

Final Rule Summary

Prepared by the NASCUS State Regulatory Affairs Department
October 23, 2013

Interagency Rulemaking

12 CFR Part 1026; 12 CFR 722
Appraisals for Higher-Priced
Mortgage Loans
(Regulation Z)

The Consumer Financial Protection Bureau (CFPB) has issued a final rule jointly with the Federal Reserve Board, FDIC, FHFA, NCUA, and OCC that implements a new provision of the Truth in Lending Act (TILA) requiring appraisals for “higher-risk mortgages.” This change was mandated by Dodd-Frank and amends 12 CFR Part 1026. The amendments are incorporated in NCUA’s regulations at 12 CFR 722.3(f), which is applicable to federally insured state-chartered credit unions pursuant to 12 CFR 741.203.

The Rule takes effect on January 18, 2014.

Rule at-a-Glance:

- Amends the definition of a “higher-priced mortgage loan” under 1026.35(a)(1) to clarify that the definition applies to closed-end consumer credit transactions and to establish a three-tier system of pricing. A first lien loan that falls within the maximum principal obligation requirements set by Freddie Mac is higher-priced if the annual percentage rate (APR) exceeds the average prime offer rate (APOR) by 1.5% or more. If the same loan *exceeds* the Freddie Mac principal obligation limit, the APR must exceed APOR by 2.5% or more to be classified as higher-priced. A loan secured by a subordinate lien is higher-priced if the APR exceeds the APOR by 3.5% or more.
- Exempts the following transactions from the higher-priced mortgage appraisal requirements:
 - ✓ extensions of Credit of \$25,000 or less, indexed every year for inflation,
 - ✓ streamlined refinancing,
 - ✓ qualified mortgages,
 - ✓ loans secured by a mobile home, boat, or trailer,
 - ✓ loans secured in whole or in part by a manufactured home, until July 18, 2015,
 - ✓ after July 18, 2015, loans secured by a manufactured home but not the underlying land,
 - ✓ loans that finance the initial construction of a dwelling
 - ✓ reverse mortgages, and
 - ✓ bridge loans connected to the acquisition of a principal dwelling

- Requires creditors to obtain a written appraisal from a certified or licensed appraiser prior to consummation of a higher-priced mortgage loan. The appraiser must conduct a physical visit of the interior of the property that will secure the transaction.
- Creates a safe harbor for creditors if they:
 - ✓ order the appraiser to conduct the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP), title XI of FIRREA, and any implementing regulations in effect at the time the appraiser signs the appraiser’s certification
 - ✓ verify through the National Registry that the appraiser is certified or licensed in the state in which the appraised property is located, as of the date the appraiser signed the appraiser’s certification
 - ✓ confirm that the written appraisal addresses the elements set forth in appendix N to this part, and
 - ✓ have no actual knowledge contrary to the facts or certifications contained in the written appraisal
- Requires creditors to obtain two appraisals, by different appraisers, for loans secured by properties that have been “flipped.” The creditor may not charge the consumer for the second appraisal.
- Exempts several classes of transaction from the double appraisal requirement based on the identity of the seller or location of the property.
- The creditor must disclose to the consumer that an appraisal is being ordered at the consumer’s expense, and the creditor must provide the consumer with a copy of any written appraisal performed in connection with the loan at no additional cost.
- The creditor must make the necessary disclosures by the third business day after receiving the consumer’s application for a higher-priced mortgage loan. Copies of any written appraisals must be turned over to the consumer no later than 3 business days prior to consummation of the loan.
- Adds Appendix N, which provides details around what type of due diligence a creditor must perform in order to qualify for the safe harbor provision.
- Adds Appendix O, which provides a list of source documents that a creditor may rely on when conducting due diligence to determine whether two appraisals are necessary under 1026.35(c)(4)(vi)(A).

The final rule may be read [here](#), and compliance resources and supplemental information can be found at: <http://www.consumerfinance.gov/regulations/appraisals-for-higher-priced-mortgage-loans/>

Background

The Consumer Financial Protection Bureau (CFPB) is charged with administering the Truth in Lending Act (TILA), which promotes the informed use of consumer credit by requiring disclosures about its costs and terms. Section 1471 of the Dodd-Frank Act's Title XIV, Subtitle F, added a new section 129H to the Truth in Lending Act, which establishes appraisal requirements that apply to "higher-risk" mortgages. CFPB, jointly with the other federal financial regulators, promulgated a final rule implementing section 129H in on January 18, 2013. These rules are substantively identical to the Federal Reserve Board's and OCC's higher-priced mortgage loan appraisal rules at 12 CFR 226.43 (for the Board) and 12 CFR 34.201 *et seq.* and 12 CFR 164.20 *et seq.* (for the OCC). This final rule is effective January 18, 2014.

Summary of Part 1026.35(a)(1); "Higher-Priced Mortgage Loan" Definition

This section defines a "higher-priced mortgage loan" for the purpose of determining prohibited acts and practices under TILA. The rule states that a higher-priced mortgage loan is "a consumer credit transaction secured by a consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set" by the specified margin. The difference between the APR and the APOR should be determined by using the last date that the rate is set (or "locked") before the loan is consummated. Creditors may use the [FFIEC Rate Spread Calculator](#) to automatically pull the applicable APOR to compare with APR. The specified margin by which APR must exceed APOR varies depending on whether the loan is a conforming first lien (1.5%), jumbo first lien (2.5%), or a subordinate credit (3.5%). The Federal Housing Finance Agency (FHFA) has set the maximum conforming loan limit at \$417,000 for one-unit properties in most areas of the country for 2014.

Summary of Part 1026.35(c)(1); Appraisal Definitions

This section provides definitions for "certified or licensed appraiser," "manufactured home," "National Registry," and "State agency." Notably, a person does not qualify as a certified and licensed appraiser under this part merely by being licensed by the State agency in the state in which the property securing the transaction is located. The appraiser must also perform the appraisal in conformance with USPAP, title XI of FIRREA, and any other implementing regulations in effect at the time the appraiser signs the appraiser's certification. In particular, the appraiser must conform to section 1110 of FIRREA, which relates to the appraiser's development and reporting of the appraisal.

Summary of Part 1026.35(c)(2); Exemptions

This section provides an exemption from the appraisal requirements of this part for qualified mortgages, reverse mortgages, bridge loans, construction loans, and transactions secured by a new manufactured home, a mobile home, trailer, or boat. For construction loans, the exemption applies to construction only, as well as construction-to-permanent loans. However, permanent financing that replaces a construction loan, whether extended by the same or a different creditor,

is subject to the appraisal requirements. A “bridge” loan is defined as a loan with a maturity of 12 months or less, extended for the purpose of bridging the gap between financing for the acquisition of a dwelling that will become the consumer’s principal dwelling.

Summary of Part 1026.35(c)(3); Appraisals Required

This section prohibits a lender from extending a higher-priced mortgage loan to a consumer without first obtaining a written appraisal from a certified or licensed appraiser who conducts an inspection of the interior of the property. A creditor may outsource or automate its appraisal review process, but the creditor is still responsible for complying with the rule. In order to qualify for the safe harbor provision a creditor must:

- 1) Order an appraisal from a licensed appraiser in the state that the property is located and require the appraiser to follow USPAP, title XI of FIRREA, and applicable regulations,
- 2) Confirm that the appraisal meets the requirements listed under Appendix N of this part,
- 3) Check the status of the appraiser on the National Registry to verify that he is licensed in the necessary state, and
- 4) Remember that the safe harbor only applies if you do not have actual knowledge contrary to the facts or certifications contained in the written appraisal.

A creditor who conforms to the safe harbor provisions of the rule is in compliance with the rule, but a creditor who does not adhere to the safe harbor provisions does not necessarily violate the rule. In confirming that the appraisal meets the requirements under Appendix N, the creditor need not look beyond the face of the appraisal.

Summary of Part 1026.35(c)(4); Additional Appraisal Required

This section mandates the acquisition of two written appraisals for properties that have been “flipped.” A flip is a home that is being resold within 90-180 days after it was acquired by the seller. The date that the seller “acquired” the property is determined by the date the seller obtained legal title to the property under state law. If the home is being resold within 90 days, two appraisals must be obtained if the current price exceeds the previous price by more than 10%. If the home is being resold within 180 days, two appraisals are required if the price has increased by more than 20%. The time periods are calculated by counting from the day after the seller acquired the property, up to and including the date of the consumer’s agreement to acquire the property.

If an additional appraisal is required, it must conform to the same requirements as the first appraisal and must also analyze:

- 1) The difference in the original sales price and the subsequent sales price,
- 2) Changes in market conditions, and
- 3) Property improvements made by the seller.

The second appraisal cannot be conducted by the same appraiser who conducted the first, and cannot be the appraisal obtained when the seller originally acquired the property. The creditor

may not charge the consumer for obtaining the second appraisal. Unless the creditor can demonstrate using source documents listed in Appendix O to this part that the requirement does not apply, two appraisals must be obtained.

The additional appraisal requirement does not apply if the property is located in a federal disaster area or a rural county as defined in 12 CFR 1026.35(b)(2)(iv)(A), or if the consumer is acquiring the property from:

- 1) A local, State or Federal government agency;
- 2) A person who acquired title through foreclosure, deed-in-lieu of foreclosure, or other similar procedure;
- 3) A non-profit entity as part of a government program under which the entity is permitted to acquire and resell single-family properties in foreclosure or a similar procedure;
- 4) A person who acquired title by inheritance, or by court order for dissolution of marriage, civil union, or domestic partnership, or partition of joint or marital assets;
- 5) An employer or relocation agency in connection with the relocation of an employee; or
- 6) A service member who received a deployment or permanent change of station order after the service member purchased the property.

Summary of Part 1026.35(c)(5); Required Disclosure

This section requires a creditor to provide the following disclosure within three business days after receipt of the consumer's application for a higher-priced mortgage loan:

“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.”

If the loan becomes a higher priced loan after application, the creditor has three business days to mail the disclosures from the date that the loan was determined to be higher-priced. Compliance with the disclosure requirements under the Equal Credit Opportunity Act Valuations Rule satisfies the requirements of this section.

Summary of Part 1026.35(c)(6); Copy of Appraisals

This section requires a creditor to provide a consumer with a copy of all appraisals conducted in connection with a higher-priced mortgage loan no later than three days prior to consummation of the loan, or 30 days after the creditor determines that the loan will not be consummated. The copy of the appraisal can be provided in electronic form, and the creditor may not charge for providing the copy.