

# Valuations and the Consumer CRN

Feb 5, 2014

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# What is the ECOA Valuations Rule?

- ▶ The new ECOA Valuations Rule amends the appraisal provisions of ECOA's **Regulation B**.
  - ▶ It updates current ECOA rules to say that you must provide applicants for **first-lien loans** on a **dwelling** with **copies of appraisals**, as well as **other written valuations**, developed in connection with the application, whether or not the applicants request copies.
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# Under the ECOA Valuations Rule:

- ▶ ◆ When you receive an applicant's application, you have **three business days** to **notify** the applicant of the **right to receive a copy of appraisals**.
- ▶ ◆ You must **promptly** share copies of appraisals and other written valuations with the applicant.
- ▶ ◆ **Promptly** means **promptly upon completion**, or at least **three business days** before consummation (for closed-end credit) or account opening (for open-end credit), **whichever is earlier**.
- ▶ ◆ The applicant can **waive the right** to receive copies of the appraisal or other written valuations **in advance of the closing**, but in those cases, you **must** still deliver the copies at or prior to consummation or account opening.

# Under the ECOA Valuations Rule:

- ▶ ◆ If you do not consummate the loan or open the account and the applicant has provided a waiver, you have **30 days** after you determine that the loan will not consummate or open to send the applicant a **copy of the appraisal and other written valuations**.
- ▶ You **cannot charge for copies** of appraisals or other written valuations, but you can **charge the applicant a reasonable fee** to **reimburse** you for the **cost** of preparing appraisals and other written valuations, unless applicable law prohibits it or otherwise restricts it.

You may **not upcharge** consumers by **adding fees** to the cost of preparing the appraisal or other written valuations.

# When do I have to start following this rule?

You must follow the ECOA Valuations Rule for **applications received** on or after **January 18, 2014**.

# What loans are covered by the ECOA Valuations Rule?

- ▶ ◆ **Loans for business purposes** (for example, a loan to start a business), **investment or leisure purposes** (such as a vacation home or investment property), or **consumer purposes** (for example, a loan to purchase a home)
- ▶ ◆ **Loss-mitigation transactions**, such as **loan modifications, short sales, and deed-in-lieu transactions**, if they are credit transactions covered by Regulation B
- ▶ ◆ Loans secured by **mobile or manufactured homes**
- ▶ ◆ **Reverse mortgages**
- ▶ ◆ **Time-share loans** if they are credit transactions covered by Regulation B (and if, as in each of the above examples, they are secured by a first lien on a dwelling)

# What loans are not covered by the ECOA Valuations Rule?

- ▶ The ECOA Valuations Rule does not cover **second liens** and other **subordinate loans** and loans that are **not secured** by a **dwelling** (such as loans secured solely by land).
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# What is a valuation of a dwelling?

A dwelling is a **residential** structure that contains **one to four units** whether or not that structure is attached to real property. The term includes, but is not limited to, individual **condominium units, mobile homes, and manufactured homes.**

A **“valuation”** is any estimate of the value of a dwelling developed in connection with an application for credit.

# Nonexclusive list of valuations

- ▶ ◆ An **appraiser's report** (whether or not the appraiser is licensed or certified), including the appraiser's estimate of the property's value or opinion of value.
- ▶ ◆ A document your staff prepares that **assigns value** to the property
- ▶ ◆ A report approved by a government-sponsored enterprise for describing to the applicant an estimate developed by the **enterprise's proprietary methodology** or mechanism
- ▶ ◆ **Automated valuation model reports** used to estimate the property's value
- ▶ ◆ A **broker price opinion** prepared by a real estate broker, agent, or sales person to estimate the property's value

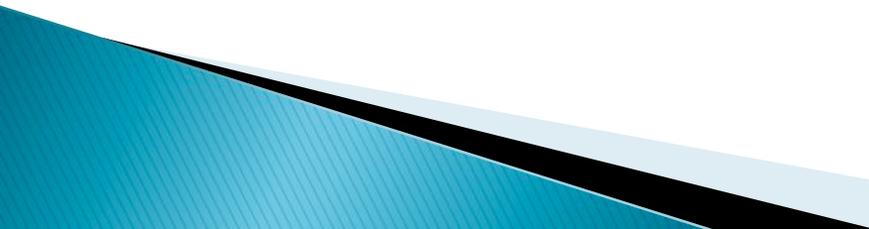
You must also share with the applicant any **attachments** or **exhibits** that are an **integrated part of the valuation**.

# What is not considered a valuation?

Not all documents that discuss or restate a property's value are valuations:

- ▶ ◆ **Internal documents** that merely **restate the estimated value** of the dwelling contained in an **appraisal or other written valuation** you are providing to the applicant (for example, an internal email that only mentions the appraised value in the appraiser's report to be provided to the applicant)
- ▶ ◆ **Government agency statements of appraised value** that are publicly available
- ▶ ◆ **Publicly-available lists of valuations** (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges)

# What is not considered a valuation?

- ▶ ◆ **Manufacturers' invoices** for manufactured homes
  - ▶ ◆ Reports reflecting **property inspections** that do not provide an estimate of the value of the property and are not used to develop an estimate of the value of the property
  - ▶ **Appraisal reviews** that do not include the appraiser's estimate of the property's value or opinion of value.
  - ▶ In addition, an **appraisal review** that does not itself state a **different estimate from the appraisal** would not be a valuation you must provide to the applicant.
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# What do I have to do to comply with this rule?

- ▶ ◆ If you have an application that was not originally going to be secured by a first lien on a dwelling and you later determine that it will be secured by a first lien on a dwelling, then you have **three business days after you determine the change** has occurred to **notify** the applicant about the right to receive appraisals.
- ▶ The ECOA Valuations Rule does not provide a definition of **“business days”** for purposes of the timing of the consumer notice and for providing copies of appraisals and other written valuations.
- ▶ For other loans, you can apply your own reasonable definition, which **may include counting Saturdays** – as provided, for example, in the alternative definition in Regulation Z.

# Disclosure Notice

- ▶ What text should I use in my standard disclosure notice? (Appendix C, Sample Notification Form C-9)
- ▶ The sample notice contained in an appendix to Regulation B states:
  - ▶ “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.*”
    - Ask audience why is this included

# How must I provide information to applicants?

- ▶ 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 that the applicant received the copies.
- ▶ For **electronic delivery**, you must **obtain the applicant's consent** under the Electronic Signatures in Global and National Commerce Act (E-Sign Act). You will find information about E-Sign at <http://www.fdic.gov/regulations/compliance/manual/pdf/X-3.1.pdf>

# Can I charge for the copies?

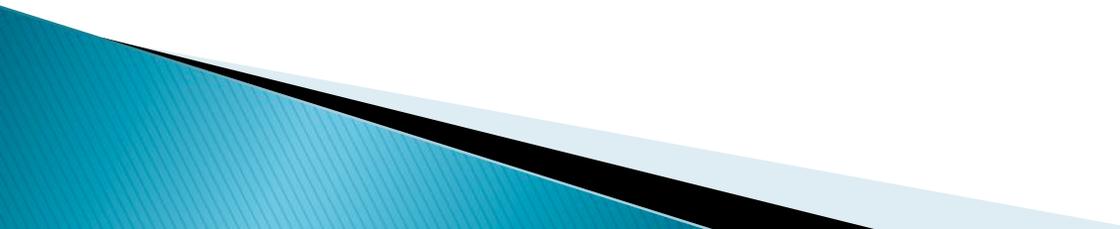
- ▶ You cannot charge fees for photocopying or to cover the cost of postage to mail copies of appraisals or other written valuations.
- ▶ You may charge a reasonable fee to cover the cost of developing an appraisal or other written valuation, except as otherwise provided by law. **You cannot condition providing copies on payment of this fee**, however. If you receive a completed valuation, you must promptly provide it to the applicants, **even if they do not pay for it**. To ensure payment, you can collect payment before ordering the appraisal or other written valuation, subject to restrictions for some mortgages under Regulation Z.

# What if there is more than one applicant? Do I have to send the disclosure and valuation copies to each of them?

- ▶ If there is more than one applicant, you may give the disclosure and copies to **one applicant**.

# When must the copies of valuations be provided to applicants? Can I save up my valuations and send them all at once?

- ▶ You must send valuations promptly upon completion. If one valuation is completed, it **may be possible** to wait a **few days** for another valuation to be completed, as long as copies are provided at least three business days before closing.
- ▶ However, waiting for longer than a few days reduces the likelihood that delivery of the first valuation will be prompt. **If you obtain a waiver from the applicant, you can wait until closing to provide the valuations all at once.**

- ▶ The “promptly upon completion” standard does not refer to a particular time period. Its **application and meaning** depend on the **facts and circumstances**, including (but not limited to):
    - ▶ ◆ When you receive the appraisal or other written valuation
    - ▶ ◆ The extent of any **review or revisions** you do after receiving it
  - ▶ **“Completion”** of an appraisal or other written valuation occurs when you get the last version of that appraisal or other written valuation, or when it is apparent to you that there will be only one version of that appraisal or other written valuation.
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- ▶ **Examples** in which the “promptly upon completion” **standard would be satisfied** include (but are not limited to) the following. These examples assume the applicant receives the valuation copy no later than three business days before consummation or account opening:
  - ▶ ◆ Sending a copy of an appraisal **within a week of review by underwriting**: For example, 15 days after application, your underwriting department reviews and approves an appraisal. You send a copy to the applicant one week later.
  - ▶ ◆ **Not providing** a copy of a **draft appraisal** a reviewer is **revising**, while providing a copy of the **revised appraisal within a week of the reviewer finding it acceptable**: For example, you receive a revised appraisal 45 days after application and your underwriting department approves it. You have not sent the initial appraisal to the applicant. You send the revised appraisal within a few days.
  - ▶ ◆ Sending a copy of an automated valuation model (AVM) report **within a week** after receiving it: For example, you receive an AVM report five days after application and treat it as complete. Twelve days after the application (a week after receiving the AVM report), you send a copy to the applicant.

- ▶ **Examples** of cases in which the “promptly upon completion” **standard would not be satisfied** include (but are not limited to):
- ▶ ◆ **Delaying too long** after completing an appraisal or other written valuation before providing a copy: For example, 12 days after application, you receive and approve an appraisal. You wait to provide a copy to the applicant until 42 days after application.
- ▶ ◆ **Delaying providing a copy of one written valuation too long while waiting for completion of a second written valuation**: For example, you receive and approve an AVM report five days after application. You order an appraisal and the initial version of the appraisal is deficient. It takes until day 35 to get the revised appraisal. You hold the AVM report and send both the AVM and the appraisal to the applicant on day 35. While you provided the appraisal report promptly upon completion, you **did not provide the AVM report promptly upon completion**.

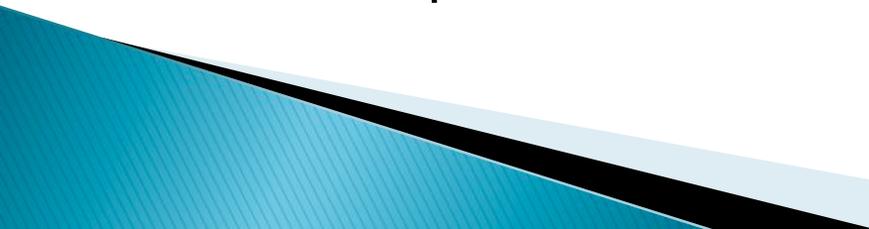
# If I get multiple versions of a valuation, do I have to send them all to the applicant?

- ▶ The reference to providing copies of “all” appraisals and other written valuations **does not refer to all versions of the same appraisal** or other written valuation. If you get multiple versions of an appraisal or other written valuation, **you have to give the applicant only the latest version.**
- ▶ If **you give the applicant a copy** of an appraisal or other written valuation **and then** you get a **revised version of the same appraisal** or written valuation, then you **must send the updated version to the applicant as well.** You cannot charge a fee for providing the copy of an updated valuation.
- ▶ If you have only one version of an appraisal or other valuation, then the copy of that version is the one you give the applicant.

# When can the applicant waive the timing requirements of the ECOA Valuations Rule?

- ▶ The reference to providing copies of “all” appraisals and other written valuations **does not refer to all versions of the same appraisal** or other written valuation. If you get multiple versions of an appraisal or other written valuation, **you have to give the applicant only the latest version.**
- ▶ If **you give the applicant a copy** of an appraisal or other written valuation **and then** you get a **revised version of the same appraisal** or written valuation, then you **must send the updated version to the applicant as well.** You cannot charge a fee for providing the copy of an updated valuation.
- ▶ If you have only one version of an appraisal or other valuation, then the copy of that version is the one you give the applicant.

# Additional ECOA Questions / Answers

- ▶ When can the applicant waive the timing requirements of the ECOA Valuations Rule?
  - ▶ How does a waiver work if there is more than one applicant?
  - ▶ How can an applicant give a waiver?
  - ▶ What happens if there is a clerical error in a valuation?
  - ▶ A third-party provider says the valuation contains proprietary information that I cannot disclose to others. How can I provide a copy to the applicant?
  - ▶ Can I provide more information to the applicant?
  - ▶ How do the ECOA Valuations Rule and the Appraisals for Higher-Priced Mortgage Loans Rule overlap?
  - ▶ This rule implements an amendment to ECOA, which deals with lending discrimination. How might discrimination occur in a valuation?
  - ▶ Practical Implementation and Compliance Considerations
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# Where can I find a copy of the ECOA Valuations Rule?

You will find the rule on the CFPB website:

[www.consumerfinance.gov/regulations](http://www.consumerfinance.gov/regulations)

<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/>

