

ICBA Summary of the TILA Higher-Priced Mortgage Loan (HPML) Appraisal Rule

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I. BACKGROUND

On February 13, 2013, the Board of Governors of the Federal Reserve System; Consumer Financial Protection Bureau; Federal Deposit Insurance Corporation; Federal Housing Finance Agency; National Credit Union Administration; and Office of the Comptroller of the Currency issued a [final rule](#) revising Regulation Z, which implements the Truth in Lending Act (TILA), to require appraisals for “higher-priced mortgage loans” (HPMLs) that was added to TILA by the Dodd-Frank Wall Street Reform and Consumer Protection Act. A [supplemental final rule](#) was issued by the agencies on December 26, 2013.

The HPML Appraisal Rule became effective January 18, 2014. However, all loans secured in whole or in part by a manufactured home were exempt from the HPML Appraisal Rule until July 18, 2015.

Applicability to Community Banks

The TILA Higher-Priced Mortgage Loan (HPML) Appraisal Rule applies to community banks.

Link to the CFPB’s HPML Appraisal Rule Resource Page -

<http://www.consumerfinance.gov/regulations/appraisals-for-higher-priced-mortgage-loans/>

II. SCOPE

The HPML Appraisal Rule applies to residential mortgages—which are not otherwise exempt from the rule—if the APR exceeds the average prime offer rate (APOR) by 1.5 percent for a first-lien or conforming loans, 2.5 percent for first-lien jumbo loans¹ and 3.5 percent for subordinate loans.

Certain loans are exempted from the HPML Appraisal Rule including:

- Qualified Mortgages (QMs);
- Reverse mortgages;
- Bridge loans (for 12 months or less and intended to be used to acquire a new principal dwelling);
- Loans for the initial construction of a dwelling (not limited to 12 months or less);
- Streamlined refinance loans²;
- Loans secured by boats, trailers, and mobile homes;

¹ A loan is a jumbo loan when the maximum 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.

² Streamlined refinance loans are exempt, 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 for \$25,500 or less for 2016 and 2017 (indexed yearly for inflation); and
- Some loans secured by a manufactured home.³

Note: Special requirements may apply to properties that are being resold within 180 days. See Section VI. Special Rules for Flipped Properties.

III. PROVIDING THE CONSUMER DISCLOSURE AND THE APPRAISAL

Disclosure

When a creditor originates an HPML they must disclose to consumers within three business days⁴ 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.

- The CFPB suggests the following text for use by creditors for a consumer disclosure: "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.

Appraisal

A creditor must deliver copies of any appraisals to covered applicants no later than three business days before the loan is consummated.

- Copies of the appraisal should be sent to the applicant's last known physical or electronic address. Delivery occurs three business days after the creditor mails or transmit copies, or whenever the creditor has evidence indicating the applicant received the copies.
 - A creditor must obtain consent for electronic delivery under the Electronic Signatures in Global and National Commerce (ESIGN) Act.

³ Loans secured by manufactured homes for which the application is received before July 18, 2015 are exempt. 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: (1) the manufacturer's invoice of the unit cost (for a transaction secured by a new manufactured home); (2) an independent cost service unit cost; or (3) a valuation conducted by an individual who has no financial interest in the property or credit transaction, and has training in valuing manufactured homes.

⁴ For the purposes of this rule, under Regulation Z, 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.

- If there is more than one applicant, the creditor is only required to provide a copy of the disclosure and appraisal copies to one of the applicants.
 - If the HPML is secured by a first lien, then the ECOA Valuations Rule will require that the creditor send copies to the primary applicant when one is readily apparent
- A creditor may not charge a fee or adjust the borrower’s interest rate for photocopying or for the cost of postage for providing a copy of the appraisal(s).
- If a creditor determines that they are not going to close a loan, they must still have to give the applicant appraisal copies within 30 days after they 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).

IV. THE APPRAISAL

The HPML Appraisal Rule provides a list of four steps a creditor can take to be sure that any required appraisal meets the requirements of the rule. When the creditor takes each of the four steps they will be eligible for the “safe harbor” protection for that appraisal.

Step 1

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.

Step 2

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; and
- Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) and Title XI of FIRREA and any implementing regulations.

Step 3

A creditor should use the National Appraiser Registry⁵ to verify that the chosen appraiser is certified or licensed in the state where the property is located on the date he signed the appraiser's certification.

Step 4

A creditor may outsource the appraisal review to a third party, but the creditor bears ultimate responsibility for complying with the rule. Using an automated review process is allowed, but the creditor will remain responsible for the effectiveness of those processes.

Note: The safe harbor applies only if the creditor does not have actual knowledge contrary to the facts or certifications contained in the written appraisal.

V. INTERACTION WITH ECOA

For first-lien HPMLs that are covered by the HPML Appraisal Rule, the disclosure requirements overlap with the Equal Credit Opportunity Act (ECOA) Valuations Rule. The ECOA Valuations Rule implements Dodd-Frank Act amendments to ECOA, which require creditors to provide consumer disclosures and free copies of appraisals and other written valuations. The disclosure required under the ECOA Valuations Rule can satisfy the requirements of the HPML Appraisal Rule

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.

⁵ Federal Financial Institutions Examination Council, Appraisal Subcommittee, National Appraiser Registry, <https://www.asc.gov/National-Registry/NationalRegistry.aspx>.

VI. SPECIAL RULES FOR FLIPPED PROPERTIES

The HPML Appraisal Rule includes special appraisal requirements in connection with certain HPMLs where the security property has been resold within a 180 day period.⁶ These types of transactions may be commonly described as “flips” or “flipped properties.” If the consumer is using a covered HPML to buy a flipped property, unless exemptions apply⁷ 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.⁸

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.

A creditor cannot charge the consumer for the additional appraisal. The additional appraisal must be conducted by an appraiser who is independent of the appraiser who conducted the first 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; and
- Property improvements the seller made.

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

⁶ To calculate whether these flipping requirements must be followed it is important to note that 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.

⁷ An additional appraisal is not required if the property is acquired from: a local, state, or federal government agency; a person who acquired the title from the holder of a defaulted mortgage on the property via foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedures through exercise of the holder’s rights in the 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 non-judicial procedures; a person who inherited the property or acquired it through a court-ordered dissolution of a 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; or a service member who received a deployment or permanent change of station order after purchasing the property. A creditor also do not have to order an additional appraisal when an HPML is used to acquire a flipped property if the property is: located in a presidentially-declared disaster area during any time period during which the federal financial institutions regulatory agencies waive the requirements in Title XI of FIRREA and any implementing regulations; or located in certain rural counties. See <http://www.consumerfinance.gov/guidance/#ruralunderserved> for a list of those counties.

⁸ The acquisition price is amount the seller paid. 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.