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National Association of Federally-Insured Credit Unions

January 27, 2019

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Residential Real Estate Appraisals (RIN 3133-AE91)

Dear Mr. Poliquin:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the National Credit Union Administration's (NCUA) notice of proposed rulemaking on residential real estate appraisals. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 120 million consumers with personal and small business financial service products. NAFCU appreciates the NCUA's efforts to reduce regulatory burdens for credit unions through this proposal by minimizing transaction costs, improving access to credit by reducing closing times, and accurately reflecting risk in the residential real estate market while preserving safety and soundness. NAFCU recommends that the NCUA continue to set an appraisal threshold that provides parity with banks, offer additional commentary on what constitutes a complex transaction to provide credit unions with greater clarity, and establish a de minimis threshold for transactions that are partially insured or guaranteed.

General Comments

NAFCU generally supports the proposed amendments to the NCUA's appraisal rules, which are required under Title XI of the *Financial Institutions Reform, Recovery, and Enforcement Act of 1989* (Title XI). NAFCU is supportive of the proposed increased threshold of \$400,000 to reduce regulatory burdens on credit unions and keep up with inflation and changing real estate market realities. NAFCU has historically supported and advocated for an increase to the threshold.

Credit unions provide their communities with vital lending products including mortgages for one-to-four family residential properties. This proposal provides meaningful regulatory relief for credit unions by addressing appraiser capacity issues, especially those observed in smaller markets, which has contributed to unnecessary delays and increased costs for borrowers. According to NAFCU's *2019 Federal Reserve Meeting Survey*, respondents reported that mortgage regulation compliance costs are likely to increase 24 percent over the next three years. This proposal would positively impact the credit union industry by reducing costs, as well as the time needed to close a mortgage transaction. Due to these savings, the overall member experience would be positively impacted.

In addition, this proposal is a positive development that aligns credit unions' collective risk profile with evolving regulatory expectations for appraisals. As the NCUA correctly acknowledged in the proposal, the historically sound valuation practices of the credit union industry warrant an increased appraisal threshold. The NCUA acknowledged that appraisal practices have not raised safety and soundness concerns at its current threshold level. Additionally, the NCUA acknowledged that supervisory analysis supports the proposed threshold and past valuations have not caused material losses. Residential real estate delinquencies and charge-offs continue to be manageable and lower than banks. This proposal would provide credit unions with operational flexibility, as they will continue to utilize appraisals when risks warrant such a review of the real property.

Additionally, the proposal affords greater regulatory relief for mortgages made in rural areas. Section 103 of the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (EGRRCPA) waives the appraisal requirement for federally-related mortgages under \$400,000 in rural areas where the lender has contacted three state-licensed or state-certified appraisers who could not complete an appraisal in a "reasonable amount of time." This section of the EGRRCPA provided significant regulatory relief for lenders located in and providing loans in rural areas. This proposal provides further regulatory relief by effectively removing the appraisal requirements for all mortgages in rural areas.

The NCUA Should Ensure Parity with Appraisal Thresholds Set by Banks

NAFCU recommends that the NCUA continue to monitor the appraisal threshold level to ensure it is appropriate given inflation and to provide parity between credit unions and banks. As noted in the proposal, banks and credit unions have historically adhered to a similar threshold for residential real estate appraisals. Parity ensures credit unions can remain competitive in the lending marketplace. As you are aware, credit unions face numerous competitors in today's lending marketplace. According to NAFCU's *2019 Federal Reserve Meeting Survey*, respondents reported an increasing competitive pressure from all sectors, including large banks, community banks, and fintech firms. Notably, over 34 percent of respondents reported facing competitive pressures from fintech firms, an 11 percent increase from 2018. Competitive pressures from fintech firms will likely continue to rise in the coming years, bolstering the need for appraisal threshold parity.

The Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System ("other federal banking regulators"), issued a Final Rule in October 2019, increasing the residential real estate appraisal threshold to \$400,000. The Bureau of Consumer Financial Protection (CFPB or Bureau) concurred with the proposal prior to finalization. As the other federal banking regulators finalized this rule a few months ago, it is important that the NCUA finalize this proposal expeditiously in order to restore parity and reduce any competitive disadvantage for credit unions.

The NCUA Should Review the Definition of Complex to Provide Clarity

NAFCU reiterates its call for clarification of the definition of complex. Clarification would better reflect the rule's existing contents, present the information more clearly, and provide regulatory relief for credit unions. Currently, the definition of complex means a "transaction in which the property to be appraised, the form of ownership, or market conditions are atypical. A credit union may presume that appraisals of one-to-four family residential properties are not complex unless the institution has readily available information that a given appraisal will be complex."¹ Understandably, a degree of flexibility is necessary as residential real estate varies greatly in terms of ownership structure, and property characteristics.

Credit unions may presume that one-to-four family residential properties are non-complex, therefore they have the option of utilizing a state-licensed or state-certified appraiser for transactions over the threshold. If the transaction is complex, and over the threshold, then only a state-certified appraiser can be used. However, in determining whether a transaction is complex the credit union must look at all "readily available information" to determine typicality. This phrase is vague in terms of what information constitutes and the timing of "readily available." There are implications stemming from this vagueness as only a state-certified appraiser may be used in a complex transaction. These different types of appraisers come with different price structures, as the level of training and experience differs. To err on the side of caution, a credit union may be utilizing a state-certified appraiser more often than necessary if there is no readily available information regarding complexity, thus incurring greater compliance costs.

Additionally, the vague definition creates uncertainty in situations where readily available information about complexity is procured later. The current regulations are unclear regarding situations where a credit union that does not have readily available information about complexity, completes a written estimate of market value in good faith, but subsequently obtains information about complexity. It is unclear whether a retroactive appraisal would need to be completed.

Given that the proposal may provide more opportunities for written estimates of market value, it is important to provide guidance for situations where a transaction may subsequently be found to meet the definition of "complex," and what steps a credit union must follow in order to be compliant. Thus, NAFCU suggests that the NCUA provide more commentary on what attributes would constitute a complex transaction under the rule to provide greater clarity from the outset. A clearer definition of complex would provide regulatory relief and may alleviate errors in situations where an appraisal should have been obtained from a state-certified appraiser.

The NCUA Should Establish a De Minimis Threshold for Partially Insured or Guaranteed Transactions

NAFCU continues to support a de minimis threshold for partially insured or guaranteed transactions by a U.S. government agency or the government-sponsored enterprises (GSEs),

¹ See 12 C.F.R. 722.2.

Fannie Mae and Freddie Mac, from the NCUA's written estimate of valuation requirements. Currently, those fully insured or guaranteed transactions are exempt from written estimate requirements, but those partially insured or guaranteed transactions may be subject to both the NCUA's and GSEs valuation requirements. A de minimis threshold would still subject credit unions to any government agency or GSE valuation requirements but would exempt them from having to complete a written estimate for the uninsured or non-guaranteed portion so long as the amount is under a certain threshold that does not pose a risk to the credit union. For lower-value transactions, the cost of preparing a written estimate may be unnecessary given the credit union's experience and familiarity with the locality involved. Credit unions exercise sound judgment when assessing the risk of underlying collateral and should be afforded more latitude to exercise that judgment with respect to partially insured or guaranteed loans.

Additionally, the GSEs have expertise in the housing market and knowledge of the requirements necessary to sell loans on the secondary market. The GSEs have their separate valuation requirements, which selling credit unions must meet for those partially insured or guaranteed portions. The NCUA should allow those credit unions that sell their loans to the GSEs to meet the applicable requirements without imposing an additional written estimate requirement upon them. Accordingly, the NCUA should establish a de minimis threshold to encourage flexibility and reduce borrower costs.

The Proposal Safeguards Consumer Protections

Credit unions ensure that members are afforded adequate consumer protections when entering into a loan. It is important to note that this proposal affects lender-ordered appraisals. The benefit of lender-ordered appraisals is to protect the lender against the risk of default. Written estimates can adequately serve this function and credit unions have every incentive to exercise sound judgment when determining whether an appraisal is needed to assess the value of real estate collateral. Given credit unions track record, they are not in the business of providing inflated loans that do not serve the member or the credit union.

Numerous consumer protections remain in the NCUA's regulations, including the continued ability to evaluate written estimates of market value as part of its examination and supervision program. This includes ensuring that written estimates are consistent with safe and sound business practices and contain sufficient information and analysis to support the decision to engage in the transaction. This oversight ensures that credit unions' mortgage lending activities will continue to be evaluated closely to ensure that consumers are protected.

To ensure even higher levels of consumer protection, the NCUA should update its examination manual to provide more clarity regarding appraisal requirements. The NCUA's examination manual currently provides little insight on expectations for written estimates of market value. NAFCU recommends updating Chapter 10 of the examination manual upon finalization of this proposed rule to provide notice of examination expectations. Although written estimates are not currently in a standard format, consumers are protected by the more recent changes to the credentials for valuing real estate.

The NCUA's regulations require the individual preparing the written estimate of market value to be qualified, competent, and independent of the transaction and the loan production function of the institution. These requirements safeguard consumers, therefore increasing the threshold does not devalue important consumer protections. High-risk real estate-related financial transactions are still subject to appraisals. Additionally, the NCUA's regulations allow the agency the ability to require an appraisal whenever "necessary to address safety and soundness concerns." Lastly, consumers and credit unions still can request completion of an appraisal. This proposal provides credit unions with flexibility that is commensurate with their respective loan profiles, while maintaining important consumer protections.

Conclusion

NAFCU appreciates the opportunity to share its members' views on this matter. This proposal will provide meaningful regulatory relief for credit unions in terms of cost and time saved. NAFCU recommends the NCUA continue to ensure parity with the other banking regulators, provide additional commentary on what constitutes a complex transaction to provide credit unions with greater clarity, and establish a de minimis threshold for transactions that are partially insured or guaranteed. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcu.org.

Sincerely,



Kaley Schafer
Regulatory Affairs Counsel