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Special Release

Agencies Release Interim Final Rule on Deferral of Appraisals/Evaluations

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On April 14, 2020 the OCC, FRB and FDIC issued an interim final rule effective April 17, 2020 until December 31, 2020 (comments due June 1, 2020) which will amend the agencies' regulations requiring appraisals of real estate for certain transactions.

Under the interim final rule, temporary deferrals of appraisals and evaluations are permissible in response to the COVID-19 national emergency for up to 120 days following the closing of a transaction for certain residential and commercial real estate transactions, excluding transactions for acquisition, development and construction of real estate.

Banks are still expected to conduct their lending consistent with their underwriting principles and the agencies' Standards for Safety and Soundness and Real Estate Lending Standards, including the ability of a borrower to repay a loan and other relevant laws and regulations.

These deferrals are not waivers. Appraisals and evaluations are being deferred, not waived. Also, the deferrals are not a waiver of USPAP requirements. Any deferred appraisal must be conducted in compliance with USPAP and safe and sound banking practices as required by the agencies' appraisal regulations.

We mentioned above that deferrals are available for residential and commercial real estate except for loans for acquisition, development and construction of real estate. The preamble to the interim final rule states the exclusion is because these loans present heightened risks not associated with financing existing real estate. We did confirm with the FDIC the reference to acquisition was meant to refer to vacant land and not to a purchase of an existing dwelling. So, the appraisal for the purchase of an existing dwelling can be deferred.

So, while banks may close a real estate loan without an appraisal or evaluation, subject to a requirement that banks 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, banks are expected to use their best efforts and available information to develop a well-informed estimate of the collateral value of the subject property. The agencies continue to expect banks to:

- adhere to internal underwriting standards for assessing borrowers' creditworthiness and repayment capacity,
- develop procedures for estimating the collateral's value for the purposes of extending or refinancing credit, and
- develop an appropriate risk mitigation strategy if the appraisal or evaluation ultimately reveals a market value significantly lower than the expected market value.



An Interagency Guidance issued on the same day states that nothing in ECOA or Regulation B addresses the type of post-consummation valuation contemplated in this interim final appraisal rule. Regulation B requires banks to provide applicants for first-lien loans on a dwelling with copies of appraisals, as well as other written valuations, developed in connection with an application prior to the consummation of the transaction. At this point, there isn't any change to Regulation B, but the Guidance states the agencies will not take enforcement actions against banks under the ECOA Valuations Rule for post-consummation valuations performed pursuant to the interim final rule. The agencies encourage banks to provide borrowers with copies of such post-consummation valuations as promptly as practicable upon completion.

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