

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10405**]
December 4, 1990]

**PROPOSED REVISION OF REAL ESTATE
APPRAISAL STANDARDS**

Comment Invited by January 25, 1991

*To All State Member Banks and Bank Holding Companies
in the Second Federal Reserve District, and Others Concerned:*

The following statement has been issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has issued for comment proposed amendments to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) and Regulation Y (Bank Holding Companies and Change in Bank Control) regarding real estate appraisal standards.

Comment is requested by January 25, 1991.

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) required the Board and the other financial institutions regulatory agencies to promulgate regulations governing appraisal standards and practices in real estate-related transactions of financial institutions.

The Board's existing regulation sets the level above which financial institutions are required to retain the services of a licensed or certified appraiser in such transactions at \$100,000. Subsequent to the Board's action, the other federal financial institutions regulatory agencies adopted a \$50,000 level. The Board's proposal seeks comment on whether it should change that level to conform to the threshold established by the other agencies.

The proposal also would amend the preamble to the Board's rule to encourage the states to adopt meaningful licensing criteria for appraisers while reserving to the states certain flexibility in those areas.

In addition, set forth on page 4 of this circular is the text of Governor Seger's Dissenting Statement in this matter.

Printed on the following pages is the text of the Board's proposal, as printed in the *Federal Register* of November 26, 1990. Comments thereon should be submitted by January 25, 1991 and sent to the Board, as specified in the notice.

E. GERALD CORRIGAN,
President.

FEDERAL RESERVE SYSTEM**12 CFR Parts 208 and 225****[Regulation H, Regulation Y; Docket No. R-0711]****Revised Appraisal Standards for Federally Related Transactions****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Notice of proposed rulemaking.

SUMMARY: Pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the Board promulgated amendments to its Regulations H (12 CFR part 208) and Y (12 CFR part 225) to implement provisions regarding real estate appraisal standards. The Board's rules currently require State certified and licensed appraisers to be utilized in conducting appraisals in real estate-related financial transactions having a transaction value of more than \$100,000. The Board now seeks comment on whether that \$100,000 level should be changed. In addition, the Board proposes to add to the section-by-section analysis in section C of the Supplementary Information to the rule a statement which clarifies the Board's intentions regarding the qualifications of State licensed appraisers.

DATES: Comments must be submitted on or before Friday, January 25, 1991.

ADDRESSES: Comments, which should refer to Docket No. R-0711, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122, Eccles Building, between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Roger T. Cole, Assistant Director (202/452-2618), Stanley B. Rediger, Senior Financial Analyst (202/452-2629), or Virginia M. Gibbs, Senior Financial Analyst (202/452-2521), Division of Banking Supervision and Regulation; or Michael J. O'Rourke, Senior Attorney (202/452-3288) or Mark J. Tenhundfeld, Attorney (202/452-3612), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On June 28, 1990 (55 FR 27,762 (July 5, 1990)), the

Board adopted its rule regarding appraisal standards for federally related transactions as directed by Title XI of FIRREA. At the time the Board adopted the rule, staff of the banking agencies had agreed that real estate-related financial transactions valued at more than \$100,000 would require the services of a licensed or certified appraiser. The banking agencies felt that a \$100,000 level would comport with the letter and spirit of Title XI, while at the same time responding to concerns about increased costs and burdens imposed on small financial institutions and consumers seeking small real estate loans. This consensus was reached after careful consideration of all comments received in response to the Board's proposed rule and after extensive discussions among representatives from the federal financial institutions regulatory agencies. However, since the Board published its rule, concerns have been raised about whether \$100,000 is an appropriate level.

In light of these concerns, the other banking agencies have reconsidered their positions. The Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation have reached a consensus with the Office of Thrift Supervision and the National Credit Union Administration that favors a threshold level of \$50,000 above which real estate-related financial transactions would require the services of a licensed or certified appraiser. The federal financial institutions regulatory agencies other than the Board have incorporated this \$50,000 level into their appraisal regulations.

The Board now seeks comment on whether it should conform the threshold level established in its regulation to the level adopted by the other agencies.¹ In addition to the general question regarding the propriety of changing this threshold level to \$50,000, the Board also specifically requests comment on: (1) The incremental increase in the cost of obtaining appraisals for transactions having a transaction value between \$50,000 and \$100,000 if the proposal is adopted; (2) the availability of licensed or certified appraisers to perform appraisals for such transactions; and (3) the history of losses resulting from inadequate appraisals rendered in connection with transactions having a transaction value of between \$50,000 and \$100,000.

Concern also was expressed by some commenters to the Board's rule

regarding the ability of State licensed appraisals to perform appraisals of non-residential properties and complex residential properties rendered in connection with federally related transactions having a transaction value of \$250,000 or less. In adopting its rule, the Board stressed that an appraiser must be competent to perform the appraisal in question, regardless of the individual's title or designation. Since the Board adopted its rule, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council has issued a statement² informing the States that the qualification criteria for the "Residential Real Property Appraiser" classification developed by the Appraisal Qualifications Board of the Appraisal Foundation reflect meaningful standards for licensed appraisers. These criteria include, among others, experience and education standards determined by the Appraisal Qualifications Board as suitable for the performance of competent appraisals. The Board concurs with the Appraisal Subcommittee that such criteria reflect meaningful standards for licensed appraisers.

In establishing a "safe harbor" for States in adopting meaningful licensing standards consistent with Title XI, the Appraisal Subcommittee did not preclude the States from adopting other licensing criteria, so long as such criteria are consistent with Title XI. Indeed, as the Appraisal Subcommittee itself has noted on a number of occasions, Title XI has left the development of licensing criteria to the States, subject only to oversight by the Subcommittee for consistency with Title XI in federally related transactions. In that regard, the Board notes that States could adopt licensing criteria other than that specifically suggested by the Appraisal Subcommittee, and that adoption of such criteria would not necessarily be inconsistent with the Subcommittee's published advisories, the Board's regulation, or Title XI.

The Board also is cognizant of the impending statutory deadline imposed on the States by Title XI for the establishment and operation of State appraisal regulatory programs. The Board recognizes that there may be initial start-up problems and certain inefficiencies in the *de novo* establishment of such programs, particularly with regard to the timing of and procedures involved in both processing and qualifying appraisers for licenses. In that light, the Board believes

¹ If the proposal is adopted, appropriate changes also will be made to the rule's Preamble to reflect the lower threshold amount.

² See Appraisal Subcommittee Advisory 90-1 (Press Release dated August 9, 1990).

the possibility exists that States, on occasion, may feel it necessary to provide transitional arrangements of a short-term nature with respect to their licensing criteria, particularly in order to ensure the availability of appraisers to conduct federally related transactions as of the statutory deadline imposed in Title XI. The Board believes that limited, short-term transitional arrangements (such as with regard to the education and experience criteria) would not necessarily be inconsistent with the provisions of this regulation and the spirit of Title XI.

The Board again stresses that a title or designation alone does not ensure that an appraiser is competent to perform a given appraisal. Any determination of competency must be based on the appraiser's experience and training as they relate to a particular appraisal assignment.

In light of the above, the Board proposes to replace the language appearing in the preamble to the Board's rule,³ regarding the appropriate minimum standards for State licensed appraisers conducting appraisals in connection with federally related transactions, with the following:

—“ ‘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 generally would not be acceptable. Rather, the States and territories are to design criteria that will ensure that licensed appraisers will have the experience and training sufficient to perform appraisals that comply with this regulation.

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council has issued a statement⁴ informing the States that the qualification criteria for the ‘Residential Real Property Appraiser’ classification developed by the Appraisal Qualifications Board of the Appraisal Foundation reflect meaningful standards for licensed appraisers. These criteria include, among others, experience and education standards determined by the Appraisal Qualifications Board as suitable for the performance of competent appraisals. The Board concurs with the Appraisal Subcommittee that such criteria reflect

meaningful standards for licensed appraisers.

In establishing a ‘safe harbor’ for States in adopting meaningful licensing standards consistent with Title XI, the Appraisal Subcommittee did not preclude the States from adopting other licensing criteria, so long as such criteria are consistent with Title XI. Indeed, as the Appraisal Subcommittee itself has noted on a number of occasions, Title XI has left the development of licensing criteria to the States, subject only to oversight by the Subcommittee for consistency with Title XI in federally related transactions. In that regard, the Board notes that States could adopt licensing criteria other than those specifically suggested by the Appraisal Subcommittee, and that adoption of such criteria would not necessarily be inconsistent with the Appraisal Subcommittee's published advisories, the Board's regulation, or Title XI of FIRREA.

The Board also is cognizant of the statutory deadline imposed on the States by Title XI for the establishment and operation of State appraisal regulatory programs. The Board recognizes that there may be initial start-up problems and certain inefficiencies in the *de novo* establishment of such programs, particularly with regard to the timing of and procedures involved in both processing and qualifying appraisers for their licenses. In that light, the Board believes the possibility exists that States, on occasion, may feel it necessary to provide transitional arrangements of a short-term nature with respect to their licensing criteria, particularly in order to ensure the availability of appraisers to conduct federally related transactions as of the statutory deadline imposed in Title XI. The Board believes that limited, short-term transitional arrangements (such as with regard to the education and experience criteria) would not necessarily be inconsistent with the provisions of this regulation and the spirit of Title XI.

Additional assurance that licensed appraisers will have the qualifications necessary to perform the appraisals authorized under this rule is provided by the requirement that all appraisers comply with the USPAP Competency Provision. Under the Competency Provision, an appraiser must notify the client if the appraiser discovers that an assignment raises problems that are beyond his or her knowledge or experience. Moreover, the appraiser must take the necessary steps to have the assignment completed competently

through personal study, affiliation with an appraiser that possesses the necessary knowledge and experience, or retention of the services of an individual with the required knowledge and experience.”

Regulatory Flexibility Act Analysis

Title XI of FIRREA requires the Board to establish standards for performing appraisals in connection with “federally related transactions,” which are defined to include those real estate related transactions that, among other things, require the services of an appraiser. In considering whether to change the existing level above which the services of an appraiser would be required, the Board has taken into account the legislative history of Title XI, which encourages federal financial institutions regulatory agencies to adopt identical or substantially similar regulations.

The Board anticipates that the proposed regulatory change would increase the cost of federally related transactions having a transaction value between \$50,000 and \$100,000. These costs will either have to be absorbed by the regulated institutions or be passed on to their customers. The Board specifically seeks comment on the incremental increase in the cost of obtaining appraisals for transactions that would be affected by this proposal.

Paperwork Reduction Analysis

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35; 5 CFR 1320.14), the proposed revisions to Regulations H and Y that relate to recordkeeping requirements have been promulgated under authority delegated to the Board by the Office of Management and Budget.

These proposed amendments would affect bank holding companies, state member banks (“SMBs”), and nonbank subsidiaries of bank holding companies (“BHC subs”) that will engage in federally related transactions having a transaction value between \$50,000 and \$100,000. In developing these proposed amendments, the Board has consulted with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Resolution Trust Corporation. The Legislative history of Title XI encourages those institutions to adopt substantially similar regulations.

The Federal Reserve System estimates that 1,183 institutions would be affected by these recordkeeping requirements if the proposal were adopted. Each

³ The language to be replaced currently appears in the section-by-section analysis of the Preamble at Part C of the Supplementary Information.

⁴ See Appraisal Subcommittee Advisory 90-1 (Press Release dated August 9, 1990).

federally related transaction would be expected to require, on average, 15 minutes for review and recordkeeping. The Board now estimates that the total reporting burden for complying with the

regulation as proposed to be revised is 54,716 burden hours. This reflects an increase in burden hours of 22,791, as calculated below. The total reporting burden, even if the proposal is adopted,

would remain less than one percent of the total annual System reporting burden.

	Number of respondents	X	Annual frequency	X	Estimated average number of hours per response	=	Estimated total annual burden hours
Current:							
SMBs.....	1,073		86		.25		23,070
BHC subs.....	110		322		.25		8,855
Total.....	1,183						31,925
Proposed:							
SMBs.....	1,073		148		.25		39,701
BHC subs.....	110		546		.25		15,015
Total.....	1,183						54,716
Net Change:							
SMBs.....			+ 62				+ 16,631
BHC subs.....			+ 224				+ 6,160
Total.....							+ 22,791

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set forth in its document, the Board proposes to amend 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

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

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. In § 225.63, paragraph (a)(1) is revised to read as follows:

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

(a) * * *

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

* * * * *

Board of Governors of the Federal Reserve System, November 19, 1990.

William W. Wiles,
Secretary of the Board.

[FR Doc. 90-27636 Filed 11-23-90; 8:45 am]

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Dissenting Statement of Governor Seger

I dissent from the Board's decision to reconsider the level at which real estate-related transactions conducted by financial institutions would require the services of a licensed or certified appraiser under the Board's appraisal regulation. The purpose of Title XI of FIRREA and the Board's regulation is to promote safety and soundness among our financial institutions through competent appraisal practices. This proposal does not serve to advance this goal.

The Board's supervisory experience to date suggests that credit losses arising from inadequate appraisals of typical 1-to-4 family residential properties have not been a major cause of failures of commercial banking organizations regulated by the Federal Reserve. Accordingly, I believe there is no basis for the Board to reconsider its initial determination that a \$100,000 level is appropriate. In my view, this is an anti-consumer proposal and, if adopted, would serve as an unnecessary financial burden on our financial institutions, without otherwise promoting safety and soundness.