

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 722**

**RIN: 3133-AE98**

**Real Estate Appraisals**

**AGENCY:** National Credit Union Administration (NCUA)

**ACTION:** Final rule

**SUMMARY:** The NCUA Board (Board) is amending the agency's regulation requiring appraisals for certain residential real-estate related transactions. The final rule increases the threshold level below which appraisals are not required for residential real-estate related transactions from \$250,000 to \$400,000. Instead of an appraisal, and consistent with the requirement for other transactions that fall below applicable appraisal thresholds, federally insured credit unions (FICUs) are required to obtain written estimates of market value of the real estate collateral consistent with safe and sound practices. For ease of reference, this final rule explicitly incorporates the existing statutory requirement that appraisals be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). This final rule is consistent with the final rule, effective October 9, 2019, issued by the Board of

Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (federal banking agencies) that increases the threshold level at or below which appraisals are not required for residential real estate transactions from \$250,000 to \$400,000.

**DATES:** The final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

**II. Final Rule**

**III. Legal Authority**

**IV. Discussion of Public Comments Received on the Proposed Rule**

**V. Effective Date**

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## **I. Introduction**

### ***A. Background***

In November 2019, the Board invited comment on a notice of proposed rulemaking<sup>1</sup> (proposal or proposed rule) that would amend the NCUA's appraisal regulation promulgated pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI).<sup>2</sup> Specifically, the proposed rule would increase the monetary threshold below which FICUs would not be required to obtain appraisals in connection with residential real estate transactions from \$250,000 to \$400,000. Instead of an appraisal, and consistent with the requirement for other transactions that fall below applicable appraisal thresholds, the proposal would require FICUs to obtain written estimates of market value of the real estate collateral consistent with safe and sound practices. In addition, the proposed rule would amend the agency's appraisal regulation to explicitly incorporate the existing statutory requirement that appraisals be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), as required by section 1473(e) of the Dodd Frank Wall Street Reform and Consumer Protection Act (the Dodd Frank Act).<sup>3</sup>

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<sup>1</sup> 84 FR 65707 (Nov. 29, 2019).

<sup>2</sup> 12 U.S.C. 3331 *et seq.*

<sup>3</sup> Pub. L. 111-203, 124 Stat. 1376, codified at 12 U.S.C. 3339(3).

## ***B. Summary of Proposed Rule***

As noted in the proposed rule, the price of residential real estate has increased over time, but the residential appraisal threshold has not been adjusted since 2001.<sup>4</sup> Further, the Board estimated under the proposal, the percentage of transactions exempted from the appraisal requirement would be restored to the level it was following the last threshold increase in 2001. The proposed residential appraisal threshold level of \$400,000 would exempt a similar number of transactions and dollar volume of transactions as did the current threshold of \$250,000 when it was set in 2001 thereby restoring the level of exempted transactions. The Board stated it believes increasing the appraisal threshold for residential real estate transactions will provide meaningful burden reduction for FICUs, while maintaining federal public policy interests in real-estate related transactions and the safety and soundness of FICUs.

Based on the NCUA's data analysis and supervisory experience, as set forth in the proposed rule, the increase in the appraisal threshold in the 2001 residential appraisal final rule did not result in a material increase in risk to safety and soundness. The Board estimated that the proposed rule would exempt from appraisal requirements approximately 46,000 residential real estate transactions, worth a combined \$14 billion, equating to approximately 0.9 percent of FICU assets.<sup>5</sup> The Board estimated that approximately 77 percent of transactions, for a total of 55 percent of the dollar amount of transactions, are currently not subject to the NCUA's residential appraisal requirement. This is estimated to increase to 94 percent of transactions and 83 percent of the dollar amount with the increased threshold. In the proposed rule, the Board noted that in

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<sup>4</sup> 66 FR 58656 (Nov. 23, 2001). The rule was effective March 1, 2002.

<sup>5</sup> *Supra* note 1, at 65712. Assets as of December 2019 Call Report.

2001, an estimated 95 percent of residential transactions and 80 percent of the dollar amount of residential transactions were exempt when the current \$250,000 threshold was set.<sup>6</sup> The NCUA's current appraisal regulation requires FICUs to obtain written estimates of market value for all real-estate related transactions that do not require an appraisal pursuant to Title XI (Title XI appraisal), unless explicitly exempted from written estimates of market value requirements.<sup>7</sup> As an important prudential safeguard, written estimates of market value must be prepared by qualified, experienced, and independent individuals.<sup>8</sup> In addition, through the *Interagency Appraisal and Evaluation Guidelines (Interagency Guidelines)*<sup>9</sup>, the NCUA has provided guidance to FICUs on its expectations regarding when and how written estimates of market value should be used.<sup>10</sup>

## **II. Final Rule**

This final rule follows publication of the November 29, 2019, proposed rule. After carefully considering the comments and conducting further analysis, the Board is adopting the final rule as proposed, and is increasing the residential real estate appraisal threshold from \$250,000 to \$400,000. As discussed in the proposal, and further detailed below in response to comments, increasing the residential real estate appraisal threshold will provide meaningful regulatory relief for FICUs while maintaining their safety and soundness and providing reasonable protection for consumers. This final rule also adopts without change the proposed conforming amendment to the NCUA's appraisal regulations explicitly incorporating the Dodd

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<sup>6</sup> *Supra* note 4, at 65711.

<sup>7</sup> *See* 12 CFR 722.3(d).

<sup>8</sup> *Id.*

<sup>9</sup> *Interagency Appraisal and Evaluations Guidelines* at 75 FR 77458 (Dec. 10, 2010).

<sup>10</sup> *Interagency Guidelines* at 77460.

Frank Act amendment to Title XI that appraisals be subject to appropriate review for compliance with USPAP,<sup>11</sup> as well as a conforming amendment to remove additional requirements for the appraisal exemption for certain residential real estate transactions in rural areas.

### **III. Legal Authority**

Title XI directs each federal financial institutions regulatory agency<sup>12</sup> to require regulated institutions to obtain appraisals meeting minimum standards for certain real estate-related transactions. The purpose of Title XI is to protect federal financial and public policy interests<sup>13</sup> in real estate-related transactions by requiring that real estate appraisals used in connection with Title XI appraisals be performed in accordance with uniform standards, by individuals whose competency has been demonstrated, and whose professional conduct will be subject to effective supervision.<sup>14</sup>

Title XI defines a “federally related transaction” as a real estate-related financial transaction that is regulated or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser.<sup>15</sup> The NCUA has authority to determine those real estate-related financial transactions that do not require the services of a state-certified or state-

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<sup>11</sup> Pub. L. 111-203, 124 Stat. 1376, codified at 12 U.S.C. 3339(3).

<sup>12</sup> “Federal financial institutions regulatory agencies” mean the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation (FDIC); the Office of the Comptroller of the Currency (OCC); the NCUA, and formerly the Office of Thrift Supervision (OTS). 12 U.S.C. 3350(6).

<sup>13</sup> These interests include those stemming from the federal government’s role as regulator and deposit insurer of financial institutions that engage in real estate lending and investment, guarantor or lender on mortgage loans, and as a direct party in real estate-related financial transactions. These federal financial and public policy interests have been described in predecessor legislation and accompanying congressional reports. *See* Real Estate Appraisal Reform Act of 1988, H.R. Rep. No. 100-10001, pt. 1, at 19 (1988); 133 Cong. Rec. 33047-33048 (1987).

<sup>14</sup> 12 U.S.C. 1331.

<sup>15</sup> 12 U.S.C. 3350(4) (defining “federally related transaction”).

licensed appraiser and are therefore exempt from the Title XI appraisal requirements. Such exempt real estate-related financial transactions are not federally related transactions under the statutory or regulatory definitions because they are not required to have Title XI appraisals.<sup>16</sup>

The NCUA has exercised this authority by exempting several categories of real estate-related financial transactions from the Title XI appraisal requirements, including transactions at or below certain designated dollar thresholds.<sup>17</sup> The NCUA has determined that these categories of transactions do not require appraisals by state-certified or state-licensed appraisers in order to protect federal financial and public policy interests or to satisfy principles of safety and soundness.

Title XI expressly authorizes the NCUA to establish dollar threshold levels at or below which Title XI appraisals are not required if: (1) the NCUA determines, in writing, that the threshold does not represent a threat to the safety and soundness of financial institutions; and (2) the NCUA receives concurrence from the Consumer Financial Protection Bureau (CFPB) that such threshold level provides reasonable protection for consumers who purchase “1-4 unit single-family residences.”<sup>18</sup> As noted above, transactions below the threshold level are exempt from the Title XI appraisal requirements and thus are not deemed “federally related transactions.”

#### **IV. Discussion of Public Comments Received on the Proposed Rule**

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<sup>16</sup> See 59 FR 29482 (June 7, 1994).

<sup>17</sup> See 12 CFR 722.3(a).

<sup>18</sup> 12 U.S.C. 3341(b).

### ***A. The Public Comments, Generally***

The NCUA received 27 comments following publication of the November 29, 2019 proposed rule. Of the 27 comments received, 22 were in support of and five were in opposition to the proposed increase to the appraisal threshold for residential real estate transactions.<sup>19</sup>

The five comments received in opposition to the proposed rule came from appraisal companies, appraisal trade organizations, and one individual. They expressed concern that the proposal would reduce the safety and soundness of credit unions and would not provide adequate consumer protections.

In contrast, comments received from credit unions, credit union trade associations, state credit union leagues, state credit union regulators and others supported the proposal, stating that it would reduce regulatory burden, reduce member costs, increase access to credit, and would provide reasonable protection for consumers.

### ***B. Discussion of Specific Comments on the Proposed Rule***

The Board requested comment on all aspects of the proposed rule and posed a number of specific questions related to the consumer protection aspect of appraisals and the analysis for the proposed rule and written estimates of market value. All comments received were in response to the proposed increase in the monetary threshold for residential real estate transactions. No comments were received regarding the proposed conforming amendment to the NCUA's

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<sup>19</sup> One commenter opposed to the rule did not provide a comment letter in response to the Board's proposed rule, but provided instead their response to the federal banking agencies' December 2018 proposal to increase the residential real estate threshold for their regulated financial institutions. Where relevant, their comments have been discussed in this preamble to the final rule.



appraisal regulations explicitly incorporating the Dodd Frank Act amendment to Title XI that appraisals be subject to appropriate review for compliance with USPAP. Commenters' rationale for opposing or supporting the \$400,000 threshold are discussed below.

*1. Threshold Level.*

*a. "At or below" Standard.* The final rule adopted by the federal banking agencies sets a threshold level at or below \$400,000. One credit union trade association encouraged the NCUA to adopt the same "at or below" language to maintain consistency with the federal banking agencies. Upon consideration, the Board has determined to keep the rule as proposed in order to be consistent with the NCUA's appraisal threshold for non-residential real estate transactions.<sup>20</sup>

*b. Accounting for regional variations.* Three commenters, two from the perspective of communities with house prices significantly lower than the proposed increased threshold and one from the perspective of a community with sales prices that largely exceed it, suggested the Board should consider an approach that takes into account regional home price variations rather than adopt a single figure nationwide. The Board believes that adopting such a regional approach would only add unnecessary regulatory burden and complexity by introducing numerous threshold levels across the country. In addition, FICUs and borrowers retain the option to obtain appraisals on exempt transactions, and some credit union commenters indicated that they would continue using appraisals for transactions below the threshold.

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<sup>20</sup> 12 CFR 722.3(b)(1) (requiring appraisals for non-residential transactions at or above \$1,000,000, which thus exempts such transactions below \$1,000,000).

*c. General support and concerns.* Commenters supporting the proposed increase generally stated that written estimates of market value are adequate substitutes for appraisals for transactions below the proposed \$400,000 threshold. Nevertheless, one credit union league stated that many of its members would continue to use appraisals even on loans eligible for written estimates of market value. A credit union trade association noted favorably that the rule is flexible enough that consumers and FICUs would still have the option of ordering an appraisal. Two state appraiser coalitions expressed concern that raising the threshold would exempt most transactions in their service area and lead to almost all real estate-related transactions being exempt from appraisal requirements in some regions or metropolitan statistical areas.

*2. Safety and soundness.* The majority of commenters opposed to the \$400,000 threshold expressed concern that the proposal increases risk for residential real estate transactions and would negatively affect safety and soundness. These commenters generally posited that appraisals offer an important safety and soundness tool because appraisals provide an unbiased opinion on the value of collateral, and without this valuation, credit unions are exposed to increased risk. One commenter stated that by focusing on the total dollar volume of loans originated, rather than the total volume of transactional activity, the proposal interprets safety and soundness as only a monetary safeguard and not as a safeguard on the volume of lending activity.

In contrast, commenters supportive of the proposed rule did not foresee an increased risk to FICUs or individual transactions. Most individual credit union commenters noted that their policies and procedures are designed to mitigate risk, and in those instances where they currently

use written estimates of market value, such estimates are performed by individuals who are independent from the loan process and are qualified and experienced in home valuation. A few commenters noted that while they support the proposed threshold increase, they would continue to prioritize sound underwriting practices, guide their decisions by the best interests of their members, and use business judgment in deciding when, and if, appraisals are necessary for transactions below the threshold. One commenter stated that the historically sound valuation practices of the credit union industry warrant the increased appraisal threshold. Several commenters expressly agreed with the safety and soundness considerations discussed in the proposed rule. Many commenters stated that the increased threshold would eliminate the competitive disadvantage that FICUs now face since the federal banking agencies raised the residential real estate transaction threshold for banks.

After taking into account the comments discussed above, the Board maintains that the threshold level of \$400,000 for residential real estate transactions does not pose a threat to the safety and soundness of FICUs. First, the \$400,000 threshold would exempt a similar number of transactions and dollar volume of transactions as did the current threshold of \$250,000 when it was set in 2001.<sup>21</sup> Raising the threshold in 2001 did not result in a material increase in risk to

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<sup>21</sup> The NCUA conducted analyses using 2018 data reported under the Home Mortgage Disclosure Act (HMDA), which requires a variety of financial institutions to maintain, report, and publicly disclose loan-level information about residential mortgage originations. Information reported under HMDA includes various data points relevant to the NCUA's analysis, including loan size, loan type, property type, property location, and secondary market purchaser. While the HMDA data has limitations, including that certain low-volume originators and originators located in rural areas are not required to report, the Board believes it provides a representative sample of the universe of mortgage originations, including transactions subject to the NCUA's appraisal requirement. The NCUA used 2018 HMDA data to estimate the effect of the residential threshold increase. The NCUA used HMDA data to determine the number of transactions and dollar volume of transactions that would be affected relative to: (1) total FICU originations reported in the HMDA data; and (2) transactions originated by NCUA-insured institutions that were not sold to a government-sponsored enterprise (GSE) or otherwise insured or guaranteed by a U.S. government agency (regulated transactions).

safety and soundness. Second, the new threshold would not introduce significant additional risk to the credit union system. Based on 2018 Home Mortgage Disclosure Act (HMDA) data, the new threshold would only incrementally exempt real estate-secured loans granted each year, worth approximately \$14 billion, which equates to approximately 0.9 percent of FICU assets as of the December 31, 2019 Statement of Financial Condition (referred to as the Call Report). Third, FICUs' residential real estate-secured loans have performed well with relatively low delinquencies and net charge-off rates in an analysis of performance from 1994 to 2018. This period, which included two major recessionary periods, shows the prior threshold changes in 1995 and 2001 did not have a negative impact on loan performance.<sup>22</sup> Furthermore, based on supervisory experience and analysis of material loss reviews conducted by the NCUA's Inspector General, appraisals have not been a substantial factor in any material FICU failures. The Board has also taken into consideration that \$400,000 is a reasonable limit that is consistent with the general appreciation in home prices since the last threshold increase.<sup>23</sup> Finally, the NCUA's appraisal regulations require FICUs to obtain written estimates of market value for all real estate-related financial transactions that do not require a Title XI appraisal, unless the real estate-related financial transaction is explicitly exempt from written estimates of market value requirements.<sup>24</sup>

Written estimates of market value performed in accordance with the NCUA's regulations provide FICUs with suitable alternatives to appraisals.<sup>25</sup> In the agency's supervisory experience,

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<sup>22</sup> Net charge-offs are charge-offs minus recoveries. Net charge-offs represent losses to financial institutions.

<sup>23</sup> Based on analysis of residential home prices using the S&P Case-Shiller Home Price Index, FHFA Index, as well as the Bureau of Labor Statistics Consumer Price Index.

<sup>24</sup> See 12 CFR 722.3(d).

<sup>25</sup> 12 CFR 722.3(d)(2).

written estimates of market value have provided sufficient information to enable FICUs to make prudent lending decisions.

For all these reasons, the Board concludes that past threshold increases did not adversely impact safety and soundness, and the current increase of the residential appraisal threshold to \$400,000 does not represent a threat to the safety and soundness of FICUs.<sup>26</sup>

### *3. Consumer protection.*

*a. Consumer protections, in general.* All five commenters that opposed the increased threshold raised consumer protection concerns. One stated that the proposal contradicts the position taken by the federal banking agencies and the NCUA in their 2017 Economic Growth and Regulatory Paperwork Reduction Act<sup>27</sup> (EGRPRA) report to Congress, at which time the federal financial regulators opted not to change the threshold based on considerations of safety and soundness and consumer protection. The same commenter stated that the proposed rule ignores congressional intent as reflected in the Economic Growth, Regulatory Relief, and Consumer Protection Act,<sup>28</sup> (EGRRCPA) in which Congress chose only to raise the threshold for rural areas on a case-by-case basis for individual transactions in which the lender was unable to secure the services of an appraiser. One commenter noted that lower-income and first-time homebuyers would be particularly impacted by not having an unbiased party value the purchase price.

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<sup>26</sup> 12 U.S.C. 3341(b).

<sup>27</sup> 12 U.S.C. 3311.

<sup>28</sup> Pub. L. 115–174, Title I, Section 103, codified at 12 U.S.C. 3356 (effective May 24, 2018).

In proposing the increase in the appraisal threshold, the Board stated that while appraisals can provide protection to consumers by facilitating the informed use of credit and helping to ensure that the estimated value of the property supports the loan amount, written estimates of market value have also provided these benefits for FICUs and borrowers for transactions below the current \$250,000 threshold. FICUs have used written estimates of market value for transactions below the applicable appraisal thresholds since the issuance of the first rule implementing Title XI.

With this final rule, the percentage of transactions exempted from the appraisal requirement would be restored to the same level following the last threshold increase in 2001. As an additional safeguard, under Title XI, the NCUA must receive CFPB concurrence that the residential appraisal threshold level provides reasonable protection for consumers who purchase “1-4 unit single-family residences.”<sup>29</sup> By letter dated April 8, 2020, the CFPB Director provided this concurrence.

The NCUA recognizes that it decided against proposing a residential appraisal threshold increase during the EGRPRA process due to safety and soundness and consumer protection concerns. The NCUA has reconsidered this decision based on comments received to date from FICUs and state credit union regulators, and in light of the recent action by the federal banking agencies to increase the residential real estate appraisal threshold for banks. The Board believes that consumer protection and safety and soundness concerns are addressed and supported by the rationale as put forth in the proposed rule and in this preamble to the final rule.

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<sup>29</sup> 12 U.S.C. 3341(b).

The NCUA also recognizes that Congress recently amended Title XI to provide a narrow, self-effectuating appraisal exemption for rural transactions meeting certain requirements. However, the Board also observes that Congress did not amend the NCUA's long-standing authority in Title XI to establish a threshold level at or below which a certified or licensed appraiser is not required to perform an appraisal in connection with federally related transactions. Through the EGRRCPA amendment, Congress mandated that rural transactions meeting specific statutory criteria be exempted from the appraisal regulations; however, there is no indication that Congress intended to restrict the NCUA's authority to provide additional exemptions pursuant to its existing authority. Notably, unlike the analysis conducted pursuant to this rulemaking, the EGRRCPA amendment did not require a safety and soundness determination or CFPB concurrence.<sup>30</sup>

With regard to the comment that an appraiser is the only unbiased party to a residential real estate transaction, this is not reflective of the agency's supervisory experience or regulatory expectations. As is the case currently for transactions under the threshold exemptions, written estimates of market value generally must be performed by individuals who are independent of the loan production and collection processes, with no direct, indirect, or prospective interest, financial or otherwise, in the property or the transaction.<sup>31</sup> Written estimates of market value must also be conducted by individuals qualified and experienced to perform such estimates for

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<sup>30</sup> 12 U.S.C. 3341(b).

<sup>31</sup> 12 CFR 722.3(d)(2).

the type and amount of credit being considered.<sup>32</sup> Furthermore, the Valuation Independence Rule, which implements the Dodd Frank Act independence provisions, states:

no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.<sup>33</sup>

The Valuation Independence Rule applies to both appraisals and written estimates of market value. During the supervisory review of a FICU's real estate lending activities, the NCUA's examiners assess the adequacy of risk management practices, including the independence of the collateral valuation function.

*b. Specific requests for consumer protection comments.* In addition to requesting comment on all aspects of the rule, the Board asked particularly about specific aspects of consumer protection raised by the proposal. The Board asked commenters how often FICUs use internal staff to prepare written estimates of market value and what valuation information, if any, would be lost if more written estimates of market value were performed rather than appraisals. The Board also requested comment on the extent to which appraisals and written estimates of market value provide benefits or protections for borrowers that are purchasing 1-to-4 family residential property and the nature and magnitude of the differences, if any, in consumer protection. The Board was also interested in knowing how well consumers have understood

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<sup>32</sup> *Id.*

<sup>33</sup> 12 CFR 226.42(c).



written estimates of market value and whether there are any concerns in this area that the Board should take into account. Finally, the Board asked for input on the extent to which useful and accurate property valuation information is readily available to borrowers through public sources.

Several credit union commenters stated that all of their written estimates of market value are performed by individuals who are independent of the loan or production process and have the necessary qualifications and experience. One credit union commenter stated specifically that it does not use internal staff to prepare written estimates of market value, as did one credit union trade association based on a survey of its members. In terms of the valuation information that would be lost if more written estimates of market value were performed rather than appraisals, two commenters, one supportive of the rule and one opposed, noted that the physical inspection of a property is the primary benefit of an appraisal to consumers. One commenter stated that appraisers conduct rigorous analysis of property features, such as number of bedrooms and proximity to open space, which may have an impact on a property's future marketability. On the other hand, one commenter noted that buyers conduct their own visual inspections and professional home inspections are a typical part of most transactions. One credit union association, while supportive of the rule, stated that its members anticipated the loss of valuable information, such as the composition of a property's interior and data on comparable properties, with the use of written estimates of market value instead of appraisals. This commenter stated that many of its credit union members would continue using appraisals on properties for which written estimates of market value would be allowed.

In response to the comments concerning on-site inspections of real estate, the Board notes that USPAP does not require an on-site inspection of the subject property.<sup>34</sup> However, USPAP states that inspections are often conducted and that some appraisers use third parties to conduct inspections.<sup>35</sup> Property valuations, whether appraisals or written estimates of market value, should contain sufficient information and analysis to support the FICU's decision to engage in a particular transaction, including information relating to the actual physical condition and characteristics of the property. The appraiser's physical inspection of a property can provide additional information on the features of the property to the buyer, however, the primary purpose of the appraisal is to value the collateral behind the loan. As USPAP states, "the appraiser's inspection commonly is limited to those things readily observable without the use of special testing or equipment."<sup>36</sup> Furthermore, "an inspection conducted by an appraiser is usually not the equivalent of an inspection by an inspection professional (e.g. a structural engineer, [or] home inspector)."<sup>37</sup>

While there is no requirement for a physical inspection with either an appraisal or a written estimate of market value, the *Interagency Guidelines* state that safe and sound written estimates of market value should be supported by a physical inspection of the property or any alternative method to confirm the property's condition, depending on transaction risks.<sup>38</sup> In the

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<sup>34</sup> 2020-21 USPAP, Advisory Opinion 2 at 69.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Interagency Guidelines* at 77461. In addition, the Dodd Frank Act requires each creditor to furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn. 15 U.S.C. 1691.

event a borrower requires further information about the physical condition of a property, the borrower always retains the option of engaging a licensed property or building inspector.

One appraisal organization stated that the proposal would lead more consumers to lose out on the benefits of an appraisal that has been conducted in accordance with the USPAP. This commenter pointed out that there are other benefits reflected in an appraisal as a result of the appraiser acting in an ethical manner informed by the education, competency, qualifications and training that are required of USPAP compliant appraisers.

One commenter noted that lenders are increasingly willing to rely on automated valuation models (AVM) for which the federal financial regulators have not yet promulgated regulations despite the Dodd Frank Act requirement to do so. As a result, the commenter posits that the AVM represents a “black box” approach that may not be fully understood by lenders or comprehensible to prospective homeowners.

While USPAP itself does not apply to written estimates of market value, the Board believes that the regulatory framework requiring independence, qualifications, and experience, combined with the agency’s longstanding supervisory experience with written estimates of market value, provides sufficient basis for raising the residential real estate appraisal threshold while maintaining reasonable consumer protection. In fact, the NCUA’s supervisory experience shows that many FICUs still use appraisals for situations when only a written estimate of market value was required. These reasons include institutional preference, underwriting to secondary market standards for flexibility, ease of valuation policy implementation and, as the *Interagency*

*Guidelines* recommend, for transactions with elevated risk.<sup>39</sup> As additional independent analysis, the NCUA reviewed the current residential real estate underwriting practices of over 120 FICUs<sup>40</sup> to confirm whether FICUs will continue to obtain appraisals for transactions under the threshold. The review found that 60 percent of these FICUs obtained appraisals in a majority of their residential real estate transactions below the current threshold of \$250,000. Similar reasons as listed above were cited for obtaining appraisals when not required.

Moreover, although limited in scope, the higher priced mortgage loan rule (HPML rule), requires lenders for certain HPMLs secured by a consumer's principal dwelling to obtain an appraisal—and in some cases, two appraisals—that include an interior property visit, and provide free copies to the consumer.<sup>41</sup> The HPML Rule applies to certain higher-risk transactions. Thus, for a select group of loans, the HPML Rule requires that the information in an appraisal will be available for some first time or low-income borrowers mentioned by some commenters as being most affected by the threshold increase.

With regard to the increasing use of AVMs in the valuation industry, the Board believes that technology and data present an opportunity to improve and expand upon current property valuation methods. AVMs cannot be the sole source of collateral valuation, but may be used in the process of generating an appraisal, written estimate of market value, or even for credit union portfolio management purposes. The federal banking agencies and the NCUA have issued a

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<sup>39</sup> *Interagency Guidelines*, Appendix A.

<sup>40</sup> The NCUA reviewed a sample of open examinations across all of its regional offices for a defined, limited period to gather feedback on typical FICU practices for real estate appraisals under the \$250,000 threshold.

<sup>41</sup> 15 U.S.C. 1639h.

public notice regarding the AVM rulemaking required by the Dodd Frank Act.<sup>42</sup> As long as AVMs are subject to quality controls, such as testing for accuracy and rigorous analysis of the algorithms that drive them, there are many advancements that computer-based applications can make. As these automated models become more sophisticated and widespread in the market, it is important that they be used to promote fair lending and greater and more equitable access to credit.<sup>43</sup>

On the extent to which appraisals and written estimates of market value provide benefits or protections to borrowers who are purchasing 1-to-4 family residential property, a commenter stated that appraisals protect against an inaccurate valuation of a property and requested that the Board provide another valuation option to protect the consumer. This commenter did not reference written estimates of market value, but, as noted above, both appraisals and written estimates of market value provide a reliable estimate of the market value of a property and must be performed by qualified individuals. As set forth in the *Interagency Guidelines*, written estimates of market value should contain sufficient information and analysis to support the valuation of the property.<sup>44</sup> In addition, lenders must provide borrowers with a copy of all

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<sup>42</sup> The federal banking agencies, the NCUA, the Federal Housing Finance Agency and the Consumer Financial Protection Bureau, in consultation with the Appraisal Subcommittee and the Appraisal Standards Board of the Appraisal Foundation, are required to promulgate regulations to enumerate quality control standards for automated valuation models. Section 1473(q) of the Dodd-Frank Act requires that automated valuation models used to estimate collateral value for mortgage lending comply with quality control standards designed to ensure a high level of confidence in the estimates produced by automated valuation models; protect against manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and account for other factors the agencies deem appropriate. Public notice available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=3133-AE23>.

<sup>43</sup> This is consistent with the NCUA's longstanding regulatory requirement that federal credit unions may not consider lending policies which have the effect of discriminating on the basis of certain characteristics of the borrower, or rely on appraisals that they know or should know are based upon criteria, as enumerated in the NCUA's regulations, that have a discriminatory effect. 12 CFR 701.31.

<sup>44</sup> *Interagency Guidelines* at 77461.

appraisals and written estimates of market value developed in connection with an application for a first-lien loan secured by a dwelling.<sup>45</sup> Both consumers and lenders may always order an appraisal in the event of a dispute arising out of a written estimate of market value.

Some commenters stated the nature and magnitude of the differences in consumer protection between appraisals and written estimates of market value revolve largely around the physical inspections and USPAP protections discussed above. Commenters also noted that, with appraisals consumers have a direct mechanism for lodging a complaint for a faulty appraisal.

With respect to consumer recourse, lenders can order appraisals when disputes arise with written estimates of market value. In addition, the failure to comply with the independence requirements of the Valuation Independence Rule can result in civil liability.<sup>46</sup> From a supervisory standpoint, the NCUA can address deficiencies in a credit union's valuation process through informal or formal enforcement actions. Borrowers may also file a complaint through the NCUA's complaint process as well as through the CFPB's process. Therefore, the Board does not expect the increased threshold to materially affect options for consumer recourse.

With regard to how well consumers have understood written estimates of market value and any related concerns the Board should take into account, two appraisal organizations stated that appraisals are more standardized than written estimates of market value, thus, making it easier for consumers to understand and compare appraisals. On the other hand, one credit union

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<sup>45</sup> 12 CFR 1002.14, 78 FR 7216 (January 31, 2013) (implementing amendment to the Equal Credit Opportunity Act (ECOA)), 15 U.S.C. 1691 *et seq.*, by the Dodd Frank Act section 1474. 15 U.S.C. 1691(e).

<sup>46</sup> 15 U.S.C. 1639e(k); 15 U.S.C. 1640.

stated that appraisals are not user-friendly and have led to consumers disputing appraised values due to a misunderstanding of the contents of appraisals. The same commenter suggested that written estimates of market value could be drafted in such a way as to be more helpful to borrowers. One commenter asked the Board to provide additional guidance for credit unions on what constitutes an adequate written estimate of market value. One commenter stated that they would strongly support the NCUA creating a model form with a safe harbor from liability for unintentional and nonmaterial errors.

Based on the agency's supervisory experience and observations on the use of written estimates of market value, the Board does not believe that it is necessary to provide a model form for written estimates of market value at this time. The *Interagency Guidelines* encourage regulated institutions to establish policies and procedures for determining an appropriate collateral valuation method for a given transaction considering associated risks.<sup>47</sup> The *Interagency Guidelines* also set forth the information that a sufficient written estimate of market value should contain to support a credit decision, including, at a minimum, the location and description of the property, an estimate of the property's market value, the methods used to confirm the property's physical condition, the analysis that was performed along with the supporting information used to value the property, any supplemental information that was considered when using an analytical method or technological tool, and all sources of information used to arrive at the property valuation.<sup>48</sup> The Board reiterates that FICUs have been utilizing written estimates of market value under the \$250,000 threshold since 2001. It has not been the agency's experience that the existing *Interagency Guidelines* are insufficient or that written

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<sup>47</sup> *Interagency Guidelines* at 77461.

<sup>48</sup> *Id.*

estimates of market value for transactions under the \$250,000 threshold harm consumers because they are not standardized. Although the Board recognizes that written estimates of market value are not subject to the same uniform standards as appraisals,<sup>49</sup> in terms of structure and content or the preparer's training and credentialing requirements, written estimates of market value provide sufficient consumer protections for transactions under \$400,000.<sup>50</sup>

All commenters who discussed the extent to which useful and accurate property valuation information is readily available to borrowers through public sources acknowledged the broad availability of consumer-facing property valuation information through public sources, including websites such as Zillow, Trulia, and Realtor.com and the Multiple Listing Service. However, one appraisal organization commented that many of these consumer-facing tools are not necessarily useful to consumers or lenders in determining property values—rather they are designed for marketing purposes. Some individual credit union commenters specifically referenced the usefulness of publicly available tax assessed valuations (known as TAVs) in helping them determine property valuations and in making relatively conservative lending decisions. The Board finds that, although all sources of publicly available valuation information might not always accurately reflect the market value of a particular property, consumers can use a variety of available information to learn more about the availability of and the potential range of values for properties in a particular area or market.

#### *4. Time and cost of appraisals.*

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<sup>49</sup> USPAP does not prescribe a model form, but institutions often use template forms, such as Fannie Mae Form 1004/Freddie Mac Form 70, known as the Uniform Residential Appraisal Report.

<sup>50</sup> 12 U.S.C. 3341(b).



The Board asked for comments on whether the proposed rule would lead to cost savings for FICUs and/or borrowers as well as reduce the time to close loans. Responses to this point were mixed. Many commenters who supported the proposed threshold noted that it would increase access to credit, reduce the regulatory burden on credit unions, and lead to cost savings for members. Some commenters who opposed the rule mentioned the cost savings do not outweigh consumer considerations and those commenters disputed the materiality of time savings.

Lenders generally require consumers to pay for costs associated with obtaining appraisals, which can include fees paid to appraisers and appraisal firms and fees charged by the Appraisal Management Companies (AMC) that lenders often use to administer the appraisal process. A few credit union commenters provided time and cost estimates of appraisals as evidence of borrowers' potential savings. These commenters stated that appraisals generally cost between \$500 and \$1,000 and take up to four weeks to receive. One credit union commenter stated that in its rural area, appraisals could take up to eight weeks and range from \$600 to \$1,100.

In contrast, one commenter opposed to the proposed rule stated that the average cost of an appraisal is \$446 with an average turnaround time of 9 days, or 18 days if a lender orders an appraisal through an AMC. Another commenter stated that the average price of an appraisal is \$331 with an average turnaround time of 5 days. Some appraiser organizations commented that, regarding time and cost savings, the fee structure between appraisers and AMCs is not transparent to the consumer. They also noted that it is unfair to blame appraisers for the time

that elapses before an appraisal is even requested, and, to the extent that appraisers affect timeliness of closing, this is often because of issues with the property that are not discovered until the inspection phase. One commenter noted that complaints about appraiser access in recent years have more to do with increased loan demand due to falling interest rates rather than appraiser supply issues. Some commenters noted that accurate data is not available on the cost and turnaround time for written estimates of market value, so it is not clear how much consumers and credit unions save.

The Board considered the comments relating to the amount of time it takes credit unions to receive a completed appraisal and the appraisal's related cost. The time it takes to complete a written estimate of market value may often be shorter than the time it takes to receive a Title XI appraisal, particularly in rural areas. In addition, written estimates of market value generally cost less than Title XI appraisals for the same properties. The Board believes, based on information available on the cost of written estimates of market value and appraisals, that there are likely to be time and cost savings for FICUs and borrowers where a written estimate of market value, as opposed to an appraisal, is obtained.

A few commenters supporting the proposed threshold increase specifically discussed the impact of the proposal on FICUs serving rural communities. These commenters stated that it is difficult to get an appraisal for a reasonable cost and in a reasonable time in rural areas. One commenter noted that it serves a community in which there is no appraiser within 100 miles, and thus appraisers will often wait for enough transactions to justify the travel necessary to conduct a physical inspection of the property. Feedback from commenters is consistent with the Board's

experience as appraisals for properties in high cost of living areas and rural areas tend to be more expensive than in low cost of living and urban areas. The Department of Veterans Affairs' (DVA) appraiser fee schedule by state ranges from a low of \$425 in South Carolina to a high of \$875 in Montana. In addition, based on DVA schedules and feedback from commenters, turnaround time and costs for appraisals is higher for rural areas than urban areas. The Board estimates the \$400,000 threshold would provide burden relief in terms of transaction volume and dollar amount to rural areas at a proportional rate to the burden reduction overall. However, the Board estimates the proportional amount of relief in terms of time and cost savings to credit unions and borrowers would exceed the burden relief in urban areas.

*5. Other comments.*

*Hearing request.* One group of state appraiser organizations submitted a copy of the comment letter that it sent to the federal banking agencies in response to their proposed rule to increase the residential real estate appraisal threshold. The letter to the federal banking agencies included a request for a hearing to more fully explore these issues. Separately, an appraisal organization strongly suggested that the Board conduct hearings to solicit more views. The Board declines to hold a hearing on this rulemaking. The Board does not believe that a hearing would elicit information that could not have been submitted through the notice and comment process. The Board has thoroughly considered all comment letters, including those submitted by these two organizations.

*6. Comments beyond the scope of the rule.*

One commenter noted that many residential real estate contracts include appraisal contingency clauses, which would not be available to consumers without an appraisal. Another commenter, however, raised the possibility of a valuation contingency clause in future residential contracts.<sup>51</sup> An appraisal contingency is an agreement confirming property valuation between the seller and the buyer not the financing institution. Furthermore, the appraisal contingency referenced by the commenter is outside the scope of this rulemaking.

Two commenters requested that the NCUA add a *de minimis* threshold to the requirement that transactions that are partially insured or guaranteed by a U.S. government agency or sponsored agency have written estimates of market value. The proposed rule did not make any changes to the provision regarding transactions partially insured or guaranteed by a U.S. government agency or a U.S. government sponsored agency. Accordingly, the Board declines to make any changes to this provision in this final rule.

One commenter requested the agency clarify the definition of “complex.” Under the NCUA’s current appraisal regulation, a residential real estate transaction at or above the \$250,000 threshold (not including any amount of the transaction that is guaranteed or insured by a U.S. government agency or government sponsored agency) that is deemed “complex,” must be accompanied by an appraisal from a state-certified appraiser, as opposed to a state-licensed appraiser who is not certified. The current regulation also provides that a FICU may presume

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<sup>51</sup> The CFPB, in its concurrence to the federal banking agencies’ final residential real estate appraisal rule, acknowledged the potential benefit of appraisal contingency clauses in the context of the few appraisals that come in below the contract price, but did not find them to be a significant enough consumer protection to outweigh the benefit of raising the threshold. Available at [https://files.consumerfinance.gov/f/documents/cfpb\\_firrea-concurrence\\_2019\\_08.pdf](https://files.consumerfinance.gov/f/documents/cfpb_firrea-concurrence_2019_08.pdf).

that appraisals of 1-to-4 family residential properties are not complex unless the credit union has readily available information that a given appraisal will be complex. The commenter requested further clarity on what is considered “readily available information.” The proposed rule did not make any changes to this presumption or to the definition of “complex.”

The Board declines to consider these suggested changes to the regulation at this time as they are beyond the scope of the rule.

### ***C. Final Rule***

Based on the above analysis and consideration of the comments, the Board determines it is appropriate to adopt the proposed increase in the threshold below which appraisals for residential real estate transactions are not required from \$250,000 to \$400,000. In addition, the Board adopts the proposed conforming changes regarding review of appraisals for compliance with USPAP and the removal of additional requirements for the appraisal exemption for certain transactions in rural areas for the reasons stated in the proposed rule. As discussed in the proposed rule, the additional requirements associated with the appraisal exemption for certain residential real estate transactions will be unnecessary once the threshold for all residential appraisals is raised to \$400,000.<sup>52</sup> Removing these requirements from the regulation will reduce confusion for FICUs but does not affect the validity of this authority under the 2018 legislation. Neither provision substantively alters the rights or obligations of FICUs or other parties, which are addressed in the relevant statutes.

## **V. Effective Date**

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<sup>52</sup> 84 FR at 65709.

All provisions of the rule are effective upon publication of the final rule in the **Federal Register**. The 30-day delayed effective date required under the Administrative Procedure Act is waived pursuant to 5 U.S.C. 553(d)(1) and (3), which provides an exception to the 30-day delayed effective date requirement when a substantive rule grants or recognizes an exemption or relieves a restriction. The amendment to increase the residential appraisal threshold exempts additional transactions from the agency's appraisal requirement, which would have the effect of relieving restrictions, and the final rule incorporates the existing statutory requirement that appraisals be subject to appropriate review for compliance with USPAP for ease of reference and removes additional requirements relating to residential real estate transactions in rural areas.

## **VI. Regulatory Procedures**

### ***A. Regulatory Flexibility Act***

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rule, an agency prepare a final regulatory flexibility analysis that describes the impact of a rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than \$100 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

Data currently available to the NCUA are not sufficient to estimate how many small credit unions make residential real estate loans in amounts that fall between the current and amended thresholds. Therefore, the NCUA cannot estimate how many small entities may be

affected by the increased threshold and how significant the reduction in burden may be for such small entities. The NCUA believes, however, that the threshold increase will meaningfully reduce burden for small credit unions. Accordingly, the NCUA certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

### ***B. Paperwork Reduction Act***

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden (44 U.S.C. 3507(d)). For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or third-party disclosure requirement, referred to as an information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control number.

This final rule increases the threshold from \$250,000 to \$400,000 for a residential real estate transaction on which an appraisal is required. Transaction values of less than \$400,000 do not require an appraisal, but a written estimate of market value. The information collection requirement of this part is that the FICU retain a record of either the appraisal or written estimate of market value, whichever applies. Even though the threshold has increased, the proposal will not result in a change in burden. This recordkeeping requirement is cleared under OMB control number 3133-0125. There are no new information collection requirements associated with this final rule.

### ***C. Executive Order 13132***

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

### ***D. Assessment of Federal Regulations and Policies on Families***

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 54 of the Treasury and General Government Appropriations Act of 1999.

### ***E. Small Business Regulatory Enforcement Fairness Act***

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) generally provides for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a “major rule.” The NCUA does not believe this rule is a “major rule” within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA has submitted this final rule to the OMB for it to determine if the final



rule is a “major rule” for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

**List of Subjects**

Appraisal, Appraiser, Credit unions, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

By the National Credit Union Administration Board on \_\_\_\_\_, 2020.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR part 722 as follows:

**PART 722—APPRAISALS**

1. The authority citation for part 722 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1789, and 3331 *et seq.* Section 722.3(a) is also issued under 15 U.S.C. 1639h.

2. Amend § 722.3 by:

- a. Revising paragraphs (b)(2), (c)(1), and
- b. Removing paragraph (f).

The revision reads as follows:

**§722.3 Appraisals and written estimates of market value requirements for real estate-related financial transactions.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) The transaction is complex, involves a residential real estate transaction, and \$400,000 or more of the transaction value is not insured or guaranteed by a United States government agency or United States government sponsored agency.

(c) \* \* \*

(1) An appraisal performed by a state-certified appraiser or a state-licensed appraiser is required for any real estate-related financial transaction not exempt under paragraph (a) of this section in which the transaction is not complex, involves a residential real estate transaction, and \$400,000

or more of the transaction value is not insured or guaranteed by a United States government agency or United States government sponsored agency.

\* \* \* \* \*

3. Amend §722.4 by:

- a. Republishing the introductory text;
- b. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively;
- c. Adding a new paragraph (c); and
- d. Revising in newly designated paragraph (e) the text “§ 722.2(f)” and adding in its place the text “§ 722.2”.

The addition reads as follows:

**§ 722.4 Minimum appraisal standards.**

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

\* \* \* \* \*

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

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