

## **Federally Related Transactions**

**(current as of July 17, 2018)**

Each of the Federal financial institutions regulatory agencies have adopted regulations which include thirteen categories of real estate related financial transactions that do not require the services of an appraiser<sup>1</sup>. A real estate related financial transaction is not a “federally related transaction” if it does not require the services of an appraiser. Financial institutions are required to obtain evaluations for 4 out of the 13 categories of transactions that do not require USPAP compliant appraisals. A significant percentage of the transactions engaged in by financial institutions do not require appraisals and are not federally related transactions. In addition, Public Law 115-174 was enacted in 2018 that allows financial institutions to proceed with some rural residential loans without an appraisal if the institution is unable to place the assignment with at least three local appraisers under customary and reasonable assignment conditions<sup>2</sup>.

### **Explanation**

Federal banking law (12 U.S.C.A. § 3350) defines a “federally related transaction” as:

*“Any real estate-related financial transaction which: (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; **and** (B) requires the services of an appraiser.”*

The same section defines a “Real estate related financial transaction” as:

*“Any transaction involving: (A) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (B) the refinancing of real property or interests in real property; and (C) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.”*

Lastly, the term “Federal financial institutions regulatory agencies” means:

*“The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.”*

In determining whether a transaction is a “federally related transaction”, three things must be determined:

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<sup>1</sup> The NCUA has appraisal requirements (12 C.F.R. § 722.3) that are slightly different.

<sup>2</sup> Public Law 115-174 generally requires financial institutions to offer local market appraisers on the institution’s approved appraiser list customary and reasonable fees and standard timeliness conditions before proceeding without an appraisal.

- 1) Is it a “real estate related financial transaction”;
- 2) Is it engaged in, contracted for, or regulated by one of the five “federal financial institutions regulatory agency”; ***and***
- 3) Does the transaction “require the services of an appraiser?”

### **The Appraisal Exemptions**

Title 12, Section 3341 of the federal banking law states that:

*(b) “Each Federal financial institutions regulatory agency and the Resolution Trust Corporation may establish a threshold level at or below which a certified or licensed appraiser is not required to perform appraisals in connection with federally related transactions, if such agency determines in writing that such threshold level does not represent a threat to the safety and soundness of financial institutions, and receives concurrence from the Bureau of Consumer Financial Protection that such threshold level provides reasonable protection for consumers who purchase 1-4 unit single-family residences.”*

Pursuant to this statutory authority, each of the agencies has adopted regulations that outline the transactions for which a “certified or licensed appraiser is not required to perform appraisals”. The federal financial institutions regulatory agencies have interpreted “threshold level” to include not only a monetary threshold but also categories of transactions which are exempt from the appraisal requirements. Some, but not all, transactions that don’t require the services of an appraiser require an evaluation. A real estate related financial transaction that does not require an appraisal is not a federally related transaction.

The thirteen categories of “real estate related financial transactions that don’t require an appraisal performed by a State certified or licensed appraiser are<sup>3,4</sup>:

- (1) The transaction value is \$250,000 or less;**
- (2) A lien on real estate has been taken as collateral in an abundance of caution;
- (3) The transaction is not secured by real estate;
- (4) A lien on real estate has been taken for purposes other than the real estate's value;
- (5) The transaction is a business loan that:**
  - (a) Has a transaction value of \$1 million or less; and**

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<sup>3</sup> 12 C.F.R. § 34.43, 12 C.F.R. § 225.63, 12 C.F.R. § 323.3 – Current as of 7/17/2018.

<sup>4</sup> These regulations are applicable only to transactions regulated by the OCC, FDIC, and FRB.

**(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;**

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

**(7) The transaction involves an existing extension of credit at the lending institution, provided that:**

**(i) 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**

**(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;**

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged- backed securities, and each loan or interest in a loan, pooled loan, or real property interest met OCC regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The federal bank regulatory agency determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate- related financial transactions or to protect the safety and soundness of the institution.

**(13) The transaction is a commercial real estate transaction that has a transaction value of \$500,000 or less.**

Transactions that fall within categories (1), (5), (7) and (13) require an evaluation instead of an appraisal. However, because these transactions do not require the services of an appraiser, they are not federally related transactions.

In 2018, Section 103 of Public Law 115-174 (enacted by Congress as S. 2155) became law allowing financial institutions to proceed with some rural residential loans without an appraisal if that institution is unable to place the assignment with local appraisers. The exemption does not apply to high-cost mortgages, and the federal financial institutions regulatory agencies can require an institution to obtain an appraisal to address safety and soundness concerns. It is expected that the federal financial institutions regulatory agencies will issue rules clarifying whether a transaction that qualifies for this exemption requires an evaluation or can be originated without a formal value of the real property collateral.

Estimates are that as much as 90% of all real estate related financial transactions engaged in by federally regulated institutions are not federally related transactions.