DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AI45

[Docket ID FSA–2019–0008]

Agriculture Risk Coverage and Price Loss Coverage Programs; Correction

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule; correction and correcting amendment.

SUMMARY: The Commodity Credit Corporation (CCC) is correcting a final rule that was published in the **Federal Register** on September 3, 2019, which revised the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) Programs. That document inadvertently failed to include the relevant counties in Nebraska that have been established as having a history of double-cropping covered commodities or peanuts with fruits, vegetables, or wild rice and incorrectly listed the previous Regulation Identifier Number (RIN).

DATES: *Effective:* October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Mary Ann Ball; telephone: (202) 720–4283, email address: *maryann.ball@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice only).

SUPPLEMENTARY INFORMATION:

Correction to Preamble

In the published final rule beginning on page 45877, in the 3rd column, in the **Federal Register** of Monday, September 3, 2019 (84 FR 45877–45895), correct the ''RIN'' heading to read: RIN 0560–AI45.

Correcting Amendment to Regulations

In addition, the final rule inadvertently omitted the list of counties for Nebraska in 7 CFR 1412.46(f). The listing of counties in § 1412.46(f) specifies which counties have been determined to be regions having a history of double-cropping covered commodities or peanuts with fruits, vegetables, or wild rice. The FSA State committees establish the counties as regions within their respective States. During the development of the final rule, the list of counties for Nebraska was intended to be added as: Box Butte, Dawes-North Sioux, Morrill, and Sheridan. Instead, the final rule did not list any counties in Nebraska. This correction adds the list of Nebraska counties.

List of Subjects in 7 CFR Part 1412

Cotton, Feed grains, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

For the reasons discussed above, CCC corrects 7 CFR part 1412 as follows:

PART 1412—AGRICULTURE RISK COVERAGE, PRICE LOSS COVERAGE, AND COTTON TRANSITION ASSISTANCE PROGRAMS

■ 1. The authority citation for part 1412 continues to read as follows:

Authority: 7 U.S.C. 1508b, 7911–7912, 7916, 8702, 8711–8712, 8751–8752, and 15 U.S.C. 714b and 714c.

Subpart D—ARC and PLC Contract Terms and Enrollment Provisions for Covered Commodities

■ 2. In § 1412.46:

■ a. Revise paragraph (f)(28).

■ b. In paragraph (g), remove the cross-reference ''paragraph (h)'' and add the cross-reference ''paragraph (i)'' in its place.

The revision reads as follows:

§ 1412.46 Planting flexibility.

* * * * *

(f) * * *

(28) *Nebraska.* Box Butte, Dawes-North Sioux, Morrill, and Sheridan.

* * * * *

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

Richard Fordyce,

Administrator, Farm Service Agency.

[FR Doc. 2019–21604 Filed 10–7–19; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC–2019–0038]

RIN 1557–AE57

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No. R–1639]

RIN 7100–AF30

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

RIN 3064–AE87

Real Estate Appraisals

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The OCC, Board, and FDIC (collectively, the agencies) are adopting a final rule to amend the agencies' regulations requiring appraisals of real estate for certain transactions. The final rule increases the threshold level at or below which appraisals are not required for residential real estate transactions from $250,000 to $400,000. The final rule defines a residential real estate transaction as a real estate-related financial transaction that is secured by a single 1-to-4 family residential property. For residential real estate transactions exempted from the appraisal requirement as a result of the revised threshold, regulated institutions must obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices. The final rule makes a conforming change to add to the list of exempt transactions those transactions secured by residential property in rural areas that have been exempted from the agencies' appraisal requirement pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act. The final rule requires evaluations for these exempt transactions. The final rule also amends the agencies' appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice.

DATES: This final rule is effective on October 9, 2019, except for the amendments in instructions 4, 5, 9, 10, 14, and 15, which are effective on January 1, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: G. Kevin Lawton, Appraiser (Real Estate Specialist), (202) 649–7152; Mitchell E. Plave, Special Counsel, (202) 649–5490; or Joanne Phillips, Counsel, Chief Counsel's Office (202) 649–5500; Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. For persons who are deaf or hearing impaired, TTY users may contact (202) 649–5597.

Board: Anna Lee Hewko, Associate Director, (202) 530–6260; Virginia Gibbs, Manager, Policy Development Section, (202) 452–2521; Carmen Holly, Lead Financial Institution Policy Analyst, (202) 973–6122, Division of Supervision and Regulation; Laurie Schaffer, Associate General Counsel, (202) 452–2272; Matthew Suntag, Counsel, (202) 452–3694; Derald Seid, Counsel, (202) 452–2246; or Trevor Feigleson, Senior Attorney, (202) 452–3274, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

FDIC: Beverlea S. Gardner, Senior Examination Specialist, Division of Risk Management and Supervision, (202) 898–3640, *BGardner@FDIC.gov;* Benjamin K. Gibbs, Counsel, Legal Division, (202) 898–6726; Mark Mellon, Counsel, Legal Division, (202) 898–3884; or Navid Choudhury, Legal Division, (202) 898–6526, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, TDD users may contact (202) 925–4618.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Background

In December 2018, the agencies invited comment on a notice of proposed rulemaking (proposal or proposed rule) [1] that would amend the agencies' appraisal regulations promulgated pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI).[2] Specifically, the proposal would increase the monetary threshold at or below which financial institutions that are subject to the agencies' appraisal regulations (regulated institutions) would not be required to obtain appraisals in connection with residential real estate transactions (residential real estate appraisal threshold) from $250,000 to $400,000. In addition, the proposal would add to the list of exempt transactions those transactions that are secured by residential property in rural areas that have been exempted from the agencies' appraisal requirement pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) [3] (rural residential appraisal exemption). The proposal would require regulated institutions to obtain evaluations for transactions exempt from the agencies' appraisal requirements due to the increase in the residential real estate appraisal threshold or the rural residential appraisal exemption. Finally, the proposal would amend the agencies' appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), as required under section 1473(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).[4]

Title XI directs each Federal financial institutions regulatory agency [5] to publish appraisal regulations for federally related transactions within its jurisdiction. The purpose of Title XI is to protect federal financial and public policy interests [6] in real estate-related transactions by requiring that real estate appraisals used in connection with federally related transactions (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.[7]

Title XI directs the agencies to prescribe appropriate standards for Title XI appraisals under the agencies' respective jurisdictions.[8] At a minimum, the statute provides that Title XI appraisals must be: (1) performed in accordance with USPAP; (2) written appraisals, as defined by the statute; and (3) subject to appropriate review for compliance with USPAP.[9]

All federally related transactions must have Title XI appraisals. Title XI defines a federally related transaction as a real estate-related financial transaction [10] that the agencies or a financial institution regulated by the agencies engages in or contracts for, that requires the services of an appraiser under Title XI and the interagency appraisal rules.[11] The agencies have authority to determine those real estate-related

[1] 83 FR 63110 (December 7, 2018).

[2] 12 U.S.C. 3331 *et seq.*

[3] Public Law 115–174, 132 Stat. 1296, Title I, section 103, codified at 12 U.S.C. 3356.

[4] Public Law 111–203, 124 Stat. 1376, codified at 12 U.S.C. 3339(3).

[5] The term ''Federal financial institutions regulatory agencies'' means the Board, the FDIC, the OCC, the National Credit Union Administration (NCUA), and, formerly, the Office of Thrift Supervision. 12 U.S.C. 3350(6).

[6] These interests include those stemming from the federal government's roles as regulator and deposit insurer of financial institutions that engage in real estate lending and investment, guarantor or lender on mortgage loans, and as a direct party in real-estate related financial transactions. These federal financial and public policy interests have been described in predecessor legislation and accompanying Congressional reports. *See* Real Estate Appraisal Reform Act of 1988, H.R. Rep. No. 100–1001, pt. 1, at 19 (1988); 133 Cong. Rec. 33047–33048 (1987).

[7] 12 U.S.C. 3331.

[8] 12 U.S.C. 3339.

[9] The third minimum requirement was added to Title XI by section 1473(e) of the Dodd-Frank Act, as noted *supra,* and is being implemented by this rulemaking. *See infra,* Section II.C.

[10] 12 U.S.C. 3350(5). 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.

[11] 12 U.S.C. 3350(4).

financial transactions that do not require Title XI appraisals.[12] The agencies have exercised this authority by exempting several categories of real estate-related financial transactions from the agencies' appraisal requirement, including transactions at or below certain designated thresholds.[13]

Title XI expressly authorizes the agencies to establish thresholds at or below which Title XI appraisals are not required if: (1) The agencies determine in writing that the threshold does not represent a threat to the safety and soundness of financial institutions; and (2) the agencies receive concurrence from the Consumer Financial Protection Bureau (CFPB) that such threshold level provides reasonable protection for consumers who purchase 1-to-4 unit single-family residences.[14] Under the current thresholds, residential real estate transactions [15] with a transaction value [16] of $250,000 or less, certain real estate-secured business loans (qualifying business loans) [17] with a transaction value of $1 million or less, and commercial real estate (CRE) transactions with a transaction value of $500,000 or less do not require Title XI appraisals.[18] The appraisal threshold applicable to residential real estate transactions has not been changed since 1994.[19]

For real estate-related financial transactions at or below the applicable thresholds and for certain existing extensions of credit exempt from the agencies' appraisal requirement,[20] the Title XI appraisal regulations require regulated institutions to obtain an appropriate evaluation of the real property collateral that is consistent with safe and sound banking practices.[21] An evaluation should contain sufficient information and analysis to support the regulated institution's decision to engage in the transaction.[22] The agencies have provided supervisory guidance for conducting evaluations in a safe and sound manner in the *Interagency Appraisal and Evaluation Guidelines* (Guidelines) [23] and the *Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions* (Evaluations Advisory,[24] and together with the Guidelines, Evaluation Guidance).

In 2018, Congress amended Title XI by adding the rural residential appraisal exemption to provide relief for financial institutions engaging in residential real estate transactions in certain rural areas. The exemption provides that residential transactions in certain rural areas do not require Title XI appraisals if the financial institution documents that appraisers are not available for the transaction within reasonable time and cost parameters.[25] The statute does not specifically require that real estate evaluations be performed when financial institutions utilize this exemption.

B. Summary of Proposed Rule

As noted in the proposed rule, residential property values have increased over time, but the appraisal threshold has not been adjusted since 1994. The agencies believe rising market prices of residential properties have contributed to increased burden for regulated institutions and consumers in terms of transaction time and costs, given that the threshold has remained the same since 1994. The proposed rule was intended to reduce regulatory burden consistent with federal financial and public policy interests in residential real estate-related financial transactions. Based on supervisory experience and available data, the agencies published the proposed rule to accomplish these goals without posing a threat to the safety and soundness of financial institutions.

The agencies proposed to increase the threshold level at or below which appraisals are not required for residential real estate transactions from $250,000 to $400,000. Residential real estate transaction would be defined as a real-estate related financial transaction that is secured by a single 1-to-4 family residential property. For residential real estate transactions exempted from the appraisal requirement as a result of the revised threshold, regulated institutions would be required to obtain an evaluation of the real property collateral that is consistent with safe and sound banking practices.

The agencies also proposed to make conforming changes to add the rural residential appraisal exemption to the appraisal regulations. The agencies proposed that evaluations be required

[12] Real estate-related financial transactions that the agencies have exempted from the appraisal requirement are not federally related transactions under the agencies' appraisal regulations.

[13] *See* OCC: 12 CFR 34.43(a); Board: 12 CFR 225.63(a); FDIC: 12 CFR 323.3(a). The agencies have determined that these categories of transactions do not require appraisals by state certified or state licensed appraisers in order to protect federal financial and public policy interests or to satisfy principles of safe and sound banking.

[14] 12 U.S.C. 3341(b).

[15] While the $250,000 threshold explicitly applies to all real estate-related financial transactions with transaction values of $250,000 or less, it effectively only applies to residential real estate transactions because all other real estate-related financial transactions are subject to higher thresholds.

[16] For loans and extensions of credit, the transaction value is the amount of the loan or extension of credit. For sales, leases, purchases, investments in or exchanges of real property, the transaction value is the market value of the real property. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of each loan or the market value of each real property, respectively. *See* OCC: 12 CFR 34.42(m); Board: 12 CFR 225.62(m); FDIC: 12 CFR 323.2(m).

[17] Qualifying business loans are business loans that are real estate-related financial transactions and that are not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment. The Title XI appraisal regulations define "business loan" to mean a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity. *See* OCC: 12 CFR 34.42(d); Board: 12 CFR 225.62(d); FDIC: 12 CFR 323.2(d).

[18] *See* OCC: 12 CFR 34.43(a)(1), (5), and (13); Board: 12 CFR 225.63(a)(1), (5), and (14); and FDIC: 12 CFR 323.3(a)(1), (5), and (13).

[19] *See* 59 FR 29482 (June 7, 1994). The OCC, Board, and FDIC had previously set the appraisal threshold at $100,000. OCC: 57 FR 12190–02 (April 9, 1992); Board: 55 FR 27762 (July 5, 1990); FDIC: 57 FR 9043–02 (March 16, 1992).

[20] Transactions that involve an existing extension of credit at the lending institution are exempt from the agencies' appraisal requirement, but are required to have evaluations, provided that 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 there is no advancement of new monies, other than funds necessary to cover reasonable closing costs. *See* OCC: 12 CFR 34.43(a)(7) and (b); Board: 12 CFR 225.63(a)(7) and (b); FDIC: 12 CFR 323.3(a)(7) and (b).

[21] *See* OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b). An evaluation is not required when real estate-related financial transactions meet the threshold criteria and also qualify for another exemption from the agencies' appraisal requirement where no evaluation is required by the regulation.

[22] Evaluations are not required to be performed in accordance with USPAP or by state certified or state licensed appraisers by federal law. For additional information on evaluations, *see infra* notes 23 and 24.

[23] The agencies proposed the Guidelines for public comment in 2008, *see* 73 FR 69647 (November 19, 2008), and adopted the final Guidelines in 2010, *see* 75 FR 77450 (December 10, 2010).

[24] Interagency Advisory on the Use of Evaluations in Real Estate-Related Financial Transactions (March 4, 2016), OCC Bulletin 2016–8; Board SR Letter 16–5; FDIC FIL–16–2016.

[25] Public Law 115–174, Title I, section 103, codified at 12 U.S.C. 3356. Effective May 24, 2018, section 103 provides that a Title XI appraisal is not required if the real property or interest in real property is located in a rural area, as described in 12 CFR 1026.35(b)(2)(iv)(A), and if the transaction value is $400,000 or less. In addition, the mortgage originator or its agent, directly or indirectly must have contacted not fewer than three state certified or state licensed appraisers, as applicable, on the mortgage originator's approved appraiser list in the market area, in accordance with 12 CFR part 226, not later than three days after the date on which the Closing Disclosure was provided to the consumer and documented that no state certified or state licensed appraiser, as applicable, was available within five business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments.

for these transactions. In addition, the agencies proposed to amend the agencies' appraisal regulations to require regulated institutions to subject appraisals for federally related transactions to appropriate review for compliance with USPAP, pursuant to Title XI, as amended by the Dodd-Frank Act.[26] The agencies also proposed several conforming and technical amendments to their appraisal regulations. The agencies invited comment on all aspects of the proposal.

C. Overview of Comments

The agencies collectively received over 560 comments regarding the proposal to increase the residential real estate appraisal threshold that addressed a variety of issues. Comments from financial institutions, financial institution trade associations, and state banking regulators generally supported the proposed increase. Comments from appraisers, appraiser trade organizations, individuals, and consumer advocate groups generally opposed the proposal to increase the threshold. The agencies also received a few comments that are addressed separately below concerning the proposed requirement to obtain evaluations for transactions that qualify for the rural residential appraisal exemption or to subject certain appraisals to appropriate review for compliance with USPAP.[27]

Commenters supporting the proposed threshold increase asserted that an increase would be appropriate given the increases in real estate values since the current threshold was established as well as the cost and time savings to lenders and borrowers that the higher threshold would provide. Supportive commenters also indicated that a threshold increase would provide burden relief for financial institutions without sacrificing safe and sound banking practices. Many of these commenters saw evaluations as appropriate substitutes for appraisals and institutions as having appropriate risk management controls in place to manage the proposed threshold change responsibly. Some commenters in support of the proposal indicated that the proposed threshold increase would benefit consumers, arguing that costs and delays due to appraisals could be reduced. These commenters asserted that expedited valuations could make the residential mortgage market more efficient and lower closing costs.

Commenters opposing an increase to the residential real estate appraisal threshold asserted that the proposal would elevate risks to borrowers, financial institutions, the financial system, and taxpayers. Several commenters asserted that the increased risk would not be justified by burden relief resulting from a threshold increase. As described in more detail below, many commenters in opposition asserted that the proposal would negatively impact consumers. Many of these comments focused on views that evaluations are inadequate substitutes for appraisals.

Many commenters opposing the proposal highlighted the benefits that state licensed or state certified appraisers bring to the real estate valuation process. Commenters asserted that appraisers serve a necessary function in real estate lending and expressed concerns that bypassing them to create a more streamlined valuation process could lead to fraud and another real estate crisis. Many commenters asserted that appraisers are the only unbiased party in the valuation process, in contrast to buyers, agents, lenders, and sellers, who each have an interest in the underlying transactions. Several commenters rejected assertions that there was an appraiser shortage warranting regulatory relief.

Several commenters questioned the proposal in light of the agencies' previous decision not to propose an increase to the residential real estate appraisal threshold during the regulatory review process required by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).[28] A few commenters also questioned whether the proposed threshold increase is consistent with Congressional intent, given that the rural residential real estate exemption was made available only to transactions meeting certain criteria, while the proposed threshold increase would exempt all residential transactions at or below $400,000.

II. Revisions to the Title XI Appraisal Regulations

After carefully considering the comments and conducting further analysis, the agencies are adopting the final rule as proposed, and are increasing the residential real estate appraisal threshold from $250,000 to $400,000. As discussed in the proposal and further detailed below, increasing the residential real estate appraisal threshold will provide meaningful regulatory relief for financial institutions without threatening the safety and soundness of financial institutions.

The agencies are authorized to increase the threshold based on express statutory authority to do so upon making a determination in writing that the threshold does not represent a threat to the safety and soundness of financial institutions and receiving concurrence from the CFPB that the threshold level provides reasonable protection for consumers who purchase 1-to-4 unit single-family residences.[29]

As detailed below, the agencies have determined that a residential real estate appraisal threshold of $400,000 will not threaten the safety and soundness of financial institutions and have received concurrence from the CFPB that this threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences.

The agencies recognize that they decided against proposing a residential appraisal threshold increase during the EGRPRA process. The agencies have reconsidered this decision based on continued comments received from financial institutions and state bank regulatory agencies that increasing the residential appraisal threshold would provide meaningful burden relief, as well as further analysis regarding safety and soundness and consumer protection factors related to the proposal, as detailed below. The agencies also recognize that Congress recently amended Title XI to provide a narrow, self-effectuating appraisal exemption for rural transactions meeting certain requirements. However, the agencies also observe that Congress did not amend the agencies' long-standing authority in Title XI to establish a threshold level at or below which a certified or licensed appraiser is not required to perform an appraisal in connection with federally related transactions. Through the EGRRCPA amendment, Congress mandated that rural transactions meeting specific statutory criteria be exempted from the appraisal regulations; however, there is no indication that Congress intended to restrict the agencies' authority to provide additional exemptions pursuant to their existing statutory authority.

[26] Public Law 111–203, 124 Stat. 1376.

[27] The agencies received five comments suggesting that the agencies hold public hearings regarding the proposed rule. The agencies denied these requests on grounds that holding a public hearing would not elicit relevant information that could not be conveyed through the notice and comment process.

[28] Public Law 104–208, Div. A, Title II, section 2222, 110 Stat. 3009–414, (1996) (codified at 12 U.S.C. 3311).

[29] The agencies note the rural residential appraisal exemption does not require a safety and soundness determination by the agencies or a concurrence by the CFPB. 12 U.S.C. 3341(b).

The agencies are also finalizing as proposed the requirement to obtain an evaluation for transactions that qualify for the rural residential appraisal exemption and the requirement that appraisals for federally related transactions be subject to appropriate review for compliance with USPAP. The final rule also makes several technical and conforming changes to the appraisal regulations. These changes are discussed in more detail below, in the order in which they appear in the rule. The effective date for the rule will be the first day after its publication in the **Federal Register,** other than the evaluation requirement for transactions exempted by the rural residential appraisal exemption and the appraisal review provision, which will become effective on January 1, 2020.

A. Threshold Increase for Residential Real Estate Transactions

1. *Definition of Residential Real Estate Transaction.* The agencies proposed to define a residential real estate transaction as a real estate-related financial transaction secured by a single 1-to-4 family residential property and specifically asked commenters whether the proposed definition is appropriate. The agencies received one comment generally supporting the proposed definition and one comment generally opposing the definition, neither of which included any detail regarding the reasoning for the position. This definition is consistent with current references to appraisals for residential real estate in the agencies' appraisal regulations and in Title XI, and the definition of commercial real estate transaction that was created in the recent rulemaking to increase the appraisal threshold for commercial real estate (CRE) transactions (CRE rulemaking).[30] Adding this definition does not change any substantive requirement, but provides clarity to the regulation.[31] Therefore, the agencies are adopting the definition of a residential real estate transaction as proposed.

2. *Threshold Level.* The agencies proposed increasing the residential real estate appraisal threshold from $250,000 to $400,000. In determining the level of increase, the agencies considered increases in housing prices and general inflation across the economy since the current threshold was established in 1994. The agencies also considered comments received during the EGRPRA process and in response to questions posed about the residential threshold in the CRE rulemaking.[32] As discussed in the proposal, the agencies analyzed the Standard & Poor's Case-Shiller Home Price Index (Case-Shiller Index)[33] and the FHFA Index[34] to determine changes in house prices since 1994. The agencies also analyzed general measures of inflation by reviewing the Consumer Price Index (CPI).[35]

A residential property that sold for $250,000 as of June 30, 1994, would be expected to sell in March 2019 for $643,750 according to the Case-Shiller Index and $621,448 according to the FHFA Index (see Table 1 below). The agencies also considered housing prices over the most recent financial cycle which were generally at a low point in 2011. During the low point of the cycle, in December 2011, a house that sold for $250,000 in 1994 would have been expected to sell for $445,152 in December 2011, according to the Case-Shiller Index and $414,629 according to the FHFA Index.

TABLE 1—HOUSE PRICE AND INFLATION ADJUSTMENTS OF $250,000 AT JUNE 30, 1994, FOR THE CASE-SHILLER INDEX AND THE FHFA INDEX, AND JULY 1, 1994 FOR THE CPI INDEX

Table 1 year	Case-Shiller	FHFA	CPI
1994	250,000	250,000	250,000
2006	578,813	511,636	341,109
2011	445,152	414,629	379,997
2019	643,750	621,448	429,240

The agencies adopted a conservative approach and proposed a threshold of $400,000 to approximate housing prices based on the low point during the most recent cycle. The proposed threshold level is also consistent with general measures of inflation across the economy reflected in the CPI since 1994. The agencies invited comment on the proposed level for the residential real estate appraisal threshold.

The agencies received a number of comments agreeing that the proposed threshold level would be justified by changes in real estate prices, inflation, and the data presented by the agencies in the proposal. Other commenters supporting a threshold increase supported a higher threshold, such as $500,000. These commenters generally asserted that doing so would be more consistent with the data presented. Some commenters also cited consistency with the CRE appraisal threshold as a justification for increasing the residential real estate threshold to $500,000. One commenter supporting a higher threshold questioned why the agencies did not adjust from the lowest point in the most recent cycle to account for price appreciation up to a more recent date, as was done in the CRE rulemaking. Several commenters supportive of increasing the threshold recommended that the agencies either commit to adjusting the threshold periodically, or automatically adjust the threshold periodically, to reflect changes in housing values, market conditions or inflation.

Some commenters opposing the increase asserted that inflationary changes are inadequate justifications for increasing the appraisal threshold. Some opposing commenters suggested the agencies should either maintain the current $250,000 threshold or lower the threshold, with suggested ranges from $100,000 or under to $275,000. Some commenters suggested eliminating the residential appraisal threshold exemption entirely and requiring appraisals for all residential real estate transactions. A few commenters suggested lower thresholds and that transactions under the current and proposed thresholds often pose risk to financial institutions and to consumers. Some of these commenters asserted that many transactions involving defaults or foreclosures are transactions below $400,000.

Some commenters asserted that the threshold should vary based on market values in specific geographic areas, and that a national threshold level is inappropriate given differences in property values across the country. Some commenters suggested doing so by basing the threshold on the GSE conforming loan limits for specific geographic areas. Several commenters asserted that inflationary measures such as the CPI are inappropriate measures

[30] 83 FR 15019–01 (April 9, 2018) ("commercial real estate transaction" is defined as a "real estate-related financial transaction that is not secured by a single 1-to-4 family residential property").

[31] The agencies believe that federally related transactions secured by single 1-to-4 family residential properties are currently the only real estate transactions subject to the $250,000 appraisal threshold.

[32] 82 FR 35478, 35482 (July 31, 2017); 83 FR at 15029–15030.

[33] The Case-Shiller Index reflects changes in home prices from a base of $250,000 in June 1994, based on the Standard & Poor's Case-Shiller Home Price Index. *See* Standard & Poor's CoreLogic Case-Shiller Home Price Indices, *available at https://us.spindices.com/index-family/real-estate/sp-corelogic-case-shiller.*

[34] The FHFA Index reflects changes in home prices from a base of $250,000 in June 1994, based on the FHFA House Price Index. *See* FHFA House Price Index, *available at https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index.aspx.*

[35] The CPI, which is published by the Bureau of Labor Statistics, is a measure of the average change over time in the prices paid by urban consumers for a market basket of goods and services. *See https://www.bls.gov/cpi/.*

on which to base the threshold because they are not accurate indicators of housing prices. One of these commenters suggested that the threshold be based on wage growth and housing affordability. Two commenters asserted that adjusting the $250,000 threshold based on changes in prices would be inappropriate because that level was not itself the result of an inflation adjustment and was either arbitrary or improper.

After carefully considering the comments received, and for the reasons discussed previously, the agencies have decided to increase the residential real estate appraisal threshold to $400,000, as proposed. Increasing the appraisal threshold for residential real estate transactions to $400,000 approximates more recent house prices and provides an inflation adjustment to a threshold that has not been increased since 1994. The agencies based the beginning point for this analysis on $250,000 because, as discussed below, supervisory experience with the $250,000 threshold indicates that this threshold level did not threaten the safety and soundness of financial institutions.

The agencies acknowledge that the data presented indicates that a house sold in 1994 would sell for higher than $400,000 today; however, the agencies believe the more conservative approach is appropriate. Setting the threshold level to the low point of the most recent cycle takes into consideration potential price fluctuations to which financial institutions that engage in residential real estate lending could be exposed. This approach also considers that a high percentage of residential real estate transactions is already captured by the existing residential real estate threshold, as reflected below in Table 2.

The agencies also concluded that automatic adjustments to the threshold or agency commitments to set timetables for future threshold increases would not be appropriate. The agencies already periodically review their regulations to identify outdated or unnecessary regulatory requirements, such as through the EGRPRA process, and can consider any comments concerning the thresholds through that process. In addition, the agencies are required by Title XI to weigh safety and soundness implications regarding any proposed threshold increase and obtain CFPB concurrence. The other alternative proposals suggested, such as varying the threshold based on local housing prices or wages, would add unnecessary regulatory burden and complexity by introducing numerous threshold levels across the country.

3. *Safety and Soundness Considerations for Raising the Residential Real Estate. Threshold.* Under Title XI, the agencies may set a threshold at or below which a Title XI appraisal is not required if they determine in writing that such a threshold level does not pose a threat to the safety and soundness of financial institutions.[36] In the proposal, the agencies preliminarily determined that the proposed threshold level for residential real estate transactions would not pose a threat to the safety and soundness of financial institutions. The preliminary determination was based on supervisory experience regarding causes of losses at financial institutions, analysis of available Home Mortgage Disclosure Act (HMDA) data, and the fact that evaluations would be required for transactions below the proposed threshold.[37] The agencies invited comment on their preliminary finding that the proposed threshold would not pose a threat to the safety and soundness of financial institutions, as well as the data used to support the finding. After taking into account the comments, discussed below, and analyzing a range of data and information, the agencies have determined that the threshold level of $400,000 for residential real estate transactions does not represent a threat to the safety and soundness of financial institutions.

Agency staff used HMDA data to estimate the number and dollar volume of institutions' residential real estate transactions that would be affected by the increased threshold. Table 2 below shows the number and dollar volume of transactions in 2017 that: (i) Would have been exempted under the current threshold; (ii) would be newly exempted under the proposed threshold increase; (iii) in total would be exempted as a result of the proposed threshold increase; and (iv) would not be exempted following the proposed threshold increase. The data are limited to first-lien, single-family mortgage originations [38] on residential properties by FDIC-insured institutions and affiliated institutions that are not sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency (''regulated transactions'').[39]

TABLE 2—2017 HMDA [40]

Regulated transactions by transaction amount	Exempted by current threshold of $250,000	Newly exempted by proposed increase to $400,000	Total exempted by proposed increase to $400,000	Total not exempted by proposed increase to $400,000
Number of Transactions	750,000	214,000	965,000	379,000
% of Total	56%	16%	72%	28%
Dollar Volume ($billions)	96	68	164	305
% of Total	20%	14%	35%	65%

The 2017 HMDA data suggests that the $250,000 threshold currently exempts approximately 20 percent of the total dollar volume of regulated transactions. Raising the threshold to $400,000 will exempt an additional estimated 14 percent of the dollar volume, thus increasing the share of the dollar volume of regulated transactions that are exempt to approximately 35 percent.

The agencies reviewed HMDA data to measure the percent of regulated transactions exempted in 1994 when the

[36] 12 U.S.C. 3341(b).

[37] 83 FR at 63116–63119.

[38] Single-family properties include 1-to-4 family and manufactured housing property types.

[39] Transactions originated by regulated institutions but sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency are separately exempted from the agencies' appraisal requirement. *See* OCC: 12 CFR 34.43(a)(9); Board: 12 CFR 225.63(a)(9); FDIC: 12 CFR 323.3(a)(9). As described in the proposal, the 214,000 additional exempted transactions represent only three percent of total HMDA originations in 2017 and, as also reflected in Table 2, 16 percent of regulated transactions.

[40] Numbers and dollar volumes are based on 2017 HMDA data. Originations with loan amounts greater than $20 million are excluded. Subtotals may not add to totals due to rounding.

threshold was raised from $100,000 to $250,000 as compared to raising the threshold from $250,000 to $400,000. The data show that increasing the threshold from $100,000 to $250,000 in 1994 resulted in an estimated 77 percent of the total dollar volume of regulated transactions being exempt.[41] By comparison, as referenced above in Table 2, 2017 HMDA data indicates that increasing the threshold from $250,000 to $400,000 will result in an estimated 35 percent of the total dollar volume of regulated transactions being exempt. As stated in the proposal, the threshold increase will exempt a much smaller percentage of regulated transactions by dollar volume.

In the proposal, the agencies requested comment on whether the proposed level of $400,000 for the threshold would be appropriate from a safety and soundness perspective, and on what sources of data would be appropriate for the safety and soundness analysis. In general, commenters who supported the proposed increase in the threshold viewed the data presented in the proposed rule as supporting the increase, while commenters opposed to the increase found the data insufficient.

A number of commenters noted that the scope of the threshold had decreased significantly since it was established in 1994 due to inflation in home values. As such, they argued that an increase in the threshold would be justified to align the threshold with its 1994 scope. Other commenters expressed concern that the proposed threshold level would exempt too high a percentage of residential transactions from the protections provided by appraisals. These commenters focused on the percentage of residential transactions that would be affected, either on a national basis or based on specific geographic areas. Many such commenters cited data indicating that the proposed threshold of $400,000 is well above median home prices nationally and would exempt a large majority of residential transactions in specific areas. One commenter indicated that only 17 metropolitan statistical areas have a median sales price for single-family homes that exceeds $400,000. Several commenters cited to sources of data that indicated lower median home prices than the sources cited in the proposal.

A number of commenters requested that the agencies conduct alternative analyses and pointed out that the agencies did not analyze the local or regional markets affected by the increase nor the impact on particular borrowers or communities. Some commenters called for further study of home prices by region and metro area and for the agencies to show which markets would be most affected by the threshold increase. In particular, commenters requested that the agencies analyze the effect of the proposed increase in the threshold in dynamic markets and compare its effect in urban versus rural areas. One commenter indicated that HMDA data are the wrong source of information for evaluating the impact of the threshold on rural areas, given that certain low volume originators in rural areas are not required to report HMDA data.

Based on the agencies' supervisory experience and analysis, as discussed in more detail below, the current threshold has not negatively impacted safety and soundness, and the agencies do not believe raising the threshold to $400,000 will present a safety and soundness concern. Although several commenters were concerned that the agencies had not analyzed the effects on local markets or particular communities, the agencies' supervisory experience with the current threshold since 1994 suggests that this incremental increase will not negatively affect safety and soundness on the local or national level based on loss rates for residential real estate loans as discussed below and observations during examinations.

Moreover, the 2017 HMDA data also suggests that, though the impact on the total dollar volume of exempted transactions would be somewhat limited, the number of exempted transactions would increase materially and provide cost savings and regulatory burden relief for financial institutions. As shown in table 2 above, the agencies estimate that the increase would exempt an additional 214,000 transactions and thus raise the share of the number of regulated transactions that would be exempt from 56 percent to 72 percent. This analysis of the 2017 HMDA data indicates that the increased threshold will affect a low aggregate dollar volume but a material number of transactions, suggesting the potential for financial savings and burden relief with limited additional risk.[42]

Further, as covered in the proposal, the 2017 HMDA data show that the rule would provide significant burden relief in rural areas. The agencies estimate that increasing the appraisal threshold to $400,000 would potentially increase the share of exempted transactions from 82 percent to 91 percent of the number, and from 43 percent to 58 percent of the dollar volume, of regulated transactions that were secured by residential property located in a rural area.[43]

a. *Use of Evaluations.* The Title XI appraisal regulations require regulated institutions to obtain evaluations for several categories of real estate-related financial transactions that the agencies have determined do not require a Title XI appraisal, including transactions at or below the current thresholds.[44] Accordingly, the agencies proposed to require that regulated institutions entering into residential real estate transactions at or below the proposed residential real estate appraisal threshold obtain evaluations that are consistent with safe and sound banking practices unless the institution chooses to obtain an appraisal for such transactions. The agencies requested comment on use of evaluations instead of appraisals for residential real estate transactions.

In general, commenters who supported the increase in the threshold

[41] In both the 1994 and 2017 HMDA analyses, the agencies excluded transactions originated by nonbanks or transactions sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency because those transactions are already subject to other exemptions in the appraisal regulations. When discussing the impact of the threshold increase from $100,000 to $250,000, the preamble to the 1994 rule noted that information from the National Association of Realtors, the Census Bureau, and the Department of Housing and Urban Development indicated that 85 percent of the dollar volume of mortgages financing new homes and 82 percent of the volume of mortgages financing purchases of existing homes would fall below the $250,000 threshold. *See* 59 FR at 29486. The agencies reviewed the data used in 1994 and determined that the information reviewed by the agencies did not appear to exclude transactions originated by nonbanks or transactions sold to the GSEs or otherwise insured or guaranteed by a U.S. government agency, thus, necessitating the additional analysis.

[42] As noted above, in estimating the impact of the threshold increase on institutions, the agencies attempted to exclude from the HMDA data analysis residential transactions that were already exempt from the appraisal regulations, including those sold to the GSEs. The agencies recognize that the analysis may not have excluded all GSE-related transactions exempted from the appraisal regulations, as the regulations exempt not just transactions sold to the GSEs, but all transactions that qualify for sale to a GSE or U.S. government agency. OCC: 12 CFR 34.43(a)(10)(i); Board: 12 CFR 225.63(a)(10)(i); FDIC: 12 CFR 323.3(a)(10)(i). The agencies do not currently have the ability to accurately determine which transactions not sold to a GSE or U.S. government agency actually qualified for sale. Even assuming that a number of transactions fall into this category, the agencies believe the threshold increase will produce burden relief for regulated institutions.

[43] For the purposes of the HMDA analysis, a property is considered to be located in a ''rural'' area if it is in a county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, based on 2013 Urban Influence Codes (UIC) published by the United States Department of Agriculture. Any loans from Census tracts that are missing geographical identifiers or undefined in the 2013 UIC have been excluded from the analysis of burden relief in rural areas.

[44] *See* OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b).

also viewed evaluations as providing sufficient valuation information and analysis for financial institutions and consumers to engage in safe and sound residential real estate transactions. Those opposed to the increase in the threshold generally argued that evaluations would not provide enough support for these transactions and would pose a threat to financial institutions and consumers.

Commenters in support of the proposal asserted that there would be little impact to safety and soundness by relying on evaluations instead of appraisals. Some financial institutions commented that they had found evaluations to generally contain sufficient information and analysis to be the basis for lending decisions. Several commenters noted that financial institutions are only allowed to use evaluations when doing so is consistent with safety and soundness and that the institution always retains the discretion to seek an appraisal. Some of these commenters also asserted that they have adequate programs and policies to ensure that evaluations are used prudently.

Many commenters opined that appraisals are more accurate and reliable sources of valuation information than evaluations because they are done by professionals with strict training requirements and who are subject to state credentialing and disciplinary review for poor quality work. In contrast, commenters noted there are no standardized requirements for those who perform evaluations. Commenters also noted that appraisals are required to follow established requirements as provided by USPAP, which guarantees a certain level of information and quality, whereas evaluations lack standard requirements for information or structure. Some of these commenters expressed particular concern about homes in rural areas that tend to have unusual features or fewer comparable properties and thus are harder to value. Some commenters also raised concerns about the use of evaluations on homes that may need repairs, suggesting that evaluations may not uncover these issues.

Many commenters argued that appraisers are the only independent third party in a real estate transaction and that only appraisers' opinions are independent and unbiased. These commenters represented that those who perform evaluations often do not have the same level of independence from the transaction. Some commenters asserted that appraisals provide more accuracy than evaluations because they include a physical inspection of the property. In contrast, some commenters who were providers of evaluation services indicated that they typically include a physical inspection of the property in their product. A few commenters suggested that evaluations are subject to less regulatory scrutiny than appraisals.

Commenters also opined about the use of automated valuation models (AVMs) in the performance of evaluations. Many commenters felt that AVMs are unreliable and expressed concern that raising the threshold could lead to greater reliance on AVMs. Some of these commenters asserted that it would be inappropriate for the agencies to expand the residential real estate transaction threshold before issuing quality control standards for AVMs, as required by Title XI.[45] In contrast, some commenters believed that AVMs could provide valuable information, and that improvements in technology and greater availability of information has improved the quality of evaluations. One commenter indicated that AVMs are more predictive of default than appraisals. Another indicated that evaluations based on AVMs are generally more objective than appraisals because they are not skewed by knowledge of the contract price.

The agencies are adopting this aspect of the final rule without change. As is the case currently for transactions under the threshold exemptions, evaluations will be required for transactions exempted by the new threshold that do not receive appraisals.[46] Although the agencies recognize, as many commenters noted, that evaluations are not subject to the same uniform standards as appraisals in terms of structure and content or the preparer's training and credentialing requirements, evaluations must be consistent with safe and sound banking practices.[47] The agencies have provided the Evaluation Guidance to assist institutions in complying with this requirement.[48] The Evaluation Guidance provides information to help ensure that evaluations provide a credible estimate of the market value of the property pledged as collateral for the loan. For instance, the Evaluation Guidance states that, generally, evaluations should be performed by persons who are competent, independent of the transaction, and have the relevant experience and knowledge of the market, location, and type of real property being valued.

Although some commenters expressed concern that raising the threshold would cause financial institutions to feel pressured to use evaluations whenever possible in order to remain competitive, data analyzed by the agencies suggests that financial institutions are generally using caution when determining when evaluations are suitable for a given transaction. A five-year review of supervisory information on the use of appraisals and evaluations by large financial institutions found larger lenders obtained appraisals on 74 percent of portfolio residential real estate originations at or below the current $250,000 threshold.[49] These data suggest that financial institutions are often exercising discretion in determining when to use evaluations and are not automatically using evaluations whenever permitted.

Further, individuals performing evaluations are expected to be independent of the transaction. The agencies note that many evaluations of residential properties that are a consumer's principal dwelling are covered by the valuation independence requirements of section 1472 of the Dodd-Frank Act and its implementing regulation.[50] Among other requirements, this regulation prohibits conflicts of interest and coercion in the preparation of any opinion of value and prohibits preparers of opinions of value from materially misrepresenting the value of the property.[51] In addition, the agencies have issued guidance to help institutions ensure that they have the proper controls to fulfill independence expectations.[52]

Regarding concerns about AVM use, the agencies note that, while financial institutions may use AVMs in preparing evaluations, any evaluation in which they are used must be consistent with safe and sound practices. The agencies have published guidance to help ensure that financial institutions' use of AVMs is consistent with this requirement.[53]

[45] 12 U.S.C. 3354(b).

[46] An evaluation is not necessary if the transaction qualifies both for the new threshold and for another exemption that does not require an evaluation.

[47] OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b).

[48] *See supra* notes 23 and 24. *See also* Frequently Asked Questions on the Appraisal Regulations and the Interagency Appraisal and Evaluation Guidelines (October 16, 2018), OCC Bulletin 2018–39; Board SR Letter 18–9; FDIC FIL–62–2018.

[49] Y–14 data. Bank holding companies and intermediate holding companies with $50 billion or more in total consolidated assets are required to submit a quarterly *Capital Assessments and Stress Testing* (FR Y–14M) reports and schedules, which collect granular data on institutions' various asset classes, including residential real estate loans.

[50] 15 U.S.C. 1631; 12 CFR 226.42.

[51] 12 CFR 226.42.

[52] Guidelines, Section V.

[53] *See* Supervisory Guidance on Model Risk Management (April 4, 2011), OCC Bulletin 2011–12; Board SR Letter 11–7; FDIC FIL–22–2017 (adopted by the FDIC in 2017 with technical and conforming

b. *Analysis of Loss Rates.* When considering the threshold increase's potential impact on safety and soundness, the agencies considered a loss analysis of aggregate net charge-off rates for residential real estate loans after the last increase in the appraisal threshold in 1994. The agencies' analysis of the charge-off rates offered no evidence that increasing the appraisal threshold to $400,000 for residential real estate transactions would materially increase the risk of loss to financial institutions. The agencies requested comment on this analysis of the charge-off data.

Several commenters noted that the agencies' loss analysis did not reflect any significant change in the loss history for residential real estate transactions after the threshold was increased from $100,000 to $250,000 in 1994. Other commenters requested alternative analyses of charge-off rates, specifically data on foreclosures and losses based on loan amount, as opposed to aggregate net charge-off data. These commenters asserted that the aggregate data could include loans not eligible for the exemption or loans exempted on other grounds. A few commenters recommended that the agencies compare loan-level foreclosure rates for their use of appraisals and evaluations to determine if a correlation exists between the use of evaluations and foreclosures.

As noted in the proposal, a historical review of loss data demonstrates that the net charge-off rate for residential real estate transactions did not increase after the appraisal threshold was raised from $100,000 to $250,000 in June 1994, indicating the 1994 threshold increase did not have a negative impact on the safety and soundness of regulated institutions. The historical loss information in the Reports of Condition and Income (Call Reports) also shows that the net charge-off rate for residential real estate transactions remained relatively unchanged after the increase in the threshold in 1994 through year-end 2007. While the net charge-off rate for residential real estate transactions escalated significantly from 2008 through 2013 during the financial crisis, the agencies primarily attribute this to weak underwriting standards in the lead up to the crisis.

changes)); Guidelines, Appendix B. The agencies note that many commenters suggested that appraisers, unlike those who perform evaluations, cannot be employees of the financial institution making the loan. However, appraisers are permitted to be employees of the lender provided that the independence requirements in the agencies' rules are met. OCC: 12 CFR 34.45(a); Board: 12 CFR 225.65(a); FDIC: 12 CFR 323.5(a).

Based on the net charge-off data, which suggest that the increase in the appraisal threshold in 1994 did not have a material effect on the loss experience associated with residential real estate loans, the agencies believe the increase to $400,000 will not lead to increases in charge-off rates.

c. *Supervisory Experience.* In addition to analyzing net charge-off rates for residential real estate transactions, the agencies also considered their own supervisory experience with appraisals and evaluations. The agencies' experience in supervising appraisal and evaluation programs and practices since the enactment of FIRREA indicates that increasing the threshold would not threaten the safety and soundness of financial institutions. The agencies have found that both appraisals and evaluations prepared properly can be credible tools to support real estate lending decisions.

As part of the agencies' consideration of the safety and soundness implications of the proposed threshold increased, the agencies reviewed safety and soundness Reports of Examination. Regarding examination experience, the agencies reviewed Reports of Examination of their respective supervised institutions from January 2017 to December 2018 for examiner findings regarding appraisals and evaluations.[54] Both appraisals and evaluations were cited in examiner findings, however, the overall amount and nature of valuation-related examination findings support a conclusion that the proposed threshold increase would not threaten the safety and soundness of financial institutions.

The agencies have a long history with evaluations as an alternative valuation tool. The agencies have implemented examination procedures to frame their review of an institution's valuation practices and the sufficiency of the supporting information in evaluations, as appropriate for the size and nature of the institution's residential real estate lending activities. The agencies have used these procedures to assess the use of evaluations and ensure that they are prepared according to safety and soundness principles and will continue to examine institutions' evaluation policies and practices. The fact that evaluations, which will continue to be subject to supervisory oversight, will be required for transactions at or below the increased threshold supports the conclusion that increasing the residential real estate appraisal threshold to $400,000 will not pose a threat to safety and soundness.

d. *Additional Protections.* In proposing to raise the residential real estate appraisal threshold, the agencies noted that institutions may elect to obtain appraisals for transactions that fall under the threshold, even though an evaluation would also be permitted. In the supervisory experience of the agencies, a financial institution may choose to obtain appraisals for exempt transactions based on the risks associated with a particular transaction or to preserve the flexibility to sell residential loans in the secondary market. The agencies requested comment on the question of whether and when institutions use appraisals even if not required to do so by the appraisal regulations.

Several commenters indicated that institutions follow risk-based internal policies to determine whether to obtain an appraisal, including for transactions that fall under one of the exemptions from the appraisal regulations. One commenter provided survey data suggesting that the majority of lenders in one state often obtain appraisals for loans that fall below the current threshold. On the other hand, some commenters asserted that lenders would feel competitive pressure to use more evaluations if the threshold were raised and that the agencies lacked data on how often lenders use evaluations when permitted.

The agencies expect regulated institutions to continue using a risk-focused approach when considering whether to order an appraisal for transactions that fall below the threshold. The Guidelines encourage institutions to establish appropriate policies and procedures for determining when to obtain an appraisal in connection with transactions for which an evaluation is permitted.[55] Similarly, the Evaluations Advisory suggests it would be prudent to obtain an appraisal rather than an evaluation when an institution's portfolio risk increases or for higher-risk transactions.[56] As detailed above, data reviewed by the agencies found that lenders often choose to obtain appraisals, even when evaluations are permitted for transactions at or below the current $250,000 threshold.

In addition to the additional safety and soundness protection provided by the risk-based approach to valuations, the agencies note that each agency has the ability under the appraisal

[54] The Reports of Examination data reviewed related to both commercial and residential real estate lending valuations and valuation programs of supervised institutions.

[55] Guidelines, Section XI.

[56] Evaluations Advisory at 2.

regulations to require an appraisal whenever it is necessary to address safety and soundness concerns.[57] This authority allows the agencies to require appraisals for exempt transactions, for example, where an institution demonstrates weakness in the safe and sound use of evaluations for exempt transactions.

4. *Consumer Protection Considerations.* In proposing the increase in the appraisal threshold for residential transactions, the agencies noted that evaluations can provide consumer protections. The agencies noted that evaluations have long been required for below-threshold transactions; must be consistent with safe and sound banking practices;[58] and should contain sufficient information and analysis to support the decision to engage in the transaction,[59] although they may be less structured than appraisals. In the proposal, the agencies also highlighted that the Guidelines and the Evaluations Advisory[60] provide that individuals preparing evaluations should be qualified, competent, and independent of the transaction and the loan production function of the institution.[61] For these reasons, the agencies posited that evaluations could provide a level of consumer protection for transactions at or below the proposed appraisal threshold.

The agencies requested comment generally regarding any implications of the proposed rule on consumer protection. In addition, the agencies asked commenters for specific information about the potential cost and time savings to consumers that may result from the increased use of evaluations versus appraisals and whether information in evaluations would be sufficiently clear to enable the consumer to make an informed decision. The agencies also requested comment on the availability of valuation information to consumers through public sources and whether information from those sources help provide consumers with additional protection in residential transactions. Finally, the agencies requested comment on challenges, if any, that financial institutions may have in meeting the requirements and standards for independence for evaluations prepared by internal staff or external third parties.

In general, commenters that supported the proposed threshold and commented on consumer protection issues indicated that evaluations provide consumers with sufficient protection in a residential real estate transaction. Many commenters who opposed the increased threshold indicated that evaluations are inadequate substitutes for appraisals and therefore an increased threshold would pose a threat to consumer protection.

Many commenters opposed to an increase in the threshold argued that appraisers are the only objective and unbiased party in a transaction and bring checks, balances, and oversight to the mortgage lending process. Some of these commenters based this assertion on the legal requirement for appraiser independence and the professional standards to which appraisers are held. These commenters also argued that individuals preparing evaluations are often not disinterested third parties because they are employed by the lender. Several commenters asserted that evaluations are usually performed by individuals who, unlike appraisers, are not credentialed valuation professionals subject to standardized training and experience requirements.

A number of commenters suggested that inadequate property valuations and undue influence on appraisers contributed to property overvaluation during the most recent financial crisis, with adverse impacts for consumers. They indicated that the Dodd-Frank Act strengthened protections regarding appraisals, including federal oversight provisions, and that a number of these protections do not apply to evaluations that are not conducted by appraisers. On the other hand, commenters who supported the proposed increase in the threshold argued that evaluations are a safe alternative to appraisals, with some noting that individuals who prepare evaluations are also required to be independent under federal law, as discussed further below.

Many commenters who opposed a threshold increase on consumer protection grounds asserted that evaluations are not subject to uniform standards and are not a meaningful substitute for an appraisal that must be conducted in compliance with USPAP. A number of commenters questioned the reliability of valuation methods other than appraisals, particularly AVMs and evaluations. Other commenters suggested that the proposal would cause consumers to lose the benefit of appraisers performing a physical inspection and an analysis of specific property features, including property maintenance and repair issues that can affect the property value.

Some commenters in favor of a threshold increase asserted that evaluations protect consumers by helping to ensure the property's value supports the purchase price. In this regard, one commenter indicated that evaluations must be consistent with safe and sound banking practices and, according to agency guidelines, they should provide supporting information and an estimate of market value. One commenter in favor of a threshold increase raised concerns that appraisals may provide a false sense of protection to consumers who incorrectly assume their property can be sold for the appraised market value if they encounter financial difficulties. A few commenters that supported an increase argued that neither appraisals nor evaluations are consumer protection tools for homebuyers, asserting that both are received after prospective buyers have entered into a purchase and sale agreement (PSA) to purchase the residential property at a specified price.

Some commenters that opposed an increase in the residential threshold argued that, unlike for faulty appraisals, consumers do not have any recourse for faulty evaluations. Some commenters noted that consumers may file an official complaint with a state's appraiser board to address an inaccurate appraisal, which is not an option for addressing an inaccurate evaluation performed by a non-appraiser. In addition, one commenter questioned whether evaluations could be used to renegotiate or cancel PSAs under an appraisal contingency clause.

A number of commenters opposed to a threshold increase asserted that appraisals are easier for consumers to understand than evaluations. Some commenters noted the standardized requirements of a USPAP-compliant appraisal report provide information in a consistent manner and ensure that the user has enough information to understand the conclusions in the report. Some commenters opposed to an increase raised concerns that free online valuation information and tools may be flawed due to, for example, their reliance on public records with data entry errors.

One commenter in favor of an increased threshold indicated that evaluations are often easier for consumers to read and understand, asserting that they typically explain the comparisons with other recent sales in "plain English." Some commenters generally in favor of an increase noted that consumers have access to a wide array of readily available valuation information, and may also voluntarily obtain appraisals.

[57] OCC: 12 CFR 34.43(c); Board: 12 CFR 225.63(c); FDIC: 12 CFR 323.3(c).

[58] OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b).

[59] Guidelines, Section XIII.

[60] Evaluations Advisory at 2.

[61] Guidelines, Section V.

Numerous commenters opposed to a threshold increase asserted that an increase to the appraisal threshold would have a disproportionately negative impact on more at-risk consumers, such as low-income individuals, members of certain minority groups, or first-time homebuyers, because at-risk borrowers are more likely to purchase homes priced in lower ranges and, therefore, are more likely to enter into residential transactions without the benefit of an appraisal. Some commenters asserted that first-time homebuyers are among the consumers least able to manage financial risk, and are most in need of consumer protections. According to several of these commenters, this is because first-time homebuyers typically use a substantial portion of their savings for the down payment or obtain mortgages with high loan-to-value ratios.

In adopting the threshold increase for residential mortgage loans as proposed, the agencies appreciate and have considered the consumer protection issues and concerns raised by the commenters. Based on their supervisory experience with evaluations since 1994, the agencies have found that both appraisals and evaluations can protect consumers by facilitating the informed use of credit and helping to ensure the estimated value of the property supports the purchase price and mortgage amount. Further, the agencies consulted with the CFPB throughout the development of the proposal and final rule and, as required by Title XI,[62] have received concurrence from the CFPB that the residential real estate appraisal threshold being adopted provides reasonable protection for consumers who purchase 1–4 unit single-family residences.

In response to the comments concerning valuation independence, the agencies have long recognized that evaluations prepared by competent and independent preparers can provide credible valuation information for residential real estate transactions. In addition, the Dodd-Frank Act contained provisions that addressed independence requirements applicable to ''valuations'' for consumer-purpose mortgages secured by a consumer's principal dwelling. The Valuation Independence Rule,[63] which implements the Dodd-Frank Act independence provisions, states that ''no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.''[64] Additionally, the rule prohibits mischaracterizations of property value and conflicts of interest for persons preparing valuations or performing valuation management functions.[65] These independence requirements extend to appraisals, evaluations, and other estimations of value and encompass not only individuals preparing such valuations but also those performing valuation management functions.[66] The failure to comply with the independence requirements in the Valuation Independence Rule can result in civil liability.[67]

In response to comments concerning on-site inspections of real estate, the agencies note that USPAP does not require appraisers to inspect the subject property and that some appraisers use third parties to conduct inspections. As such, not all appraisals include inspections. As with appraisals, the agencies note that when financial institutions obtain an evaluation, the evaluation will often include a physical property inspection, which can provide a prospective buyer with relevant information about a property's condition. Evaluations, like appraisals, should contain sufficient information and analysis to support the institution's decision to engage in a credit decision, including information relating to the actual physical condition and characteristics of the property, as discussed in the Guidelines.[68] The individual who is performing the evaluation should determine whether a physical property inspection is necessary to support the property's value. Based on the agencies' supervisory experience with appraisals and evaluations since 1994, the agencies believe that property inspections done by appropriately trained individuals for either appraisals or evaluations can provide prospective buyers with detailed information regarding a property's condition and features, may provide consumer protection, and can help ensure that appraisals or evaluations are consistent with safe and sound banking practices.

The agencies recognize that some consumers may seek to include appraisal contingency clauses in PSAs. However, the threshold exemption does not affect the ability to enter into these arrangements. One commenter suggested that evaluations may not constitute appraisals for purposes of appraisal contingency clauses and may cause confusion to consumers opting for these contingencies. The agencies are not aware of any such issues regarding the current threshold, which already exempts a significant portion of residential real estate transactions. In this regard, the agencies do not have reason to believe that the incremental increase in exempted transactions will create consumer protection concerns related to PSAs. With respect to consumer recourse for faulty evaluations, available information from entities that use or provide evaluations indicates that lenders often order appraisals when disputes arise with evaluations, so the agencies do not expect the proposal to materially affect options for consumer recourse.

Regarding the impact of the threshold increase on consumers' understanding of and access to valuation information, the agencies note that lenders must provide a copy of all appraisals and written valuations developed in connection with an application for a first-lien loan secured by a dwelling,[69] which includes both appraisals and evaluations. In addition, although all sources of publicly available valuation information might not always accurately

[62] In the Dodd-Frank Act, Congress amended the threshold provision to require ''concurrence from the Bureau of Consumer Financial Protection that such threshold level [established by the agencies] provides reasonable protection for consumers who purchase 1–4 unit single-family residences.'' 12 U.S.C. 3341(b).

[63] *See* Interim Final Rule for Valuation Independence, 75 FR 66554 (October 28, 2010) and 75 FR 80675 (December 23, 2010), Board: 12 CFR 226.42; CFPB: 12 CFR 1026.42 (implementing valuation independence amendments to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* by Dodd-Frank Act section 1472, 15 U.S.C. 1639e).

[64] Board: 12 CFR 226.42(c)(1); CFPB: 12 CFR 1026.42(c)(1).

[65] *See* Board: 12 CFR 226.42(c)(2), (d); CFPB: 12 CFR 1026.42(c)(2), (d).

[66] Valuation management functions include: ''Recruiting, selecting, or retaining a person to prepare a valuation''; ''contracting with or employing a person to prepare a valuation''; ''managing or overseeing the process of preparing a valuation, including by providing administrative services such as receiving orders for and receiving a valuation, submitting a completed valuation to creditors and underwriters, collecting fees from creditors and underwriters for services provided in connection with a valuation, and compensating a person that prepares valuations''; and ''reviewing or verifying the work of a person that prepares valuations.'' 12 CFR 1026.42(b)(4).

[67] *See* 15 U.S.C. 1640.

[68] Guidelines, Section XII.

[69] *See* 12 CFR 1002.14, 78 FR 7216 (January 31, 2013) (implementing amendments to the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.,* by Dodd-Frank Act section 1474, 15 U.S.C. 1691(e)).

reflect the market value of a particular property, consumers can use a variety of available information to learn more about the availability of and the potential range of values for properties in a particular area or market. Moreover, although limited in scope, the higher-priced mortgage loan rule (HPML rule),[70] as adopted by the agencies, requires lenders for certain HPMLs secured by a consumer's principal dwelling to obtain an appraisal—and in some cases two appraisals—that include an interior property visit, and provide free copies to the consumer. The HPML Rule applies to certain higher-risk transactions. Thus, for a select group of loans, the HPML Rule assures that the information in an appraisal will be available for some of the consumers who might be more likely to fall into the at-risk categories mentioned by commenters as being most affected by the threshold increase.

Finally, the agencies note that even when the transaction amount is at or below the threshold, the Guidelines[71] encourage regulated institutions to establish policies and procedures for obtaining Title XI appraisals when necessary for risk management. As discussed above, the FR Y–14M data reviewed by the agencies found that lenders included in the data obtained appraisals on 74 percent of residential real estate loans of $250,000 and below that were held in portfolio. These empirical data indicate that lenders generally obtain appraisals for a majority of residential real estate transactions for which the agencies' appraisal regulations permitted an evaluation. These data are also consistent with some commenters' assertions that lenders would continue to use a risk-based approach in determining whether to obtain an evaluation or an appraisal for a particular transaction, regardless of the threshold amount. Further, consumers may voluntarily obtain appraisals regardless of whether the regulated institution is required to do so.

5. *Reducing Burden Associated with Appraisals.* In proposing the increase in the residential appraisal threshold, the agencies considered that the increased use of evaluations would likely reduce the time and costs associated with residential real estate transactions, which in turn would reduce burden for financial institutions and consumers. The agencies invited comment on the cost and time associated with performing and reviewing evaluations as compared to Title XI appraisals. The agencies also invited comment on the appropriateness of the data used in the proposal and requested any suggestions for alternative sources of data.

The agencies received a number of comments indicating that the proposed increase in the residential real estate appraisal threshold would result in cost and time savings for consumers and regulated institutions. Several commenters concurred with the agencies' cost estimates in the proposal. One commenter indicated that evaluation tools provide accurate valuation information at approximately half the cost of an appraisal. Another commenter estimated that an evaluation could cost between 20 and 50 percent of the price of a comparable appraisal, and that an evaluation can generally be delivered in one to five days while an appraisal may take between five and twenty-one days. Another commenter asserted that evaluations typically cost about $100 less than appraisals. One commenter noted that evaluations are often performed by bank employees, in which case the customer is not typically charged for the service, and that when the lender obtains an evaluation from a third-party provider (as opposed to using its own employee), borrowers may still save approximately 50 percent. Some commenters also asserted that the proposed threshold increase would reduce the time needed for appraisal review. The agencies received several comments from financial institutions, financial institution trade associations, and state regulators asserting that the proposals would particularly reduce delays and costs in rural areas that may be experiencing a shortage of state licensed or state certified appraisers. Two of these commenters specifically asserted that a broadly applicable threshold increase to $400,000, rather than the more limited rural residential appraisal exemption, is appropriate because it would provide additional burden relief by eliminating unnecessary qualifying criteria. One of these commenters, a financial institution trade association from a large state, asserted that the rural residential appraisal exemption would not apply to transactions in areas representing 86 percent of the state's population, and that the proposed threshold increase thus would provide additional burden relief in the state beyond what was provided by the rural residential appraisal exemption.

Other commenters questioned how much relief the proposal would provide. Some commenters noted the agencies' acknowledgement that there is limited information on the cost and time burden of evaluations versus appraisals and urged the agencies to obtain additional data to quantify any expected savings. Several commenters noted that the cost of an appraisal is relatively small compared to other financing costs in the transaction such as the fees charged by banks and brokers. Some of these commenters also suggested that any cost savings to consumers would be outweighed by the financial harm that could result from purchasing a home without an estimate of value provided by an appraiser. One commenter indicated that evaluations may take longer to review than appraisals. Another argued that even if an appraisal takes longer to review, the time difference is not significant and would not delay a loan closing. Some commenters questioned the need for, and appropriateness of, the proposed threshold increase in light of the rural residential appraisal exemption.

Several commenters challenged the agencies use in the proposal of the Department of Veterans Affairs (VA) appraisal fee schedule as support for their analysis of potential cost savings, arguing that the $600 average cost noted in the proposal based on the VA fee schedule likely overstates the cost of appraisals. One commenter noted the VA's underwriting requirements exceed USPAP standards, which increases costs. Some of these commenters cited alternative sources for fee data, including several state-specific studies. One such commenter referred to a survey showing that VA fees are higher than the norm, indicating that the median cost of an appraisal is $450, with 89 percent of those surveyed stating the typical cost of an appraisal is below $600. This commenter also questioned whether the cost and time to receive an appraisal were burdensome, as its survey reflected that appraisals represented less than 0.2 percent of the total transaction cost and that the typical wait time for an appraisal in 2018 was only 7 days.

A number of commenters disputed that there are appraiser shortages warranting regulatory relief outside of

[70] OCC: 12 CFR part 34, subpart G; Board: 12 CFR 226.43; FDIC (through adoption of CFPB rule): 12 CFR 1026.35(c). The FDIC adopted the HPML Rule as published in the CFPB's regulation. *See* 78 FR 10368–01, 10370 (December 26, 2013). Exemptions from the requirements of the HPML Rule include, among others, ''qualified mortgages'' under 15 U.S.C. 1639c (implemented by the CFPB at 12 CFR 1026.43); reverse mortgages subject to 12 CFR 1026.33; and certain refinancings. *See* OCC: 12 CFR 34.203(b); Board: 12 CFR 226.43(b); FDIC (through adoption of CFPB rule): 12 CFR 1026.35(c)(2). Exemptions from the requirement for two appraisals for certain transactions include, among others, extensions of credit that finance a consumer's acquisition of property located in a rural county, as defined in 12 CFR 1026.35(b)(2)(iv)(A). *See* OCC: 12 CFR 34.203(d)(7)(H); Board: 12 CFR 226.43(d)(7)(H); FDIC (through adoption of CFPB rule): 12 CFR 1026.35(c)(4)(vii)(H).

[71] *See* Guidelines, Section XI.

rural areas, with some offering supporting data from the Appraisal Subcommittee of the Federal Financial Institutions Examination Council and the Appraisal Foundation. Several commenters identified appraisal management companies (AMCs) as a significant source of unnecessary costs and delays, and suggested that appraiser shortages are due to the low appraisal fees AMCs offer, resulting in appraisers being unwilling to work for AMCs.

The agencies considered these comments in evaluating the rule's potential impact. As discussed further below, available data and analysis indicate that, while there is limited information available to compare the cost and time savings related to performing appraisals versus evaluations, raising the residential threshold, and the corresponding increased use of evaluations, will lead to some level of cost savings for consumers and institutions. The agencies also conclude that raising the threshold is likely to reduce the time needed to find appropriate personnel to perform the valuation, particularly in areas experiencing shortages of certified or licensed appraisers.

As noted in the proposal, and according to data submitted by commenters, the cost of obtaining an evaluation can be substantially less than the cost of obtaining an appraisal, with estimates ranging from evaluations costing $100 less than the cost of an appraisal or less than half (with one estimate of 20 percent) of the cost of an appraisal. The agencies acknowledge the limitations in relying on the VA appraisal fee schedule, which may reflect appraisal fees that are higher than average across the industry. However, even if the average appraisal cost is less than the $375 to $900 range suggested in the proposal, the agencies believe expanding the use of evaluations will produce time and cost savings. Some commenters indicated that, while the cost of an appraisal is generally passed on to the borrower, an evaluation performed by in-house staff may be provided at no cost to the borrower. When a borrower pays for an evaluation outsourced to a third-party, the cost may still be significantly less than for a comparable appraisal.

The agencies also note that regulated institutions generally need less time to review evaluations than Title XI appraisals because the content of the report can be less comprehensive than an appraisal report. Institutions are more likely to obtain an evaluation, where permitted, for transactions with a lower dollar value, that are less complex, or that are subsequent to a previous transaction for which a Title XI appraisal was obtained. As a result, evaluations are often simpler and take less time to review than appraisals. Based on supervisory experience, the agencies have previously estimated that, on average, the time to review evaluations takes approximately 30 minutes less than the time to review appraisals. While the precise time and cost reduction per transaction is difficult to determine, the agencies conclude that the increased threshold is likely to result in some level of cost and time savings for regulated institutions that engage in residential real estate lending and for consumers.

In considering the aggregate effect of this rule, the agencies also considered the number of transactions likely to be affected by the increased threshold. As discussed above, the agencies' analysis of 2017 HMDA data suggests that increasing the residential threshold from $250,000 to $400,000 would exempt an additional 214,000 residential real estate originations at regulated institutions from the agencies' appraisal requirement, representing an additional 16 percent of all regulated transactions. While the supervisory data discussed above suggest that use of evaluations is lower than it could be, the agencies expect that raising the residential appraisal threshold will still provide burden relief because it will provide flexibility in those situations where obtaining an appraisal would significantly delay the transaction and the financial institution determines that an evaluation would be sufficient for the safety and soundness of the particular transaction.

B. Incorporation of the Rural Residential Appraisal Exemption Under Section 103 of the Economic Growth, Regulatory Relief, and Consumer Protection Act

As discussed above, in section 103 of EGRRCPA, Congress amended Title XI in 2018 to add a rural residential appraisal exemption.[72] Under this new exemption, a financial institution need not obtain a Title XI appraisal if the property is located in a rural area; the transaction value is less than $400,000; the financial institution retains the loan in portfolio, subject to exceptions; and not later than three days after the Closing Disclosure Form is given to the consumer, the financial institution or its agent has contacted not fewer than three state certified or state licensed appraisers, as applicable, and has documented that no such appraiser was available within five business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments.[73]

The proposed rule would have amended the agencies' appraisal regulations to reflect the rural residential appraisal exemption under section 103 of EGRRCPA in the list of transactions that are exempt from the agencies' appraisal requirement. The amendment to this provision would have been a technical change that would not alter any substantive requirement, because the statutory provision is self-effectuating and the proposed threshold increase to $400,000 would encompass loans that would otherwise qualify for the section 103 rural residential appraisal exemption. In addition, the proposed rule would have required evaluations for transactions that are exempt from the agencies' appraisal requirement under the rural residential appraisal exemption under section 103 of EGRRCPA. The agencies proposed that financial institutions obtain evaluations for these transactions because evaluations protect the safety and soundness of financial institutions.

In the proposed rule, the agencies specifically asked what challenges, if any, would be posed by requiring lenders to obtain evaluations where the rural residential appraisal exemption under section 103 of EGRRCPA is used. The agencies received very few comments on the proposed evaluation requirement. A few commenters asserted that the preparation of both appraisals and evaluations on properties located in rural areas may be affected by the limited comparable sales data available in rural areas.

After considering the comments received, the agencies have decided to implement the requirement for regulated institutions to obtain evaluations when the rural residential appraisal exemption is used. The agencies recognize that the scarcity of comparable sales data in rural areas has been a long-standing issue and issued guidance in 2016 to assist institutions in obtaining evaluations in rural areas with few or no recent comparable sales.[74] Since the early 1990s, the agencies' appraisal regulations have required that regulated institutions obtain evaluations for certain other exempt residential real

[72] Public Law 115–174, Title I, section 103, codified at 12 U.S.C. 3356.

[73] 12 U.S.C. 3356. The mortgage originator must be subject to oversight by a Federal financial institutions regulatory agency, as defined in Title XI. Further, the exemption does not apply to loans that are high-cost mortgages, as defined in section 103 of TILA, or if a Federal financial institutions regulatory agency requires an appraisal because it believes it is necessary to address safety and soundness concerns.

[74] Evaluations Advisory at 3.

estate transactions (which in practice are generally retained in their portfolios). Requiring evaluations for transactions exempted by the rural residential appraisal exemption reflects the agencies' long-standing view that safety and soundness principles require institutions to obtain an understanding of the value of real estate collateral underlying most real estate-related transactions they originate.

For clarity, the agencies note that under the final rule, creditors operating in rural areas could opt to rely on the more broadly applicable exemption for transactions of $400,000 or less in lieu of the rural residential appraisal exemption and will not need to meet the additional criteria required under the rural residential appraisal exemption. This is because the broader exemption for transactions of $400,000 or less adopted in this final rule encompasses the more narrow exemption under EGRRCPA section 103. An evaluation is required regardless of which of these exemptions is relied upon. By specifying that an evaluation is required for transactions in which all of the criteria under EGRRCPA section 103 are met, the agencies seek to streamline the exemption rules and eliminate confusion for creditors operating in rural areas.

C. Addition of the Appraisal Review Requirement

Section 1473(e) of the Dodd-Frank Act amended Title XI to require that the agencies' appraisal regulations include a requirement that Title XI appraisals be subject to appropriate review for compliance with USPAP.[75] The proposed rule would have made a conforming amendment to add this statutory requirement for appraisal review to the appraisal regulations. The agencies proposed to mirror the statutory language for this standard. The agencies also indicated in the proposal that the Guidelines provide more information to assist financial institutions in the appropriate review of appraisals and evaluations.[76]

In the proposal, the agencies specifically asked what concerns, if any, would be posed by requiring lenders to conduct appropriate reviews of Title XI appraisals for compliance with USPAP. The agencies received very few comments addressing the appraisal review proposal. One commenter indicated that appraisal review provides significant consumer and lender safeguards. Another commenter expressed concern that a requirement for appraisal review would force some financial institutions to outsource the review process, given that many small institutions do not have staff trained in USPAP standards, which would add considerable overhead expense for financial institutions. This commenter also requested clarification of whether evaluations must be reviewed for compliance with USPAP.

In response to these comments, the agencies note that the appraisal review proposed is statutorily required by Title XI. In addition, the agencies have long recognized that appraisal review is consistent with safe and sound banking practices, as outlined in the Guidelines, and should be employed as part of the credit approval process to ensure that appraisals comply with USPAP, the appraisal regulations, and a financial institution's internal policies.[77] As noted in the Guidelines, appraisal reviews should help ensure that an appraisal contains sufficient information and analysis to support the decision to engage in the transaction, as required by the appraisal regulations.[78] Through the review process, the institution should be able to assess the reasonableness of the valuation method, the assumptions, and whether data sources are appropriate and well-supported.[79]

As a reflection of the long-standing guidance on appraisal review, many financial institutions may already have review processes in place for these purposes. With respect to the question concerning evaluations and appraisal review, the agencies note that evaluations need not comply with USPAP. While financial institutions should continue to conduct safety and soundness reviews of evaluations to ensure that an evaluation contains sufficient information and analysis to support the decision to engage in the transaction, the USPAP review requirement in Title XI does not apply to such a review.

After carefully considering the comments received, the agencies have decided to implement the requirement that financial institutions review appraisals for federally related transactions for compliance with USPAP. The agencies encourage regulated institutions to review their existing appraisal review policies and incorporate additional procedures for subjecting appraisals for federally related transactions to appropriate review for compliance with USPAP, as needed. Financial institutions may refer to the Guidelines for more information to assist them in the appropriate review of appraisals and evaluations.[80]

D. Conforming and Technical Amendments

The agencies' appraisal regulations require that all complex 1-to-4 family residential property appraisals rendered in connection with federally related transactions shall have a state certified appraiser if the transaction value is $250,000 or more.[81] In order to make this paragraph consistent with the other proposed changes to the agencies' appraisal regulations, the agencies proposed changes to its wording to incorporate the proposed definition of ''residential real estate transaction,'' to introduce the $400,000 threshold, and to make other technical and conforming changes. The agencies also proposed to amend the definitional term ''complex 1-to-4 family residential property appraisal'' to ''complex appraisal for a residential real estate transaction'' to conform to the definition of residential real estate transaction. The proposed amendments to these provisions would have been conforming changes that would not alter any substantive requirements.

The agencies received one comment on these conforming changes seeking clarification as to whether certified appraisers would be required for complex appraisals for residential real estate transactions above $400,000 or transactions at or above $400,000. As provided in the rule text, the requirement will only apply to transactions above $400,000. The agencies did not receive further comment on these proposed technical and conforming changes and are adopting the proposed technical changes as final.

III. Effective Date

All provisions of the rule, other than the evaluation requirement for transactions exempted by the rural residential appraisal exemption [82] and the requirement to subject appraisals to appropriate review for compliance with USPAP (as discussed below) are effective the first day after publication of the final rule in the **Federal Register**. The 30-day delayed effective date required under the Administrative Procedure Act is waived for all other amendments to the regulation, pursuant

[75] Dodd-Frank Act, section 1473, Public Law 111–203, 124 Stat. 1376.

[76] *See* Guidelines, Section XV.

[77] *See id.*

[78] *See* OCC: 12 CFR 34.44(b); Board: 12 CFR 225.64(b); FDIC: 12 CFR 323.4(b).

[79] *See* Guidelines, Section XV.

[80] *See id.*

[81] OCC: 12 CFR 34.43(d)(3); Board: 12 CFR 225.63(d)(3); FDIC: 12 CFR 323.3(d)(3).

[82] *See supra* note 3.

to 5 U.S.C. 553(d)(1), which provides an exception to the 30-day delayed effective date requirement when a substantive rule grants or recognizes an exemption or relieves a restriction. The amendments to increase the residential appraisal threshold exempts additional transactions from the agencies' appraisal requirement, which would have the effect of relieving restrictions. Consequently, all provisions of this rule, except the evaluation requirement for transactions exempted by the rural residential appraisal exemption and the appraisal review provision, meet the criteria to waive the 30-day delayed effective date requirement set forth in the Administrative Procedure Act.

The provisions for the evaluation requirement for transactions exempted by the rural residential appraisal exemption and for the appraisal review will be effective on January 1, 2020. The delayed effective date will provide regulated institutions adequate time to implement procedures for obtaining an evaluation for certain residential transactions secured by property in a rural area that are exempt from the appraisal requirements and for subjecting appraisals for federally related transactions to appropriate review for compliance with USPAP.[83] The agencies did not receive any comments on the proposed effective date.

IV. Regulatory Analysis

A. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration (SBA) to include commercial banks and savings institutions, and trust companies, with assets of $600 million or less and $41.5 million or less, respectively) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

The OCC currently supervises 1,211 institutions (commercial banks, trust companies, federal savings associations, and branches or agencies of foreign banks) of which approximately 782 are small entities.[84] The OCC estimates that the final rule may impact approximately 734 of these small entities. The final rule to increase the residential threshold may result in cost savings for impacted institutions.

For transactions at or below the new residential threshold, regulated institutions will be given the option to obtain an evaluation of the property instead of an appraisal. While the cost of obtaining appraisals and evaluations can vary and may be passed on to borrowers, evaluations generally cost less to perform than appraisals, given that evaluations are not required to comply with USPAP. In addition to costing less than an appraisal, evaluations may require less time to review than appraisals because evaluations typically contain less detailed information than appraisals. In addition to savings relating to the relative costs associated with appraisals and evaluations, the final rule may also reduce burden for institutions in areas with appraiser shortages. In the course of the agencies' most recent EGRPRA review, commenters contended that it can be difficult to find state certified and licensed appraisers, particularly in rural areas, which results in delays in completing transactions and sometimes increased costs for appraisals.[85] For this reason, substituting evaluations for appraisals may reduce burden for institutions in areas with appraiser shortages. While the increased residential threshold may decrease costs for institutions, the extent to which institutions will employ evaluations instead of appraisals is uncertain, given that institutions retain the option of using appraisals for below-threshold transactions.

The requirement in the final rule that institutions obtain an evaluation for transactions that qualify for the rural residential appraisal exemption could be viewed as a new mandate. However, because the final rule increases the residential threshold to $400,000 for all residential transactions, institutions will not need to comply with the detailed requirements of the rural residential appraisal exemption in order for such transactions to be exempt from the agencies' appraisal requirement. Therefore, complying with the evaluation requirement for below-threshold transactions will be significantly less burdensome than complying with the requirements of the rural residential appraisal exemption.

The requirement that Title XI appraisals be subject to appropriate review for USPAP compliance could also be viewed as a new mandate. The OCC does not believe, however, that this requirement will impose a significant burden or economic impact on regulated institutions because Title XI and the agencies' appraisal regulations already require that Title XI appraisals be performed in compliance with USPAP. In addition, many financial institutions already have review processes in place to ensure that appraisals comply with USPAP. Finally, the OCC notes that the requirement for appraisal review is statutorily mandated by Title XI.

Because the final rule does not contain any new recordkeeping, reporting, or significant compliance requirements, the OCC anticipates that costs associated with the final rule, if any, will be de minimis. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

FRB: The RFA[86] generally requires that an agency prepare and make available a final regulatory flexibility analysis in connection with a final rulemaking that the agency expects will have a significant economic impact on a substantial number of small entities. The regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

The agencies are increasing the threshold from $250,000 to $400,000 at or below which a Title XI appraisal is not required for residential real estate transactions in order to reduce regulatory burden in a manner that is consistent with the safety and soundness of financial institutions. To ensure that the safety and soundness of

[83] As discussed below, new requirements on insured depository institutions (IDIs) generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. *See* 12 U.S.C. 4802(b).

[84] The OCC bases this estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC includes the assets of affiliated financial institutions when determining whether to classify an OCC-supervised institution as a small entity. The OCC used December 31, 2018, to determine size because a ''financial institution's assets are determined by averaging the assets reported in its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[85] *See* EGRPRA Report, *available at https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

[86] 5 U.S.C. 601 *et seq.*

regulated institutions are protected, the agencies will require evaluations for transactions that are exempted by the increased residential appraisal threshold. The final rule also requires evaluations for transactions exempted by the rural residential appraisal exemption. In order to fulfill the agencies' statutory responsibility under the Dodd-Frank Act, the agencies are also adding to the appraisal regulations a requirement that appraisals be subject to appropriate review for compliance with USPAP.

The Board's rule applies to state chartered banks that are members of the Federal Reserve System (state member banks), as well as bank holding companies and nonbank subsidiaries of bank holding companies that engage in lending. There are approximately 529 state member banks and 232 nonbank lenders regulated by the Board that meet the SBA definition of small entities and are subject to the final rule. Data currently available to the Board do not allow for a precise estimate of the number of small entities that are affected by the threshold increase or the evaluation requirement for transactions exempted by the rural residential appraisal exemption, because the number of small entities that engage in residential real estate transactions qualifying for these exemptions is unknown.

The increased threshold level for residential transactions is expected to produce cost and time savings for financial institutions without imposing any burden, since it will permit institutions to use evaluations instead of appraisals for a greater number of transactions, and evaluations generally cost less and take less time to conduct and review than appraisals. The cost and time savings produced for institutions by obtaining evaluations versus appraisals is difficult to quantify because of limited available data and variation based on the type and complexity of the transaction. Costs of appraisals and evaluations may also be passed on to borrowers.

With respect to transactions that qualify for the rural residential appraisal exemption, the requirement that institutions obtain evaluations for such transactions could be viewed as an additional burden. However, because the final rule increases the residential threshold to $400,000 for all residential transactions, institutions, including small entities, will not need to comply with the detailed requirements of the rural residential appraisal exemption in order for such transactions to be exempt from the agencies' appraisal requirement. Complying with the evaluation requirement for transactions below the residential appraisal threshold is likely to be less burdensome than complying with the requirements of the rural residential appraisal exemption. Overall, the Board does not believe this requirement will have a significant economic impact on small institutions.

The requirement that Title XI appraisals be subject to appropriate review for USPAP compliance applies to all small entities regulated by the Board that engage in real estate lending. However, the Board does not believe this requirement would impose a significant burden or economic impact on such institutions because the agencies' appraisal requirements already require that Title XI appraisals be performed in compliance with USPAP. Further, many financial institutions already have review processes in place to ensure that appraisals comply with USPAP.

The final rule does not contain any new recordkeeping, reporting, or significant compliance requirements. Based on information available to the Board, the final rule is not expected to impose any significant cost or burden on small entities, and small entities and borrowers engaging in residential real estate transactions could experience cost reductions; however, the overall economic impact on small entities is not expected to be significant. The Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities supervised by the Board.

FDIC: The RFA generally requires that, in connection with a final rulemaking, an agency prepare and make available a final regulatory flexibility analysis describing the impact of the rule on small entities.[87] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[88] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that this rule will not have a significant economic effect on a substantial number of small entities.

The FDIC supervises 3,465 depository institutions,[89] of which 2,705 are defined as small entities by the terms of the RFA.[90] In 2017, 1,139 small, FDIC-supervised institutions reported originating residential real estate loans. However, beginning in 2017, FDIC-supervised institutions ceased reporting residential loan origination data in compliance with HMDA if they originated less than 25 loans per year. Therefore, in order to more accurately assess the number of institutions that could be affected by this rule we counted the number of existing institutions who reported any residential loan originations in 2015, 2016, or 2017. By that measure, 1,430 (52.9 percent) are estimated to be affected by this rule.[91]

The final rule is likely to reduce loan valuation-related costs for small, covered institutions. By increasing the residential real estate appraisal threshold, the rule is expected to increase the number of residential real estate loans eligible for an evaluation, instead of an appraisal. The FDIC estimates that, on average, the review process for an appraisal would take approximately forty minutes, but only ten minutes, on average, for an evaluation. Therefore, the FDIC estimates that the rule would reduce loan valuation-related costs for small, FDIC-supervised institutions by 30 minutes per transaction, on average. According to 2017 HMDA data, 13.3 percent of residential real estate loans originated by small, FDIC-supervised institutions and affiliated institutions are subject to the Title XI appraisal requirements and have loan amounts between $250,000 and $400,000.[92] Additionally, of the 1,430 small, FDIC-supervised institutions that reported residential loan originations, a total of 163,148 residential real estate loans

[87] 5 U.S.C. 601 *et seq.*

[88] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[89] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[90] Call Report, March 31, 2019.

[91] HMDA data, December 2015–2017.

[92] HMDA data, December 2017.

were originated,[93] and the average number of originations per year was approximately 128. Assuming that 13.3 percent of originations by small, FDIC-supervised institutions fall in the $250,000 to $400,000 range and are subject to the Title XI appraisal requirement, approximately 21,699 originations per year, or an average of 15 per small, FDIC-supervised institution, would have the option of an evaluation rather than an appraisal as a result of this rule. Thus, by using evaluations instead of appraisals a small, FDIC-supervised institution may reduce its total annual residential real estate transaction valuation-related labor hours by 7.5 hours.[94] The FDIC estimates this will result in a potential cost savings for small, FDIC-supervised institutions of $519.15 per year, per institution.[95] The estimated reduction in costs would be smaller if lenders opt to not utilize an evaluation and require an appraisal on a residential real estate transaction greater than $250,000 but not more than $400,000. These estimated savings would not exceed 5 percent of annualized salary expense or 2.5 percent of annualized noninterest expense for any small, FDIC-supervised institutions.[96]

This rule is likely to reduce residential real estate transaction valuation-related costs for the parties involved. By increasing the residential real estate appraisal threshold, the rule is expected to increase the number of residential real estate loans eligible for an evaluation, instead of an appraisal. As discussed in the proposal, the United States Department of Veterans Affairs' appraisal fee schedule [97] for a single-family residence generally ranges from $375 to $900, depending on the location of the property. While the FDIC does not have definitive data on the cost of evaluations, some of the comments from financial institutions and their trade associations represented that evaluations are less costly than appraisals. Making more residential real estate transactions eligible for evaluations rather than appraisals is likely to reduce transaction valuation-related costs. However, the FDIC assumes that most, if not all, of these cost reductions would be passed on to residential real estate buyers. Therefore, this aspect of the rule is likely to have little or no effect on small, FDIC-supervised entities.

The FDIC does not expect the rule to have any substantive effects on the safety and soundness of small, FDIC-supervised institutions. Analysis of HMDA data shows that the rule would newly exempt from appraisal requirements an estimated 13.3 percent of transactions, and 23 percent of the dollar volume of transactions, among small, FDIC-supervised institutions. Assuming that loans secured by residential properties with values from $250,000 to $400,000 represent the same percentage of the residential real estate loan portfolios of small, FDIC-supervised institutions as they do of the dollar volume of new originations, such loans do not represent more than 19.5 percent of total assets for any small, FDIC-supervised institutions.[98] The aggregate value of such loans for all small, FDIC-supervised institutions represents approximately four percent of assets, assuming that 23 percent of each institution's portfolio of loans secured by first liens on one- to four-family residential mortgages is made up of loans with a value at origination of $250,000 to $400,000.[99] While exempted transactions would not require an appraisal, they would still require an evaluation that is consistent with safe and sound banking practices. As previously discussed in the Revisions to the Title XI Appraisal Regulations section,[100] supervisory experience indicates that appraisals and evaluations are both credible tools to support real estate lending decisions, so the FDIC does not expect that increasing the threshold for appraisals will affect the safety and soundness of small, FDIC-supervised institutions. Further, historical loss information in the Call Reports reflects that the net charge-off rate for residential transactions did not increase after the increase in the appraisal threshold from $100,000 to $250,000 in June 1994, or during and after the recession in 2001 through year-end 2007. During this timeframe, the net charge-off rate for small, FDIC-supervised institutions ranged from 1 basis point to 9 basis points. However, the net charge-off rate for residential transactions increased significantly from 2008–2013, which was during and immediately after the recent recession, ranging from 3 basis points to 55 basis points. As discussed earlier, the agencies attribute the increase in the net charge-off rate for loans secured by single 1-to-4 family residential real estate during the recent recession to weak underwriting standards in the lead up to the crisis. Therefore, the FDIC believes the proposed rule is unlikely to pose significant safety and soundness risks for small, FDIC-supervised entities.

The rule is likely to pose relatively larger residential real estate valuation-related transaction cost reductions for rural buyers and small, FDIC-supervised institutions lending in rural areas; however, these effects are difficult to accurately estimate. Home prices in rural areas are generally lower than those in suburban and urban areas. Therefore, residential real estate transactions in rural areas are likely to utilize evaluations more than appraisals, under the proposed rule. Additionally, there may be less delay in finding qualified personnel to perform an evaluation than to perform a Title XI appraisal, particularly in rural areas.

Finally, by potentially reducing valuation-related costs associated with residential real estate transactions for properties greater than $250,000 but not more than $400,000, the proposed rule could result in a marginal increase in lending activity of small, FDIC-supervised institutions for properties of this type. However, the FDIC believes that this effect is likely to be negligible given that the potential cost savings of using an evaluation, rather than an appraisal, represents between 0.12–0.29 percent of the median home price.[101]

For the reasons described above and under section 605(b) of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 [102] (PRA), the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The

[93] *Id.*

[94] 0.5 hours *15 originations = 7.5 hours.

[95] 7.5 hours * $69.22 per hour = $519.15 The FDIC estimates that the average hourly compensation for a loan officer is $69.22 an hour. The hourly compensation estimate is based on published compensation rates for Credit Counselors and Loan Officers ($44.30). The estimate includes the May 2017 75th percentile hourly wage rate reported by the Bureau of Labor Statistics, National Industry Specific Occupational Employment and Wage Estimates for the Depository Credit Intermediation sector. These wage rates have been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2017 and December 2018 (3.59 percent) and grossed up by 50.8 percent to account for non-monetary compensation as reported by the December 2018 Employer Costs for Employee Compensation Data.

[96] Call Report, March 31 2019.

[97] *See https://www.benefits.va.gov/HOMELOANS/appraiser_fee_schedule.asp.*

[98] Call Report data, March 31, 2019.

[99] *Id.*

[100] *See supra,* Section II.

[101] Median home price in the United States as of January 2019 is estimated at $307,700 by the Federal Reserve Bank of St. Louis. *See https://fred.stlouisfed.org/series/MSPUS.* $375/$307,700 = .001218, $900/$307,700 = .002925.

[102] 44 U.S.C. 3501–3521.

agencies have reviewed this final rule and determined that it would not introduce any new or revise any collection of information pursuant to the PRA. In addition, the agencies received no comments on the PRA analysis in the proposal. Therefore, no submissions will be made to OMB for review.

C. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[103] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[104]

The agencies recognize that the requirement to obtain an evaluation for transactions exempted by the rural residential appraisal exemption [105] could be considered by IDIs to be a new requirement, despite the longstanding requirements for IDIs to obtain evaluations for transactions exempt from agencies' appraisal requirement under a threshold exemption. The agencies also recognize that the requirement for an appraisal review could be considered by IDIs to be a new requirement, despite the longstanding practice of many financial institutions to conduct appraisal reviews. Accordingly, with respect to the requirement that financial institutions obtain evaluations for transactions exempted by the rural residential appraisal exemption and the requirement for appraisal review, the effective date will be January 1, 2020, which is the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, consistent with RCDRIA.

Otherwise, the final rule reduces burden and does not impose any reporting, disclosure, or other new requirements on IDIs. For transactions exempted from the agencies' appraisal requirement by the final rule (*i.e.,* residential real estate transactions between $250,000 and $400,000), lenders are required to get an evaluation if they chose not to get an appraisal. However, the agencies do not view the option to obtain an evaluation instead of an appraisal as a new or additional requirement for purposes of RCDRIA. First, the process of obtaining an evaluation is not new since IDIs already obtain evaluations for transactions at or below the current $250,000-threshold. Second, for residential real estate transactions between $250,000 and $400,000, IDIs could continue to obtain appraisals instead of evaluations. Because the final rule does not impose new requirements on IDIs, the agencies are not required by RCDRIA to consider the administrative burdens and benefits of the rule or delay its effective date (other than the evaluation provision for transactions exempted by the rural residential appraisal exemption or and the appraisal review provision, as discussed above).

Because delaying the effective date of the final rule's threshold increase is not required and would serve no purpose, the threshold increase and all other provisions of the final rule, other than the evaluation requirement for the rural residential appraisal exemption and the requirement that appraisals be subject to appropriate review for compliance with USPAP, are effective on the first day after publication of the final rule in the **Federal Register**.

Additionally, although not required by RCDRIA, the agencies did consider the administrative costs and benefits of the residential appraisal threshold increase while developing the proposal. In designing the scope of the threshold increase, the agencies chose to align the definition of residential real estate transaction with industry practice, regulatory guidance, and the categories used in the Call Report in order to reduce the administrative burden of determining which transactions were exempted by the final rule. The agencies also considered the cost savings that IDIs would experience by obtaining evaluations instead of appraisals and set the threshold at a level designed to provide significant burden relief without sacrificing safety and soundness. Similarly, in requiring evaluations for exempted rural transactions and adding the appraisal review requirement, the agencies considered the administrative burden of these requirements on IDIs consistent with principles of safety and soundness and the public interest.

D. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [106] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

E. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation, currently $154 million).[107] As discussed in the OCC's Regulatory Flexibility Act section, the costs associated with the final rule, if any, would be *de minimis.* Therefore, the OCC concludes that the final rule will not result in an expenditure of $154 million or more annually by state, local, and tribal governments, or by the private sector.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Capital planning, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing

[103] 12 U.S.C. 4802(a).

[104] *Id.* at 4802(b).

[105] *See supra* note 25.

[106] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[107] The OCC estimates the UMRA inflation adjustment using the change in the annual U.S. GDP Implicit Price Deflator between 1995 and 2018, which is the most recent available annual data. The deflator was 71.868 in 1995, and 110.382 in 2018, resulting in an inflation adjustment factor of 1.54 (110.382/71.868 = 1.54, and $100 million × 1.54 = $154 million).

12 CFR Part 323

Banks, banking, Mortgages, Reporting and recordkeeping requirements, Savings associations.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

For the reasons set forth in the joint preamble, the OCC amends part 34 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1, 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j—3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* and 5412(b)(2)(B), and 15 U.S.C. 1639h.

■ 2. Section 34.42 is amended by:
■ a. Revising paragraph (f);
■ b. Redesignating paragraphs (k) through (n) as (l) through (o), respectively; and
■ c. Adding a new paragraph (k).
The revision and addition read as follows:

§ 34.42 Definitions.

* * * * *

(f) Complex appraisal for a residential real estate transaction means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

* * * * *

(k) Residential real estate transaction means a real estate-related financial transaction that is secured by a single 1-to-4 family residential property.

* * * * *

■ 3. Section 34.43 is amended by:
■ a. Revising paragraph (a)(1);
■ b. Removing the word ''or'' at the end of paragraph (a)(12);
■ c. Removing the period at the end of paragraph (a)(13) and adding ''; or'' in its place;
■ d. Adding paragraph (a)(14); and
■ e. Revising paragraph (d)(3).
The revisions and addition read as follows:

§ 34.43 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(1) The transaction is a residential real estate transaction that has a transaction value of $400,000 or less;

* * * * *

(14) The transaction is exempted from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. 3356.

* * * * *

(d) * * *

(3) *Complex appraisals for residential real estate transactions of more than $400,000.* All complex appraisals for residential real estate transactions rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is more than $400,000. A regulated institution may presume that appraisals for residential real estate transactions are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

* * * * *

■ 4. Effective January 1, 2020, § 34.43 is further amended by revising paragraph (b) to read as follows:

§ 34.43 Appraisals required; transactions requiring a State certified or licensed appraiser.

* * * * *

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraphs (a)(1), (5), (7), (13), or (14) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

* * * * *

■ 5. Effective January 1, 2020. § 34.44 is amended by:
■ a. Republishing the introductory text;
■ b. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and
■ c. Adding a new paragraph (c).
The addition reads as follows:

§ 34.44 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

* * * * *

(c) Be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice;

* * * * *

Federal Reserve Board

For the reasons set forth in the joint preamble, the Board amends part 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 6. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331 *et seq.,* 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 7. Section 225.62 is amended by:
■ a. Revising paragraph (f);
■ b. Redesignating paragraphs (k) through (n) as (l) through (o), respectively; and
■ c. Adding a new paragraph (k).
The revisions and addition read as follows:

§ 225.62 Definitions.

* * * * *

(f) Complex appraisal for a residential real estate transaction means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

* * * * *

(k) Residential real estate transaction means a real estate-related financial transaction that is secured by a single 1-to-4 family residential property.

* * * * *

■ 8. Section 225.63 is amended by:
■ a. Revising paragraph (a)(1);
■ b. Removing the word ''or'' at the end of paragraph (a)(13);
■ c. Removing the period at the end of paragraph (a)(14) and adding ''; or'' in its place;
■ d. Adding paragraph (a)(15); and
■ e. Revising paragraph (d)(3).
The addition and revisions read as follows:

§ 225.63 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(1) The transaction is a residential real estate transaction that has a transaction value of $400,000 or less;

* * * * *

(15) The transaction is exempted from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. 3356.

* * * * *

(d) * * *

(3) *Complex appraisals for residential real estate transactions of more than $400,000.* All complex appraisals for

residential real estate transactions rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is more than $400,000. A regulated institution may presume that appraisals for residential real estate transactions are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

* * * * *

■ 9. Effective January 1, 2010, § 225.63 is further amended by revising paragraph (b) to read as follows:

§ 225.63 Appraisals required; transactions requiring a State certified or licensed appraiser.

* * * * *

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraphs (a)(1), (5), (7), (14), or (15) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

* * * * *

■ 10. Effective January 1, 2020, § 225.64 is amended by:

■ a. Republishing the introductory text;

■ b. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

■ c. Adding a new paragraph (c).

The addition reads as follows:

§ 225.64 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

* * * * *

(c) Be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice;

* * * * *

Federal Deposit Insurance Corporation

For the reasons set forth in the joint preamble, the FDIC amends part 323 of chapter III of title 12 of the Code of Federal Regulations as follows:

■ 11. The authority citation for part 323 continues to read as follows:

Authority: 12 U.S.C. 1818, 1819(a) (''Seventh'' and ''Tenth''), 1831p–1 and 3331 *et seq.*

■ 12. Section 323.2 is amended by:

■ a. Revising paragraph (f);

■ b. Redesignating paragraphs (k) through (n) as (l) through (o), respectively; and

■ c. Adding a new paragraph (k).

The revision and addition read as follows:

§ 323.2 Definitions.

* * * * *

(f) Complex appraisal for a residential real estate transaction means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

* * * * *

(k) Residential real estate transaction means a real estate-related financial transaction that is secured by a single 1-to-4 family residential property.

* * * * *

■ 13. Section 323.3 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Removing the word ''or'' at the end of paragraph (a)(12);

■ c. Removing the period at the end of paragraph (a)(13) and adding ''; or'' in its place; and

■ d. Adding paragraph (a)(14); and

■ e. Revising paragraph (d)(3).

The revisions and addition read as follows:

§ 323.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(1) The transaction is a residential real estate transaction that has a transaction value of $400,000 or less;

* * * * *

(14) The transaction is exempted from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. 3356.

* * * * *

(d) * * *

(3) *Complex appraisals for residential real estate transactions of more than $400,000.* All complex appraisals for residential real estate transactions rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is more than $400,000. A regulated institution may presume that appraisals for residential real estate transactions are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

* * * * *

■ 14. Effective January 1, 2020. § 323.3 is further amended by revising paragraph (b) to read as follows:

§ 323.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

* * * * *

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraphs (a)(1), (5), (7), (13), or (14) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

* * * * *

■ 15. Effective January 1, 2020, § 323.4 is amended by

■ a. Republishing the introductory text;

■ b. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

■ c. Adding a new paragraph (c).

The addition reads as follows:

§ 323.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

* * * * *

(c) Be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice;

* * * * *

Dated: August 8, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 23, 2019.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on August 20, 2019.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2019–21376 Filed 10–7–19; 8:45 am]

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