Housing Finance & Regulatory Affairs
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September 29, 2017

Legislative and Regulatory Activities Division
Office of Comptroller of the Currency
400 7th Street, SW
Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219

12 CFR Part 34
[Docket No. OCC-2017-0011]
RIN 1557-AE18

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551

12 CFR Part 225
[Docket No. R-1568; RIN 7100 AE-81]

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

12 CFR Part 323
RIN 3064 AE-56

Proposed Rule: Real Estate Appraisals

Dear Sir or Madam:

NAHB is pleased to submit comments on the proposed rule to amend regulations requiring appraisals of real estate for certain transactions, released by the Office of Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (collectively, "the agencies").

NAHB is a Washington DC-based trade association representing more than 140,000 members involved in the development and construction of for-sale single family homes, including homes for first-time and low- and moderate-income homebuyers, as well as the construction, ownership and management of multifamily rental housing, including affordable rental housing.

NAHB and its members have a strong interest in supporting a housing finance system that offers home builders and home buyers access to affordable mortgage financing in all geographic areas, in all economic conditions.

The process to evaluate the collateral supporting real estate transactions is an important component of the overall housing finance system.

NAHB supports efforts that provide streamlined processes and reduce regulatory burdens. NAHB estimates that, on average, regulations imposed by all levels of government account for 24.3 percent of the sales price of a new single family home.

Background on Appraisal Requirements

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI) directs each federal financial institutions regulatory agency to publish appraisal regulations for federally related transactions (FRTs) within its jurisdiction.

A federally related transaction (FRT) is defined 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. 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.

Title XI requires that real estate appraisals used in connection with FRTs (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. At a minimum, Title XI appraisals must be: (1) performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP); (2) written appraisals, as defined by the statute; and (3) subject to appropriate review for compliance with USPAP.

The agencies have authority to determine those real estate-related financial transactions that do not require the services of a certified or licensed appraiser and are therefore exempt from the appraisal requirements of Title XI. In 1992, Congress amended Title XI, expressly authorizing the agencies to establish a threshold level at or below which an appraisal by a state certified or licensed appraiser is not required in connection with FRTs if the agencies determine in writing that the threshold does not represent a threat to the safety and soundness of financial institutions. The agencies finalized the threshold in 1994 at the current level of $250,000 for all real estate-related financial transactions. The real estate-related financial transactions at or below this threshold require an evaluation of the real property collateral that is consistent with safe and sound banking practices. An evaluation should contain sufficient information and analysis to support the financial institution’s decision to engage in the transaction. However, evaluations need not be performed in accordance with USPAP or by certified or licensed appraisers.

Overview of the Proposed Rule

The agencies have issued a proposed rule that would increase the threshold for requiring an appraisal on commercial real estate loans from the current level of $250,000 to $400,000. Consistent with current regulations, an evaluation of the real property collateral would be required for commercial real estate transactions with a value at or below the proposed threshold.

The agencies are proposing to define commercial real estate transactions as loans secured by real estate that are: (1) for construction, land development, and other land loans; (2) secured by farmland; (3) secured by residential properties with five or more units; or (4) secured by nonfarm nonresidential properties. The proposed definition would include loans to builders and consumers for the construction of single family homes (1-4 dwelling units), however, loans that provide both initial construction funding and permanent financing would be excluded from the definition.

The agencies are not proposing to change the current $250,000 appraisal threshold for 1-to-4 family residential mortgage loans.

NAHB Comments

Commercial Real Estate Loans

NAHB appreciates the agencies' efforts to identify areas where regulatory burden can be reduced without negatively impacting safety and soundness and encourages the regulators to continue this work. NAHB believes that increasing the appraisal threshold for commercial loans from $250,000 to $400,000 is a positive step. Commercial real estate loans of $400,000 and less, particularly construction loans, are typically made to small builders who are more disproportionally impacted by added financing costs.

As the agencies assert in the proposal, raising the threshold to $400,000 for commercial loans may exempt more commercial real estate transactions from the appraisal requirements and would provide relief from regulatory burden without increasing safety and soundness risk. Using the CoStar Comps database set, the agencies project that an additional 11 percent of commercial real estate loans would not require an appraisal with this updated threshold. The agencies analysis of Call Report data estimate that only 3 or 4 percent of commercial loans fall under the current threshold of $250,000 which are much fewer transactions than were exempted when the threshold was set in 1994.

NAHB encourages the agencies to continue to analyze this proposed threshold to determine if it could be increased further to provide more relief. Lenders must still manage their risk by doing an evaluation along with other underwriting considerations, so NAHB believes there is room for greater flexibility.

Furthermore, NAHB encourages the agencies to reconsider not including construction-to-permanent loans in the definition of commercial real estate loans, as proposed. To reduce regulatory burden, construction-to-permanent loans should be treated as construction loans. Treating these loans as such would provide consistency and allow for more efficient processes.

Construction-to-permanent loans are particularly important to NAHB members who often are small business owners. During the crisis in the credit markets, NAHB members found it very difficult to obtain financing for the construction of new homes. As community banks retrenched from lending to home builders for new home construction, it became more common for borrowers who wanted to purchase a newly constructed home to seek construction loans directly from their banks through a construction-to-permanent loan. This product has become an increasingly important financing vehicle to address the availability of homes for sale. According to NAHB's Survey on Acquisition, Development and Construction (AD&C) Financing, in the second quarter of 2017, 32 percent of respondents said they had built homes financed by a construction-to-permanent loan made to the buyer of the home, up from 19 percent in the second quarter of 2009.

Construction loans, including construction-to-permanent loans, require thorough underwriting practices and close coordination between a bank, the home builder and the homebuyer and often carry lower loan-to-value ratios and other strict underwriting requirements. NAHB believes this engagement between the parties helps mitigate the risk, and therefore, NAHB supports including construction-to-permanent loans in the definition of commercial real estate loan and allowing an exemption from the appraisal requirements at the increased threshold.

Residential Mortgages

The agencies are proposing to keep the threshold for residential mortgages at $250,000. NAHB encourages the agencies to continue to review this threshold to see if more flexibility could be provided to lenders with sound underwriting criteria and processes in place.

In fact, Fannie Mae and Freddie Mac have programs that offer lenders the option to waive appraisals on specific, eligible mortgage loans. In recent announcements, both Enterprises expanded their appraisal waiver programs to include purchase transactions in addition to non cash-out refinance transactions. When a lender receives notice that a mortgage submitted to Fannie Mae's Desktop Underwriter or Freddie Mac's Loan Product Advisor is eligible for an appraisal waiver, the lender can choose whether or not to exercise the waiver option.

Streamlining Appraisal Requirements

NAHB members continue to express concerns about appraisals. In response to criticism that lax appraisals contributed to the financial crisis, more restrictive, and in some cases conflicting, appraisal policies have been implemented by lenders, federal banking regulators, the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the United States Department of Agriculture (USDA), and Fannie Mae and Freddie Mac. NAHB supports an environment that promotes safe and sound valuation practices, policy, and procedures to produce more credible valuations under all economic circumstances. NAHB urges the agencies to review the various appraisal requirements of these lending programs and pursue ways to make appraisal requirements more consistent. Providing consistency in the lending process across the various programs would be helpful.

Lender Credit Overlays

NAHB supports the agencies efforts to reduce regulatory burden. However, in the wake of the Great Recession, lenders continue to be cautious and have put in place practices that go beyond the minimum required by the regulators. The agencies' attempt to provide regulatory relief will not be effective if lenders continue to implement overlays. NAHB asks the regulators to encourage lenders to adhere to the agencies' guidelines in order to make efforts such as this one more successful.

Conclusion

NAHB appreciates the agencies' effort to provide relief to regulated financial institutions. NAHB's Survey on AD&C Financing shows that builders and developers continue to rely heavily on commercial banks for housing production credit. Of the respondents who were seeking credit in the second quarter of 2017, 82 percent reported commercial banks were the primary source of loans for speculative single-family construction, 80 percent for land development, 77 percent for land acquisition and 73 percent for pre-sold single-family construction. Thrift institutions were generally the second most important source. Therefore, reducing the regulatory burden on lenders will help facilitate financing to builders.

Thank you for your consideration of NAHB's comments. NAHB looks forward to working with the agencies and all housing market participants to promote a responsible and robust lending environment.

Please contact Jessica Lynch, NAHB's Assistant Vice President of Housing Finance & Regulatory Affairs (email: jlynch@nahb.org or phone: 202-266-8401) if you have any questions about this letter.

Sincerely,

[redacted]

David L. Ledford