

Summary of final TILA rule on appraisals

January 18, 2013

The Consumer Financial Protection Bureau (Bureau) is issuing a rule regarding appraisals for higher-priced (subprime) mortgage loans (HPMLs) on January 18, 2013. One purpose of the rule is to ensure that full interior appraisals are conducted when consumers take out HPMLs. The rule implements amendments to the Truth in Lending Act (TILA) enacted in the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)¹ and will become effective on January 18, 2014. The statutory term “higher-risk mortgage” has been replaced with the TILA term HPML because the definitions are very similar and HPML is already familiar to creditors.

BACKGROUND

In response to the recent mortgage crisis, Congress expanded consumer protections for HPMLs by adding new appraisal provisions to TILA. The Bureau is issuing this rule to implement those changes. As required by Congress, the rule was developed together with the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency.

SUMMARY OF THE RULE

Consistent with the Dodd-Frank Act, the rule allows a creditor to extend an HPML only if the following conditions are met (unless an exemption applies, as discussed below):

- The creditor obtains a written appraisal;
- The appraisal is performed by a certified or licensed appraiser; and
- The appraiser conducts a physical property visit of the interior of the property.

The rule also requires the creditors take the following steps during the application process for an HPML that is covered by the rule:

¹ Pub. L. 111-203, 124 Stat. 1376, section 1474 (2010).

- At application, the applicant must be provided with the notice included in the rule regarding the purpose of the appraisal, that the creditor will provide the applicant a copy of any written appraisal, that the creditor may charge the applicant for the appraisal, and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant; and
- The creditor must provide the consumer with a free copy of any written appraisals obtained for the transaction at least three business days before consummation.

In addition, as required by the Dodd-Frank Act, the rule requires a HPML mortgage loan creditor to obtain a second written appraisal based on an interior inspection of the property, at no cost to the borrower, in connection with certain “flipped” properties. Subject to certain exemptions, the second appraisal would be required where:

- The seller acquired the home within 180 days prior to the date of the consumer’s purchase agreement; and
- The consumer is acquiring the home for a price that exceeds the seller’s acquisition price by 10% (if the seller acquired the property within the past 90 days) or 20% (if the seller acquired the property between 91 and 180 days earlier).

The Dodd-Frank Act specifically exempts qualified mortgages and certain reverse mortgages from these rules. In addition to exempting these loans, the rule also exempts:

- All reverse mortgages;
- Loans for initial construction of a dwelling;
- Temporary bridge loans (for 12 months or less);
- Loans secured by a new manufactured homes; and
- Transactions secured by a mobile home, boat, or trailer.

The rule only applies to closed-end credit transactions.

The disclosure requirements of this rule overlap with another rule the Bureau is releasing today. That rule implements an amendment the Dodd-Frank Act made to ECOA, which also requires creditors in first lien transactions to provide free copies of appraisals and to disclose this

requirement at application. The rule allows creditors to use a single unified disclosure notice for HPMLs that are first liens, and which are therefore subject to the ECOA rule.