

Client Alert

October 2019

Federal Banking Regulators Raise Residential Real Estate Appraisal Exemption from \$250,000 to \$400,000

On Friday, September 27, 2019, the Board of Governors of the Federal Reserve System (**the Federal Reserve**), the Federal Deposit Insurance Corporation (**the FDIC**) and the Office of the Comptroller of the Currency (**the OCC** and, together with the Federal Reserve and the FDIC, **the Agencies**) announced the adoption of a final rule amending regulations promulgated by the Agencies requiring appraisals of real estate for certain transactions.¹ The Agencies consulted with, and received concurrence from, the Consumer Financial Protection Bureau regarding the increased threshold.

Previously, appraisals were not required to be obtained for residential real estate transactions of \$250,000 or less. Today's final rule increases this threshold to residential real estate transactions of \$400,000 or less. This appraisal threshold was last changed in 1994. The Agencies determined that "[g]iven price appreciation in residential real estate transactions since that time, the change will provide burden relief without posing a threat to the safety and soundness of financial institutions."

The change in the threshold is scheduled to take effect the day after the rule is published in the Federal Register.

What is a "residential real estate transaction?"

The Agencies define a residential real estate transaction as a real estate-related financial transaction that is secured by a single 1- to 4-family residential property.

What is an "appraisal" and when must appraisals be performed on residential real estate transactions?

Appraisals are defined as written statements independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Under the final rule, an appraisal performed by a state-certified or -licensed appraiser is required for all residential real estate transactions that have a transaction value of in excess of \$400,000, unless another appraisal exemption applies. Residential real estate transactions that have a transaction value of \$400,000 or less are exempt from the appraisal requirement of the Agencies.

How is "transaction value" calculated?

In the context of "residential real estate transactions," the regulations promulgated by the Agencies define "transaction value" as the market value of the real property interest involved.

¹ See e.g., [OCC News Release 2019-109](#).

“Market value” is further defined as the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- (1) Buyer and seller are typically motivated;
- (2) Both parties are well informed or well advised, and acting in what they consider their own best interests;
- (3) A reasonable time is allowed for exposure in the open market;
- (4) Payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and
- (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

What else is required when a residential real estate transaction is exempt from the appraisal requirement?

While appraisals are no longer required for residential real estate transactions with a transaction value of \$400,000 or less, the final rule nevertheless requires that regulated institutions obtain an “appropriate evaluation” of real property collateral. While “appropriate evaluation” is not defined by the Agencies, such “appropriate evaluation” must be consistent with safe and sound banking practices.

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