# CUNA HPML Appraisals Chart

<table>
<thead>
<tr>
<th>Regulation Z/ Truth in Lending Act</th>
<th>12 CFR 1026.35: Prohibited acts or practices in connection with higher-priced mortgage loans (This is an interagency rule; Part 1026 is part of the CFPB’s regulations.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who’s covered?</td>
<td>Creditors that make “higher-priced mortgage loans” (HPMLs)</td>
</tr>
<tr>
<td>What’s covered?</td>
<td>Higher-priced mortgage loans (HPMLs)</td>
</tr>
<tr>
<td>When is compliance required?</td>
<td>January 18, 2014</td>
</tr>
<tr>
<td>General Requirements</td>
<td>Creditors may originate a higher priced mortgage loan (HPML) only if they obtain a written appraisal; the appraisal is performed by a certified or licensed appraiser; and the appraiser conducts a physical property visit of the interior of the property. Creditors must also provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. In addition, the rule requires a HPML creditor to obtain a second written appraisal at no cost to the borrower in connection with certain “flipped” properties.</td>
</tr>
</tbody>
</table>

## HPML Definition

Sec. 1026.35(a)(1)

A “higher-priced mortgage loan” is a closed-end consumer credit transaction secured by the consumer’s principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

- By 1.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction’s interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;
- By 2.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction’s interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; and
- By 3.5 or more percentage points, for a loan secured by a subordinate lien.

**Commentary to Section 1026.35(a)(1)**

1. **Comparable transaction.** A higher-priced mortgage loan is a consumer credit transaction secured by the consumer’s principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the
date the interest rate is set by the specified margin. The table of average prime offer rates published by the Bureau indicates how to identify the comparable transaction.

2. *Rate set.* A transaction’s annual percentage rate is compared to the average prime offer rate as of the date the transaction’s interest rate is set (or “locked”) before consummation. Sometimes a creditor sets the interest rate initially and then re-sets it at a different level before consummation. The creditor should use the last date the interest rate is set before consummation.

3. *Threshold for “jumbo” loans.* Section 1026.35(a)(1)(ii) provides a separate threshold for determining whether a transaction is a higher-priced mortgage loan subject to § 1026.35 when the principal 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 (a “jumbo” loan). The Federal Housing Finance Agency (FHFA) establishes and adjusts the maximum principal obligation pursuant to rules under 12 U.S.C. 1454(a)(2) and other provisions of Federal law. Adjustments to the maximum principal obligation made by FHFA apply in determining whether a mortgage loan is a “jumbo” loan to which the separate coverage threshold in § 1026.35(a)(1)(ii) applies.

| Exemptions Sec. 1026.35(c)(2) | The following are excluded from the definition of “higher-priced mortgage loan”:
|-----------------------------|------------------------------------------------------------------------------|
| Any loan that is a “qualified mortgage” loan as defined in Reg Z Section 1026.43(e); | The following are excluded from the definition of “higher-priced mortgage loan”:
| A transaction secured by a new manufactured home; | • A reverse-mortgage transaction subject to Section 1026.33(a). |
| A transaction secured by a mobile home, boat, or trailer; | • A loan with maturity of 12 months or less, if the purpose of the loan is a “bridge” loan converted with the acquisition of a dwelling intended to become the consumer’s principal dwelling. |
| A transaction to finance the initial construction of a dwelling; | • A loan with maturity of 12 months or less, if the purpose of the loan is a “bridge” loan converted with the acquisition of a dwelling intended to become the consumer’s principal dwelling. |
| A reverse-mortgage transaction subject to Section 1026.33(a). | • A reverse-mortgage transaction subject to Section 1026.33(a). |

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### CUNA HPML Appraisals Chart

| Appraisals required for HPMLs Sec. 1026.35(c)(3)(i) | A creditor is prohibited from making a higher-priced mortgage loan unless, prior to consummation, the creditor obtains a written appraisal from a “certified or licensed appraiser” who conducts a physical visit of the interior of the property.  

A **certified or licensed appraiser** means a person who is certified or licensed by the State agency in the State in which the property that secures the transaction is located, and who performs the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements applicable to appraisers in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989, as amended (12 U.S.C. 3331 et seq.), and any implementing regulations in effect at the time the appraiser signs the appraiser’s certification. – Sec. 1026.35(c)(1)(i) |
| --- | --- |
| Safe Harbor Sec. 1026.35(c)(3)(ii) | There is a safe harbor for creditors when the appraiser certifies compliance with Uniform Standards of Professional Appraisal Practice (USPAP) and applicable FIRREA title XI requirements.  

Specifically, under the safe harbor, a creditor would be deemed to have obtained a written appraisal that meets the requirements of this section if the creditor:  

- Orders that the appraiser perform the appraisal in conformity with the USPAP and title XI of FIRREA;  
- Verifies through the National Registry that the appraiser who signed the appraiser’s certification was certified or licensed in the state in which the appraised property is located as of the date it was signed;  
- Confirms that the elements set forth in Appendix N are addressed in the written appraisal; and  
- Has no actual knowledge to the contrary of facts or certifications contained in the written appraisal. |
**Appendix N** provides that, to qualify for the safe harbor, a creditor must check to confirm that the written appraisal:

1. Identifies the creditor who ordered the appraisal and the property and the interest being appraised.
2. Indicates whether the contract price was analyzed.
3. Addresses conditions in the property’s neighborhood.
4. Addresses the condition of the property and any improvements to the property.
5. Indicates which valuation approaches were used, and includes a reconciliation if multiple approaches were used.
6. Provides an opinion of the property’s market value and an effective date for the opinion.
7. Indicates that a physical property visit of the interior of the property was performed.
8. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with USPAP.
9. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with FIRREA title XI.

**Commentary to Section 35(c)(3)(ii)(C)**

1. *Confirming elements in the appraisal.* To confirm that the elements in appendix N to this part are included in the written appraisal, a creditor need not look beyond the face of the written appraisal and the appraiser’s certification.

**Additional Appraisal for Certain HPMLs**

**Sec. 1026.35(c)(4)(i)-(iv)**

In addition, a creditor must obtain an additional written appraisal, *at no cost* to the borrower, if the higher-priced mortgage loan will finance the acquisition of the consumer’s principal dwelling, and:

- The seller acquired the property 90 or fewer days prior to the date of the consumer’s agreement to acquire the property and the price in the consumer’s agreement to acquire the property exceeds the seller’s acquisition price by more than 10 percent; or
The seller acquired the property 91 to 180 days prior to the date of the consumer’s agreement to acquire the property and the price in the consumer’s agreement to acquire the property exceeds the seller’s acquisition price by more than 20 percent.

The additional written appraisal must be performed by a different licensed or certified appraiser, and generally must include the following information:

- An analysis of the difference in sale prices (i.e., the sale price paid by the seller and the acquisition price of the property as set forth in the consumer’s purchase agreement);
- Changes in market conditions between the date the seller acquired the property and the date of the consumer’s agreement to acquire the property; and
- Any improvements made to the property between the date of the previous sale and the current sale.

Commentary to Section 35(c)(4)(i) - In general.

1. **Appraisal from a previous transaction.** An appraisal that was previously obtained in connection with the seller’s acquisition or the financing of the seller’s acquisition of the property does not satisfy the requirements to obtain two written appraisals under § 1026.35(c)(4)(i).

2. **90-day, 180-day calculation.** The time periods described in § 1026.35(c)(4)(i)(A) and (B) are calculated by counting the day after the date on which the seller acquired the property, up to and including the date of the consumer’s agreement to acquire the property that secures the transaction. For example, assume that the creditor determines that date of the consumer’s acquisition agreement is October 15, 2012, and that the seller acquired the property on April 17, 2012. The first day to be counted in the 180-day calculation would be April 18, 2012, and the last day would be October 15, 2012. In this case, the number of days from April 17 would be 181, so an additional appraisal is not required.
3. **Date seller acquired the property.** For purposes of § 1026.35(c)(4)(i)(A) and (B), the date on which the seller acquired the property is the date on which the seller became the legal owner of the property pursuant to applicable State law.

4. **Date of the consumer’s agreement to acquire the property.** For the date of the consumer’s agreement to acquire the property under § 1026.35(c)(4)(i)(A) and (B), the creditor should use the date on which the consumer and the seller signed the agreement provided to the creditor by the consumer. The date on which the consumer and the seller signed the agreement might not be the date on which the consumer became contractually obligated under State law to acquire the property. For purposes of § 1026.35(c)(4)(i)(A) and (B), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. If the dates on which the consumer and the seller signed the agreement differ, the creditor should use the later of the two dates.

5. **Price at which the seller acquired the property.** The price at which the seller acquired the property refers to the amount paid by the seller to acquire the property. The price at which the seller acquired the property does not include the cost of financing the property.

6. **Price the consumer is obligated to pay to acquire the property.** The price the consumer is obligated to pay to acquire the property is the price indicated on the consumer’s agreement with the seller to acquire the property. The price the consumer is obligated to pay to acquire the property from the seller does not include the cost of financing the property. For purposes of § 1026.35(c)(4)(i)(A) and (B), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. See also comment 35(c)(4)(i)-4.

**Commentary to Section 1026.35(c)(4)(ii) - Different Certified or Licensed Appraisers**

1. **Independent appraisers.** The requirements that a creditor obtain two separate appraisals under § 1026.35(c)(4)(i), and that each appraisal be conducted by a different licensed or certified appraiser under § 1026.35(c)(4)(ii), indicate that the two
### CUNA HPML Appraisals Chart

<table>
<thead>
<tr>
<th>Determination of prior sale date and price</th>
<th>A creditor must obtain two written appraisals unless the creditor can demonstrate by exercising reasonable diligence that the requirement to obtain two appraisals does not apply.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 1026.35(c)(4)(vi)</td>
<td>A creditor acts with reasonable diligence if it bases its determination on information contained in written source documents, such as the documents listed in <strong>Appendix O -- Illustrative Written Source Documents for HPML Appraisal Rules:</strong></td>
</tr>
<tr>
<td></td>
<td>1. A copy of the recorded deed from the seller.</td>
</tr>
</tbody>
</table>

Commentary to Section 1026.35(c)(4)(ii) - Relationship to General Appraisal Requirements

1. Safe harbor. When a creditor is required to obtain an additional appraisal under § 1026(c)(4)(i), the creditor must comply with the requirements of both § 1026.35(c)(3)(i) and § 1026.35(c)(4)(ii) through (v) for that appraisal. The creditor complies with the requirements of § 1026.35(c)(3)(i) for the additional appraisal if the creditor meets the safe harbor conditions in § 1026.35(c)(3)(ii) for that appraisal.

Commentary to Section 1026.35(c)(4)(i) - Required Analysis in the Additional Appraisal

1. Determining acquisition dates and prices used in the analysis of the additional appraisal. For guidance on identifying the date on which the seller acquired the property, see comment 35(c)(4)(i)-3. For guidance on identifying the date of the consumer's agreement to acquire the property, see comment 35(c)(4)(i)-4. For guidance on identifying the price at which the seller acquired the property, see comment 35(c)(4)(i)-5. For guidance on identifying the price the consumer is obligated to pay to acquire the property, see comment 35(c)(4)(i)-6.

A creditor acts with reasonable diligence if it bases its determination on information contained in written source documents, such as the documents listed in Appendix O -- Illustrative Written Source Documents for HPML Appraisal Rules:
2. A copy of a property tax bill.
3. A copy of any owner’s title insurance policy obtained by the seller.
4. A copy of the RESPA settlement statement from the seller’s acquisition (i.e., the HUD-1 or any successor form).
5. A property sales history report or title report from a third-party reporting service.
6. Sales price data recorded in multiple listing services.
7. Tax assessment records or transfer tax records obtained from local governments.
8. A written appraisal performed in compliance with § 1026.35(c)(3)(i) for the same transaction.
9. A copy of a title commitment report detailing the seller’s ownership of the property, the date it was acquired, or the price at which the seller acquired the property.
10. A property abstract.

If after exercising reasonable diligence, a creditor cannot determine the seller’s acquisition date or cannot determine the price based on written source documents, the creditor will have to obtain two appraisals; however, the additional appraisal would not have to contain the full analysis. It would have to include an analysis of the required factors (difference in sales price, changes in market conditions, and property improvements) only to the extent necessary for the appraiser to perform the analysis.

Commentary to Section 1026.35(c)(4)(vi) Creditor’s Determination of Prior Sale Date and Price

35(c)(4)(vi)(A) In General -

1. Estimated sales price. If a written source document describes the seller’s acquisition price in a manner that indicates that the price described is an estimated or assumed amount and not the actual price, the creditor should look at an alternative document to satisfy the reasonable diligence standard in determining the price at which the seller acquired the property.
CUNA HPML Appraisals Chart

2. **Reasonable diligence—oral statements insufficient.** Reliance on oral statements of interested parties, such as the consumer, seller, or mortgage broker, does not constitute reasonable diligence under § 1026.35(c)(4)(vi)(A).

3. **Lack of information and conflicting information—two appraisals required.** If a creditor is unable to demonstrate that the requirement to obtain two appraisals under § 1026.35(c)(4)(i) does not apply, the creditor must obtain two written appraisals before extending a higher-priced mortgage loan subject to the requirements of § 1026.35(c). See also comment 35(c)(4)(vi)(B)-1. For example:

   i. Assume a creditor orders and reviews the results of a title search, which shows that a prior sale occurred between 91 and 180 days ago, but not the price paid in that sale. Thus, based on the title search, the creditor would not be able to determine whether the price the consumer is obligated to pay under the consumer’s acquisition agreement is more than 20 percent higher than the seller’s acquisition price, pursuant to § 1026.35(c)(4)(i)(B). Before extending a higher-priced mortgage loan subject to the appraisal requirements of § 1026.35(c), the creditor must either: (1) Perform additional diligence to ascertain the seller’s acquisition price and, based on this information, determine whether two written appraisals are required; or (2) obtain two written appraisals in compliance with § 1026.35(c)(4). See also comment 35(c)(4)(vi)(B)-1.

   ii. Assume a creditor reviews the results of a title search indicating that the last recorded purchase was more than 180 days before the consumer’s agreement to acquire the property. Assume also that the creditor subsequently receives a written appraisal indicating that the seller acquired the property between 91 and 180 days before the consumer’s agreement to acquire the property. In this case, unless one of these sources is clearly wrong on its face, the creditor would not be able to determine whether the seller acquired the property within 180 days of the date of the consumer’s agreement to acquire the property from the seller, pursuant to § 1026.35(c)(4)(i)(B). Before extending a higher-priced mortgage loan subject to the appraisal requirements of § 1026.35(c), the creditor must either: perform additional diligence to ascertain the seller’s acquisition date and, based on this information,
determine whether two written appraisals are required; or obtain two written appraisals in compliance with § 1026.35(c)(4). See also comment 35(c)(4)(vi)(B)-1.

35(c)(4)(vi)(B) Inability To Determine Prior Sales Date or Price—Modified Requirements for Additional Appraisal

1. Required analysis. In general, the additional appraisal required under § 1026.35(c)(4)(i) should include an analysis of the factors listed in § 1026.35(c)(4)(iv)(A) through (C). However, if, following reasonable diligence, a creditor cannot determine whether the conditions in § 1026.35(c)(4)(i)(A) or (B) are present due to a lack of information or conflicting information, the required additional appraisal must include the analyses required under § 1026.35(c)(4)(iv)(A) through (C) only to the extent that the information necessary to perform the analyses is known. For example, assume that a creditor is able, following reasonable diligence, to determine that the date on which the seller acquired the property occurred between 91 and 180 days prior to the date of the consumer’s agreement to acquire the property. However, the creditor is unable, following reasonable diligence, to determine the price at which the seller acquired the property. In this case, the creditor is required to obtain an additional written appraisal that includes an analysis under § 1026.35(c)(4)(iv)(B) and (c)(4)(iv)(C) of the changes in market conditions and any improvements made to the property between the date the seller acquired the property and the date of the consumer’s agreement to acquire the property. However, the creditor is not required to obtain an additional written appraisal that includes analysis under § 1026.35(c)(4)(iv)(A) of the difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property.

Exemptions from the additional appraisal requirement Sec. 1026.35(c)(4)(vii)

The additional appraisal is not required for extensions of credit that finance a consumer’s acquisition of property:

A. From a local, State or Federal government agency;
B. From a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure as a result of the person’s exercise of rights as the holder of a defaulted mortgage loan;
| Required Disclosure Sec. 1026.35(c)(5)(i) | A creditor must provide a consumer who applies for a higher-priced mortgage with the following written statement:  

“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.”  

Compliance with Regulation B appraisal disclosure [12 CFR 1002.14(a)(2)] satisfies this requirement.  

Commentary to Section 1026.35(c)(5) Required Disclosure  

35(c)(5)(i) In General -  

1. *Multiple applicants*. When two or more consumers apply for a loan subject to this section, the creditor is required to give the disclosure to only one of the consumers. |

| C. | From a non-profit entity as part of a local, State, or Federal government program under which the non-profit entity is permitted to acquire title to single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in lieu of foreclosure, or other similar judicial or non-judicial procedure; |
| D. | From a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party; |
| E. | From an employer or relocation agency in connection with the relocation of an employee; |
| F. | From a servicemember who received a deployment or permanent change of station order after the servicemember purchased the property; |
| G. | Located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies waive the requirements in title XI of FIRREA and any implementing regulations in that area; or |
| H. | Located in a rural county (to be determined from CFPB’s annual list). |
| **Timing of Disclosure** Sec. 1026.35(c)(5)(ii) | The above disclosure must be mailed or delivered not later than the third business day after the creditor receives the consumer’s application. If the disclosure is not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered. |
| **Copy of Appraisals** Sec. 1026.35(c)(6)(i) | The creditor is required to provide a free copy of a written appraisal performed in connection with a higher-priced mortgage loan to the applicant. |
| **Commentary to Section 1026.35(c)(6)(i)** | |
| 1. **Multiple applicants**. When two or more consumers apply for a loan subject to this section, the creditor is required to give the copy of each required appraisal to only one of the consumers. |
| **Timing** Sec. 1026.35(c)(6)(ii) | The copy must be provided to the consumer no later than three business days prior to consummation of the loan. In the case of a loan that is not consummated, no later than 30 days after the creditor determines that the loan will not be consummated. |
| **Commentary to Section 1026.35(c)(6)(ii) - Timing** | |
| 1. “Provide.” For purposes of the requirement to provide a copy of the appraisal within a specified time under § 1026.35(c)(6)(ii), “provide” means “deliver.” Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant (which, in the case of electronic receipt, must be based upon consent that complies with the E-Sign Act), whichever is earlier. |
| 2. “Receipt” of the appraisal. For appraisals prepared by the creditor’s internal appraisal staff, the date of “receipt” is the date on which the appraisal is completed. |
| 3. **No waiver**. Regulation B, 12 CFR 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to § 1026.35(c). A consumer of a higher-priced mortgage loan subject to § 1026.35(c)
<table>
<thead>
<tr>
<th>Form of copy</th>
<th>Sec. 1026.35(c)(6)(iii)</th>
<th>Any copy of a written appraisal may be provided to the applicant electronically, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).</th>
</tr>
</thead>
<tbody>
<tr>
<td>No charge for copy</td>
<td>Sec. 1026.35(c)(6)(iv)</td>
<td>A creditor shall not charge the consumer for a copy of a written appraisal required to be provided to the consumer pursuant to section 1026.35(c)(6)(i).</td>
</tr>
<tr>
<td>Commentary to Section 1026.35(c)(6)(iv) - No Charge for Copy Of Appraisal</td>
<td>1. <em>Fees and mark-ups.</em> The creditor is prohibited from charging the consumer for any copy of an appraisal required to be provided under § 1026.35(c)(6)(i), including by imposing a fee specifically for a required copy of an appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.</td>
<td></td>
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</tbody>
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