical Property Inspections. The Interagency Statement emphasizes that while exterior and interior inspections are commonly conducted in preparing appraisals and evaluations and can facilitate high quality valuations, such inspections are not required by the agencies' appraisal regulations. The Banking Agencies' appraisal regulations require compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), but USPAP indicates that even when an interior inspection would customarily be part of the scope of work, a health or other emergency condition may require an appraiser to make an extraordinary assumption about the interior of a property. See USPAP March 2020 Q&A. However, interior inspections are required for certain higher-priced mortgage loans (HPMLs) pursuant to the Interagency HPML Appraisal Rule, which implements TILA's appraisal requirements.
