

JANUARY 13, 2014

# TILA Higher-Priced Mortgage Loans (HPML) Appraisal Rule

SMALL ENTITY COMPLIANCE GUIDE



Consumer Financial  
Protection Bureau

# Version Log

The Bureau updates this guide on a periodic basis to reflect finalized clarifications to the rule which impacts guide content. Below is a version log noting the history of this document and its changes:

Date	Version	Rule Changes
January 13, 2014	1.2	Miscellaneous administrative changes
January 2, 2014	1.1	<ul style="list-style-type: none"> <li data-bbox="500 867 1274 1457"> <input type="checkbox"/> The Agencies are adopting additional exemptions from the HPML appraisal rules (<i>See “What HPML loans are not covered by the HPML Appraisal Rule?” on page 11.</i>) for               <ul style="list-style-type: none"> <li data-bbox="573 1020 1274 1083">○ extensions of credit of \$25,000 or less, indexed every year for inflation.</li> <li data-bbox="573 1136 1274 1199">○ certain types of refinance products commonly referred to as streamlined refinances, and</li> <li data-bbox="573 1251 1274 1457">○ certain covered HPMLs secured by manufactured housing subject to changes and conditions that take effect July 18, 2015, as described in more detail in “What HPML loans are not covered by the HPML Appraisal Rule?” on page 11.</li> </ul> </li> <li data-bbox="500 1509 1274 1761"> <input type="checkbox"/> In addition, the Agencies are broadening the exemption for qualified mortgages (QMs) adopted in the January 2013 Final Rule beyond the Bureau’s QM definition in 12 CFR 1026.43(e) to include any transaction that falls under the statutory QM criteria at 15 USC 1693c. (<i>See “What HPML loans are not covered by the HPML Appraisal Rule?” on page 11 and “What exemptions apply under the HPML Appraisal Rule?” on page 24</i>)           </li> </ul>

April 30, 2013	1.0	<b>Original Document</b>
----------------	-----	--------------------------

# Table of Contents

<b>Version Log</b> .....	<b>2</b>
<b>1. Introduction</b> .....	<b>6</b>
I. What is the purpose of this guide? .....	7
II. Who should read this guide? .....	8
III. Who can I contact about this guide or the HPML Appraisal Rule? .....	8
<b>2. Overview of the HPML Appraisal Rule</b> .....	<b>10</b>
I. When do I have to start following the HPML Appraisal Rule? .....	10
II. What loans does the HPML Appraisal Rule cover? (§ 1026.35(a)(1)) .....	10
III. What HPML loans are not covered by the HPML Appraisal Rule? (§ 1026.35(c)(2)) .....	11
<b>3. About the HPML Appraisal Rule</b> .....	<b>13</b>
I. What must I do to comply with the HPML Appraisal Rule?.....	13
II. What do I have to do for the required appraisals to qualify for the safe harbor? (§ 1026.35(c)(3)(ii) and Appendix N to Regulation Z) .....	14
III. How do the Appraisals for Higher-Price Mortgage Loans Rule and the Equal Opportunity Credit Act Valuations Rule overlap? .....	15
IV. What text do I use in my disclosure to consumers?.....	16
V. Do I need to provide the disclosure as part of the initial loan estimate? .....	16
VI. How can I deliver the appraisal copies to applicants? (Comment 35(c)(6)(ii)-1) .....	17

VII. What counts as a “business day” for the timing of the required disclosure and appraisal copies? .....	17
VIII. Can I charge for the appraisal copies? (Comment 35(c)(6)(iv)-1) .....	17
IX. What if there is more than one applicant? Do I have to send the disclosure and appraisal copies to each of them? (Comments 35(c)(5)(i)-1 and 35(c)(6)(i)-1).....	18
X. What are my obligations if the loan does not close? (§ 1026.35(c)(6)(ii)(B))	18
<b>4. How are “flips” defined and documented?.....</b>	<b>19</b>
I. What is a “flip”? (15 U.S.C. § 1639h(b)(2); § 1026.35(c)(4)(i)) .....	19
II. What do I have to do if the property is a “flip” purchased with a covered HPML? (§ 1026.35(c)(4)(ii)-(iv)) .....	20
III. How do I calculate the 180-day period for prior sales? (Comment 35(c)(4)(i)-2) .....	21
IV. How do I determine the price at which the seller acquired the property and the consumer will pay to acquire it? (Comments 35(c)(4)-5 and -6).....	21
V. What documents can I use to determine if the seller acquired the property in the past 180 days? (Appendix O to Regulation Z) .....	22
VI. Can the additional appraisal be done by an appraiser from the same firm that did the first appraisal? .....	23
<b>5. What are the exemptions from the HPML Appraisal Rule? .....</b>	<b>24</b>
I. What exemptions apply under the HPML Appraisal Rule? (§ 1026.35(c)(2))	24
II. What are the exemptions from the requirement to obtain an additional appraisal for certain flipped homes? (§ 1026.35(c)(4)(vii)).....	25
<b>6. Practical implementation and compliance considerations .....</b>	<b>27</b>
<b>7. Other resources .....</b>	<b>30</b>
I. Where can I find a copy of the HPML Appraisal Rule and get more information about it? .....	30

# 1. Introduction

The Truth in Lending Act (TILA) of 1968 and its implementing rules under Regulation Z seek to promote the informed use of consumer credit by requiring disclosures about its costs and terms. In 2010, TILA was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) to require rules for appraisals on principal residences securing higher-priced loans.

To implement these TILA amendments, the Consumer Financial Protection Bureau (CFPB), in partnership with five other federal regulatory agencies, is adopting a new rule, the Higher-Priced Mortgage Loans (HPML) Appraisal Rule. The rule is part of Regulation Z.

Mortgage loans are HPMLs if they are secured by a consumer's principal dwelling and have interest rates above certain thresholds, as outlined in Section 2 of this guide.

When you originate a higher-priced first-lien or subordinate-lien loan covered by the HPML Appraisal Rule, you must:

- Use a licensed or certified appraiser who certifies the appraisal complies with the Uniform Standards of Professional Appraisal Practice (USPAP) and the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989, as amended, 12 U.S.C. 3331 *et seq.*, and any implementing regulations
- Have the appraiser physically visit the property and view the interior and produce a written appraisal report
- Obtain an additional appraisal at your own expense if the property's seller acquired the dwelling within the past 180 days and is reselling it for a price that exceeds certain thresholds, which are detailed in Section 2 of this guide
- Provide a disclosure within three business days of application explaining the consumer's rights with regard to appraisals
- Give consumers free copies of the appraisal reports performed in connection with the loan at least three days before consummation of the transaction

**When you originate first-lien mortgages covered by the HPML Appraisal Rule, you must also consider the requirements of the Equal Credit Opportunity Act (ECOA),** which are outlined in the Bureau's *ECOA Valuations Rule Small Entity Compliance Guide*. This guide contains more information about the overlap between the two rules. The ECOA guide and the ECOA Valuations Rule are online at <http://www.consumerfinance.gov/regulations/disclosure-and-delivery-requirements-for-copies-of-appraisals-and-other-written-valuations-under-the-equal-credit-opportunity-act-regulation-b/>.

The Bureau has generally estimated that, based upon market practices as of 2011, the vast majority of HPMLs will be Qualified Mortgages. If you do originate HPMLs that are not Qualified Mortgages, then your cost and the effort required to implement this rule will be based on the mix of those loans you originate. There will be costs associated with obtaining an additional appraisal when you originate an HPML to which that requirement applies, as well as costs for reviewing and implementing the regulation.

There are several exemptions from the rule, as well as from the rule's requirement to obtain an additional appraisal for purchases of flipped properties that exceed specified price thresholds. These exemptions are detailed in Section 5 of this guide.

In the January 18, 2013 final rule, the Agencies recognized an exemption for HPMLs that met the Qualified Mortgage (QM) standards in section 1026.43(e) of Regulation Z. In the December 2013 Supplemental Final Rule, the Agencies broadened the exemption for QMs beyond the Bureau's QM definition in 1026.43(e) to include any transaction that falls under the statutory QM criteria at 15 U.S.C. 1639c. As revised, this exemption will include, for example, transactions that are covered by the Bureau's Ability to Repay Rule and are QMs defined under any final rule that the Bureau, HUD, or other federal agencies may adopt under authority at 15 U.S.C. 1639c. In addition, transactions that are not covered by the Bureau's Ability-to-Repay Rule can still be eligible for the exemption if they are insured, guaranteed, or administered by HUD, VA, USDA, or VA and meet the QM criteria under rules issued by the corresponding agency. For more information, see comment 35(c)(2)(i)-1(ii).

For more information on Qualified Mortgages, consult the Bureau's *Ability-to-Repay/Qualified Mortgage Rule Small Entity Compliance Guide* online at [http://files.consumerfinance.gov/f/201310\\_cfpb\\_atr-qm-small-entity\\_compliance-guide.pdf](http://files.consumerfinance.gov/f/201310_cfpb_atr-qm-small-entity_compliance-guide.pdf).

## I. What is the purpose of this guide?

The purpose of this guide is to provide a summary of the new HPML Appraisal Rule. This guide also highlights issues that small creditors, and those that work with them, might find helpful to consider when implementing the rule.

The Bureau hopes this guide will provide greater clarity on the issues covered by the rule and lessen your compliance burden by reducing costs for attorneys and compliance officers, as well as potential costs of over-compliance and unnecessary litigation.

The guide summarizes the HPML Appraisal Rule, but it is not a substitute for the rule. Only the rule and its Official Interpretations (also known as Commentary) can provide definitive information regarding its requirements. The discussions below provide citations to the sections of the rule that pertain to the subject being discussed. Keep in mind that the Official Interpretations, which provide detailed explanations of many of the rule's requirements, are found after the text of the rule and its appendices. The interpretations are arranged by rule section and paragraph for ease of use. The complete rule, including the Official Interpretations, is available at <http://www.consumerfinance.gov/regulations/appraisals-for-higher-priced-mortgage-loans/>.

Additionally, the CFPB and other agencies has issued a final rule to amend and clarify provisions in the January 2013 Final Rule: the [December 2013 Supplemental Final Rule](#). The focus of this guide is the HPML Appraisal Rule. Except for limited discussion of the related ECOA Valuations Rule and the Ability-to-Repay Rule noted above, this guide does not discuss other federal or state laws that may apply to appraisals you prepare as you originate loans secured by principal dwellings.

At the end of this guide, there is more information about how to read the rule and a list of additional resources.

## II. Who should read this guide?

If your organization originates HPMLs – whether they are secured by first or subordinate liens on principal dwellings – you may find this guide helpful, particularly if any of these HPMLs are not Qualified Mortgages.

This guide will help you determine whether this rule covers any of the loans you originate and if so, what your compliance obligations are.

This guide may also be helpful to secondary market participants, appraisal management companies, software providers, and other companies that serve as business partners to creditors.

## III. Who can I contact about this guide or the HPML Appraisal Rule?

If, after reviewing this guide and the regulations and commentary it addresses, you have a question regarding regulatory interpretation, please email [CFPB\\_reinquiries@cfpb.gov](mailto:CFPB_reinquiries@cfpb.gov) with your specific questions, including reference to the applicable regulation section(s). If you do not have access to the internet, you may leave this information in a voice mail at 202-435-7700.



Email comments about the guide to [CFPB\\_MortgageRulesImplementation@cfpb.gov](mailto:CFPB_MortgageRulesImplementation@cfpb.gov). Your feedback is crucial to making sure the guide is as helpful as possible. The Bureau welcomes your suggestions for improvements and your thoughts on its usefulness and readability.

The Bureau is particularly interested in feedback relating to:

- How useful you found this guide for understanding the rule
- How useful you found this guide for implementing the rule at your business
- Suggestions you have for improving the guide, such as additional implementation tips

## 2. Overview of the HPML Appraisal Rule

### I. When do I have to start following the HPML Appraisal Rule?

You must follow the HPML Appraisal Rule's provisions for applications received on or after January 18, 2014. For example, an application received on January 17, 2014, for a loan not scheduled to close until February 2014, would not be covered by the HPML Appraisal Rule.

However, all loans secured in whole or in part by a manufactured home will be exempt from the HPML appraisal rules for 18 months, until July 18, 2015.

### II. What loans does the HPML Appraisal Rule cover? (§ 1026.35(a)(1))

The HPML Appraisal Rule applies to higher-priced, first-lien or subordinate-lien closed-end loans secured by a consumer's principal dwelling, which are not otherwise exempt under the rule.

A loan is **"higher-priced"** if:

- It is a first-lien mortgage (other than a jumbo loan) with an annual percentage rate (APR) that exceeds the Average Prime Offer Rate (APOR) published by the Bureau at the time the APR is set by 1.5 percentage points or more.

**Implementation Tip:** You already must compare APRs and APOR under existing Regulation Z to determine whether the transaction is an HPML that is subject to the escrow requirements. The process you use for that comparison will suffice for this regulation as well.

- It is a first-lien jumbo loan with an APR that exceeds the APOR at the time the APR is set by 2.5 percentage points or more. A loan is a jumbo loan when the principal balance exceeds the limit in effect as of the date the transaction's rate is set for the maximum principal obligation eligible for purchase by Freddie Mac. (Comment 35(a)(1)-3)
- It is a subordinate-lien with an APR that exceeds the APOR at the time the APR is set by 3.5 percentage points or more.

For example, if the APOR is 5 percent, a first-lien non-jumbo mortgage is higher-priced if it has an APR of 6.5 percent or more.

You will find an online APOR rate spread calculator, which automatically imports the applicable APOR to compare with APR, at <http://www.ffiec.gov/ratespread/newcalc.aspx>.

### III. What HPML loans are not covered by the HPML Appraisal Rule? (§ 1026.35(c)(2))

The rule exempts these loans (unless otherwise explained below, the rule exempts the loans from all of its requirements):

- Qualified Mortgages, as defined in Regulation Z § 1026.43 or under rules on qualified mortgages adopted by HUD, USDA, or VA, including mortgages that meet the QM criteria for these rules. For more information on Qualified Mortgages, see comment 35(c)(1)(i)-1 and consult the Bureau's *Ability-to-Repay/Qualified Mortgage Rule Small Entity Compliance Guide* online at <http://www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z/>.
- Reverse mortgages
- Bridge loans (for 12 months or less and intended to be used to acquire a new principal dwelling)
- Loans for initial construction of a dwelling (not limited to loans of 12 months or less)
- Loans for \$25,000 or less, indexed every year for inflation
- Streamlined refinance loans, so long as the holder of the credit risk of the existing obligation remains the same on the refinancing. Furthermore, the periodic payments under the refinance loan must not result in negative amortization, cover only interest on the loan, or result in a balloon payment. Finally, the proceeds from the refinance loan may only be used to pay off the existing obligation and to pay closing or settlement charges.

- Loans secured by manufactured homes for which the application is received before July 18, 2015, as discussed above, and for applications received thereafter:
  
- Loans secured by new manufactured homes and land are exempt from the requirement that the appraisal include a physical inspection of the interior of the property, but will be subject to all other HPML appraisal requirements. A new manufactured home is defined as one that has not previously been occupied.
  
- Loans secured by an existing (used) manufactured home and land will not be exempt from the rules.
  
- Transactions secured solely by a manufactured home and not land will be exempt from the rules if the creditor gives the consumer one of three types of information about the home's value:
  - the manufacturer's invoice of the unit cost (for a transaction secured by a new manufactured home)
  
  - an independent cost service unit cost. An "independent cost service" would include a value report from the NADA guides, for example.
  
  - a valuation conducted by an individual who has no financial interest in the property or credit transaction, and has training in valuing manufactured homes. An example would be an appraisal conducted according to procedures approved by the U.S. Department of Housing and Urban Development (HUD) for existing (used) home-only loans.
  
- Loans secured by boats, trailers, and mobile homes

# 3. About the HPML Appraisal Rule

## I. What must I do to comply with the HPML Appraisal Rule?

When you originate a covered HPML (*See list of exemptions on page 10*), you must:

- Disclose to consumers within three business days after receiving the consumers' applications that they are entitled to a free copy of any appraisal the creditor orders and also can hire their own appraiser at their own expense for their own use. (§ 1026.35(c)(5))
- Obtain a written appraisal performed by a certified or licensed appraiser in conformity with the USPAP and Title XI of FIRREA and its implementing regulations. (§§ 1026.35(c)(1)(i) and 35(c)(3)(i))
- Have the appraiser visit the interior of the property and provide a written report (§ 1026.35(c)(3))
- Deliver copies of appraisals to applicants no later than three business days before consummation (§ 1026.35(c)(6)(ii))

**Implementation Tip:** To be sure the appraisal complies with USPAP and FIRREA and meets the interior-inspection requirement, you can take the list of steps described in the “safe harbor” in appendix N to Regulation Z. (*See “What do I have to do for the required appraisals to qualify for the safe harbor?” on page 14.*)

Additional requirements apply in certain cases when a home is being resold within 180 days of its acquisition by the seller above certain price thresholds. (*See “What is a flip?” on page 19.*)

## II. What do I have to do for the required appraisals to qualify for the safe harbor? (§ 1026.35(c)(3)(ii) and Appendix N to Regulation Z)

In Appendix N to Regulation Z, the HPML Appraisal Rule provides a list of steps you can take to be sure that any required appraisal meets the requirements of the rule. When you take each of the steps in this list for an appraisal, you will be eligible for the “safe harbor” protection for that appraisal. That is, by taking these steps, you will comply with the rule.

You can gain safe harbor protection for an appraisal by following four steps:

First, when ordering the appraisal:

Order an appraisal from a certified or licensed appraiser in the state where the property is located and require the appraiser to follow USPAP and Title XI of FIRREA and any implementing regulations in effect at the time the appraiser signs the appraiser’s certification.

Second, you must confirm that the appraisal:

- Identifies the creditor who ordered the appraisal, the property and the interest being appraised
- Indicates whether the appraiser analyzed the contract price
- Addresses conditions in the property’s neighborhood
- Addresses the condition of the property and any improvements to the property
- Indicates which valuation approaches the appraiser used and includes a reconciliation if the appraiser used more than one valuation approach
- Provides an opinion of the property’s market value and an effective date for the opinion
- Indicates that the appraiser performed a physical property visit of the interior of the property, as applicable
- Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of USPAP and Title XI of FIRREA and any implementing regulations

Third, check the status of the appraiser:

Use the National Registry to verify that the appraiser is certified or licensed in the state where the property is located on the date he signed the appraiser’s certification.

Fourth, keep in mind that the safe harbor applies only if:

You do not have actual knowledge contrary to the facts or certifications contained in the written appraisal.

(§ 1026.35(c)(3)(ii))

You may outsource your appraisal review to a third party, but you will remain responsible for complying with the rule. If you rely on the third party and if the third party does not follow the rule, then you will be responsible for the violation. Using an automated review process can also be appropriate, but you will still remain responsible for the effectiveness of those processes.

**Implementation Tip:** You can send the copy of the appraisal disclosure electronically if the consumer gives consent as required by the Electronic Signatures in Global and National Commerce Act (ESIGN Act).

### III. How do the Appraisals for Higher-Price Mortgage Loans Rule and the Equal Opportunity Credit Act Valuations Rule overlap?

For first-lien HPMLs that are covered by the HPML Appraisal Rule, the disclosure requirements overlap with the ECOA Valuations Rule. The ECOA Valuations Rule implements Dodd-Frank Act amendments to ECOA, which require you to provide consumer disclosures and free copies of appraisals and other written valuations.

You can use the disclosure under the ECOA Valuations Rule to satisfy the requirements of this rule. The ECOA guide and the ECOA Valuations Rule are online at

<http://www.consumerfinance.gov/regulations/disclosure-and-delivery-requirements-for-copies-of-appraisals-and-other-written-valuations-under-the-equal-credit-opportunity-act-regulation-b/>.

The ECOA Valuations Rule imposes a different deadline structure for providing copies of appraisals to consumers. Under the ECOA Valuations Rule, the copies of appraisals must be provided “promptly upon completion” or three business days before closing, whichever is earlier.

As a result, if the appraisal is completed early in the application process, then the “promptly upon completion” deadline will come first, since it will be earlier than the three-business-days-before-closing deadline under this rule.

In addition, the applicant can waive the deadline under the ECOA Valuations Rule and elect to receive the copies at closing, whereas the applicant cannot waive the three-business-days-before-closing deadline under the HPML Appraisal Rule.

If the transaction is subject to both rules, then comply with the earlier deadline. The HPML Appraisal Rule deadline will be earlier if the applicant provides a waiver under the ECOA Valuations Rule.

For example, if an applicant waives the deadline under the ECOA Valuations Rule, you will still need to comply with the three-business-day-before-closing requirement in this rule.

If the applicant does not waive the three-business-days-before-closing deadline, generally the ECOA Valuations Rule “promptly upon completion” deadline will be earlier.

## IV. What text do I use in my disclosure to consumers?

Use this text in your disclosure to consumers:

“We may order an appraisal to determine the property’s value and charge you for this appraisal. We will give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.”

For a first-lien transaction, you can also add the word “promptly” to the disclosure, telling the consumers you will “promptly” give them the copy. Then you will have the same disclosure used to comply with the ECOA Valuation Rule. (Regulation B, 12 CFR 1002.14(a)(2))

## V. Do I need to provide the disclosure as part of the initial loan estimate?

Yes. Currently, the Good Faith Estimate (GFE) provided under the Real Estate Settlement Procedures Act (RESPA) does not include a space for the appraisal disclosure, and you will need to provide the HPML appraisal disclosure separately for loans covered by the HPML Appraisal Rule.

In 2012, the Bureau proposed a rule to integrate certain disclosures under TILA and under RESPA (the 2012 TILA-RESPA Proposal). A “Loan Estimate” was one of the proposed integrated disclosures, combining the GFE currently provided under RESPA with initial TILA disclosures. The Bureau finalized this proposal in November of 2013 (the [2013 TILA-RESPA Final Rule](#)). It takes effect on August 1, 2015.



Under the 2013 TILA-RESPA Final Rule, available at <http://www.consumerfinance.gov/regulations/integrated-mortgage-disclosures-under-the-real-estate-settlement-procedures-act-regulation-x-and-the-truth-in-lending-act-regulation-z/>, the Bureau included appraisal-related disclosures in the loan estimate to satisfy the requirements of both Regulations Z and B (TILA § 129H and ECOA § 701(e)).

For closed-end credit, once the final TILA-RESPA rule takes effect on August 1, 2015, the loan estimate required from then on includes the disclosure required by the HPML Appraisal Rule. Until then, you have to use a separate disclosure to comply with the HPML Appraisal Rule.

## VI. How can I deliver the appraisal copies to applicants? (Comment 35(c)(6)(ii)-1)

Send the copies to the applicant's last-known physical or electronic address. Delivery occurs three business days after you mail or transmit the copies, or whenever you have evidence indicating the applicant received the copies.

For electronic delivery, you must obtain consent from the applicant under the Electronic Signatures in Global and National Commerce Act (ESIGN Act). You will find information about ESIGN online at <http://www.fdic.gov/regulations/compliance/manual/pdf/X-3.1.pdf>.

## VII. What counts as a “business day” for the timing of the required disclosure and appraisal copies?

Under Regulation Z, for purposes of the deadlines for delivering the initial disclosure on appraisals and also for delivering a copy of the appraisal, a “business day” is defined as when “the creditor’s offices are open to the public for carrying on substantially all of its business functions.”

## VIII. Can I charge for the appraisal copies? (Comment 35(c)(6)(iv)-1)

You cannot charge fees for photocopying or to cover the cost of postage to provide copies of appraisals, nor can you raise the consumer's interest rate or mark up other fees to cover this cost.

## IX. What if there is more than one applicant? Do I have to send the disclosure and appraisal copies to each of them? (Comments 35(c)(5)(i)-1 and 35(c)(6)(i)-1)

If there is more than one applicant, you are required to give a copy of the disclosure and appraisal copies to only one of the applicants.

For further guidance, see the Bureau’s ECOA Valuations Rule or the Bureau’s *ECOA Valuations Rule Small Entity Compliance Guide* available online at <http://www.consumerfinance.gov/regulations/disclosure-and-delivery-requirements-for-copies-of-appraisals-and-other-written-valuations-under-the-equal-credit-opportunity-act-regulation-b/>.

**Implementation Tip:** If your HPML is secured by a first lien, then the ECOA Valuations Rule will require that you send copies to the primary applicant when one is readily apparent.

## X. What are my obligations if the loan does not close? (§ 1026.35(c)(6)(ii)(B))

If you determine that you are not going to close a loan, you still have to give the applicant appraisal copies within 30 days after you determine the transaction is not going to close. In addition, if the transaction is subject to the ECOA Valuations Rule, an earlier deadline of providing the copies “promptly upon completion” applies (unless the applicant has waived that deadline under the ECOA Valuations Rule).

For further guidance on ECOA Valuations, see the Bureau’s ECOA Valuations Rule or the Bureau’s *ECOA Valuations Rule Small Entity Compliance Guide* available online at <http://www.consumerfinance.gov/regulations/disclosure-and-delivery-requirements-for-copies-of-appraisals-and-other-written-valuations-under-the-equal-credit-opportunity-act-regulation-b/>.

## 4. How are “flips” defined and documented?

### I. What is a “flip”? (15 U.S.C. § 1639h(b)(2); § 1026.35(c)(4)(i))

Additional requirements apply in certain cases when a covered HPML is being used to purchase a home that is being resold within 90-180 days of its acquisition by the seller. These types of transactions may be commonly described as “flips.”

If the consumer is using a covered HPML to buy a flipped property, unless exemptions apply (*see “What are the exemptions from the requirement to obtain an additional appraisal for certain flipped homes?” on page 25*) an additional appraisal is required if the price reflected in the consumer’s purchase agreement is more than a certain amount higher than the seller’s acquisition price. These amounts are:

- More than a 10 percent price increase if the seller acquired the property in the past 90 days
- More than a 20 percent price increase if the seller acquired the property in the past 91 to 180 days

To determine the seller’s acquisition price, use written source documents. (*See “What documents can I use to determine the seller acquired the property in the past 180 days?” on page 22*)

## II. What do I have to do if the property is a “flip” purchased with a covered HPML? (§ 1026.35(c)(4)(ii)-(iv))

When a consumer uses a covered HPML to purchase a flipped property, additional requirements apply in some cases. If the price increase exceeds specified amounts, you must obtain an additional appraisal from a different certified or licensed appraiser unless an exemption applies. *(See “What are the exemptions from the requirement to obtain an additional appraisal for certain flipped homes?” on page 25.)*

You cannot charge the consumer for the additional appraisal.

The additional appraisal must meet the same requirements as the first (written report by a certified or licensed appraiser in compliance with USPAP and FIRREA based upon an interior property visit) and also must analyze:

- The difference in the original sales price and the subsequent sales price
- Changes in market conditions
- Property improvements the seller made

You cannot use the appraisal from the seller’s acquisition or finance of the property to satisfy the requirement for an additional appraisal.

In purchase transactions financed by a covered HPML, you may find it useful to set up a process for determining whether an additional appraisal would be required based upon the availability of exemptions or prior sales or acquisitions involving the property that would secure the loan.

The Bureau estimates that very few covered HPMLs will be used to purchase flips that have the necessary price increases and are not exempt from the requirement to obtain an additional appraisal. If you can determine the requirement to obtain an additional appraisal does not apply based upon only one piece of information that will save you time.

For example, the requirement to obtain an additional appraisal does not apply if *any* of the following is true:

- An exemption applies. *(See “What exemptions apply under the HPML Appraisal Rule?” on page 24 and “What are the exemptions from the requirement to obtain an additional appraisal for certain flipped homes?” on page 25 for more information on exemptions.)*
- The seller’s acquisition date is more than 180 days earlier
- The price increase is below the applicable threshold

### III. How do I calculate the 180-day period for prior sales? (Comment 35(c)(4)(i)-2)

The **acquisition date** is the day the seller became the legal owner of the property (based on state law).

The **purchase date** is the day the consumer and the seller signed a home purchase agreement.

If the seller and the consumer signed the purchase agreement on two different days, use the latter of the two dates. (Comment 35(c)(4)(i)-4)

Start with the day after the acquisition date and count up to and including the purchase date.

Suppose, for example:

- A seller acquires the property on April 17, 2012.
- Your consumer agrees to buy the property on October 15, 2012.

The first day you would count in the 180-day calculation would be April 18, 2012, and the last day would be October 15, 2012. In this case, the number of days from April 17 would be 181, so you would not have to order an additional appraisal.

You do not have to determine whether and to what extent the purchase agreement is legally binding on both parties. (Comment 35(c)(4)(i)-4)

### IV. How do I determine the price at which the seller acquired the property and the consumer will pay to acquire it? (Comments 35(c)(4)-5 and -6)

Use the amount the seller paid. Do not include the cost of financing the property. If the seller paid nothing for the property, and received it as a gift, then treat the acquisition price as zero.

The price the consumer is obligated to pay to acquire the property is the price that appears in the consumer's agreement with the seller. Do not include the cost of financing the property.

## V. What documents can I use to determine if the seller acquired the property in the past 180 days? (Appendix O to Regulation Z)

You can use written documents to establish that you acted with reasonable diligence in determining if the seller acquired the property in the previous 180 days. For example, you can show you acted with reasonable diligence if you rely on one or more of these 10 documents (this list does not include all documents you might use):

1. A copy of the recorded deed from the seller
2. A copy of a property tax bill
3. A copy of an owner's title insurance policy purchase by the seller
4. A copy of the RESPA settlement statement from the seller's closing (*i.e.*, the HUD-1 or any successor form)
5. A property sales history report or title report from a third-party reporting service
6. Sales price data recorded in multiple listing services
7. Tax assessment records or transfer tax records obtained from local governments
8. A written appraisal performed in compliance with the USPAP and FIRREA requirements for the same transaction
9. A copy of a title commitment report detailing the seller's ownership of the property, the date it was acquired, or the price at which the seller acquired the property
10. A property abstract

If, after exercising reasonable diligence, you cannot tell if the property was subject to a prior acquisition in the last 180 days, and you cannot tell whether the price difference falls below the applicable threshold described above, and no exemption applies, then you must obtain an additional appraisal. (See comment 35(c)(4)(vi)(A)-3 and associated examples for more information on this.)

## VI. Can the additional appraisal be done by an appraiser from the same firm that did the first appraisal?

The HPML Appraisal Rule requires that the two appraisals be conducted by appraisers who are independent of each other. If the two certified or licensed appraisers are affiliated – for example, they work for the same appraisal firm – then whether they have conducted the appraisal independently of each other must be determined based on the facts and circumstances of the particular case known to the creditor. For more information, see the appraisal independence regulations applicable to your institution. (§ 1026.43)

# 5. What are the exemptions from the HPML Appraisal Rule?

## I. What exemptions apply under the HPML Appraisal Rule? (§ 1026.35(c)(2))

The HPML Appraisal Rule provides exemptions for the following types of transactions (unless otherwise explained below, the rule exempts the loans from all of the requirements of the rule):

- Qualified Mortgages, as defined in Regulation Z § 1026.43 or under rules on qualified mortgages adopted by HUD, USDA, or VA, including mortgages that meet the QM criteria for these rules and are insured, guaranteed, or administered by those agencies. For more information on the exemption for Qualified Mortgages, see comment 35(c)(1)(i)-1 and consult the Bureau's Ability-to-Repay/Qualified Mortgage Rule Small Entity Compliance Guide online at <http://www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z/#guide>
- Reverse mortgages
- Bridge loans (for 12 months or less)
- Loans for initial construction of a dwelling (not limited to loans of 12 months or less)
- Loans for \$25,000 or less, indexed every year for inflation



- Streamlined refinance loans, so long as the holder of the credit risk of the existing obligation remains the same on the refinancing. Furthermore, the periodic payments under the refinance loan must not result in negative amortization, cover only interest on the loan or result in a balloon payment. Finally, the proceeds from the refinance loan may only be used to pay off the existing obligation and to pay closing or settlement charges.
  
- Loans secured by manufactured homes for which the application is received before July 18, 2015, as discussed above, and for applications received thereafter:
  - Loans secured by new manufactured homes and land are exempt from the requirement that the appraisal include a physical inspection of the interior of the property, but will be subject to all other HPML appraisal requirements. A new manufactured home is defined as one that has not previously been occupied.
  
  - Loans secured by an existing (used) manufactured home and land will not be exempt from the rules.
  
  - Transactions secured solely by a manufactured home and not land will be exempt from the rules if the creditor gives the consumer one of three types of information about the home's value
    - the manufacturer's invoice of the unit cost (for a transaction secured by a new manufactured home)
  
    - an independent cost service unit cost. An "independent cost service" would include a value report from the NADAguides, for example.
  
    - a valuation conducted by an individual who has no financial interest in the property or credit transaction, and has training in valuing manufactured homes. An example would be an appraisal conducted according to procedures approved by the U.S. Department of Housing and Urban Development (HUD) for existing (used) home-only loans.

## II. What are the exemptions from the requirement to obtain an additional appraisal for certain flipped homes? (§ 1026.35(c)(4)(vii))

There also are exemptions from the requirement to obtain an additional appraisal for covered HPMLs used to purchase flipped homes at prices above the thresholds. There are eight types of transactions that are exempt from this requirement.

You do not have to order an additional appraisal for a covered HPML used to acquire the property from:

- A local, state, or federal government agency
- A person who acquired title on the property via foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure through that person's exercise of rights as the holder of a defaulted loan
- A nonprofit entity as part of a local, state, or federal government program that lets nonprofits acquire title to single-family properties for resale from a seller who itself acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or nonjudicial procedure
- A person who inherited the property or acquired it through a court-ordered dissolution of marriage, civil union, or domestic partnership, or through the partition of the seller's joint or marital assets
- An employer or relocation agency in connection with an employee relocation
- A service member, as defined in 50 U.S.C. appendix 511(1), who received a deployment or permanent change of station order after purchasing the property

You also do not have to order an additional appraisal for a covered HPML used to acquire a property:

- Located in a presidentially-declared **disaster area** during any time period during which the federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in Title XI of FIRREA and any implementing regulations in that area
- Located in a rural county (12 CFR 1026.35(b)(2)(iv)(A) and (c)(4)(vii)(H)), which are those counties located in the U.S. Department of Agriculture's Economic Research Service Urban Influence Codes 4, 6, 7, 8, 9, 10, 11, or 12. The Bureau has published a preliminary list of these counties at <http://www.consumerfinance.gov/blog/exemption-from-escrow-requirement-for-small-creditors-in-rural-or-underserved-counties>.

# 6. Practical implementation and compliance considerations

You may want to consult with legal counsel or your compliance officer to understand your obligations under the rule and to devise the policies and procedures that may help you comply with the rule's requirements.

How you comply with the rule may depend on your business model. When mapping out your compliance plan, you should consider practical implementation issues in addition to understanding your obligations under the rule.

Your implementation and compliance plan may include:

## **1. Identifying affected products, departments, and staff**

To begin planning for implementation of the rule, you may need to identify all affected mortgage products, departments, and staff. This will include consumer closed-end mortgages for principal dwellings whether secured by a first lien or subordinate lien.

## **2. Identifying the business process, operational, and technology changes that will be necessary for compliance**

The new requirements may affect a number of parts of your business systems and processes. For example, you will need to update your origination forms and processes to give applicants the new disclosure. You will also need to be sure you have established methods to ensure that consumers receive the required appraisal copies in accordance with relevant deadlines in this rule (and the ECOA Valuations Rule, if applicable) as well as to confirm that applicants receive timely appraisal copies even when loans do not close.

Fully understanding the required changes may involve a review of your existing business processes and recordkeeping regimes, as well as the hardware and software that you, your agents, or other business partners use. Gap analyses may be a helpful output of such a review and help to inform a robust implementation plan.

### **3. Identifying key service providers or business partners for appraisals and other written valuations if you use outside assistance for disclosures, compliance, quality control, or records storage**

Appraisal providers, vendors, and business partners may offer compliance solutions that can assist you with any necessary changes. You may find it helpful to talk to your appraisal management firm and technology vendors. In some cases, you may want to negotiate revised or new contracts with these parties, or seek a different set of services.

If you seek the assistance of vendors or business partners, make sure you understand the extent of the assistance that they provide.

The CFPB expects supervised banks and nonbanks to have an effective process for managing the risks of service provider relationships. For more information on this, view [CFPB Bulletin 2012-03 Service Providers](#).

### **4. Identifying training needs**

Consider what training will be necessary for your origination, processing, compliance, and quality-control staff as well as anyone else involved in originating mortgage loans. Training may also be required for other individuals you employ.

### **5. Considering other Title XIV rules**

The HPML Appraisal Rule is just one component of the Bureau's Dodd-Frank Title XIV rulemakings.

Other Title XIV rules include:

- Ability-to-Repay and Qualified Mortgage Rule
- 2013 HOEPA Rule
- ECOA Valuations Rule
- Loan Originator Rule
- TILA and RESPA Mortgage Servicing Rules
- TILA Higher-Priced Mortgage Loans Escrow Rule

Each of these rules affects aspects of the mortgage industry and its regulation. Many of these rules intersect with one or more of the others. Therefore, the compliance considerations for these rules may overlap in your organization. You will find full copies of the regulations on the Bureau's website at <http://www.consumerfinance.gov/regulations/>.

# 7. Other resources

## I. Where can I find a copy of the HPML Appraisal Rule and get more information about it?

You will find the rule on the Bureau’s website at <http://www.consumerfinance.gov/regulations/appraisals-for-higher-priced-mortgage-loans/>.

In addition to a complete copy of the rule, that web page also contains:

The preamble, which explains why the Bureau issued the rule; the legal authority and reasoning behind the rule; responses to comments; and analysis of the benefits, costs, and impacts of the rule

- Official Interpretations of the rule
- Links to final rule amendments, including the [December 2013 Supplemental Final Rule](#)
- Other implementation support materials including videos, reference charts, and proposed rule amendments.
- Useful resources related to regulatory implementation are also available at <http://www.consumerfinance.gov/regulatory-implementation/>.

For email updates about Bureau regulations and when additional Dodd-Frank Act Title XIV implementation resources become available, please submit your email address within the “Email updates about mortgage rule implementation” box [here](#).