

## Federal Rulemaking after the Dodd-Frank Act

### Mandatory:

- FRB's Valuation Independence Standards
- Appraisal Requirements for "Higher-Risk Mortgages"
- ECOA's Right to Valuations
- QC Standards for AVMs
- AMC Minimum Requirements/AMC Registry Fees

### Discretionary:

- Appraisal Portability
- Revisiting Valuation Independence



ECOIA Rule (Reg B)

The image features a central orange horizontal band with the text "ECOIA Rule (Reg B)" in white. The background is a vibrant blue with a bokeh effect of light spots and hexagonal shapes, creating a shimmering, textured appearance.

## Reg B: Basics

- Effective for applications received by a creditor on or after January 18, 2014, a creditor must:
  - Provide free copies of all appraisals and other written valuations developed in connection with the credit application
  - Notify applicants of a credit transaction of their right to receive a copy of the appraisal
- Borrower may waive timing requirements for receipt of valuations

## Reg B: Covered Loans

- Final rule applies to an application for credit that is secured by a first lien on a 1-4 unit dwelling, including:
  - Consumer or commercial purpose loans
  - Open- or closed-end loans
  - Reverse mortgages
  - Temporary loans (i.e., bridge and construction loans)
  - Loss mitigation activities (to the extent otherwise subject to Reg B)
  - Renewals (unless using a previously developed valuation)

## Reg B: Providing Appraisals and Other Valuations

- Creditors must automatically provide copies of appraisals and other written valuation materials “developed” in connection with an application
  - Applies whether credit is extended or denied or if the application is incomplete or withdrawn
  - Even if a creditor does not use a valuation, the creditor must nevertheless provide the valuation to the borrower if it was prepared in connection with the credit application

## Reg B: What Is a Valuation?

- Examples of “valuations”:
  - Appraisal report (by fee or staff appraiser)
  - Report approved by a GSE describing an estimate of property’s value
  - AVM report/BPO
- The following are not “valuations”:
  - Internal documents that restate the estimated value of the property contained in written valuation provided to the applicant
  - Publicly available lists of valuations/government agency statements of value
  - Reports reflecting property inspections that do not provide, and are not used to develop, an estimate or opinion of value

## Reg B: Valuation Materials

- A creditor must “provide” copies of appraisals and other written valuations to the applicant “promptly upon completion” or no later than 3 business days before consummation or account opening, *whichever is earlier*
- “Promptly upon completion” – based on facts and circumstances
  - For multiple versions of a valuation, the CFPB has adopted the “last version received rule”
- Provide = Delivery = 3 days after mailing or delivering materials to the last known address or evidence of actual receipt, whichever is earlier
  - Delivery may be electronic
  - If more than one applicant, copies need only be given to one applicant

## Reg B: Waiver

- Borrower may agree to receive copies at or before consummation or account opening, *except where otherwise prohibited by law*
- Two types of waivers: Applicant can provide an affirmative oral or written waiver of timing requirement
  - At least 3 business days prior to consummation or account opening
  - Within 3 business days of consummation or account opening for waivers that pertain solely to a copy that contains only clerical changes from a prior version previously provided to the applicant
- Applicant still must receive copy of the valuation at or prior to consummation or account opening



## Reg B: Disclosure

- A creditor must mail or deliver to an applicant, not later than 3 business days after receiving an application for credit on a first-lien loan, a written notice of the applicant's right to receive a copy of valuations developed in connection with the application
- CFPB provides a model disclosure that does not use the term "valuation":
  - "We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly 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"



# Higher-Risk/Higher-Priced Mortgage Loans



## HPML: Basics

- For applications received on or after January 18, 2014, a creditor cannot extend credit in the form of a HPML without first:
  - obtaining a written appraisal by a certified/licensed appraiser with a physical inspection of the interior of the property regardless of transaction amount
  - obtaining an additional appraisal if properties are resold within a 180 day period
  - providing disclosure at time of application regarding the appraisal
  - providing the applicant with a free copy of any appraisal obtained at least 3 business days prior to consummation
- Exemption includes QM, reverse mortgages, bridge loans, construction loans, and loans secured by new manufactured homes, boats, trailers, and mobile homes

## HPML: Written Appraisal Required

- A creditor shall not extend a HPML to a consumer unless prior to consummation:
  - Creditor obtains a written appraisal
  - Appraisal is performed by a certified or licensed appraiser
  - Appraiser conducts a physical property visit of the interior of the property
- A creditor will be deemed to satisfy this requirement if the creditor satisfies the safe harbor conditions; failure to satisfy the safe harbor is not a *per se* violation

## HPML: Safe Harbor

A creditor qualifies for the safe harbor if the creditor:

- Orders that the appraiser conform with USPAP and Title XI of FIRREA
- Verifies through National Registry that the appraiser was certified/licensed in the state
- Confirms that the written appraisal contains **nine** prescribed items by viewing the face of the appraisal and the appraiser's certification, such as:
  - Addresses conditions in the property's neighborhood and of the property
  - Indicates which valuation approaches were used
  - Provides an opinion of the property's market value and effective date for opinion
  - Includes a certification that it was prepared in accordance with USPAP and FIRREA
- Has no actual knowledge contrary to the facts or certification found in the written appraisal

## HPML: Anti-Flipping

- If a consumer is using a covered HPML to buy a flipped property (home being resold within 90-180 days), unless an exemption applies, a second appraisal is required if the purchase price is more than a certain amount higher than the seller's acquisition price. These amounts are:
  - More than 10% price increase if seller acquired the property in the past 90 days, or
  - More than 20% price increase if seller acquired the property in the past 91 to 180 days

## HPML: Anti-Flipping

- If two written appraisals are required:
  - Second 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 subsequent sales price
    - Change in market conditions
    - Property improvements the seller made
  - The creditor may only charge the consumer for one appraisal
  - The same appraiser cannot perform both appraisals and must be independent

## HPML: Anti-Flipping Due Diligence

- A creditor must obtain two appraisals unless the creditor can demonstrate by exercising reasonable diligence that the requirement to obtain two appraisals does not apply
- A creditor acts with reasonable diligence if the creditor bases its determination on information contained in written source documents, such as those listed in Appendix O of HPML Rule:
  - Copy of the recorded deed from the seller
  - Copy of a property tax bill
  - Property sales history report/title report from third-party reporting service
  - Sales price data recorded in MLS
  - Tax assessment records/transfer tax records from local government



## HPML: Anti-Flipping Exemptions

Additional appraisal requirement does not apply to extensions of credit that finance a consumer's acquisition of property:

- From a local, state or federal government agency
- From a person who acquired title to the property through foreclosure, DIL, or other similar judicial or non-judicial procedure
- From a non-profit as part of a local, state or federal foreclosure prevention program
- From a person who acquired title by inheritance or pursuant to a court order
- From an employer or relocation agency in connection with a relocation of an employee
- From a servicemember who received a deployment or PCS order after the servicemember purchased the property
- Located in a declared federal disaster area, if and for as long as the Agencies waive the requirements in Title XI of FIRREA in that area
- Located in a rural county (e.g., located on the table of rural counties published by the CFPB)

## HPML: Application Disclosure Requirement

- Unless otherwise exempt, a creditor must disclose a statement nearly identical to the disclosure required in Reg B to a consumer who applies for a HPML
  - Reg B difference – the word “promptly”
  - Because all first-lien HPMLs are subject to ECOA, creditors who use a single notice should use the ECOA version (with the word “promptly”)
  - But remember the Reg B notice doesn’t apply to subordinate liens
- Disclosure must be delivered or placed in the mail no later than the 3<sup>rd</sup> business day after the creditor receives the consumer’s application for a HPML (or, once the creditor determines the loan is a HPML)

## HPML: Copy of Appraisal

- A creditor must provide (i.e., deliver) the consumer a copy of each written appraisal:
  - No later than 3 business days prior to consummation, **or**
  - If the loan is not consummated, no later than 30 days after the creditor determines the loan will not be consummated
- When 2 or more consumers apply for a HPML, the creditor is required to give the copy of each required appraisal to only one consumer
- Unlike under ECOA, a consumer of a HPML may not waive the timing requirement to receive the appraisal
- A creditor is prohibited from charging the consumer for any copy of an appraisal required to be provided, including by imposing a fee or marking up the interest rate

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