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December 3, 2018

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

Re: Comments on Proposed Rule Part 722, Real Estate Appraisals; RIN 3133-AE79

Dear Mr. Poliquin:

On behalf of America's credit unions, I am writing regarding the National Credit Union Administration's (NCUA) proposal to amend part 722, Real Estate Appraisals. The Credit Union National Association (CUNA) represents America's credit unions and their 110 million members.

NCUA has proposed a rule to amend the agency's regulation requiring real estate appraisals for certain transactions. The proposed rule would:

- 1) Increase the threshold below which appraisals would not be required for non-residential real estate transactions from \$250,000 to \$1,000,000.
- 2) Restructure the appraisal regulation to clarify its requirements for the reader.
- 3) Exempt from the appraisal regulation certain federally related transactions involving real estate where the property is located in a rural area.
- 4) Make certain conforming amendments to the definitions section.

Proposed Changes to NCUA Part 722—Appraisals

Section 722.2 – Definitions

“Complex”

The proposal would replace the defined term *complex 1- to 4-family residential property appraisal* with the term *complex*, which would retain the language in the existing definition and also consolidate related language from elsewhere in part 722 into the definition of the new term.

The proposed definition for *complex* real estate-related financial transaction is similar to the current definition for *complex 1- to 4-family residential property appraisal*, but would allow the term *complex* to be used more broadly in conjunction with other provisions in proposed § 722.3.

We support the proposed replacement of the term *complex 1- to 4-family residential property appraisal* with the shortened term *complex*, which would not include any substantive changes to the definition. As stated below, we support NCUA's effort to reorganize part 722 to make it easier to follow and understand, and we believe the proposed change to the term *complex* is necessary to allow NCUA to reorganize certain aspects of § 722.3.

Section 722.3 – Appraisals and Written Estimates of Market Value Requirements for Real Estate-Related Financial Transactions

Current § 722.3 provides the general requirement that all real estate-related financial transactions must have a state-certified or state-licensed appraisal unless the transaction qualifies for a listed exemption.

We support NCUA reorganizing this section to make it easier for credit unions to determine when an appraisal or written estimate of market value is required. Under the way the section is currently structured, we agree that it is difficult for a reader to quickly determine whether a written estimate of market value is required, or whether an appraisal performed by a state-licensed or state-certified appraiser is required for certain real estate-related financial transactions.

Thus, we support proposed structural changes to reorder current § 722.3 to help the reader more readily determine:

- Whether the real estate-related financial transaction does not require an appraisal or written estimate of market value under part 722;
- When an appraisal required under part 722 must be prepared by a state-certified appraiser;
- When an appraisal required under part 722 may be prepared by either a state-certified or state-licensed appraiser; and
- When only a written estimate of market value is required.

§ 722.3(a) – Real Estate-Related Financial Transactions Not Requiring an Appraisal or Written Estimate of Value Under This Part

To make it easier to follow, the proposal would reorganize certain provisions of the list of exempt transactions under current § 722.3(a)(1)-(9). In addition, the proposal would make substantive changes to several provisions in current § 722.3(a), which describes circumstances under which an appraisal or written estimate of market value is not required for a real estate-related financial transaction.

(a)(1): In addition to renumbering, the proposal would substantively alter the current exemption for an existing extension of credit.

Currently, the rule exempts a transaction that involves an existing extension of credit, and:

- There is no advancement of new monies, other than funds necessary to cover reasonable closing costs; or
- There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of new monies.

As amended under the proposal, this provision would exempt a transaction that involves an existing extension of credit, and:

- Is not considered a new loan under Generally Accepted Accounting Principles (GAAP).

According to NCUA, the current exemption's conditions can involve significant subjectivity, may be difficult to apply in practice, and do not necessarily align with financial reporting standards. As such, NCUA believes linking this exemption to GAAP should increase consistency and better achieve the objectives of this regulation.

We do not support the proposed change to the exemption for existing extensions of credit. While the use of a clear-cut requirement or established definition or calculation can be preferable to language that may be open to interpretation or clearly ambiguous, we disagree that current § 722.3(a)(5) suffers from such deficiencies. We agree with NCUA that there may be circumstances that result in an appraisal being required under this proposed rule that would not be required under the current rule due to linking the exemption to GAAP.

As indicated in the proposal, the GAAP description of a loan and lending activity is quite complex and can include, lending, committing to lend, refinancing or restructuring loans, arranging standby letters of credit, syndicating loans, and leasing activities. It is unclear whether this proposed change would result in a reduction of subjectivity and increase in consistency since, as NCUA noted, a written estimate of market value will likely be required for some but not all modifications, workouts, or troubled debt restructurings of existing loans, and credit unions will need to rely on "sound judgement in determining when a written estimate of market value, or an appraisal, is warranted to support a loan workout."

In addition, the proposed change would reduce flexibility provided by the current exemption. Specifically, current § 722.3(a)(5) provides an exemption for a transaction involving an existing extension of credit under two separate prongs: 1) no advancement of new monies, *or* 2) no change in market or physical aspects of the property. The proposal would permit the exemption under only a single scenario.

Lastly, we believe this is an area where NCUA should follow the work of the banking regulators, which did not consider linking this exemption to GAAP, but rather maintained the exemption as it was prior to their recent amendments to the bank regulations. NCUA's current exemption in § 722.3(a)(5) is identical to that of the banking regulators.

(a)(9): The proposed rule would remove § 722.3(a)(9) to eliminate the option for a Regional Director to grant a waiver from the appraisal requirement for a category of loans meeting the definition of a member business loan. According to NCUA, this provision would be removed due to the proposal's increase of the non-residential real estate-related financial transaction appraisal threshold to \$1 million.

While we are not outright opposed to this proposed change, we caution NCUA from making changes that reduce flexibility where there is no clear showing of necessity. Before NCUA makes changes such as this that reduce flexibility and discretion, we ask the agency to ensure the industry has sufficient information to make informed opinions (*e.g.*, data regarding granting of such waivers by Regional Directors).

§ 722.3(b) – Real Estate-Related Financial Transactions Requiring an Appraisal by a State-Certified Appraiser

The proposal would restructure the provisions describing the real estate-related financial transactions for which an appraisal performed by a state-certified appraiser is required. We support the proposed changes from an organizational perspective, as they should make § 722.3(b) easier for the reader to follow.

Proposed § 722.3(b)(1) would require an appraisal performed by a state-certified appraiser for transactions that are not exempt under paragraph (a) and the transaction value is \$1 million or more. We support this proposed change, which would increase the threshold at which non-residential real estate-related financial transactions are exempt from appraisal requirements from \$250,000 to \$1 million. As would be required under the proposed change, we believe it is appropriate that, for commercial real estate-related financial transactions with transaction values below \$1 million, credit unions be able to use their judgment, consistent with safe and sound lending practices, to determine whether to use an appraisal or a written estimate of market value.

In supporting the proposed threshold increase, we agree with NCUA that statutory limits, combined with appropriate prudential and supervisory oversight, should sufficiently offset any potential risk that could occur by raising the appraisal threshold for nonresidential real estate-related transactions.

§ 722.3(f) – Exemption from Appraisals of Real Property Located in Rural Areas

Proposed § 722.3(f) incorporates a new exemption that was included in the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, signed on May 24, 2018. Section 103 of the Act amends Title XI of the Financial Institutions Reform,

Recovery, and Enforcement Act of 1989 (FIRREA) to exempt from appraisal requirements certain federally related, rural real-estate transactions valued below \$400,000 if no state-certified or state-licensed appraiser is available.

Under this provision, transactions involving real estate or an interest in real estate located in a rural area are exempt from appraisal requirements if certain conditions are met. Since the exemption provided in the Act is self-implementing, credit unions may already be taking advantage of it, provided the transaction meets all of the requirements under section 103.

We encourage NCUA to incorporate the exemption explicitly into part 722 of the regulations for easier reference.

Conclusion

On behalf of America's credit unions and their 110 million members, thank you for the opportunity to share our comments regarding NCUA's real estate appraisals proposal. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743.

Sincerely,

A handwritten signature in blue ink that reads "Luke Martone". The signature is written in a cursive style with a large initial "L" and "M".

Luke Martone
Senior Director of Advocacy & Counsel