



September 5, 2012

CFPB Proposal to Amend Reg B to Require Creditors to Provide Free Copies of Appraisals and Valuations

EXECUTIVE SUMMARY

- The Consumer Financial Protection Bureau (CFPB) is proposing to amend Regulation B, which implements the Equal Credit Opportunity Act (ECOA), to require creditors to provide free copies of all written appraisals and valuations developed in connection with an application for a loan secured by a first lien on a dwelling.
- The proposal would set forth the general requirement that a creditor provide copies of written appraisals and valuations to applicants, and would set forth the timing and waiver requirements for providing such copies.
- The proposal would also require a creditor to provide a written disclosure of the applicant's right to receive a copy of such written appraisals and valuations.
- The proposal would prohibit creditors from charging the applicant for providing a copy of the appraisals and valuations, but would permit creditors to require applicants to pay a reasonable fee to reimburse the creditor. Further, the proposal would clarify that these requirements apply regardless of whether credit is extended or denied, or if the application is incomplete or withdrawn.
- Currently, federal credit unions are exempt from the appraisal delivery requirements in Reg B. However, the proposal would remove this exemption and require credit unions to comply with the proposed requirements.
- The CFPB is accepting public comments until October 15, 2012. **Please send your comments to CUNA by October 5.**

Please send comments to Senior Vice President and Deputy General Counsel [Mary Dunn](#) and Assistant General Counsel [Luke Martone](#). [Click here](#) for the proposed rule.

BACKGROUND

Equal Credit Opportunity Act: ECOA makes it unlawful for creditors to discriminate in any aspect of a credit transaction and applies to all credit—commercial as well as consumer—without regard to the nature or type of the credit or the creditor. Historically, § 701(e) of ECOA has provided that a credit applicant has the right to request copies of appraisal reports used in connection with the application for mortgage credit.

Dodd-Frank Act Amendments Concerning Appraisals: Section 1474 of Dodd-Frank amended ECOA § 701(e) to require that creditors provide copies of appraisals and valuations to loan applicants at no additional cost and without requiring applicants to affirmatively request such copies.

Higher-Risk Mortgage Appraisal Requirements: The CFPB simultaneously released a separate proposal to implement § 1471 of the Dodd-Frank Act, which added new appraisal requirements for higher-risk mortgages that are subject to joint implementation. This provision contains disclosure requirements that are similar to ECOA § 701(e) in that creditors must provide consumers, at least three days prior to closing, a copy of any appraisal prepared in connection with a higher-risk mortgage.

DESCRIPTION OF PROPOSAL

Providing Appraisals and Valuations (§ 1002.14(a))

Currently, § 1002.14(a) of Reg B allows a creditor to comply either with provisions regarding the routine delivery of copies of appraisal reports to an applicant, or with provisions regarding the delivery of copies of appraisal reports upon request. The proposal would amend § 1002.14(a) to:

- Require a creditor to provide copies of written appraisals and valuations to applicants for credit to be secured by a first lien on a dwelling (§ 1002.14(a)(1));
- Require that a creditor provide a written disclosure of the applicant's right to receive a copy of such written appraisals and valuations (§ 1002.14(a)(2));
- Prohibit creditors from charging the applicant for providing a copy of written appraisals and valuations, but would permit creditors to require applicants to pay a reasonable fee to reimburse the creditor for appraisals and valuations (§ 1002.14(a)(3));
- Clarify that these requirements apply regardless of whether credit is extended or denied, or if the application is incomplete or withdrawn (§ 1002.14(a)(4)); and
- Allow for the copies to be provided electronically (§ 1002.14(a)(5)).

In General (§ 1002.14(a)(1))

Scope: Consistent with ECOA § 701(e)(1), proposed § 1002.14(a)(1) would require a creditor to provide an applicant a copy of all written appraisals and valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling. The scope of proposed § 1002.14(a)(1) differs in several important respects from current § 1002.14(a). First, consistent with new ECOA § 701(e)(1), the proposed amendments to § 1002.14(a)(1) would broaden the scope of the current requirement to provide copies of "an appraisal report" to include "all written appraisals and valuations developed." Thus, more types of documents developed to value properties would be covered.

At the same time, the amendments made to ECOA § 701(e)(1) also narrow the types of transactions that are covered. Specifically, the proposed rule would apply to applications for credit to be secured by a first lien on a dwelling. In contrast, current § 1002.14(a) applies to applications for credit secured by a first lien or a subordinate lien on a dwelling. Accordingly, proposed § 1002.14(a)(1) would also add the word "first" to § 1002.14(a) to narrow the scope of the proposed rule to cover only loans secured by a first lien.

The proposal would include commentary to clarify that for purposes of § 1002.14, a "written" appraisal or valuation includes an appraisal or valuation received or developed by the creditor: in paper form (hard copy); electronically, such as by CD or email; or by any other similar media.

Timing: Under the proposed rule, a creditor would be required to provide a copy of all appraisals and valuations within 30 days of receipt or three days prior to consummation of the transaction, whichever is first to occur.

Waiver: As proposed, an applicant may waive the timing requirement to receive a copy of an appraisal or valuation three business days prior to consummation and agree to receive the copy at or before consummation, except as otherwise prohibited by law.

Exemption for Federal Credit Unions Removed: In 1993, the Federal Reserve Board issued a final rule on the provision of appraisal reports that provided an exemption from the appraisal delivery requirements in § 1002.14 for credit unions. In the 1993 final rule, the Board cited the legislative history of the 1991 ECOA amendments as the basis for the exemption for credit unions. However, the Dodd-Frank Act amendments to ECOA § 701(e) substantially alter the requirements on creditors to provide appraisals, including by expanding the scope of the requirements to require creditors to provide copies of all valuations, and to eliminate the need for applicants to request copies. In addition, neither Dodd-Frank nor the legislative history refers to an exception for credit unions subject to NCUA's provisions relating to making appraisals available upon request. Therefore, the CFPB's proposal would delete the exemption for federal credit unions in current § 1002.14(b).

Disclosure (§ 1002.14(a)(2))

Content: The CFPB believes that Congress intended ECOA and TILA disclosures to work together to provide consumers a better understanding of their rights in the appraisal process. Accordingly, the CFPB is proposing to amend form C-9 in Reg B to include the language developed to satisfy the new appraisal-related disclosure requirements of both ECOA and TILA. The CFPB believes that the proposed sample notice language developed to satisfy the disclosure requirements of both TILA and ECOA serves the interests of consumers, the public, and creditors. Under the proposal, form C-9, Sample Disclosure of Right to Receive a Copy of an Appraisal, would be replaced with the following:

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.

Timing and Method of Delivery: The proposal would require creditors to notify applicants in writing, not later than the third business day after a creditor receives such application, of the right to receive a copy of all written appraisals and valuations developed in connection with such application. This approach is consistent with the disclosure requirements of TILA and RESPA, which currently require creditors to provide disclosures no later than the third business day after receiving a consumer's written application. The CFPB has also proposed as part of the 2012 TILA-RESPA Proposal that the ECOA disclosure be provided as part of the Loan Estimate disclosure to be delivered not later than the third business day after application, to eliminate the need for a separate disclosure.

Reimbursement (§ 1002.14(a)(3))

The proposed rule would remove current comment 14(a)(2)(ii)-1, which permits creditors to charge photocopy and postage costs incurred in providing a copy to the applicant. ECOA § 701(e)(3) affirms that creditors may require applicants to pay reasonable fees to reimburse the creditor for the cost of the appraisal, except where otherwise required by law. Section 701(e)(4) provides that notwithstanding this ability, however, creditors shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

The CFPB interprets the two provisions to permit creditors to charge applicants reasonable fees to reimburse the creditor for costs of the appraisal or valuation itself, but not for photocopying, postage, or similar costs associated with providing one written copy to the applicant. Accordingly, proposed § 1002.14(a)(3) generally implements § 701(e)(3) and § 701(e)(4), and provides additional details for clarity.

Proposed comment 14(a)(3)-1 would provide examples of the specific types of charges that are prohibited under the regulation, such as photocopying fees and postage for mailing a copy of written appraisals or valuations. Proposed comment 14(a)(3)-2 would clarify that creditors are not prohibited from imposing fees that are reasonably designed to reimburse the creditor for costs incurred in connection with obtaining actual appraisal or valuation services, so long they are not increased to cover the costs of providing documentation.

Withdrawn, Denied, or Incomplete Applications (§ 1002.14(a)(4))

The proposal would provide that the copy requirements apply whether credit is extended or denied or if the application is incomplete or withdrawn.

Copies in Electronic Form (§ 1002.14(a)(5))

The proposal would provide that the copies of written appraisals and valuations may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act.

Definitions (§ 1002.14(b))

“Consummation”: As discussed above, for clarity and to be consistent with other similar regulatory requirements under TILA and RESPA, the proposal would use the term “consummation” in place of the statutory term “closing.” “Consummation” would be defined as the time that a consumer becomes contractually obligated on a credit transaction.

“Valuation”: The proposal would define “valuation” as any estimate of the value of a dwelling developed in connection with a creditor’s decision to provide credit. The proposed commentary would include the following examples of valuations:

- A report prepared by an appraiser, including written comments and other documents submitted to the creditor in support of the person’s estimate or opinion of the property’s value.
- A document prepared by the creditor’s staff that assigns value to the property, if a third-party appraisal report has not been used.
- An internal review document reflecting that the creditor’s valuation is different from a valuation in a third party’s appraisal report (or different from valuations that are publicly available or valuations such as manufacturers’ invoices for mobile homes).
- Values developed pursuant to a methodology or mechanism required by a government sponsored enterprise.
- Values developed by an automated valuation model.
- A broker price opinion prepared by a real estate broker, agent, or sales person.

QUESTIONS TO CONSIDER REGARDING THE PROPOSAL

1) The CFPB requests comment on whether additional guidance is needed on the application of the requirements of proposed § 1002.14(a)(1) in the case of renewals for consumer or business purpose transactions.

2) The CFPB requests comment on the removal of the credit union exemption and whether there are additional factors the CFPB should take into consideration relating to the application of proposed § 1002.14 to credit unions.

3) The CFPB requests comment on the proposed language in § 1002.14(a)(2) and whether additional changes should be made to the text of the notification to further enhance consumer comprehension.

4) In addition, the CFPB notes that the model language in proposed Form C–9 refers only to appraisals, while proposed § 1002.14(a)(2) refers to “all written appraisals and valuations.” The CFPB solicits comment on what, if any, adjustments or clarifications to Form C–9 would be appropriate for creditors that perform valuations rather than, or in addition to, appraisals.

5) The CFPB requests comment on whether providing the disclosure at some other time would be more beneficial to consumers, and how the disclosure should be provided where an application is submitted by phone, fax or electronically. For example, the CFPB solicits comment on whether it would be appropriate to require that creditors provide the disclosure at the same time the application is received, or even as part of the application.

6) The CFPB seeks comment on the effective date if the CFPB were to finalize the proposal to include the new appraisal disclosure in the TILA-RESPA Loan Estimate. Because the 2012 TILA-RESPA Proposal likely will not be finalized on the same timeline as this proposal, creditors would likely have to revise their current ECOA disclosures to reflect the new language and distribute the disclosures as standalone forms until such time as the TILA-RESPA integrated disclosures must be provided. The CFPB is not proposing to delay implementation of the disclosure requirement, as it is with some other mortgage-related disclosures required by the Dodd-Frank Act that the CFPB is proposing to implement as part of the integrated TILA-RESPA forms. The CFPB seeks comment on the burden and time involved in implementing the proposed revisions to the ECOA notice.

7) The CFPB requests comment on the proposed text regarding reimbursement and whether additional guidance is needed to comply with the requirements of proposed § 1002.14(a)(3).

8) The CFPB requests comment on whether the list in proposed § 1002.14(b)(3) should include other examples of valuations. In addition, the CFPB requests comments on whether additional clarification is needed about what types of information would not constitute a valuation.

9) Other comments or questions.
