

By the National Credit Union
Administration Board on July 17, 1990.

Hattie M. Ulan,

Acting Secretary of the Board.

[FR Doc. 90-17239 Filed 7-24-90; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Parts 701, 722 and 741

Appraisals and Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final regulation implements title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"). It is intended to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. Title XI of FIRREA and this final regulation provide the affected federal entities with added assurance that real estate appraisals used in connection with federal responsibilities and requirements are performed in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. Toward this end, the final regulation identifies which transactions require an appraiser, sets forth minimum standards for performing appraisals, and distinguishes those appraisals requiring the services of a state-certified appraiser from those requiring a state-licensed appraiser. This regulation is the result of a working group made up of representatives from the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Resolution Trust Corporation, and the NCUA. The other agencies are issuing similar regulations.

EFFECTIVE DATE: August 9, 1990.

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SUPPLEMENTARY INFORMATION:

A. Background

Title XI of FIRREA is designed to insure more reliable appraisals rendered in connection with federally-related transactions. In addition, title XI

requires the NCUA Board to identify those circumstances that require a state-certified appraiser and those that require a state-certified or -licensed appraiser. In response to this legislative mandate, the NCUA Board has adopted this regulation which is designed to address problems perceived by Congress and the Board.

Section 1121 of FIRREA defines a "federally related transaction" as a real estate-related financial transaction which, *inter alia*, requires the services of an appraiser. The NCUA Board has required state-certified or -licensed appraisers to be used for all real estate-related financial transactions except those transactions where (i) A lien is placed on real property solely through an abundance of caution; (ii) the transaction value (as defined in the proposed regulation) is less than or equal to \$50,000; (iii) the transaction involves a lease that is not the economic equivalent of a purchase or sale; (iv) there is a renewal of an extension of credit under certain circumstances; or (v) the credit union is acquiring interests in loans that complied with this regulation when originated. The NCUA Board, acting pursuant to section 1112 of FIRREA has identified which categories of federally related transactions will require a state-certified appraiser and which will require a state-licensed appraiser. State requirements to become a certified appraiser will be more demanding than those required for a state-licensed appraiser.

In addition, the NCUA Board has adopted standards, pursuant to section 1110 of FIRREA, for the performance of appraisals in connection with federally related transactions within NCUA's jurisdiction. These standards require that all such appraisals be written and that they conform to the Uniform Standards of Professional Appraisal Practices ("USPAP") promulgated by the Appraisal Standards Board of the Appraisal Foundation (established November 30, 1987, as a not-for-profit corporation under the laws of Illinois) and the additional standards set forth in this regulation.

This regulation is intended to supplement the appraisal guidelines previously issued in Letter to Credit Unions Number 112 (October 20, 1989). These guidelines will remain in effect.

The NCUA Board has adopted this regulation to comply with FIRREA and to improve the safety and soundness of all federally-insured credit unions. The soundness of real estate loans and investments made by federally insured credit unions depends upon the adequacy of the underwriting and analysis used to support these transactions. A real estate appraisal is

one of several essential components of the lending process. Accordingly, through the integration of existing guidance on real estate appraisals, with the additional requirements imposed by title XI of FIRREA, this regulation provides federally insured credit unions with a reasonable degree of assurance that real estate appraisals used in connection with federally related transactions will be reliable.

The Appraisal Standards Board of the Appraisal Foundation has adopted standards to be used with this regulation. These standards have been amended since the Board first solicited comment on its Appraisal Standards regulation. The standards will be published in the *Federal Register* in conjunction with the other financial regulators before the effective date of this regulation. Public comment on the standards will be solicited at that time.

B. Effective Dates

Appraisals performed in connection with federally related transactions are to comply with the standards set forth in this regulation by August 9, 1990. State-certified or -licensed appraisers, as appropriate, will be required for federally related transactions as of July 1, 1991, unless this deadline is extended by the Appraisal Subcommittee for a given state pursuant to provisions of title XI. Appraisals for real estate-related financial transactions entered into before August 9, 1990, will not require an appraisal to be performed in accordance with this regulation. A transaction will be deemed entered into and a loan will be deemed originated if there is a binding commitment to perform before the effective date of this regulation.

C. Comments

On February 16, 1990 (55 FR 5614), NCUA published for comment proposed rules to implement Title XI of FIRREA. NCUA received one hundred and seventeen comments from interested individuals and organizations. Sixty-four of the commenters were FCUs and fourteen were state-chartered credit unions. Seven comments were from state credit union leagues. Eight comments were from appraisal trade associations and seven were received from real estate trade associations. Three comments were from federal agencies, three commenters were law firms, and two commenters were individuals. Two comments were received from national credit union trade associations. Comments were also received from a state credit union regulator, a mortgage bankers' trade association, a savings and loan trade

association, an accountants' trade association, and an appraisal firm. Most of the responses were favorable, although a number of commenters recommended one or more changes to the regulation. The principal issues raised by the comments were discussed in the section below. In addition, the section-by-section analysis addresses many of the concerns raised by the comments.

D. Discussion

Section 722.2 Appraisal Definitions

Fourteen commenters objected to the definition of a "complex 1-to-4 family residential property appraisal." In the proposed rule, it is defined as "an appraisal of a property which is atypical for the marketplace." The definition then goes on to give examples of what may be considered atypical factors. Most of these commenters found this definition to be ambiguous, unworkable and subject to widely varying interpretations. In addition, these commenters believe that if this definition was adopted, credit unions would be forced to complete a preappraisal property analysis at the time the mortgage loan application is taken in order to determine if the property should be appraised by a state-licensed or state-certified appraiser. Some commenters suggested that the credit union should be able to presume that a property is noncomplex if the transaction value is below a certain dollar limit.

In response to these comments, the NCUA Board has amended the definition in the final rule to clarify that a residential real estate appraisal is considered complex when the property to be appraised, the form of ownership, or market conditions are atypical, and not solely because of the presence or absence of the particular factors cited in the proposed rule. The illustrative list of atypical factors which appeared in the proposed rule has been moved to the section-by-section analysis of the preamble. As discussed more fully below, the final rule also adopts a presumption that residential real estate appraisals are noncomplex and permits licensed appraisers to perform complex 1-to-4 family residential property appraisals if the transaction value is less than \$250,000.

One commenter requested that the definition of state-certified appraiser contain language concerning the requirement that a state-certified appraiser pass a state examination that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser

Qualification Board of the Appraisal Foundation. Although similar language was contained in NCUA's preamble to the proposed rule, for the sake of clarity and uniformity, the suggestion was incorporated into the final rule.

One commenter had some serious concerns about a possible disruption in the mortgage market due to some of the definitional language contained in the proposed rule. The commenter believes the definitions may lead to an interpretation that any regulated institution that sells or swaps pooled mortgages to investors, in an amount greater than \$1 million per delivery, must have obtained certified appraisals on each of the loans in the pool. This is not the intent of the regulation. To avoid any confusion, the NCUA Board has amended this regulation to provide that the definition applies to each loan in the pool, but not the pool itself. In addition, NCUA has clarified that a purchase of a loan or interest in a loan will not require an appraisal of the property that serves as collateral, provided that the property was appraised in conformance with this regulation when the loan was originated. As a consequence, a regulated institution purchasing an interest in a pool will not have to have each property securing a loan reappraised. However, if a regulated institution intends to purchase a pool of loans that do not have conforming appraisals, then appraisals will have to be performed on the underlying real estate collateral prior to the purchase. In such an instance, the transaction value will be the individual amounts of the loans, not the aggregate amount of the pool.

Section 722.3 Appraisals Not Required; Transactions Requiring A State-Certified or -Licensed Appraiser

Under the proposed rule, an appraisal would not be required for any real estate-related transaction in which the transaction value is \$15,000 or less. Most of the commenters discussed this provision and a substantial majority requested a higher dollar amount, although a minority of commenters believe that sound lending practices require an appraisal in almost all real estate-related transactions. Thirteen commenters believe the \$15,000 limit is appropriate. Among the majority of commenters, the main reasons for increasing the dollar value on when an appraisal is not required were the geographical diversity in the U.S. housing market, the increased costs for borrowers, and the lengthening of the mortgage lending process if a low dollar amount was adopted. Several commenters noted that in many cases a

credit union could extend credit to a borrower on an unsecured basis for amounts in excess of \$15,000 and argued that it was their experience that there were very few losses attributable to small residential real estate loans and home equity loans.

Some commenters suggested using the tax-assessed value of a property and a "drive by" instead of the \$15,000 limit for all home equity loans. Others commented that it would be a mistake for a credit union to use property tax assessments instead of an appraisal. They reasoned that the assessed valuation is usually not current and does not reflect the present condition of the property or the neighborhood. In addition, they assert that tax assessments are not accurate in a depressed home market and do not take into account the dumping of real estate inventory into the marketplace by the federal government. Some commenters suggest that no appraisal should be required if the loan-to-value ratio is a certain amount. Although NCUA considered the feasibility of implementing both of these suggestions, the Board believes that raising the dollar limit will adequately address the concerns expressed by the commenters.

Abundance of Caution Section 722.3(a)

Under the proposed rule, an appraisal is not required for any real estate-related financial transaction in which a lien on real property has been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien. Most of the negative commenters found the "abundance of caution" language confusing and believe it may foster conflict between NCUA examiners and credit union officials.

The final rule maintains the "abundance of caution" provision as it appeared in the proposed rule. NCUA interprets this exception narrowly, requiring that no material term of a loan be more favorable to the borrower because the regulated institution has taken real estate as collateral for the extension of credit. Accordingly, neither the amount of the loan, the rate of interest, the term of the loan, the presence or absence of a guarantor, or any other term affecting the regulated institution's ability to recover on the loan may be more favorable to the borrower. In short, this exception is intended to recognize that a credit union is not required to obtain an appraisal of real estate taken as collateral for a loan if the institution would have extended

credit to the borrower on exactly the same terms regardless of whether the real estate was taken as collateral.

State-Certified and-Licensed Appraisers—Section 722.3(b)

The NCUA Board requested comments on adopting a stricter standard for the use of certified appraisers because of the unique nature of credit unions. Specifically, the NCUA Board requested comments on requiring a certified appraiser on any "non-complex 1-to-4 family residential property appraisal" if the transaction value is in excess of \$200,000, although the proposed rule required one only if the transaction value exceed \$1 million.

Sixty-eight comments were received on this issue. A majority of these commenters rejected the idea of lowering the standard to \$200,000. The commenters had two reasons for their position. First, they believe that a lowering of the \$1 million threshold would put credit unions at a competitive disadvantage with other financial institutions. Second, these commenters believe that, in high-priced real estate areas, a \$200,000 threshold for requiring a certified appraiser will significantly increase the cost of an appraisal for higher-priced properties. The NCUA Board is persuaded by this line of reasoning and has decided to keep the threshold at \$1 million.

Some commenters suggested that requiring the use of a certified appraiser when the value of a federally related transaction exceeds 10% of regular reserves and undivided earnings places smaller credit unions at a competitive disadvantage since they would be required to obtain a certified appraisal for the same transaction which a larger institution could enter into using a licensed appraiser. The NCUA Board agrees with these comments and has deleted this limitation in the final rule.

Seven commenters believe that licensed appraisers should be allowed to perform the appraisal on any noncomplex 1-to-4 family residential property, regardless of the transaction value. The general belief among these commenters is that, for noncomplex 1-to-4 family residential property, a licensed appraiser is just as qualified as a certified appraiser. In response to comments requesting an expanded use of state-licensed appraisers, the final rule has been changed to permit licensed appraisers to perform appraisals of all 1-to-4 residential properties, including complex, where the transaction value is less than \$250,000.

A number of commenters specifically support requiring state-certified appraisers in all business loans

involving real estate. Most commenters believe that business loans are the riskiest type of loans and, due to market volatility, should be appraised by the most qualified appraiser. A few commenters were against requiring state-certified appraisers on all business loans and some suggested requiring state-certified appraisers on all member business loans in excess of \$100,000. In the final rule, a certified appraiser is required on any member business loan requiring an appraisal in excess of \$50,000 due to the increase from \$15,000 to \$50,000 on when an appraisal is required.

Section 722.4 Appraisal Standards

The proposed rule sets forth the minimum standards to which appraisals will be subject. Some commenters specifically stated that these standards will increase the cost of appraisals. Many other commenters implied the same. Few comments were received on the specific standards listed in the proposed regulation.

Appraisal Foundation & Uniform Standards of Professional Appraisal Practice

Some commenters recommend removing any reference to the Appraisal Foundation and the USPAP because the Appraisal Foundation is an organization that is not representative of the entire appraisal industry and thus NCUA should not adopt the Appraisal Foundation's standards. Title XI requires that the standards of the Appraisal Standards Board of the Appraisal Foundation be used as evidence of generally accepted appraisal standards in promulgating this rule. This standard achieves that statutory mandate by requiring that appraisals prepared for federally related transactions be performed in accordance with USPAP.

Other commenters requested that NCUA provide credit unions with the current USPAP either in the final regulation or as a separate document. The standards will be published in the *Federal Register* before the effective date of this regulation. Only those provisions of the USPAP that are published in the *Federal Register* will apply to federally related transactions.

Written Appraisals and Forms. Section 722.4(a)(3) requires appraisals to be written in a narrative format, or on forms. One commenter specifically approved of this provision. Two commenters believe that all appraisals should be on FNMA/FHLMC documentation. These commenters believe this is the safest way to document appraisals. The NCUA Board

believes that a credit union should be allowed to determine which format is best for the needs of the credit union. As a result, the final rule remains unchanged from the proposal.

Sales History. Four commenters approved of the sales history provision in § 722.4(a)(4). This section requires one-year sales histories for 1-to-4 family residential property and three years for all other types of property. However, one commenter suggested time periods of three and five years, respectively; another suggested two years for nonresidential property; while another commenter suggested a uniform three-year time frame. The NCUA Board believes one-year sales histories for 1-to-4 family residential property and three years for all other types of property are appropriate for the reasons stated in the section-by-section analysis.

Marketing Period. One commenter suggested a change in § 722.4(a)(6), while another commenter supported the standard which addresses the issue of the appraiser's estimate of what is a reasonable marketing period for the subject property. NCUA believes that this standard is necessary to ensure that accurate appraisals are prepared. The section remains unchanged.

Deductions and Discounts. Section 722.4(a)(8) requires appraisers to take into consideration appropriate deductions and discounts on any proposed construction. Two commenters believe this section needs additional clarification concerning commercial property. The NCUA Board has made additional clarification as explained in the section-by-section analysis.

Legal Description. Section 722.4(a)(11) requires a legal description of the property appraised. One commenter supported this standard. One commenter suggested that this legal description must be in addition to the description required by the USPAP. Although this was contained in the preamble to the final rule, NCUA has incorporated this suggestion into the final regulation to provide clarity and uniformity.

Use of Recognized Appraisal Approaches. Several commenters suggested that it was not feasible or reasonable to apply all approaches to valuation when appraising certain properties, such as 1-to-4 family residential properties, and that requiring this additional information would increase the cost of appraisals. This standard, found in proposed § 722.4(a)(13), requires an appraiser to follow a reasonable valuation method that addresses the three recognized approaches to estimating market value

and allows the appraiser to eliminate one or more approaches if it is not appropriate. For the reasons stated in the section-by-section analysis, the NCUA believes that this standard is necessary to the preparation of a reliable appraisal and, therefore, has retained this standard unchanged in the final rule.

Section 722.5 Appraiser Independence

The proposed rule requires fee appraisers to be hired by federally insured credit unions or their agents rather than by the borrower. The proposed rule also requires that staff appraisers not be supervised, controlled, or influenced by loan underwriters, loan officers, or collection officers. A substantial majority of commenters specifically approved of these provisions on appraiser independence for the reasons stated in the section-by-section analysis. However, one commenter disapproved of the appraiser independence provision stating that no amount of regulation will prevent collusion if the stakes are high enough.

Some commenters stated that the use of staff appraisers should be discouraged or eliminated altogether. The NCUA Board is unwilling to prohibit staff appraisers completely. The general consensus among these commenters is that no amount of regulation will prohibit the inherent conflict contained in the staff appraiser position. Other commenters believe that the appraiser independence provisions should be made even stronger.

As discussed in the section-by-section analysis to this rule, the NCUA believes that an appraiser must be independent of the lending and collection function in order to produce an objective opinion of the market value of a property. However, NCUA also recognizes that no single form of organizational structure would be appropriate for all credit unions. Thus, this provision recognizes that one credit union may engage fee appraisers to perform all appraisals for federally related transactions, another may establish a separate appraisal department wholly outside the lending and collection functions of the institution, while a third, smaller institution establishes procedures which permit a loan officer to perform appraisals as part of their employment requirements as long as he or she is not otherwise involved in the federally related transaction. The NCUA believes that the current provision puts credit unions on notice of what is required, and gives them the flexibility to develop structures and procedures to ensure that appraisers are independent and not subject to improper influences.

Some commenters wondered if the following practice would be permissible under the regulation. An FCU would have a list of five appraisers that they have interviewed, scrutinized, and determined to have the required level of competency and credentials. The borrowers would be able to pick a particular appraiser from the list. The FCU would then contract with the appraiser for the appraisal which would be delivered to the FCU upon request. This practice is acceptable under the final rule.

Section 722.6 Professional Association Membership; Competency

One commenter requested that the final rule state that, while membership in appraisal organizations may not be the sole factor to be considered when making an appraisal assignment, it may be brought into the mix of factors that are to be considered when determining an appraiser's competency. The Board believes this interpretation is clear from the plain language of the rule, *i.e.*, an appraiser may not be excluded "solely" for lack of membership. Another commenter wanted the regulation to state that all appraisers, including staff appraisers, must be state-certified or -licensed. This is not explicitly stated in the proposed rule, but it is clear that all appraisers must be certified or licensed to perform appraisals on all federally related real estate transactions required by the rule. For the sake of further clarity, this suggestion is incorporated into the final rule.

Age of Appraisal

Some commenters suggested that the final rule contain a maximum allowable age of an appraisal. They believe that there should be a maximum age (time from date of the appraisal to date of the application of the loan) for an appraisal, but that the age should not be so short as to unnecessarily require another appraisal be prepared in the uncommon instance where a mortgage is refinanced within a reasonably short time. Hence, the NCUA Board realizes that any specific time period will not be appropriate in all situations. NCUA has specifically decided to allow each institution to determine the allowable period for an appraisal, but recommends that any appraisal over one year old not be used.

July 1991

Six commenters were concerned about the July 1991 statutory deadline and how the regulation works if a state has not adopted the proper criteria. These commenters believe that it is unrealistic to require FCUs to obtain

state-certified or -licensed appraisals in all states because many of these states will not be in position to provide these designations by the target date or will have licensed or certified so few appraisers by the target date that it will be extremely difficult to obtain appraisals. The Appraisal Subcommittee of the Federal Financial Institutions Examination Council has the authority to temporarily waive appraiser certification or licensing requirements for states having a scarcity of qualified appraisers. The NCUA Board is confident that this issue will be handled in a timely and responsible manner by the Appraisal Subcommittee and therefore refrains from addressing this issue.

E. Section-by-Section Analysis

This section contains further elaboration on changes made in the regulation as well as a complete analysis of each section of the final rule.

Section 722.1 Authority, Purpose, and Scope

This section identifies title XI of FIRREA as the authority under which this regulation is promulgated. Further, it lists those institutions which must comply with the regulation. The regulation applies to all federally insured credit unions and to the NCUA.

Section 722.2 Definitions

Except where noted below, the definitions set forth in title XI of FIRREA shall apply to the terms used in this regulation.

Appraisal. This definition currently is used by nineteen federal agencies. NCUA believes that this widespread use and acceptance will produce consistent appraisals.

Complex 1- to 4-family residential property appraisal. Section 1113 of FIRREA allows the use of a state-licensed appraiser for, among other federally related transactions, 1- to 4-family residential property appraisals, "unless the size and complexity requires a State certified appraiser." The NCUA Board deems a "complex 1- to 4-family residential property appraisal" to be one in which the property to be appraised, market conditions, or form of ownership is atypical. Examples of atypical factors may include age of improvements, architectural style, size of improvements, size of lot, neighborhood land use, potential environmental hazard liability, leasehold interests, limited readily available comparable sales data, or other unusual factors. This list is illustrative only.

Before hiring an appraiser, the credit union should assess the project to determine the qualifications that an appraiser will need to complete the appraisal assignment and whether the transaction, due to its complexity, would require a certified appraiser. A credit union may presume that appraisals of 1-to-4 family residential properties are not complex, unless the credit union has readily available information that suggests that a given appraisal will be complex. Such information may be provided, for instance, on a loan application. If the credit union or assigned appraiser discovers during the assignment that the transaction is a typical or beyond the appraiser's expertise, they are required to take the necessary action to remedy the deficiency. A certified appraiser could then be employed or the licensed appraiser could complete the appraisal and have a certified appraiser review and cosign the appraisal report.

Market value. This definition is commonly used in connection with mortgage lending by a number of government agencies and others. This definition contemplates the consummation of a sale as of a specified date and the passing of title from seller to buyer under open and competitive market conditions requisite to a fair sale. It is designed to provide an accurate and reliable measure of the economic potential of property involved in federally related transactions. Moreover, the NCUA Board believes that the widespread acceptance and use of this definition will provide consistency in appraisals.

In applying this definition of market value, adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs that are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third-party financial institution that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar-for-dollar cost of the financing or concession, but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

Real estate-related financial transaction. This definition is taken

from section 1121(5) of FIRREA, except that "and" is replaced with "or" throughout so as to comply with the intent of Congress.

State-certified appraiser. This classification applies to appraisers who are recognized by the states as being more knowledgeable of and experienced in appraisals than are licensed appraisers. Section 1116 of FIRREA contemplates that each state or territory will adopt standards and procedures, consistent with the purposes of title XI, for obtaining the designation of "state-certified appraiser." To comply with the intent of title XI, each state's standards and procedures must require its certified appraisers to meet, at a minimum, the criteria for certification issued by the Appraisal Qualifications Board of the Appraisal Foundation. Moreover, no state or territory may certify an appraiser unless that individual passes an examination, administered by the state or territory, that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraisal Foundation. The rule does not prevent a state from establishing additional certification criteria.

The NCUA under title XI may, in the future, establish certification criteria in addition to those adopted by a given state. Additionally, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council may issue a written finding that the certification criteria of a state or territory are inadequate for specified reasons. Thus, an individual may be a "state-certified appraiser" only if (a) The individual complies with all state-imposed criteria and additional criteria, if any, imposed by the agency hereunder, and (b) the appraiser certifications and licenses of a state have not been rejected by the Appraisal Subcommittee. As of July 1, 1991, appraisals for federally related transactions must be performed by state-certified or -licensed appraisers, unless this deadline is extended by the Appraisal Subcommittee for a given state.

State-licensed appraiser. Each state may elect to adopt licensing criteria that are less rigorous than certification criteria. However, licensing criteria must be adequate to protect federal financial and public policy interests. For example, simply *grandfathering* all existing appraisers may not be acceptable. Rather, the states and territories are to design criteria that will insure that licensed appraisers will have the experience and training sufficient to perform 1-to-4 family residential

property appraisals that are within the dollar thresholds set forth in this final regulation and that are not "complex 1-to-4 family residential property appraisals" as this term is defined.

As with state-certified appraiser criteria, NCUA may impose additional licensing requirements. Moreover, the Appraisal Subcommittee is charged with monitoring state appraiser certifying and licensing agencies, and may reject state certifications and licenses if a state's appraisal policies, practices, or procedures are found to be inconsistent with title XI or this proposed regulation.

Tract development. A tract development may be units in a subdivision, condominium project, timeshare project, or any similar project meant to be sold as individual units over a period of time. A project will be deemed to be a tract development whether it currently is or is intended to be sold as a single development.

Transaction value. This definition is used to determine which transactions require a state-certified appraiser and/or state-licensed appraiser. NCUA will consider a series of related transactions as one transaction if it appears that a credit union is attempting to evade the requirements of Title XI of FIRREA or this regulation.

Section 772.3 Transactions Requiring State-Certified or -Licensed Appraiser

(a) **Appraisal not required.** Section 1121(4) of FIRREA defines a federally related transaction as a real estate-related financial transaction that, among other things, requires the services of an appraiser. NCUA recognizes that not all real estate-related financial transactions will require an appraiser. For instance, an appraisal would not be needed where a lien on real property has been taken as collateral solely through an abundance of caution. Collateral will be deemed to be taken in an abundance of caution where the terms, as a consequence, have not been made more favorable than they would have been in the absence of the lien. Accordingly, this exception is intended to have very limited application. In addition, NCUA does not require a state-certified or -licensed appraiser for real estate-related financial transactions having a transaction value less than or equal to \$50,000. A third instance where a state-certified or -licensed appraiser is not required is a lease that is not the economic equivalent of a purchase or sale of real estate. An example of such a lease is sublease by a credit union of a portion of its premises to unrelated third party. On the other hand, an assignment of a lease as collateral for the extension

of credit would be the economic equivalent of a purchase or sale. Fourth, NCUA will not require a state-certified or -licensed appraiser for transactions resulting from a maturing extension of credit, provided that the borrower has made all scheduled payments under the note, no new funds are advanced, the borrower remains creditworthy, and the marked conditions and collateral have not significantly deteriorated. Finally, a state-certified or -licensed appraiser will not be required if a regulated institution purchases an interest in a loan secured by real property if the underlying collateral was appraised in accordance with this regulation. If the property was not adequately appraised, then the regulated institution must order an appraisal for that property.

(b) *Transactions requiring State-certified appraiser.* Title XI requires a state-certified appraiser to be used if the size of the transaction and the complexity of the appraisal warrant the expertise of the state-certified appraiser. The regulation requires a state-certified appraiser to be used in three instances. First, all appraisals rendered in connection with a federally related transaction having a transaction value of \$1,000,000 or more require a state-certified appraiser, regardless of complexity. Second, all federally related transactions having a transaction value greater than \$50,000, except those involving appraisals of 1-to-4 family residential properties, require a state-certified appraiser. Third, 1-to-4 family residential property appraisals require a state-certified appraiser if the transaction value is \$250,000 or more and the appraisal will be complex.

(c) *Transactions requiring either a state-certified or -licensed appraiser.* Any federally related transaction that does not require the services of a state-certified appraiser must be performed by a least a state-licensed appraiser. State-licensed appraisers may perform appraisals rendered in connection with any 1-to-4 family residential property having a transaction value less than \$250,000. In addition, state-licensed appraisers may perform appraisals to 1-to-4 family residential properties for transactions with a value up to but not including \$1,000,000 if the appraisal will not be complex. Of course, state-licensed appraisers may perform appraisals rendered in connection with a property that has a transaction value of \$50,000 or less.

(d) *Valuation.* Sound lending policy requires that each credit union identify the types of real estate lending which it will offer, as well as the underwriting procedures associated with each type of

loan. For real estate secured transactions of \$50,000 or less, credit unions are expected to establish policies that address the need to ascertain the value of collateral offered by borrowers. This is necessary to ensure that the credit union is adequately protected throughout the life of the loan. A valuation is not required for transactions for which one of the four exceptions listed in § 722.3(a) (2), (3), (4) or (5) apply, regardless of value. At a minimum, the valuation should be performed by an individual who is qualified and experienced with the type of property being valued and has no direct or indirect interest in the property being evaluated. The valuation should reasonably estimate market value, as defined in section 722.2(f), with sufficient accuracy to protect the credit union's interest throughout the term of the loan.

Section 722.4 Appraisal Standards

(a) *Minimum standards.* Section 1110 of FIRREA instructs NCUA to prescribe appropriate standards for the performance of appraisals made in connection with federally related transactions. Further, section 1110 mandates that the standards require, at a minimum, that appraisals be written and that they conform to the generally accepted appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. NCUA is empowered to require compliance with additional appraisal standards if it makes a written determination that such additional standards are required in order to properly carry out its statutory responsibilities. Section 722.4 of the regulation incorporates the minimum standards set forth in the statute, while listing additional criteria that shall apply to all appraisals performed in connection with federally related transactions.

In enacting title XI of FIRREA, Congress was responding to perceived problems in the appraisal industry. These problems were identified by the House Committee on Government Operations. They have been cited repeatedly in the legislative history of Title XI. NCUA has adopted the following standards to further the legislative intent in addressing these problems. These standards are designed to contribute to safety and soundness by requiring reliable appraisals.

(1) *Compliance with USPAP; departure provision.* This standard incorporates the current standards in the USPAP, and clarifies that the Departure Provision (which allows deviations from the standards) in the

USPAP is inapplicable to appraisals conducted in connection with federally related transactions. The NCUA Board believes that the Departure Provision allows appraisal services to be performed which produce something different from the "appraisal" contemplated by title XI of FIRREA. For instance, in accordance with the Departure Provision and consistent with current USPAP requirements, a letter opinion might be produced, consistent with current USPAP requirements, that could be silent about trends of rents, vacancies, or overbuilding. The Comment on the Departure Provision in the USPAP lists examples of when the departure provision might apply; however, for purposes of the proposed regulation, such services are not appraisals as this term is used in Title XI. The NCUA Board believes that the Departure Provision in the USPAP allows for the omission of data that should be included in developing and reporting appraisals rendered in connection with federally related transactions and, therefore, has determined that the Departure Provision shall not apply to such appraisals.

Changes in the USPAP after August 9, 1990, will not apply to federally related transactions unless NCUA has provided prior notice in the Federal Register of the changes and interested persons have had an opportunity to comment.

(2) *Market value.* This standard requires an appraisal to document an appraiser's opinion of a property's "market value" as this term is defined. The definition of "market value" was developed by Fannie Mae and Freddie Mac with the input of many professional appraisal organizations. Without such a standard, a lender might select a definition of value that allows the value of real property to be increased by favorable financing, going concern value, or special value to a specific user. This standard proposes to provide to interested parties the information necessary to determine the value of property.

(3) *Written appraisals; forms.* This standard sets forth the legislative mandate that all appraisals be written. Moreover, it requires an appraisal to be sufficiently descriptive to enable reviewer to readily ascertain the estimated value reported and the rationale for that estimate. The appraisal may be in a narrative format or on a form chosen by an appraiser, but the appraisal must comply with all other provisions of the regulation. A form not initially designed for use in connection with federally related transactions may be used provided that it is modified as

necessary to comply with the requirements of title XI and this proposed regulation. Regardless of the format selected, the appraisal must be able to be readily understood by a third party and must reflect the complexity of the property that is appraised. This will enable the reader of the appraisal to independently determine its adequacy based upon the characteristics of the collateral appraised.

(4) *Sales history.* This standard is designed to enable a reviewer to compare an appraiser's opinion of a property's market value with recent sales prices. In addition to giving the reviewer a basis by which to evaluate the accuracy of the subject property appraisal, it also will assist the reviewer in identifying recent trends in market prices. A sales history may identify a single sale or a series of sales at artificially inflated prices.

Sales histories are required for one year for 1-to-4 family residential property and for three years for all other types of property. A more demanding reporting standard for nonresidential property is imposed because larger loan amounts are generally granted and, hence, larger risk to the credit union incurred, when the loan security is not a 1-to-4 family dwelling.

(5) *Revenues, expenses and vacancies.* An appraisal should disclose current income produced by a property if the property will continue to be used to generate income after a transaction is consummated. This information is essential for an accurate picture of the market value of a property. Appraisal values should be predicated upon current revenues, expenses and vacancies for the subject property if it is income-producing. That is, appraisals should be based upon income that can realistically be earned under current market and economic conditions (in light of rents being earned on comparable properties), rather than upon estimated or projected income that cannot be supported by current market conditions. If an appraiser reports a high current vacancy, this condition may require a lender to impose special conditions on the loan.

(6) *Marketing period.* This standard requires an appraiser to employ a marketing period that is reasonable in light of a given property's characteristics and market conditions and to disclose the assumptions used. An appraiser's opinion of market value will depend in part on the appraiser's estimate of how long a given piece of property will remain for sale. For instance, an appraisal using a long marketing period is likely to produce a higher market value than would an appraisal using a

shorter marketing period. This information will better enable the reader of the appraisal to assess its accuracy.

(7) *Trend analysis.* An appraisal should inform the reader of any market trends, regardless of whether the trend reflects rising or declining values. Such trends might include, for example, increasing vacancy rates, greater use of rent concessions, or declining sales prices. Identification of negative trends is particularly important so that federally insured credit unions may avoid extending credit on the basis of insufficient collateral. Market trends may be indicated in market activity on the subject property, such as listing, options, sales agreements; accordingly, such activity should be disclosed.

(8) *Deductions and discounts.* This standard is designed to avoid having appraisals prepared using unrealistic assumptions. For federally related transactions, the appraisal is to include, among other values, an "as is" value; this is the value of the property in its current physical condition and subject to the zoning in effect as of the date of the appraisal. For properties where improvements are to be constructed or rehabilitated, the regulated institution may request a value based on stabilized occupancy or a value based on the sum of retail sales (condominiums, lot developments, or timeshares). However, the sum of retail sales for a proposed development is not the market value of the development. For proposed developments that involve the sale of individual houses, units, or lots, the appraiser must analyze and report appropriate deductions and discounts for holding costs, marketing costs and entrepreneurial profit. For proposed and rehabilitated rental developments, the appraiser must make appropriate deductions and discounts for items such as leasing commissions, rent losses and tenant improvements from the market value estimate based on stabilized occupancy.

(9) *Prohibited influences.* All appraisals are to be performed without pressure from someone who desires a specific value. Accordingly, every appraisal rendered in connection with a federally related transaction shall include a statement to the effect that employment of the appraiser was not conditioned upon the appraisal producing a specific value or a value within a given range. Similarly, future employment prospects should not be dependent upon an appraisal producing a specified value. Employment and compensation should not be based on whether a loan application is approved, as this, too, would exert pressure on an

appraiser to render whatever appraisal is necessary for the loan to be approved.

(10) *Self-contained appraisals.* This standard requires an appraisal to contain all information necessary to enable a reader of an appraisal to understand the appraiser's opinion. The appraisal should not incorporate by reference a document that is not readily available to the reader. Studies prepared by a third party should be verified to the extent his or her assumptions or conclusions are used. Moreover, the appraiser's acceptance or rejection of a third-party study and its impact on value should be fully explained. The appraisal itself should enable the reader to understand the conclusion without having to refer to numerous other documents. Moreover, the conclusion must be reasonable in light of the information set forth in the appraisal. These requirements will force an appraiser to obtain adequate data before issuing an opinion of value.

(11) *Legal description.* A legal description of the property is to be included in an appraisal so as to avoid confusion that may arise from less precise identification. The description of real property contained in a deed will satisfy this requirement. This requirement will enable a reader to compare the legal description in the appraisal to the legal description in the loan documents. The legal description is to be provided in addition to, and not in lieu of, the description required in the USPAP.

(12) *Personal property, fixtures, and intangible items.* An appraisal is to include a separate assessment of personal property, fixtures, or intangible items that are attached to or located on real property if the personal property, fixture, or intangible items affect the market value of the real property. Furniture and fixtures should have separate valuations because their economic life is shorter than real property improvements and may require special lending or investment considerations. If the personal property, fixture, or intangible item is not a part of the transaction, then this fact should be stated and the impact on market value should be disclosed. Favorable loan financing or any business interest or other intangible item should be valued separately within the appraisal. These requirements will help provide a reader with a more complete understanding of the market value of the real property as it will be at the time the transaction is entered into.

(13) *Use of recognized appraisal approaches.* At the request of clients, some appraisers have not prepared cost

estimates of value, or estimates of value based on the capitalization of income, or value estimates based on direct sales comparisons. This standard requires an appraiser to address each of these recognized approaches to market value and explain how each approach was used. However, if one or more approaches are not used, an appraiser is to explain the elimination of any approach. This requirement is intended to produce appraisals made only after all approaches to market value have been considered and reconciled, thereby improving the accuracy of the appraisal. Disclosure of the fact that an approach was not used will assist the reader in evaluating the adequacy of the appraisal.

(b) *Unavailability of information.* The NCUA Board realizes that some information required by the USPAP or this regulation may be unavailable. For example, historic rent data will not exist for a building under construction at the time of appraisal. However, an appraisal should inform the reader of any material information that is unavailable and why such information could not be obtained, so as to assist the reader in reviewing the appraisal.

(c) *Additional standards.* The standards required by this regulation are the minimum standards to be met by every appraisal made in connection with a federally related transaction. However, the NCUA and federally insured credit unions may employ additional standards if circumstances so warrant.

Section 722.5 Appraiser Independence

An appraiser's goal should be to produce an objective opinion about the market value of a property. This objectivity may be compromised if the appraiser is involved in the transaction, such as deciding whether to extend credit. An opinion about the merits of the transaction potentially will affect the results of the appraisal. Similarly, a direct or indirect interest in the property appraised may undermine the accuracy of the appraisal. A direct interest would arise, for example, by owning all or part of the property being appraised. An indirect interest would arise if, for example, an appraiser owns property adjacent to the parcel being appraised.

This indirect interest would extend to any property whose value is likely to be affected by an appraisal, if the appraisal is the proximate cause for the effect. Moreover, the interest may be nonpecuniary, such as a desire to help an associate obtain a loan.

To further the goal of appraisal independence, the NCUA requires that fee appraisers (that is, appraisers not

permanently employed by a FICU) be hired by federally insured credit unions or their agents rather than by the borrower. An appraisal performed for one regulated institution may be used by another if the latter institution has adequately reviewed the appraisal, documented such review, and found the appraisal to have complied with this regulation. In order to avoid potential conflicts of interest, staff appraisers (appraisers that are permanently employed by a federally insured credit union) should not be supervised, controlled, or influenced by loan underwriters, loan officers, or collection officers.

The NCUA Board recognizes that in certain cases it may be necessary for loan officers and directors to perform appraisals. Such cases would depend on a credit union's particular circumstances; an example would be a small credit union where the only qualified individual to perform appraisals is a loan officer, and separating this person from the loan and collection departments is impossible. It should be noted that directors and loan officers who perform appraisals in connection with federally related transactions must be licensed or certified, as appropriate. In any case, the conflict provisions of § 701.21(c)(8) apply and prohibit directors and loan officers from receiving payment for the performance of appraisals for the credit union.

Section 722.6 Professional Association Membership; Competency

(a) *Membership in appraisal organizations.* The legislative history evidences an intent to prohibit discrimination against appraisers solely by virtue of membership or lack of membership in a particular appraisal organization. Accordingly, this regulation prohibits any entity covered by title XI from basing decisions regarding the employment of appraisers solely on membership or lack of membership in an appraisal organization. Federally insured credit unions should review the qualifications of appraisers rather than the qualifications of appraisal organizations to ensure that a qualified individual is being employed. Membership in an organization may be considered; however, it may not be the sole determining factor in accepting or rejecting an appraiser.

(b) *Competency.* Not all appraisers are competent to perform every type of appraisal that will be needed in connection with federally related transactions. For instance, an appraiser who is experienced in appraising 1-to-4

family residential¹ properties may not be competent to appraise a small business. Credit unions should look beyond an individual's title to determine if he or she has the experience and training needed to perform the appraisal. This provision is not intended to prohibit an individual in every circumstance from appraising a type of property with which he or she is not familiar. However, an appraiser may perform the appraisal only in accordance with the Competency Provision in the USPAP, which requires an appraiser to have both the knowledge and the experience required to perform a specific appraisal service competently. In addition, an individual who is not a state-certified or -licensed appraiser may assist in the preparation of an appraisal if he or she is directly supervised by a certified or licensed appraiser, as appropriate, and the appraisal is approved and signed by a certified or licensed appraiser.

Section 722.7 Enforcement

Section 1120 of FIRREA vests each of the federal financial institution regulatory agencies with the authority to bring an action for civil money penalties against a regulated institution and any institution-affiliated parties within the agency's primary jurisdiction. The regulation makes clear that additional enforcement remedies available to NCUA under the Federal Credit Union Act also apply. These can include civil money penalties and cease-and-desist orders, as well as orders of removal and prohibitions against institutions and institution-affiliated parties. "Institution-affiliated parties" specifically includes, but is not limited to, appraisers.

Section 701.21(a)

A sentence cross referencing part 722 and the appraisal requirements is added to § 701.21(a) which sets forth the scope and purpose of NCUA's lending regulation.

Section 741.4

A technical amendment to § 741.4 is added to require that all federally insured credit unions comply with part 722. A new § 741.4 is inserted and the sections following it are renumbered.

Paperwork Reduction Act

The regulation contains a requirement for the collection of additional information by a federally insured credit union. The regulation requires the submission of specific information on appraisals for a significant number of federally-related real estate transactions. The paperwork requirements were submitted to the

Office of Management and Budget for approval under the Paperwork Reduction Act. A notice will be published in the *Federal Register* once approval is received from OMB.

Administrative Procedure Act

The NCUA Board adopts this regulation as a final rule effective on August 9, 1990, without the usual 30 day delay after publication in the *Federal Register* provided for in the Administrative Procedure Act ("APA"), 5 U.S.C. 553. That requirement may be waived upon a showing of "good cause" by the promulgating agency, 5 U.S.C. 553(d)(3). The NCUA Board finds that good cause exists for implementing this rule on August 9, 1990 as required by title XI of FIRREA. First, this implementation of the final appraisal regulation serves the public interest in improving the safety and soundness of credit unions by providing a reasonable degree of assurance that real estate appraisals used in connection with federally related transactions will be reliable. The proposed rule was published with a 60-day comment period. The final rule make minor modifications to the proposed rule. Second title XI of FIRREA requires, *inter alia*, that appropriate rules are to take effect upon adoption in final form no later than August 9, 1990. See title XI of FIRREA, section 1115. For these reasons, the NCUA Board finds that good cause exists in this case for dispensing with the APA delayed effective date requirement and for adopting this regulation with an effective date of August 9, 1990.

Regulatory Flexibility Act

The NCUA Board hereby certifies that this regulation does not have a significant impact on a substantial number of small credit unions. A substantial number of small credit unions will not be making loans subject to this regulation. Accordingly the Board has determined that a Regulatory Flexibility Analysis is not required. In addition, the NCUA is required by statute to promulgate this regulation.

Executive Order 12612

This regulation will apply to all federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, that the proposed amendment may have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, but that title XI of FIRREA requires that this regulation

apply to all federally insured credit unions.

List of Subjects in 12 CFR Parts 701, 722 and 741

Credit unions, appraisals, State-certified and State-licensed appraisers.

By the National Credit Union Administration Board on July 17, 1990.

Hattie M. Ulan,

Acting Secretary of the Board.

Accordingly, NCUA amends its regulations, 12 CFR chapter VII, as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Pub. L. 101-73.

Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601-3610.

2. Section 701.21(a) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

(a) *Statement of scope and purpose.* Section 701.21 complements the provisions of section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) authorizing Federal credit unions to make loans to members and issue lines of credit (including credit cards) to members. Section 107(5) of the Act contains limitations on matters such as loan maturity, rate of interest, security, and prepayment penalties. Section 701.21 interprets and implements those provisions. In addition, § 701.21 states the NCUA Board's intent concerning preemption of state laws, and expands the authority of Federal credit unions to enforce due-on-sale clauses in real property loans. Also, while § 701.21 generally applies to Federal credit unions only, its provisions may be used by state-chartered credit unions with respect to alternative mortgage transactions in accordance with title VII of Public Law 97-320, and certain provisions apply to loans made by federally-insured state-chartered credit unions as specified in 12 CFR 741.3. Part 722 of this chapter sets forth requirements for appraisals for certain real estate secured loans made under § 701.21 and any other applicable lending authority. Finally, it is noted that § 701.21 does not apply to loans by Federal credit unions to other credit unions (although certain statutory

limitations in section 107 of the Act apply), nor to loans to credit union organizations which are governed by section 107(5)(D) of the Act and § 701.27 of this part.

PART 722—[ADDED]

3. Part 722 is added to read as follows:

PART 722—APPRAISALS

Sec.

722.1 Authority, purpose, and scope.

722.2 Definitions.

722.3 Appraisals not required; transactions requiring a state-certified or -licensed appraiser.

722.4 Appraisal standards.

722.5 Appraiser independence.

722.6 Professional association membership; competency.

722.7 Enforcement.

Authority: 12 U.S.C. 1766, 1789 and Pub. L. No. 101-73.

§ 722.1 Authority, purpose and scope.

(a) *Authority.* Part 722 is issued by the National Credit Union Administration ("NCUA") under title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. No. 101-73, 103 Stat. 183, 1989) and 12 U.S.C. 1757 and 1766.

(b) *Purpose and scope.* (1) Title XI provides protection for federal financial and public policy interests in real estate-related transactions by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This Part implements the requirements of title XI and applies to all federally related transactions entered into by the National Credit Union Administration or by federally insured credit unions ("regulated institutions").

(2) This part:

(i) Identifies which real estate-related financial transactions require the services of an appraiser;

(ii) Prescribes which categories of federally related transactions shall be appraised by a state-certified appraiser and which by a state-licensed appraiser; and

(iii) Prescribes minimum standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of the National Credit Union Administration.

§ 722.2 Definitions.

(a) *Appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately-described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(b) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(d) *Complex 1- to 4-family residential property appraisal* means one in which the property to be appraised, the form of ownership or market conditions are atypical.

(e) *Federally related transaction* means any real estate-related financial transaction entered into on or after August 9, 1990 that:

(1) The National Credit Union Administration, or any federally insured credit union, engages in or contracts for; and

(2) Requires the services of an appraiser.

(f) *Market value* means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised; and acting in what they consider their own best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(g) *Real estate-related financial transaction* means any transaction involving:

(1) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; or

(2) The refinancing of real property or interests in real property; or

(3) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(h) *State-certified appraiser* means any individual who has satisfied the requirements for certification in a state or territory whose criteria for certification as a real estate appraiser currently meet the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation. No individual shall be a state-certified appraiser unless such individual has achieved a passing grade upon a suitable examination administered by a state or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of a state or territory are inconsistent with title XI of FIRREA. The National Credit Union Administration may, from time to time, impose additional qualification criteria for certified appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(i) *State-licensed appraiser* means any individual who has satisfied the requirements for licensing in a state or territory where the licensing procedures comply with title XI of FIRREA and where the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI. The NCUA may, from time to time, impose additional qualification criteria for licensed appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(j) *Tract development* means a project of five units or more that is constructed or is to be constructed as a single development.

(k) *Transaction value means:*

(1) For loans or other extensions of credit, the amount of the loan or extension of credit; and

(2) For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

(3) For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

§ 722.3 Appraisals not required; transactions requiring a State-certified or -licensed appraiser.

(a) *Appraisals not required.* An appraisal performed by a state-certified or -licensed appraiser is not required for any real estate-related financial transaction in which:

(1) The transaction value is \$50,000 or less;

(2) A lien on real property has been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien;

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

(4) There is a subsequent transaction resulting from a maturing extension of credit, provided that:

(i) The borrower has performed satisfactorily according to the original terms;

(ii) No new monies have been advanced;

(iii) The credit standing of the borrower has not deteriorated; and

(iv) There has been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection; or

(5) A regulated institution purchases a loan or interest in a loan, pooled loans or interests in real property, including mortgage-backed securities, provided that the appraisal prepared for each pooled loan or real property interest met the requirements of this regulation, if applicable, at the time of origination.

(b) *Transactions requiring a State-certified appraiser.* (1) (All transactions of \$1,000,000 or more) All federally related transactions having a transaction value of \$1,000,000 or more shall require an appraisal prepared by a state-certified appraiser.

(2) (Nonresidential transactions) All federally related transactions having a transaction value of more than \$50,000, other than those involving appraisals of 1- to 4-family residential properties, shall require an appraisal prepared by a state-certified appraiser.

(3) (Complex residential transactions of \$250,000 or more) All complex 1- to 4-family residential property appraisals rendered in connection with federally related transactions shall require a state-certified appraiser if the transaction value is \$250,000 or more. A regulated institution may presume that appraisals of 1- to 4-family residential properties 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 cosign the appraisal; or

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

(c) *Transactions requiring either a State-certified or -licensed appraiser.* All appraisals for federally related transactions not requiring the services of a state-certified appraiser shall be prepared by either a state-certified appraiser or a state-licensed appraiser.

(d) *Valuation requirement.* Secured transactions exempted from appraisal requirement pursuant to paragraph (a)(1) of this section (transactions of \$50,000 or less) and not otherwise exempted from this regulation shall be supported by a written estimate of market value, as defined in this regulation, performed by an individual having no direct or indirect interest in the property, and qualified and experienced to perform such estimates of value for the type and amount of credit being considered.

§ 722.4 Appraisal standards.

(a) *Minimum standards.* For federally related transactions, all appraisals shall, at a minimum:

(1) Conform to the Uniform Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation, except that the Departure Provision of the USPAP shall not apply to federally related transactions;

(2) Be based upon the definition of market value as set forth in section 722.2(f);

(3) (i) Be written and presented in a narrative format, or on forms, that satisfy all the requirements of this section;

(ii) Be sufficiently descriptive to enable the reader to ascertain the estimated market value and the rationale for the estimate;

(iii) Provide detail and depth of analysis that shall reflect the complexity of the real estate appraised;

(4) Analyze and report in reasonable detail any prior sales of the property being appraised that occurred within the following time periods:

(i) For 1- to 4-family residential property, one year preceding the date when the appraisal was prepared; and

(ii) For all other property, three years preceding the date when the appraisal was prepared;

(5) Analyze and report data on current revenues, expenses and vacancies for the property if it is and will continue to be income-producing;

(6) Analyze and report a reasonable marketing period for the subject property;

(7) Analyze and report on current market conditions and trends that will affect projected income or the absorption period, to the extent they affect the value of the subject property;

(8) Analyze and report appropriate deductions and discounts for any proposed construction, or any completed properties that are partially leased, any properties that are partially leased or leased at other than market rents, as of the date of the appraisal, or any tract developments with unsold units;

(9) Include in the certification required by the USPAP an additional statement that the appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan;

(10) Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion which indicates to the reader the reasonableness of the market value reported;

(11) Include a legal description of the real estate being appraised, in addition to the description required by the USPAP;

(12) Identify and separately value any personal property, fixtures, or intangible items that are not real property but are included in the appraisal, and discuss the impact of their inclusion, or exclusion, on the estimate of market value; and

(13) Follow a reasonable valuation method that addresses the direct sales comparison, income, and cost approaches to market value, reconciles those approaches, and explains the elimination of each approach not used.

(b) *Unavailability of information.* If information required or deemed pertinent to the completion of an appraisal is unavailable, that fact shall be disclosed and explained in the appraisal.

(c) *Additional standards.* Nothing contained herein shall prevent a federally insured credit union from requiring additional appraisal standards if deemed appropriate.

§ 722.5 Appraiser Independence.

(a) *Staff appraiser.* If an appraisal is prepared by a staff appraiser, that appraiser must be independent of the lending, investment, and collection functions and not involved, except as an appraiser, in the federally related transaction, and have no direct or indirect interest, financial or otherwise, in the property. If the only qualified persons available to perform an appraisal are involved in the lending, investment, or collection functions of the credit union, the credit union shall take appropriate steps to ensure that the appraisers exercise independent judgment. Such steps include, but are not limited to, prohibiting an individual from performing an appraisal in connection with federally related transactions in which the appraiser is otherwise involved.

(b) *Fee appraisers.* If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the federally insured credit union or its agent, and have no direct or indirect interest, financial or otherwise, in the property or transaction. A federally insured credit union may accept an appraisal that was prepared by an appraiser engaged directly by another institution subject to title XI of FIRREA, if the credit union that accepts the appraisal has:

(1) Established procedures for review of real estate appraisals;

(2) Reviewed the appraisal under the established review procedures, finding the appraisal acceptable; and

(3) Documented the review in writing.

§ 722.6 Professional association membership; competency.

(a) *Membership in appraisal organization.* A state-certified appraiser or a state-licensed appraiser may not be excluded from consideration for an assignment for a federally related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee appraisers performing appraisals in connection with federally related transactions must be state-certified or licensed as appropriate. However, a state-certified or -licensed appraiser may not be considered competent solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

§ 722.7 Enforcement.

Credit unions and institution-affiliated parties, including staff appraisers and fee appraisers, may be subject to removal and/or prohibition orders, cease-and-desist orders, and the imposition of civil money penalties pursuant to section 1786 of the Federal Credit Union Act, or any other applicable law.

PART 741—REQUIREMENTS FOR INSURANCE

4. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781 through 1790 and Public Law 101-73. Section 741.10 is also authorized by 31 U.S.C. 3717.

[§§ 741.4 through 741.11 redesignated as §§ 741.5 through 741.12 respectively]

5. Sections 741.4, 741.5, 741.6, 741.7, 741.8, 741.9, 741.10, and 741.11 are redesignated as 741.5, 741.6, 741.7, 741.8, 741.9, 741.10, 741.11, and 741.12, respectively.

6. A new § 741.4 is added to read as follows:

§ 741.4 Appraisal requirements.

Any credit union that is insured pursuant to title II of the Act must adhere to the requirements stated in part 722 of this chapter concerning appraisals.

[FR Doc. 90-17242 Filed 7-24-90; 8:45 am]
BILLING CODE 7535-01-M

12 CFR Part 724**Trustees and Custodians of Pension Plans**

AGENCY: National Credit Union Administration.

ACTION: Final amendment.

SUMMARY: This final agreement adds to NCUA's regulation the authority for federal credit unions to offer self-directed IRA and Keogh accounts and act as the custodian of such accounts pursuant to certain conditions. There are no substantive changes to this authority which was previously set forth in Interpretive Ruling and Policy Statement Number 85-1; it is intended as a classification of the existing regulation.

EFFECTIVE DATE: July 25, 1990.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, at above address or telephone: 202/682-6630.

SUPPLEMENTARY INFORMATION: Paperwork Reduction Act

The Office of Management and Budget has approved the collection requirements contained in part 724 of NCUA's regulations (OMB No. 3133-0035) relating to federal credit unions acting as trustees and custodians of pension plans. The final amendment is within these collection requirements.

Background

Part 724 currently allows federal credit unions (FCUs) to act as custodians for Individual Retirement Accounts (IRAs) and Keogh Accounts provided that the funds are invested in share or share certificate accounts in the FCU. (See § 724.1.) The regulation also requires that the plan provide for the appointment of a successor trustee other than a federal credit union. (See § 724.2 recodified now as § 724.3.)

Interpretive Ruling and Policy Statement 85-1

In 1985, the NCUA Board issued Interpretive Ruling and Policy Statement 85-1 (IRPS 85-1). (See 50 FR 48176 (11/22/85).) IRPS 85-1 states that a federal credit union is authorized to offer and serve as trustee or custodian of self-directed IRA and Keogh accounts where all funds are initially deposited in a share or share certificate account at the FCU and any subsequent transfers of such funds to other assets are solely at the discretion and direction of the FCU member establishing the account. On November 21, 1989, the NCUA Board issued a proposed amendment to § 724.1, with a ninety-day public comment period (See 54 FR 48112), to incorporate this authorization into the regulation.

Comments

Nine comments were received. Three comments were received from federal credit unions, three were from state credit union leagues, and two comments were from national credit union trade associations. One commenter was a brokers' trade association.

Discussion

All of the commenters supported the proposed amendment, agreeing that it clarifies the regulatory authority for FCUs to offer and serve as trustees or custodians of self-directed IRAs and Keogh accounts.

Two commenters suggested adding additional provisions of IRPS 85-1 to the final amendment. They recommended that the final amendment state that FCU's offering self-directed IRAs and Keogh accounts may act in a custodial

capacity only and may not exercise investment discretion. They also suggested that the final amendment clarify that the portion of a self-directed IRA or Keogh account that is not invested in shares or share certificates of the FCU is not insured by the National Credit Union Share Insurance Fund. The Board agrees and has incorporated these conditions by adding a new § 724.2 to part 724. Old § 724.2 which addresses appointment of successor trustees and custodian is redesignated as § 724.3.

One commenter recommended that NCUA cross-reference part 724 with IRPS 85-1. Such cross-reference is unnecessary since the Board has incorporated provisions of IRPS 85-1 into part 724. Another commenter suggested that additional language should be added to direct FCUs to comply with the Employee Retirement Act of 1974 and demonstrate such compliance when the FCU acts as trustee or custodian for account funds invested in assets other than share or share certificate accounts. The NCUA Board believes that this suggestion is not necessary since compliance with other laws is already mentioned in § 724.1.

Regulatory Procedures**Regulatory Flexibility Act**

This final amendment simply clarifies an FCU's existing authority. Since this is not a new policy, the Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

This regulation only applies to federally chartered credit unions. The amendment to the regulation has no effect on the regulation of state-chartered credit unions.

List of Subjects in 12 CFR Part 724

Credit unions, Pensions, Reporting and recordkeeping requirements, Trusts and trustees.

By the National Credit Union Administration Board on July 17, 1990.

Hattie M. Ulan,

Acting Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

1. Part 724 is revised to read as follows:

PART 724—TRUSTEES AND CUSTODIANS OF PENSION PLANS

Sec.

724.1 Federal credit unions acting as trustees and custodians of pension plans.

724.2 Self-directed retirement plans.

724.3 Appointment of successor trustee or custodian.

Authority: 12 U.S.C. 1766 and 1767.

§ 724.1 Federal credit unions acting as trustees and custodians of pension plans.

A federal credit union is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States and forming part of a pension plan which qualifies or qualified for specific tax treatment under section 401(d) or 408 of the Internal Revenue Code, for its members or groups of its members, provided the funds of such plans are invested in share accounts or share certificate accounts of the federal credit union. All funds held in a trustee or custodial capacity must be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts. The federal credit union shall maintain individual records for each participant which show in detail all transactions relating to the funds of each participant or beneficiary.

§ 724.2 Self-directed retirement plans.

A Federal credit union may act as trustee or custodian of individual retirement plans of its members established pursuant to section 401(d) or 408 of the Internal Revenue Code, and may facilitate transfers of plan funds to assets other than share and share certificates of the credit union, provided the conditions of § 724.1 and the following additional conditions are met:

(a) All contributions of funds are initially made to a share or share certificate account in the Federal credit union;

(b) Any subsequent transfer of funds to other assets is solely at the direction of the member and the Federal credit union exercises no investment discretion and provides no investment advice with respect to plan assets (i.e., the credit union performs only custodial duties); and

(c) The member is clearly notified of the fact that National Credit Union Share Insurance Fund coverage is limited to funds held in share or share certificate accounts of NCUSIF-insured credit unions.

§ 724.3 Appointment of successor trustee or custodian.

Any plan operated pursuant to this part shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation or organization other than the Federal credit union or any person acting in his capacity as a director, employee or agent of the Federal credit union upon notice from the Federal credit union or the Board that the Federal credit union is unwilling or unable to continue to act as trustee or custodian.

[FR Doc. 90-17240 Filed 7-24-90; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 749**Records Preservation Program****AGENCY:** National Credit Union Administration ("NCUA").**ACTION:** Final rule.

SUMMARY: Part 749 of the NCUA Regulations (12 CFR part 749) sets forth requirements for records preservation for federally insured credit unions. The National Credit Union Administration Board, as part of its periodic review of its regulations, issued a proposed rule soliciting public comments on part 749 in November 1989. (See 54 FR 48271, November 22, 1989.) After evaluating the comments and further reviewing the rule, the Board has adopted two minor changes. First, the substitution of "financial officer" for "treasurer" conforms the rule to a change in the Federal Credit Union Act and second, a requirement for storage of locator information for each member clarifies that a credit union must be able to locate its members in the event of a disaster.

EFFECTIVE DATE: August 24, 1990.**ADDRESSES:** National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.**FOR FURTHER INFORMATION CONTACT:** Hattie M. Ulan, Associate General Counsel, or Margaret R. Suuberg, Staff Attorney, Office of General Counsel, at the above address or telephone: 202/682-9630.**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

The current control number for part 749 is 3133-0032. No change in the collection requirements is suggested.

Background and Comments

Part 749 establishes minimum requirements for records preservation by federally insured credit unions. The

rule requires off-site storage of duplicate vital records in order to provide financial and other necessary data for reconstruction purposes in the event of a catastrophe. The last major revision of part 749 was made in 1981 (see 46 FR 17188 (March 18, 1981)), at which time the regulation was substantially deregulated. In 1982, the NCUA Board discontinued its program of NCUA-financed off-site storage of credit union vital records. (See 47 FR 8006 (February 24, 1982).) No other changes have occurred. Section 5190 of the Accounting Manual for Federal Credit Unions (NCUA Publication 8022) also addresses records preservation and retention, and provides additional guidance to credit unions.

In November 1989, the NCUA Board issued one proposed modification to part 749 and requested comment on any other needed modifications. (See 54 FR 48271, November 22, 1989.) In its earlier form, part 749 assigned the treasurer of the credit union the responsibility for storing duplicative records at a vital records storage center (see 12 CFR 749.1). The proposed rule substituted "financial officer" for "treasurer," in order to conform the rule to a change in section 112 of the Federal Credit Union Act (12 U.S.C. 1761a).

Seven comments were received on the proposed rule. Two comments came from national credit union trade associations; three from state credit union leagues; and two from federal credit unions. All of the commenters supported the substitution of "financial officer" for "treasurer," and it has been adopted in the final rule.

Two commenters requested that NCUA address additional issues or make additional changes to the regulation.

One state credit union league expressed concern that a state-chartered, federally insured credit union might interpret the term "financial officer" to mean "treasurer" although the treasurer might not be the officer charged by the credit union with maintaining custody of the credit union's records. This commenter suggested that the words, "or, in the case of a federally insured state credit union, the officer having custody of the records" be added after the words "financial officer." The Board considers the addition of the suggested language unnecessary. It should be understood that the term "financial officer" refers to the officer responsible for the financial records of the credit union.

Another state credit union league suggested that the regulation require credit unions to include, in the vital