www.nebankers.org

NBA Nebraska Bankers Association

Update
COMPLIANCE

April 17, 2020 Vol. XXXVII, No. 29

TEMPORARY DEFERRAL OF APPRAISALS/EVALUATIONS FOR REAL ESTATE TRANSACTIONS

I. INTRODUCTION

The federal banking agencies have issued an interim final rule allowing financial institutions to temporarily defer appraisals and evaluations for residential or commercial real estate transactions for up to 120 days during the COVID–19 national emergency. The temporary relief granted under the interim final rule will expire on December 31, 2020, takes effect upon publication in the Federal Register, but does not apply to real estate acquisition, development and construction loan transactions. The agencies are excluding transactions for acquisition, development, and construction of real estate because these loans present heightened risks not associated with financing existing real estate.

The interim final rule defers the requirement to obtain an appraisal or evaluation for up to 120 days following the closing of the transaction for certain residential and commercial real estate transactions, excluding transactions for acquisition, development, and construction of real estate. Regulated institutions should make best efforts to obtain a credible valuation of real property collateral for the loan closing, and otherwise underwrite loans consistent with the principles and the agencies' Standards for Safety and Soundness and Real Estate Lending Standards.

The deferrals are not an exercise of the agencies' waiver authority, because appraisals and evaluations are being deferred, not waived. The deferrals are also not a waiver of USPAP requirements, given that (1) USPAP does not address the completion of an appraisal assignment with the timing of a lending decision; and (2) the deferred appraisal must be conducted in compliance with USPAP.

Under the interim final rule, regulated institutions may close a real estate loan without a contemporaneous appraisal or evaluation, subject to a requirement that institutions obtain the appraisal or evaluation, as would have been required under the appraisal regulations without the deferral, within a grace period of 120 days after closing of the transaction. While appraisals and evaluations can be deferred, the agencies expect institutions to use best efforts and available information to develop a well-informed estimate of the collateral value of the subject property. For purposes of risk-weighting of residential mortgage exposures, an institution's prudent underwriting estimation of the collateral value of the subject property will be considered to meet the agencies' appraisal and evaluation requirements during the deferral period.

In addition, the agencies continue to expect regulated institutions to adhere to internal underwriting standards for assessing borrowers' creditworthiness and repayment capacity, and to develop procedures for estimating the collateral's value for the purposes of extending or refinancing credit.

The agencies also expect institutions to develop an appropriate risk mitigation strategy if the appraisal or evaluation ultimately reveals a market value significantly lower than the expected market value. An institution's risk mitigation strategy should consider safety and soundness risk to the institution, balanced with mitigation of financial harm to COVID-19-affected borrowers. The temporary provision permitting regulated institutions to defer an appraisal or evaluation for eligible transactions will expire on December 31, 2020 (a transaction closed on or before December 31, 2020 is eligible for a deferral), unless extended by the agencies. The agencies believe that the limited timeframe for the deferral will in some respects help to manage potential risk by balancing the need for immediate relief due to the National Emergency with safety and soundness concerns for risk to lenders.

II. EXISTING FLEXIBILITIES IN APPRAISAL STANDARDS

The federal banking agencies separately issued an interagency statement on appraisals and evaluations for real estate related financial transactions affected by the coronavirus. The statement outlines existing flexibilities in industry appraisal standards and in the appraisal regulations issued by the agencies, as follows:

A. Existing Exceptions in Appraisal Regulations

The appraisal regulations issued by the OCC, FRB, and FDIC provide at least 14 exceptions to the requirement for an appraisal by a certified or licensed appraiser. Exceptions that lenders may find the most useful during the COVID-19 emergency for real estate related financial transactions include:

- the transaction is a residential real estate transaction with a transaction value of $400,000 or less;
- the transaction is a commercial real estate transaction with a transaction value of $500,000 or less;
- the transaction is a business loan that has a transaction value of $1 million or less where the loan does not depend 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 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;
- the transaction is wholly or partially insured or guaranteed by a US government agency or US government sponsored agency;
- the transaction either:

o qualifies for sale to a U.S. government agency or government sponsored agency; or

o involves a residential real estate transaction where the appraisal conforms to the Fannie Mae or Freddie Mac appraisal standards.

The agencies encourage financial institutions to make use of these exceptions. The use of an existing appraisal or evaluation for subsequent transactions may be particularly relevant during the COVID-19 emergency. A financial institution can use an existing evaluation or appraisal instead of obtaining a new appraisal for a subsequent transaction in certain circumstances if the institution can confirm that the evaluation or appraisal remains valid.

The passage of time is a criterion that institutions can consider when determining whether an appraisal remains valid. If the institution determines that the appraisal still reflects market value, the institution may rely on the appraisal based on an acceptable level of risk as evidenced by a loan's LTV ratio and other underwriting criteria.

The agencies understand that it may be appropriate for institutions to have different criteria for assessing the validity of an appraisal or evaluation for purposes of subsequent transactions during major disasters or other emergencies. The institution's determination of the validity of existing appraisals and evaluations used for subsequent transactions conducted during the COVID-19 emergency will not be subject to examiner criticism if it is consistent with safe and sound practices.