BANK POLICY INSTITUTE

February 5, 2019

Via Electronic Mail

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, D.C. 20219

Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Real Estate Appraisals (Docket ID OCC–2018–0038 and RIN 1557–AE57; FRB Docket No. R–1639 and RIN 7100–AF30; FDIC RIN: 3064–AE87)

Ladies and Gentlemen:

The Bank Policy Institute[1] appreciates the opportunity to comment on the proposal issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency regarding the agencies' proposal to amend the agencies' regulations requiring appraisals for certain real estate-related transactions, including the proposal to increase the current appraisal requirement threshold for residential real estate-related transactions from $250,000 to $400,000.[2]

1 The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

2 83 Fed. Reg. 63110 (Dec. 7, 2018) (the "proposal").

We strongly support the agencies' continued efforts to reduce regulatory burdens in a manner consistent with safe and sound business practices. In that regard, we support the proposal to increase the current appraisal requirement threshold for residential real estate-related transactions, and we recommend that the agencies set the threshold at $500,000, rather than $400,000, for the reasons set forth below. We also encourage the agencies to conduct periodic reviews of the appraisal requirement thresholds to account for changes in property values that occur over time. Finally, as we have previously noted, we believe that a more general review of the agencies' appraisal regulations would be appropriate in light of changes in the real estate market and in the types of real estate-related transactions in which banks and their affiliates engage since the appraisal regulations were first adopted almost 30 years ago.

I. The agencies should set the threshold below which appraisals are not required for residential real estate transactions at $500,000, which is supported by the data cited in the proposal and would appropriately reflect appreciation in housing prices since the $250,000 threshold was set in 1994.

Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("Title XI") expressly authorizes the agencies to establish the threshold at or below which 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 Bureau of Consumer Financial Protection that such threshold level provides reasonable protection for consumers who purchase 1-to-4 unit single-family residences.[3] Currently, residential real estate transactions with a transaction value of $250,000 or less do not require Title XI appraisals.[4] The appraisal threshold applicable to residential real estate transactions has not been changed in nearly 25 years.[5]

In April 2018, the agencies adopted amendments to the appraisal regulations that increased the threshold below which appraisals are not required for commercial real estate transactions from $250,000 to $500,000.[6] Although the agencies initially proposed a threshold of $400,000 for commercial real estate transactions,[7] which was based on a similar methodology to the one put forth in the proposal with respect to residential real estate transactions,[8] the agencies ultimately increased the threshold to $500,000 in the April 2018 rulemaking based on comments received and further review of the applicable commercial real estate index. Relying on a similar approach in respect of residential real estate—that is, setting a threshold that is based on real estate prices at the lowest point in the most recent cycle but accounts for estimated price appreciation as of a more recent date—would be appropriate in light of the increase in housing prices since the threshold was last adjusted.

In addition, we believe that the inflation adjustment data provided in the proposal support a $500,000 threshold. Both the Case-Shiller and the Federal Housing Finance Agency indices cited in the proposal show that a residential property that sold for $250,000 in 1994 would have sold for over $600,000 in 2018.[9] Both of these means

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[3] 12 U.S.C. § 3341(b).

[4] *See* OCC: 12 C.F.R. § 34.43(a)(1); Federal Reserve: 12 C.F.R. § 225.63(a)(1); FDIC: 12 C.F.R. § 323.3(a)(1).

[5] *See* 59 Fed. Reg. 29482 (June 7, 1994).

[6] *See* 83 Fed. Reg. 15019 (April 9, 2018).

[7] *See* 82 Fed. Reg. 35478 (July 31, 2017).

[8] *Compare* 83 Fed. Reg. at 63117 (proposing to set the residential real estate threshold at $400,000, which the agencies identify as an approximation of housing prices on an indexed basis at the lowest point of the most recent cycle, which occurred in 2011 with respect to residential real estate) *with* 82 Fed. Reg. at 35483 (proposing to set the commercial real estate threshold at $400,000, which the agencies identify as an approximation of commercial real estate prices on an indexed basis at the lowest point of the most recent cycle, which occurred in 2010 with respect to commercial real estate).

[9] *See* 83 Fed. Reg. at 63116–63117.

of inflation adjustment are specifically tailored to housing prices, making them more appropriate reference points for purposes of adjusting the residential real estate threshold than the Consumer Price Index cited in the proposal, which is informed by many additional irrelevant and countervailing inputs.[10] Further, although we understand the rationale behind setting the threshold lower than the thresholds supported by the Case-Shiller and FHFA indices (approximately $640,000 and $610,000, respectively), we do not believe that the data from 2011, the low point of the most recent cycle, corresponds with either the current real estate market or with the industry's expectations for the future real estate market. Finally, it should be noted that even in the absence of formal appraisals, bank lenders and investors have ample and sophisticated means of determining appropriate property values, including through the use of publicly available valuation databases (*e.g.*, those maintained by CoreLogic, FHFA, National Association of Realtors and Redfin), combined with sophisticated and carefully-tuned internal models that are designed to safeguard the institutions' safety and soundness while also ensuring that consumers are able to access appropriate levels of credit relative to the underlying value of the property.

Accordingly, we recommend that the agencies adopt a $500,000 threshold for determining whether or not appraisals are required for residential real estate transactions. The higher threshold is supported by the data cited in the proposal and would appropriately reflect appreciation in housing prices since the $250,000 threshold was set in 1994, just as the increase to the threshold for commercial real estate adopted in April 2018 appropriately reflected appreciation in commercial real estate prices over the same period.

II. The agencies should periodically review and adjust (if appropriate) the dollar thresholds set forth in the appraisal regulations to account for changes in property values that occur over time and should consider additional modifications to the Title XI appraisal requirements to further reduce unnecessary and burdensome requirements.

The April 2018 rulemaking that created a higher threshold for commercial real estate transactions was the first increase in the dollar thresholds in the agencies' appraisal regulations since 1994. Although residential and commercial real estate markets go through periods of volatility, as well as periods of prolonged increases, followed by decreases, in prices, more frequent evaluation of real estate price and inflation indices and their implications for existing dollar thresholds in the agencies' appraisal regulations would result in thresholds better tailored to the prevailing values of real estate transactions at any given time. We therefore recommend that the agencies periodically, and in any event at least once every five years, review the dollar thresholds set forth in the appraisal regulations to determine if adjustments to such thresholds to account for changes in property values that occur over time would be appropriate.

Finally, we have previously noted a number of additional amendments and clarifications to the agencies' appraisal regulations that would provide meaningful relief without risk of raising safety and soundness, including amendments relating to non-U.S. real estate transactions, mortgage-backed securities and pools of mortgages and community development.[11] We would welcome the opportunity to work with the agencies to address these and other matters relating to the agencies' appraisal regulations.

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[10] Indeed, the proposal describes the CPI as "as measure of the average change over time in the prices paid by urban consumers for a *market basket of goods and services*," making it far less relevant to the consideration of residential real estate prices as compared to the Case-Shiller and FHFA indices. *See* 83 Fed. Reg. at 63116, n. 71.

[11] *See* The Clearing House, *Letter Re: Notice of Proposed Rulemaking to Exempt Commercial Real Estate Transactions of $400,000 or less from Appraisal Requirements* (Sept. 29, 2017).

BPI appreciates the opportunity to comment on the proposal. If you have any questions, please contact the undersigned by phone at 202.589.2409 or by email at John.Court@bpi.com.

Respectfully submitted,

John Court

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Bank Policy Institute