


November 18, 2013

MEMORANDUM TO: The Board of Directors

FROM:

Mark Pearce 
Director, Division of Depositor and Consumer Protection

Doreen R. Eberley 
Director, Division of Risk Management Supervision

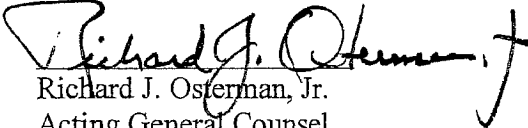
SUBJECT: Appraisals for Higher-Priced Mortgage Loans – Final Rule

RECOMMENDATION:

Staff recommends that the Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) approve, and authorize the Executive Secretary to publish in the *Federal Register*, a final rule which would add new exemptions to the appraisal requirements for certain residential mortgage transactions mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the DFA). The final rule would be issued jointly with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Federal Housing Finance Agency (collectively, the Agencies).

The final rule would provide for additional exemptions from the appraisal requirements of the Higher-Priced Mortgage Loan Final Rule (the Original HPML Final Rule). The Original HPML Final Rule was approved by the Board on January 15, 2013, issued jointly by the Agencies on January 18, 2013, published in the *Federal Register* on February 13, 2013, and becomes effective on January 18, 2014. On July 10, 2013, the Agencies proposed amendments to the Original HPML Final Rule (2013 Interagency Appraisals Supplemental Proposal or Supplemental Proposal or NPR). The Supplemental Proposal was published in the *Federal Register* on August 8, 2013. The Agencies will individually promulgate these additional amendments to the Original HPML Final Rule according to each Agency's preference, and in the same manner as the Original HPML Final Rule.

Concur:


Richard J. Osterman, Jr.
Acting General Counsel

BACKGROUND

Section 1471 of the DFA added a new section 129H to the Truth in Lending Act (TILA), setting forth appraisal requirements applicable to higher-risk mortgages, hereinafter referred to as Higher-Priced Mortgage Loans (HPMLs). HPMLs are principal dwelling-secured, residential mortgage loans that are not qualified mortgages (QMs),¹ with an annual percentage rate (APR) in excess of the average prime offer rate (APOR)² for a comparable transaction as of the date the interest rate is set by one of the following thresholds:

- 1.5% for non-jumbo mortgage loans;³
- 2.5% for loans over the jumbo limit; or
- 3.5% above “comparable rates” for junior liens.

Before extending credit for a HPML, a creditor must:

- Obtain a written appraisal by a certified or licensed appraiser who has conducted a physical visit to the interior of the property;
- Obtain an additional written appraisal (at the creditor’s expense) from a different certified or licensed appraiser if the property was previously purchased or acquired by the seller within 180 days of the current mortgage transaction at a price that was lower (by certain amounts) than the current sale price of the property.⁴ The additional appraisal must analyze any difference in sales prices, changes in market conditions, and any improvements made to the property in the period between the two mortgage loan transactions;
- Provide the borrower with a statement at the time of initial mortgage application that informs the borrower that any appraisal prepared in connection with the mortgage is for the creditor’s sole use, and that the borrower may choose to have a separate appraisal conducted at the applicant’s expense; and

¹ Section 1412 of the DFA separately amended TILA to require that a QM meet certain underwriting criteria in order to establish that a creditor has met the requirement to determine a borrower’s ability to repay the loan at consummation. The CFPB issued a final rule to implement these criteria on January 30, 2013. *See* 78 Fed. Reg. 6407. These requirements are effective January 10, 2014.

² APOR is determined by reference to the average prime offer rates published by the CFPB. The average prime offer rates are a survey-based estimate of APRs currently offered on prime mortgage loans of a comparable type. The CFPB publishes two separate tables, one for fixed rate loans (the Average Prime Offer Rates – Fixed) and another for adjustable rate loans (the Average Prime Offer Rates – Adjustable). APORs are published weekly on Friday, effective as of the following Monday. *See also* the APOR definition set forth in section 129C(b) of TILA as added by section 1412 of the DFA.

³ As of January 1, 2010, the general limit on a non-jumbo mortgage loan is \$417,000 for most of the United States, apart from Alaska, Hawaii, Guam, and the US Virgin Islands, where the limit is \$625,500 and certain other high-cost areas of the country.

⁴ Specifically, the rule requires the creditor to obtain the additional appraisal if: (1) the consumer’s purchase price exceeds 10% of the previous sale price, if the consumer’s new purchase agreement is within 90 days of the seller’s previous acquisition of the property; or (2) if the consumer’s purchase price exceeds 20% of the previous sale price, if the consumer’s new purchase agreement is within 180 days of the seller’s previous acquisition of the property.

- Provide the borrower with one copy of each appraisal without charge in connection with a HPML at least three business days prior to the transaction closing date.

On January 15, 2013, the FDIC Board approved the Original HPML Final Rule, which exempts certain real estate-related transactions from the Rule's appraisal requirements. However, the Original HPML Final Rule did not include any exemptions for certain "streamlined" refinancings and small-dollar loans that were suggested by commenters. During the proposal stage of the Original HPML Final Rule, commenters argued that such exemptions would help keep borrowers in their homes, reduce the number of delinquent loans, and encourage the rehabilitation and reintroduction of foreclosed or otherwise unavailable property to the marketplace, thus helping to rebuild communities adversely affected by the recent economic downturn.

The Agencies did not include the exemptions suggested by the commenters due to concerns that the Agencies did not have an informed basis upon which to define these exemptions. However, the Agencies' staff recommended that an exemption for "streamlined" refinancings and small-dollar residential loans be proposed in a supplemental NPR. Agencies' staff also recommended that the supplemental NPR seek clarification on whether it is appropriate to apply the Original HPML Final Rule to loans secured by certain property types, such as used manufactured housing, and whether the exemption for all new manufactured homes, including those sited on land, should be narrowed. Specifically, the Agencies proposed exemptions from the rules for: 1) transactions secured by existing manufactured homes and not land; 2) certain "streamlined" refinancings; and 3) transactions of \$25,000 or less.⁵ This supplemental final rule would finalize provisions of the Supplemental Proposal with revisions.

SUPPLEMENTAL EXEMPTIONS TO THE HPML APPRAISAL REQUIREMENT

If approved, the amendments to the Original HPML Final Rule would set forth three additional exemptions to the appraisal requirement for HPMLs.

1. Manufactured Homes

In response to comments to the Supplemental Proposal, under the final rule all loans secured in whole or in part by a manufactured home would be exempt from the HPML appraisal rules for 18 months, until July 18, 2015.

Starting on July 18, 2015, however, the following changes would apply:

- Transactions secured by a new manufactured home and land would be exempt from the requirement that the appraisal include a physical visit to the interior of the property, but would otherwise be subject to all other HPML appraisal requirements.
- Transactions secured by an existing (used) manufactured home and land would not be exempt from HPML appraisal requirements.

⁵ A total of 38 comments were received. Commenters included appraisers, depository institutions, credit unions, their trade associations, consumer advocates, and individuals.

- Transactions secured solely by a manufactured home and not land would be exempt from the HPML appraisal requirements if the creditor gives the consumer one of three types of information about the home's value:
 - a. The manufacturer's invoice of the unit cost;
 - b. A third-party cost service unit cost; or
 - c. A valuation conducted by an individual who has no financial interest in the property or credit transaction and has training in valuing manufactured homes.⁶

2. Streamlined Refinancings

The final rule would exempt certain types of refinancings from the HPML appraisal rules. These transactions have certain characteristics common to refinance products and are often referred to as "streamlined" refinances. Consistent with the proposal, the final rule exempts an extension of credit that is a refinancing where the holder of the successor credit risk also held the credit risk of the original credit obligation. The final rule includes revised terminology and additional examples in Official Staff Commentary to clarify the meaning of this requirement. In addition, the periodic payments under the refinance loan must not result in negative amortization, interest only payments, or 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 (no cash out). The final rule clarifies that the existing obligation includes any lawful charges related to the consumer's prior delinquency, as applicable, and includes certain technical changes.

3. Small Dollar Loans

The final rule exempts small-dollar loans as proposed in the Supplemental NPR. These loans are defined as extensions of credit of \$25,000 or less, indexed annually for inflation, that are secured by the borrower's principal dwelling. Several commenters contended that the exception should be raised to a higher figure than \$25,000. After considering their comments, agency staff decided that increasing the threshold from \$25,000 would exempt too large a number of HPMLs, such that the exemption would violate the intent of the statute to subject both first and subordinate lien loans to the appraisal requirements. A threshold of \$25,000 appropriately exempts from the rule those smaller dollar loans that would benefit from the exemption, such as smaller dollar home improvement loans. In addition, creditors are generally better able to absorb losses that might be associated with a loan of \$25,000 or less than loans of higher amounts.

⁶ The Agencies are adopting the definition of "valuation" at 12 CFR § 1026.42(b)(3): "Valuation" means an estimate of the value of the consumer's principal dwelling in written or electronic form, other than one produced solely by an automated model or system." An example of a valuation conducted by an individual who has no financial interest in the property or credit transaction and has training in valuing manufactured homes would be an appraisal conducted according to procedures approved by the Department of Housing and Urban Development (HUD) for existing (used) home-only transactions (referred to as HUD's "Title I" program).

CONCLUSION

For the reasons explained above, staff recommends that the Board approve the attached final rule and authorize the Executive Secretary to publish it in the *Federal Register*.

Staff members knowledgeable about this case:

Suzy Gardner, RMS (X83640)
Sandra Barker, DCP (X83615)

Mark Mellon, Legal Division (X83884)
Kim Stock, Legal Division (X83815)
Ben Gibbs, Legal Division (678-916-2458)

Attachments