

More Commercial Real Estate Transactions Exempted from Appraisal Requirements

April 30, 2018 | Christopher J. Capurso

Since 1994, certain real estate transactions have been exempt from federally imposed appraisal requirements. As of April 9, 2018, that group of exempt transactions now includes more commercial real estate transactions.

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("Title XI") defines a "federally related transaction" as a real estate-related financial transaction^[1] that is regulated by a federal financial institutions regulatory agency and requires the service of an appraisal. In 1992, Congress amended Title XI to allow agencies to establish a threshold at or under which an appraisal is not necessary. The current thresholds, established jointly by the Office of the Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation (collectively, the "agencies") in 1994, exempt the following from the appraisal requirement under Title XI:

- all real estate-related transactions with a transaction value of \$250,000 or less; and
- certain real-estate secured business loans (qualifying business loans or "QBLs") of \$1 million or less.

However, this doesn't necessarily leave these transactions in the free and clear. For any real-estate related transactions under the applicable thresholds, regulated institutions must obtain an evaluation of the real estate property collateral that is consistent with safe and sound banking practices. Even though an evaluation and an appraisal sound similar, the terms mean two very different things. Unlike an evaluation, a Title XI appraisal must be performed by a state-certified or state-licensed appraiser and must conform to the Uniform Standard of Professional Appraisal Practice. As a result, an appraisal can run a regulated institution more than double the cost of an evaluation, and that cost is passed on to the borrower.

In July of 2017, the agencies requested comments on a proposed rule that would alter the thresholds. Specifically, the agencies proposed to:

- establish a \$400,000 "commercial real estate" appraisal threshold; and
- define "commercial real estate" as all real estate-related financial transactions,

except for those secured by a 1-4 family residential property, *but* including loans that finance the construction of 1-4 family properties and do not include permanent financing.

After reviewing over 200 comments from various interested parties, the agencies decided to alter the initial proposal and publish a final rule (the "Rule") that includes the following revisions:

- the agencies increased the commercial real estate appraisal threshold to \$500,000, rather than the \$400,000 figure that was originally proposed; and
- the final definition of "commercial real estate" was revised to mean a real estate-related financial transaction that is not secured by a 1-to-4 family residential property (thus, unlike the proposal, a construction-only loan secured by such property is not "commercial real estate").

The Rule became effective upon its publication in the *Federal Register* on April 9, 2018. The immediate effective date is the result of the Rule creating an exception as opposed to a substantive rule that requires additional compliance efforts.

At most, the Rule will only affect those who take part in "commercial real estate" transactions. Essentially, the Rule allows "commercial real estate" transactions to avoid Title XI appraisal requirements if the transaction is \$500,000 or less. If the transaction is more than \$500,000, regulated institutions must still obtain an appraisal. For all other real estate-related transactions and QBLs, it remains business as usual.

The published regulation in the *Federal Register* can be found [here](#).

[1] 12 U.S.C. 3350(4). 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. 12 U.S.C. 3350(5).

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