



Banking Agencies Publish Final Rules on Dodd-Frank Requirements for Appraisals for Higher-Risk Mortgage Loans

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BY: EDMUND D. HARLLEE

On Wednesday, February 13, 2013, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, National Credit Union Administration, Bureau of Consumer Financial Protection (the "Bureau") and Federal Housing Finance Agency (collectively, the "Agencies") published final rules in the *Federal Register* amending Regulation Z (Truth in Lending) to implement the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") with respect to appraisals for "higher-risk mortgages." Proposed rules on this topic were reported in this publication on October 2, 2012.

The Act generally defines a "higher-risk mortgage" as a closed-end consumer transaction secured by a principal dwelling, and having an annual percentage rate (or "APR") of 1.5% above the average prime offer rate (or "APOR") for first-lien loans, 2.5% above the APOR for first-lien jumbo loans and 3.5% above the APOR for junior-lien loans. The final rules refer to "higher-risk mortgages" as "higher-priced mortgage loans" ("HPMLs"), the current terminology in Regulation Z, and require the creditor to determine whether a loan is an HPML by comparing the APR to the APOR. The Bureau had requested comment on replacing the APR with a "transaction coverage rate," or "TCL," for purposes of making this determination, but has decided to defer consideration of this matter until the Bureau considers the merits of a more inclusive definition of "finance charge" (see a discussion of this topic in this publication of October 2, 2012).

The final rules exempt the following types of loans from the definition of "HPML":

- ?Qualified mortgages? under the Act, which were defined under final rules issued by the Bureau on January 10, 2013 (and reported in this publication on February 7, 2013), implementing the ?ability-to-pay? requirements of the Act.
- Reverse mortgages.
- Loans secured by new manufactured homes.
- Loans secured by mobile homes, boats or trailers.
- Loans to finance the initial construction of a residence.
- ?Bridge? loans in connection with the acquisition of the consumer?s principal dwelling and having maturities of 12 months or less.

The Agencies intend to issue a supplemental proposal to consider whether ?streamlined? refinance loans, and loans secured by other property types such as existing manufactured homes, should also be exempt from the appraisal requirements.

The final rules allow a creditor to make an HPML only if the following conditions are satisfied:

- The creditor obtains a written appraisal.
- The appraisal is performed by a certified or licensed appraiser.
- The appraiser conducts a physical property visit of the interior of the property.
- At application, the applicant is provided with a statement containing information on appraisals, and the applicant?s rights to obtain a copy of the appraisal and to obtain a second appraisal at the applicant?s cost.
- The applicant is provided with a free copy of the appraisal at least three business days before closing.

In addition, the creditor must obtain, at no charge to the consumer, an additional written appraisal, if (i) the mortgage is a purchase-money loan for the consumer?s principal dwelling, (ii) the property is being purchased from a seller who acquired the property within 180 days prior to the consumer?s purchase of the property, and (iii) the consumer is paying 10% more for the home than the seller did (if the prior sale occurred within 90 days before the consumer?s purchase of the property) or 20% more for the home than the seller did (if the prior sale occurred between 91 and 180 days before the consumer?s purchase of the property). The additional written appraisal must contain, at a minimum, an analysis of the difference in price between the seller?s purchase price and the consumer?s purchase price, changes in market conditions and any improvements made to the property between the dates of the two purchases.

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- Edmund D. "Ed" Harlee ? 703.760.5208 ? eharlee@williamsmullen.com

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