

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 722

RIN 3133-AE98

#### Real Estate Appraisals

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The NCUA Board (Board) proposes to amend the agency's regulation requiring appraisals for certain real estate-related transactions. The proposed rule would increase the threshold level 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 appraisal thresholds, federally insured credit unions (FICUs) would be required to obtain written estimates of market value of the real estate collateral that is consistent with safe and sound banking practices in lieu of an appraisal. For easier reference, the proposed rule would explicitly incorporate the existing statutory requirement that appraisals be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). This proposal is consistent with the final rule, effective on October 9, 2019, issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (other banking agencies) that increases the threshold level at or below which appraisals are not required for residential real estate transactions from \$250,000 to \$400,000.

**DATES:** Comments must be received on or before January 28, 2020.

**ADDRESSES:** You may submit written comments, identified by RIN 3133-AE98, by any of the following methods

(Please send comments by one method only):

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

- *Fax:* (703) 518-6319. Include “[Your Name]—Comments on Proposed Rule: Real Estate Appraisals” in the transmittal.

- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

*Public Inspection:* You may view all public comments on the Federal eRulemaking Portal at <http://www.regulations.gov> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

#### FOR FURTHER INFORMATION CONTACT:

*Technical information:* Kenneth Acuña, Senior Credit Specialist, (703) 518-6613, Office of Examination and Insurance.

*Legal information:* Rachel Ackmann, Senior Staff Attorney, (703) 518-6540, Office of General Counsel.

*Address:* National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The Board proposes to increase the threshold level below which appraisals would not be required for real estate-related financial transactions secured by a single 1-to-4 family residential property (residential real estate transactions) from \$250,000 to \$400,000 (residential threshold). The proposal would continue to require written estimates of market value that are consistent with safe and sound business practices for transactions exempted from the appraisal requirement by the increased threshold. The proposal to raise the residential threshold is based on consideration of available

information on residential real estate transactions, supervisory experience, and comments received from the public in connection with the July 2019 NCUA rulemaking on real estate appraisals (July 2019 real estate appraisal rule) in which the Board specifically asked about increasing the threshold for residential real estate transactions.<sup>1</sup> Generally, credit union-related commenters to the July 2019 real estate appraisal rule supported increasing the residential real estate threshold. The Board believes that the proposed increase to the residential threshold would reduce burden in a manner that is consistent with federal public policy interests in real estate-related financial transactions and the safety and soundness of FICUs.

The Board has long recognized that the valuation information provided by appraisals and written estimates of market value assists FICUs in making informed lending decisions and mitigating risk. The Board also recognizes the role that appraisers play in helping to ensure a safe and sound real estate lending process. However, the Board is aware the cost and time of obtaining an appraisal can result in delays and higher expenses for both FICUs and borrowers. The Board also acknowledges 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 loan amount. However, written estimates of market value have provided these benefits for FICUs and borrowers for transactions below the current \$250,000 threshold.

Under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI),<sup>2</sup> the NCUA must receive Consumer Financial Protection Bureau (CFPB) concurrence that the proposed residential threshold level provides reasonable protection for consumers who purchase “1–4 unit single-family residences.”<sup>3</sup> Accordingly, the NCUA is consulting with the CFPB regarding the proposed residential threshold increase and will continue this consultation in developing a final rule. The Board notes that on August 5, 2019, the CFPB concurred

<sup>1</sup> 83 FR 49857 (Oct. 3, 2018) and 84 FR 35525 (July 24, 2019).

<sup>2</sup> 12 U.S.C. 3331 *et seq.*

<sup>3</sup> 12 U.S.C. 3341(b).

that the other banking agencies' residential appraisal final rule's threshold of \$400,000 provides reasonable protection for consumers who purchase "1–4 unit single-family residences."<sup>4</sup>

## II. Legal Authority

Title XI directs each federal financial institutions regulatory agency<sup>5</sup> to require regulated institutions to obtain appraisals meeting minimum standards for certain real estate-related transactions. The purpose of Title XI is to protect federal financial and public policy interests<sup>6</sup> in real estate-related transactions<sup>7</sup> by requiring that real estate appraisals used in connection with federally related transactions (Title XI appraisals) be performed in accordance with uniform standards, by individuals whose competency has been demonstrated, and whose professional conduct will be subject to effective supervision.<sup>8</sup>

Title XI directs the NCUA to prescribe appropriate standards for Title XI appraisals under the NCUA's jurisdiction, including, at a minimum that Title XI appraisals 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.<sup>9</sup> All federally related transactions must have a Title XI appraisal.

<sup>4</sup> Concurrence applied to the threshold, and the CFPB took no position with respect to any other aspect of the other banking agencies' residential appraisal final rule. See, [https://files.consumerfinance.gov/f/documents/cfpb\\_firrea-concurrence\\_2019\\_08.pdf](https://files.consumerfinance.gov/f/documents/cfpb_firrea-concurrence_2019_08.pdf).

<sup>5</sup> "Federal financial institutions regulatory agencies" mean the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC); the Office of the Comptroller of the Currency, Treasury (OCC); the NCUA, and, formerly, the Office of Thrift Supervision. 12 U.S.C. 3350(6).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> 12 U.S.C. 3331.

<sup>9</sup> 12 U.S.C. 3339. The NCUA's Title XI appraisal regulations apply to transactions entered into by the NCUA or by FICUs. 12 CFR 722.1(b).

Title XI defines a "federally related transaction" as a real estate-related financial transaction that is regulated or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser.<sup>10</sup> The NCUA has authority to determine those real estate-related financial transactions that do not require the services of a state-certified or state-licensed appraiser and are therefore exempt from the appraisal requirements of Title XI. Such exempt real estate-related financial transactions are not federally related transactions under the statutory or regulatory definitions because they are not required to have Title XI appraisals.<sup>11</sup>

The NCUA has exercised this authority by exempting several categories of real estate-related financial transactions from the Title XI appraisal requirements, including transactions at or below certain designated dollar thresholds.<sup>12</sup> The NCUA has determined that these categories of transactions do not require appraisals by state-certified or state-licensed appraisers in order to protect federal financial and public policy interests or to satisfy principles of safety and soundness.

Title XI expressly authorizes the NCUA to establish dollar threshold levels at or below which Title XI appraisals are not required if: (1) The NCUA determines, in writing, that the threshold does not represent a threat to the safety and soundness of financial institutions; and (2) the NCUA receives concurrence from the CFPB that such threshold level provides reasonable protection for consumers who purchase "1–4 unit single-family residences."<sup>13</sup> As noted above, transactions below the threshold level are exempt from the Title XI appraisal requirements and thus are not federally related transactions.

## III. Background

### A. The Other Banking Agencies' Residential Real Estate Appraisal Rulemaking

The other banking agencies issued a final rule on October 8, 2019, to amend their appraisal regulations 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 (other banking agencies' residential appraisal final rule).<sup>14</sup> The other

<sup>10</sup> 12 U.S.C. 3350(4) (defining "federally related transaction").

<sup>11</sup> See 59 FR 29482 (June 7, 1994).

<sup>12</sup> See 12 CFR 722.3(a).

<sup>13</sup> 12 U.S.C. 3341(b).

<sup>14</sup> 84 FR 53579 (Oct. 8, 2019).

banking agencies' residential appraisal final rule, consistent with the requirement for other transactions that fall below applicable thresholds, requires regulated institutions to obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices instead of an appraisal. The other banking agencies' residential appraisal final rule, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),<sup>15</sup> amends the other banking agencies' appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with USPAP.

### B. Purpose of the Proposed Rule

The Board is 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 FICUs. To consider the probable effect on burden reduction, the NCUA assessed the potential impact of the proposed threshold increase on regulated transactions.<sup>16</sup> The NCUA estimates that setting the appraisal threshold at \$400,000 would continue to exempt the majority of residential real estate transactions from the NCUA's residential real estate appraisal requirement. The increase in the number of loans that would no longer require appraisals, as compared to the current \$250,000 threshold, would provide meaningful burden reduction for FICUs. The impact of the threshold change is discussed in more detail in section "IV. Proposed Rule."

Some commenters to the July 2019 real estate appraisal rule (commenters) noted that obtaining an appraisal for a real estate transaction adds to the cost of the transaction, which is often passed on to the borrower. In addition, the need for an appraisal can delay the closing of a transaction when an appraiser cannot complete the appraisal timely. Thus,

<sup>15</sup> Dodd-Frank Act, § 1473(e), Public Law 111–203, 124 Stat. 1376, 2191. 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-dbf4-41b3-9878-fac35923d2af](http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbf4-41b3-9878-fac35923d2af).

<sup>16</sup> Regulated transactions are residential mortgage originations by NCUA-insured institutions that were not sold to the government-sponsored enterprises or otherwise insured or guaranteed by a U.S. government agency.

reducing regulatory burden by increasing the appraisal threshold for residential real estate transactions may provide both transaction cost and time savings for FICUs and borrowers.

#### Cost and Time Estimates

As discussed above, and as noted in the preamble to the other banking agencies' residential appraisal final rule, written estimates of market value generally cost less than Title XI appraisals for the same properties. The United States Department of Veterans Affairs' appraisal fee schedule<sup>17</sup> 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. Information available on the cost of written estimates of market value and appraisals suggests that there could be cost savings for FICUs and borrowers where a written estimate of market value, as opposed to an appraisal, is obtained.

The Board also considered the amount of time it takes for lenders to receive a completed appraisal. The time it takes to complete a written estimate of market value may often be shorter than the time it takes to receive a Title XI appraisal, particularly in rural areas. As described in the *Interagency Appraisal and Evaluations Guidelines (Guidelines)*, FICUs should review the property valuation prior to entering into a transaction.<sup>18</sup>

Congress recently amended Title XI by adding an exemption to the Title XI appraisal requirement for certain mortgage loans under \$400,000 secured by property in rural areas. However, the exemption is only available where FICUs can document that they are unable to obtain an appraisal at a reasonable cost and within a reasonable timeframe, among other requirements.<sup>19</sup> This proposed rule is broader in scope and would eliminate the requirement for an appraisal for all residential real estate transactions below \$400,000. The proposed threshold would include all such transactions in rural areas without requiring FICUs to meet the other criteria of the rural residential appraisal exemption.<sup>20</sup> The Board estimates the proposed rule would provide burden relief in rural areas at a proportional rate to the burden reduction overall.

<sup>17</sup> See VA Appraisal Fee Schedules and Timeliness Requirements, available at [https://www.benefits.va.gov/HOMELANS/appraiser\\_fee\\_schedule.asp](https://www.benefits.va.gov/HOMELANS/appraiser_fee_schedule.asp).

<sup>18</sup> Interagency Appraisal and Evaluations Guidelines at 75 FR 77458, 77461 (Dec. 10, 2010).

<sup>19</sup> Public Law 115–174.

<sup>20</sup> Accordingly, the proposed rule would remove the reference to this statutory exemption.

As discussed in the *Safety and Soundness Considerations for Increasing the Residential Threshold* section below, the Board estimates that under the proposed rule, the percentage of transactions exempted from the appraisal requirement would be restored to the level it was following the last threshold increase in 2001. For all of the above reasons, the proposed rule is expected to lead to cost savings, as well as reduce the time to close residential real estate loans.

#### C. Consumer Protection Considerations for Increasing the Residential Threshold

Comments to the July 2019 real estate appraisal rule stated that appraisals provide some measure of consumer protection, and that increasing the appraisal threshold for residential real estate transactions could raise consumer protection issues. Appraisals can play a role in providing protection to borrowers who purchase 1-to-4 family residential property.<sup>21</sup> Indeed, the Dodd-Frank Act's amendment to Title XI added the CFPB to the group of agencies assigned a role in the appraisal threshold-setting process.<sup>22</sup> As stated previously, the CFPB concurred that the other banking agencies' residential appraisal final rule's threshold of \$400,000 provides reasonable protection for consumers who purchase "1–4 unit single-family residences."<sup>23</sup>

The NCUA has long required written estimates of market value in lieu of appraisals for many transactions, including certain transactions exempted by an appraisal threshold. A written estimate of market value must be consistent with safe and sound business practices and should contain sufficient information and analysis to support the decision to engage in the transaction, although it may be less structured than an appraisal.<sup>24</sup>

The adequacy of written estimates of market value as a substitute for appraisals has previously been raised by

<sup>21</sup> The Board notes that information on property sales transactions and tax assessment values is now often widely available online.

<sup>22</sup> 12 U.S.C. 3341(b). The Dodd-Frank Act also required the CFPB 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, 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).

<sup>23</sup> Concurrence applies to the threshold, and the CFPB took no position with respect to any other aspect of the other banking agencies' residential appraisal final rule.

<sup>24</sup> *Guidelines*, 75 FR at 77461.

commenters. One concern previously expressed during the July 2019 real estate appraisal rulemaking about the adequacy of written estimates of market value is that the individuals performing them are not required to have professional credentials for valuing real estate. On this point, the Board notes that one of the benefits of written estimates over appraisals that institutions have cited is that they can more readily be performed in-house. The Board notes, however, that under the NCUA's regulations, individuals preparing written estimates of market value must be qualified, competent, and independent of the transaction and the loan production function of the institution. The Board recently formalized specific independence expectations by codifying them in the regulation. The amended regulation requires that a written estimate of market value be performed by an individual who is independent of the loan production and collection processes, has no direct, indirect, or prospective interest, financial or otherwise, in the property or the transaction, and is qualified and experienced to perform such estimates of value for the type and amount of credit being considered. The Board believes that written estimates of market value prepared accordingly provide an important level of consumer protection for transactions below the proposed appraisal threshold.

Additionally, the interim final rule on valuation independence (IFR on Valuation Independence) 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 borrower's principal dwelling.<sup>25</sup> FICUs using written evaluations for transactions covered by the IFR on Valuation Independence must meet standards for independence that carry civil liability, regardless of transaction size.

Another consideration about the adequacy of written estimates of market value as a substitute for appraisals is that written estimates of market value are not required to be in a standard form, and specific content is not mandated. Therefore, it is possible that some written estimates of market value

<sup>25</sup> The Federal Reserve Board issued the IFR on Valuation Independence in 2010 that amended Regulation Z (effective April 2011), establishing independence rules for consumer purpose residential mortgage loans secured by a consumer's primary dwelling. See 75 FR 66554 (Oct. 28, 2010) and 75 FR 80675 (Dec. 23, 2010) (implementing Dodd-Frank Act amendments to TILA at 15 U.S.C. 1639e); Federal Reserve Board: 12 CFR 226.42; and CFPB: 12 CFR 1026.42.

will be more difficult for borrowers to understand, or that written estimates lack information about the property typically included in an appraisal that could be useful to a borrower. However, the NCUA has not noted any such issues with written estimates of market value being conducted for transactions below the current \$250,000 threshold.

Another consideration when weighing consumer protection issues is the availability to borrowers of alternative valuation information, such as written estimates of market value. The Dodd-Frank Act amended the Equal Credit Opportunity Act<sup>26</sup> (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 written estimates of market value.<sup>27</sup> Therefore, when a FICU conducts or obtains a written estimate of market value, it must be provided to the borrower.<sup>28</sup>

The Board also notes that borrowers currently have significantly more access to property valuation information than when the appraisal threshold was last increased in 2001. For example, property records are often available to the public through the internet. These records may include not only a particular property's tax assessed value, but also the property's historical sales activity and information on other recent property sales in the area.<sup>29</sup> These widely available data sources may reduce consumer reliance on appraisals. Borrowers also may obtain an appraisal before engaging in the transaction. In addition, appraisals would still be required, regardless of transaction amount, for certain higher-priced mortgage loans (HPMLs), pursuant to the HPML Appraisal Rule.<sup>30</sup>

Finally, commenters have also raised concerns about the accountability of individuals performing written estimates of market value and borrowers' more limited options for recourse. For example, the Dodd-Frank Act required establishment of a national hotline for complaints against state-certified and state-licensed appraisers relating to non-compliance with appraisal independence and USPAP, including complaints from appraisers, individuals, borrowers, or other entities.<sup>31</sup> State appraisal regulatory agencies have authority to discipline appraisers that violate USPAP. These consumer protection benefits are not applicable for complaints against individuals who prepare written estimates of market value. However, borrowers may have some recourse against individuals performing written estimates of market value. Borrowers may make a complaint to the CFPB consumer complaint database and, as discussed above, FICUs using written evaluations for transactions covered by the IFR on Valuation Independence may be subject to civil liability.

*The Board is requesting comment specifically on the following questions related to the consumer protection aspect of appraisals.*

*Question 1: How often do FICUs use their own internal staff to prepare written estimates of market value?*

*Question 2: What valuation information, if any, would borrowers lose in practice if more written estimates of market value are performed rather than appraisals? Please provide data or other evidence to support any comments.*

*Question 3: To what extent do appraisals and written estimates of market value provide benefits or protections for borrowers that are purchasing 1-to-4 family residential property? What are the nature and magnitude of the differences, if any, in consumer protection? Please provide data or other evidence to support any comments.*

*Question 4: To what extent is useful and accurate property valuation information readily available to borrowers through public sources?*

*Question 5: How well have consumers understood written estimates of market value, and are there any concerns the Board should take into account? For example, would a model format for*

written estimates of market value be helpful to borrowers?

*Question 6: Are there any other consumer protection concerns raised by the proposal that the Board should consider?*

#### IV. Proposed Rule

Under the current appraisal rule, generally residential real estate transactions with a transaction value less than \$250,000 do not require Title XI appraisals, but require written estimates of market value.<sup>32</sup> The current thresholds were established in 2001 (2001 residential appraisal final rule) and effective in 2002.<sup>33</sup> The Board proposes to increase the appraisal threshold from \$250,000 to \$400,000 for residential real estate transactions. Residential real estate transactions below the applicable threshold would still require a written estimate of market value that is consistent with safe and sound banking practices.<sup>34</sup>

##### A. Setting the Appropriate Threshold for Residential Real Estate Transactions

In determining the level of the proposed increase, the Board considered the comments received to the July 2019 real estate appraisal rule, as well as a variety of home price and inflation indices. In particular, the NCUA analyzed residential home prices based on the Standard & Poor's Case-Shiller Home Price Index (Case-Shiller Index)<sup>35</sup> and the FHFA Index,<sup>36</sup> as well as the Consumer Price Index (CPI).<sup>37</sup>

These home price indices reflect that prices for residential real estate have increased since 2002, when the 2001 residential appraisal final rule increase became effective. Table 1 below shows that the threshold level in 2002 of \$250,000 would result in a price of approximately \$450,000 as of June 2019, when adjusted by the Case-Shiller Index

<sup>26</sup> 15 U.S.C. 1691 *et seq.*

<sup>27</sup> See 15 U.S.C. 1691(e), implemented by the CFPB 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, Federal Reserve Board, FDIC, NCUA, Federal Housing Finance Agency (FHFA), and CFPB. See, OCC: 12 CFR 34.203(f); Federal Reserve Board: 12 CFR 226.43(f); CFPB: 12 CFR 1026.35(c)(6); NCUA: 12 CFR 722.3(a); FHFA: 12 CFR 1222, subpart A (HPML Appraisal Rule). The FDIC adopted the HPML Appraisal Rule as published in the CFPB's regulation. See 78 FR 78520, 10370, 10415 (Dec. 26, 2013).

<sup>28</sup> 12 CFR 1002.14.

<sup>29</sup> 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.

<sup>30</sup> 15 U.S.C. 1639h, implemented by the CFPB at 12 CFR 1026.35. Transactions covered by the HPML Appraisal Rule are limited due to significant

exemptions from the requirements, including an exemption for qualified mortgages.

<sup>31</sup> 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, Public Law 111–203, 124 Stat. 1376, 2185.

<sup>32</sup> 12 CFR 722.3. See also, 66 FR 58656, 58662 (Nov. 23, 2001). The other banking agencies promulgated a similar rule in 1994. See 59 FR 29482 (June 7, 1994). Note that transactions with insurance or guarantees from a U.S. government agency or sponsored agency may have slightly different treatment.

<sup>33</sup> 66 FR 58656 (Nov. 23, 2001). The rule was effective March 1, 2002.

<sup>34</sup> 12 CFR 722.3(d).

<sup>35</sup> The Case-Shiller Index tracks the value of single-family housing within the United States. See Standard & Poor's CoreLogic Case-Shiller Home Price Indices, available at <https://us.spindices.com/index-family/real-estate/sp-corelogic-case-shiller>.

<sup>36</sup> The FHFA Index tracks changes in residential property prices. See FHFA House Price Index, available at <https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index.aspx>.

<sup>37</sup> 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/>.

and the FHFA Index. Using the more general CPI, which tracks price changes for general consumer goods and

services, would result in a value of approximately \$360,000, which would be \$425,000 based on when the other

banking agencies changed their threshold to \$250,000 in 1994.

TABLE 1—APPRECIATION IN RESIDENTIAL REAL ESTATE PRICES SINCE 2002<sup>38</sup>

Year	NCUA proposed threshold	Case-Shiller	FHFA	CPI
<b>NCUA since the Last Threshold Increase</b>				
2002 .....	250,000	250,000	250,000	250,000
2Q 2019 .....	400,000	455,864	452,218	361,338
Compound annual growth rate (CAGR) .....	2.5%	3.2%	3.2%	2.0%
Year	OBA threshold	Case-Shiller	FHFA	CPI
<b>Other Banking Agencies since the Last Threshold Increase</b>				
1994 .....	250,000	250,000	250,000	250,000
2Q 2019 .....	400,000	660,689	631,576	426,518
Compound annual growth rate (CAGR) .....	1.8%	3.7%	3.5%	2.0%

Several commenters to the other banking agencies' residential appraisal final rule encouraged the other banking agencies to commit to adjusting the threshold periodically, or automatically adjusting the threshold, to reflect changes in housing values, market conditions, or inflation.<sup>39</sup> The other banking agencies concluded that automatic adjustments to the threshold or agency commitments to set timetables for future threshold increases would not be appropriate. The NCUA also believes that automatic adjustments to the threshold are not appropriate. The NCUA is required by Title XI to weigh safety and soundness implications regarding any proposed threshold increase and obtain CFPB concurrence on whether the threshold provides reasonable protection for borrowers of "1–4 unit single-family residences." In addition, the NCUA already periodically reviews (at least every three years) its regulations to identify outdated or unnecessary regulatory requirements and can consider any comments concerning the thresholds through that process.

#### *B. Safety and Soundness Considerations for Increasing the Residential Threshold*

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 NCUA must determine in writing that such a threshold level does not pose a

threat to the safety and soundness of FICUs.<sup>40</sup> The Board evaluated a number of factors in considering the effect of the proposed residential threshold on the safety and soundness of FICUs. The Board determined that the proposed threshold of \$400,000 for residential real estate transactions is not expected to pose a threat to the safety and soundness of FICUs for the reasons discussed below.

First, the proposed threshold level of \$400,000 would exempt a similar number of transactions and dollar volume of transactions as did the current threshold of \$250,000 when it was set in 2001. The increase in the appraisal threshold in the 2001 residential appraisal final rule did not result in a material increase in risk to safety and soundness.<sup>41</sup>

The NCUA conducted analyses using 2018 data reported under the Home Mortgage Disclosure Act (HMDA), which requires a variety of financial institutions to maintain, report, and publicly disclose loan-level information about residential mortgage originations. Information reported under HMDA includes various data points relevant to the NCUA's analysis, 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, the Board believes it provides a representative sample of the universe of

mortgage originations, including transactions subject to the NCUA's appraisal requirement.

As described in further detail below, the NCUA used 2018 HMDA data to estimate the effect of the proposed residential threshold increase. The NCUA used HMDA data to determine the number of transactions and dollar volume of transactions that would be affected relative to: (1) Total FICU originations reported in the HMDA data; and (2) transactions originated by NCUA-insured institutions that were not sold to a government-sponsored enterprise (GSE) or otherwise insured or guaranteed by a U.S. government agency (regulated transactions). The NCUA compared these figures with similar figures using data from 2001, which was the data set used to evaluate the 2001 residential appraisal final rule when the \$250,000 residential appraisal threshold was adopted.

As outlined in Table 2 below, the NCUA estimates that approximately 77 percent of FICU residential real estate transactions for a total of 55 percent of the dollar amount of the transactions, are currently not subject to the NCUA's residential appraisal requirement. This is estimated to increase to 94 percent of transactions and 83 percent of the dollar amount with the proposed increased threshold. For context, in 2001, an estimated 95 percent of residential transactions and 80 percent of the dollar amount of residential transactions were exempt when the current \$250,000 threshold was set.

<sup>38</sup> For this Table, the analysis uses a starting date of January 1 of the year a threshold is increased and goes until June 30, 2019. The other banking agencies conducted a similar analysis, however, used dates June 30, 1994 to June 30, 2019.

<sup>39</sup> 84 FR 53579, 53583 (Oct. 8, 2019).

<sup>40</sup> 12 U.S.C. 3341(b).

<sup>41</sup> None of the 27 material loss reviews of FICU failures conducted by the NCUA's Inspector General since the mid-2000s found a lack of appraisals as the cause of a FICU's failure.

TABLE 2—2018 HMDA DATA MORTGAGE ANALYSIS

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	Appraisal still required over \$400,000	Total
Number of transactions .....	215,155	45,860	261,015	16,989	278,004
% of total .....	77%	16%	94%	6%	100%
Dollar volume (\$ billions) .....	27.0	14.2	41.2	8.3	49.5
% of total .....	55%	29%	83%	17%	100%

As seen below in Table 3, the proposed residential threshold also would result in a level of residential

transaction coverage consistent with the coverage estimated for the 2001

threshold increase, which did not result in a risk to safety and soundness.

TABLE 3—2001 HMDA DATA MORTGAGE ANALYSIS

Regulated transactions by transaction amount	Exempted by current threshold of \$100,000	Newly exempted by proposed increase to \$250,000	Total exempted by proposed increase to \$250,000	Appraisal still required over \$250,000	Total
Number of transactions .....	299,674	143,185	442,859	22,575	465,434
% of total .....	64%	31%	95%	5%	100%
Dollar volume (\$ billions) .....	12.2	18.3	30.6	7.6	38.2
% of total .....	32%	48%	80%	20%	100%

The Board also estimates that the proposed rule would increase the share of exempt transactions from 83 percent to 95 percent for transactions that are secured by residential property located in a rural area. The Board also estimates that the proposed rule would exempt 83 percent of the dollar volume of transactions that are secured by residential property located in a rural area.

Second, the new threshold would not introduce significant additional risk to the credit union system. Based on 2018 data, the NCUA estimates the proposed new threshold would only incrementally exempt real estate-secured loans granted each year. FICUs originated approximately \$78 billion in residential transactions in 2018. Of that amount, approximately \$18 billion of transactions were sold to Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) and \$11 billion of transactions were insured or sold as part of other government guarantee programs.<sup>42</sup> Therefore, approximately \$50 billion in originated residential real estate transactions were subject to the NCUA's appraisal rule. Approximately \$27 billion of the originated residential real estate transactions were exempted from appraisal requirements because the

transaction values were under the current \$250,000 threshold. In addition, \$8 billion of originated residential real estate transactions had transaction values of \$400,000 or greater, and therefore would continue to be subject to appraisal requirements under the proposed rule. Therefore, the proposed rule would only exempt an additional \$14 billion of residential real estate transactions from appraisal requirements, or 46,000 transactions. The incremental impact of the proposed increased threshold, \$14 billion, equates to approximately 0.9 percent of FICU assets as of the June 30, 2019 Statement of Financial Condition (referred to as the Call Report). Relative to credit union system assets, the incremental level of residential transactions exempt from appraisals would not pose undue risk.

Third, the NCUA examined data reported on the (Call Report) and determined that FICUs' residential real estate-secured loans have performed well with relatively low delinquencies and net charge-off rates.<sup>43</sup> To evaluate the impact of residential real estate transactions on the safety and soundness of the credit union system, the NCUA compared the net charge-off rates from 1994 to 2018, which includes two recessionary periods. The net charge-off rate for residential real estate transactions did not increase after the NCUA's increase in the appraisal threshold from \$50,000 to \$100,000 in

1995, or when the NCUA threshold was increased to \$250,000 in 2001. These prior threshold increases did not have a negative impact on loan performance.

The net charge-off rate for residential real estate loans from 2001 through 2007 ranged from three to nine basis points. For context, FDIC-insured institutions experienced residential real estate net charge-offs rates of seven to 25 basis points during the same period. From 2008 through 2011, during and immediately after the last recession, FICU net charge-off rates for residential real estate loans ranged from 11 to 68 basis points. FDIC-insured institutions experienced net charge-off rates for residential real estate loans ranging from 104 to 231 basis points during the same period. The data reflects that the loss experience associated with residential real estate loans in FICUs has been relatively modest. Thus, an increase in the appraisal threshold is not expected to pose a safety and soundness risk to FICUs or the National Credit Union Share Insurance Fund.

Further, based on supervisory experience and analysis of material loss reviews conducted by the NCUA's Inspector General, appraisals have not been a substantial factor in any material FICU failures. Of the 27 material loss reviews, 14 were residential real estate related, but none of the failures resulted from a lack of appraisals. This available data on failures during the recent recession suggests that an increase in the threshold is not expected to pose a safety and soundness risk to FICUs or

<sup>42</sup> Other government guarantee programs consists of Federal Housing Administration insured (FHA), Veterans Affairs guaranteed (VA), and USDA Rural Housing Service or Farm Service Agency guaranteed (RHS or FSA).

<sup>43</sup> Net charge-offs are charge-offs minus recoveries. Net charge-offs represent losses to financial institutions.

the National Credit Union Share Insurance Fund.

Finally, the NCUA considered the requirement for transactions below applicable thresholds to obtain written estimates of market value and how this requirement contributes to safety and soundness. The NCUA's appraisal regulations require FICUs to obtain written estimates of market value for all real estate-related financial transactions that do not require a Title XI appraisal, unless the real estate-related financial transaction is explicitly exempt from written estimate of market value requirements.<sup>44</sup> A written estimate of market value prepared by qualified, competent, and independent individuals who use appropriate supporting information provides FICUs an alternative estimate of market value and should provide sufficient information to enable FICUs to make a prudent decision regarding the transaction.

Through the *Guidelines*, the NCUA has provided guidance to FICUs on its expectations regarding when and how written estimates of market value should be used.<sup>45</sup> The *Guidelines* provide guidance on obtaining appropriate written estimates of market value that are consistent with safe and sound banking practices. Written estimates of market value must 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. The *Guidelines* state that a written estimate of market value should provide an estimate of the property's market value and have sufficient information and analysis to support the credit decision. The *Guidelines* also describe the content that an evaluation should contain.

In addition, the NCUA strengthened independence requirements for individuals performing written estimates of market value. Specifically, the Board recently incorporated into the NCUA's appraisal rule the existing *Guidelines* expectation that the individual performing a written estimate of market value be independent of the loan production and collection processes. The Board believes that the enhanced independence requirement is an important prudential safeguard.

Furthermore, as is the current practice, FICUs and borrowers may obtain appraisals to establish collateral value even if a transaction is exempt from the appraisal requirement. For example, this may be done for

transactions below the appraisal threshold levels. The *Guidelines* advise FICUs to develop policies and procedures for identifying instances when this would be prudent.<sup>46</sup> The *Guidelines* recommend that a FICU should obtain an appraisal instead of a written estimate of market value for higher-risk real estate-related financial transactions. The *Guidelines* list factors such as those involving loans with high loan-to-value ratios and properties outside the FICU's traditional lending market. The NCUA also retains the ability to require an appraisal whenever "necessary to address safety-and-soundness concerns."<sup>47</sup>

The Board also notes that FICUs have used written estimates of market values for transactions below the applicable appraisal thresholds successfully since the issuance of the first rule implementing Title XI.<sup>48</sup> The Board believes written estimates of market value are a proven safe and sound alternative for transactions below the applicable thresholds. The Board will continue to evaluate a FICU's use of written estimates of market value as part of its examination and supervision program.

#### C. Appraisal Review

Section 1473(e) of the Dodd-Frank Act amended Title XI to include a requirement that appraisals be subject to appropriate review for compliance with USPAP.<sup>49</sup> The proposed rule would make a conforming amendment to the NCUA's appraisal regulation to explicitly incorporate the existing statutory requirement for easier reference. The Board proposes to mirror the statutory language for this standard. As outlined in the *Guidelines*, which provide guidance on the review process, the NCUA has long recognized that appraisal review is consistent with safe and sound lending practices.<sup>50</sup> The NCUA already sets minimum appraisal standards that require appraisals to conform to USPAP's generally accepted appraisal standards. In addition, the NCUA recommends that FICUs have effective quality controls over the appraisal process through a periodic review of work completed by appraisers, and for individuals selected to hold appropriate state certification or licenses. A FICU should ensure that selected appraisers have the right qualifications for a given transaction

and property in order for the appraisers to be able to make appropriate adjustments to market value for factors such as prospective improvements, lease terms, and market conditions.

#### D. Consistency With Other Banking Agencies

On October 9, 2019, the other banking agencies' residential appraisal final rule to amend their appraisal regulations became effective. Their final rule increased the threshold level at or below which appraisals would not be required for residential real estate transactions from \$250,000 to \$400,000. The rule, consistent with the requirement for other transactions that fall below applicable thresholds, also requires regulated institutions to obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices in lieu of an appraisal.

The NCUA and the other banking agencies had the same threshold for residential transactions from 2002 up to 2019. Commenters to the July 2019 real estate appraisal rule expressed concern that any differences between the residential threshold for banks and FICUs may create a competitive disadvantage for FICUs and their 117 million members.

*The Board is requesting comment specifically on the following questions related to the analysis for the proposed rule and written estimates of market value.*

*Question 7:* Is \$400,000 an appropriate level for the residential appraisal threshold?

*Question 8:* Are there other sources of data that would be useful to analyze this issue?

*Question 9:* Will the proposed rule lead to cost savings for FICUs and/or borrowers, as well as reduce the time to close residential real estate loans?

*Question 10:* Will FICUs expand their use of written estimates of market value if the proposal to raise the residential threshold is finalized, or continue to use appraisals for the residential real estate transactions below \$400,000 that are eligible for this exemption? For what types of eligible residential real estate transactions are FICUs likely to obtain written estimates of market value? Please provide data or other evidence to support any comments.

*Question 11:* What, if any, concerns are raised by incorporating the requirement to review appraisals consistent with the referenced statutory language?

<sup>46</sup> *Guidelines* at 77460.

<sup>47</sup> 12 CFR 722.3(e).

<sup>48</sup> 55 FR 30199 (Jul. 25, 1990).

<sup>49</sup> Dodd-Frank Act, section 1473, Public Law 111-203, 124 Stat. 1376.

<sup>50</sup> See *Guidelines*, at 77453.

<sup>44</sup> See 12 CFR 722.3(d).

<sup>45</sup> *Guidelines* at 77460.

V. Request for Comments

In addition to the above questions outlined, the Board invites comment on all aspects of the proposed rulemaking.

VI. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. 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 (defined for purposes of the RFA to include FICUs with assets less than \$100 million) and publishes its certification and a short, explanatory statement in the Federal Register together with the rule.

Data currently available to the NCUA is not sufficient to estimate how many small FICUs make residential real estate loans in amounts that fall between the current and proposed thresholds. Therefore, the NCUA cannot estimate how many small entities may be affected by the increased threshold and how significant the reduction in burden may be for such small entities. The NCUA believes, however, that the proposed threshold increase will meaningfully reduce burden for small FICUs. Accordingly, the NCUA certifies that the proposed rule will not have a significant economic impact on a substantial number of small FICUs.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden (44 U.S.C. 3507(d)). For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

The proposed rule increases the threshold from \$250,000 to \$400,000 for residential real estate transactions for which an appraisal is required. Transaction values of less than \$400,000 do not require an appraisal, but a written estimate of market value. The information collection requirement of this part is that the FICU retain a record

of either the appraisal or estimate, whichever applies. Even though the threshold has increased, the proposal will not result in a change in burden. This recordkeeping requirement is cleared under OMB control number 3133-0125. There is no new information collection requirements associated with this proposed rule.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.

List of Subjects in 12 CFR Part 722

Appraisal, Appraiser, Credit unions, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

By the National Credit Union Administration Board on November 21, 2019.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board proposes to amend 12 CFR part 722 as follows:

PART 722—APPRAISALS

■ 1. The authority citation for part 722 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, and 3331 et seq. Section 722.3(a) is also issued under 15 U.S.C. 1639h.

- 2. Amend § 722.3 by:
■ a. Revising paragraphs (b)(2), (c)(1); and
■ b. Removing paragraph (f).

The revision reads as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) The transaction is complex, involves a residential real estate transaction, and \$400,000 or more of the transaction value is not insured or guaranteed by a United States government agency or United States government sponsored agency.

(c) \* \* \*

(1) An appraisal performed by a state-certified appraiser or a state-licensed appraiser is required for any real estate-related financial transaction not exempt under paragraph (a) of this section in which the transaction is not complex, involves a residential real estate transaction, and \$400,000 or more of the transaction value is not insured or guaranteed by a United States government agency or United States government sponsored agency.

\* \* \* \* \*

- 3. Amend § 722.4 by:
■ a. Republishing the introductory text;
■ b. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively;
■ c. Adding a new paragraph (c); and
■ d. Revising in newly designated paragraph (e) the text “§ 722.2(f)” and adding in its place the text “§ 722.2”.

The addition reads as follows.

§ 722.4 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.

\* \* \* \* \*

[FR Doc. 2019-25768 Filed 11-27-19; 8:45 am]

BILLING CODE 7535-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2019-0786; Airspace Docket No. 18-AWP-1]

RIN 2120-AA66

Proposed Amendment of Class E Airspace and Establishment of Class E Airspace Extension; Battle Mountain, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E surface area, Class E airspace extending upward from 700