

# REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION  
1775 DUKE STREET, ALEXANDRIA, VA 22314

**DATE:** July 2013 **NO:** 13-RA-07

**TO:** Federally Insured Credit Unions

**SUBJ:** CFPB's New Rule on Real Estate Appraisals and Other Written Valuations under the Equal Credit Opportunity Act

**ENCL:** [Equal Credit Opportunity Act \(ECOA\) Valuations Rule – Small Entity Compliance Guide](#)

Dear Board of Directors and Chief Executive Officer:

If your credit union receives an application on or after January 18, 2014, for a first-lien loan to be secured by a dwelling, you must:

- 1) Notify applicants in writing within three days of receiving the application that they have the right to receive copies of all appraisals and written valuations; and
- 2) Provide a free copy of these appraisals and written valuations developed in connection with the loan application, promptly after they are completed, or three days before the loan closes, (whichever is earlier) regardless of whether the credit is extended, denied, incomplete, or withdrawn.

These procedures are required by the Dodd-Frank Wall Street Reform and Consumer Protection Act's (the Dodd-Frank Act) amendment of the Equal Credit Opportunity Act (ECOA).<sup>1</sup>

The Consumer Financial Protection Bureau (CFPB) issued a final ECOA Valuations Rule to implement these new requirements.<sup>2</sup> CFPB also developed a Small Entity Compliance Guide for the rule, which is embedded as a hyperlink above.

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<sup>1</sup> Public Law 111-203, 124 Stat. 1376, section 1474 (2010)

<sup>2</sup> 78 FR 7215 (Jan. 31, 2013)

## **Background**

ECOA and its implementing rule (known as Regulation B) prohibit creditors from discriminating on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract), or because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised rights under certain credit laws, including the Truth in Lending Act (TILA).<sup>3</sup> ECOA applies to consumer credit as well as to business and commercial credit except as provided in Regulation B.

Before the new ECOA Valuations Rule, Regulation B required that creditors provide copies of appraisals to applicants upon request and notify them of their right to make a request. Although federally insured credit unions were provided an exemption from these requirements, NCUA's nondiscrimination regulation required federal credit unions make available, to any requesting member/applicant, a copy of the appraisal used in connection with that member's real estate-related loan application. The nondiscrimination regulation also required the appraisal be available for 25 months after the applicant received notice from the federal credit union of the action taken on the real estate-related loan application.<sup>4</sup>

The Dodd-Frank Act changed these requirements and did not include an exemption for federally insured credit unions. The Dodd-Frank Act and ECOA Valuations rule require creditors to disclose to applicants that they have the right to receive copies of appraisals and written valuations and automatically send a free copy of home appraisals and other written valuations promptly after they are completed, regardless of whether credit is extended, denied, incomplete, or withdrawn.

**You must follow the ECOA Valuations Rule for mortgage loan applications received on or after January 18, 2014.**

## **What Types of Loans are Covered by the Rule?**

The rule covers applications for closed-end or open-end credit secured by a first lien on a dwelling. These include, but are not limited to:

- Loans for consumer, business purposes, investment, or leisure purposes (such as a vacation home)
- Consumer loans to purchase a home
- Loss-mitigation transactions, such as loan modifications, short sales, and deed-in-lieu transactions, if they are credit transactions covered by Regulation B
- Loans secured by mobile or manufactured homes
- Reverse mortgages
- Time-share loans if they are credit transactions covered by Regulation B

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<sup>3</sup> 15 U.S.C. 1691

<sup>4</sup> See 58 FR 65657, 65660 (Dec. 16, 1993) and NCUA regulations 12 C.F.R. § 701.31(c)(5).

## **What are the Requirements of the Rule?**

Under the ECOA Valuations Rule:

- When you receive a mortgage loan application, you have three business days to notify the applicant of the right to receive a copy of appraisals and other written valuations.
- You must promptly share copies of appraisals and other written valuations with the applicant. “Promptly” means upon completion of the application, or at least three business days before consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier.
- The applicant can waive the right to receive copies of the appraisal or other written valuations in advance of the closing (except if the transaction involves a higher-priced mortgage loan – see discussion below). If the applicant waives the right to receive advance copies, you must still deliver the copies at or prior to consummation or account opening.
- If you decide not to consummate the loan or open the account, and the applicant has provided a waiver, you must send the applicant a copy of the appraisal and other written valuations within 30 days after your decision.

## **What Constitutes an Appraisal or Other Written Valuation?**

A “valuation” is any estimate of the value of a dwelling developed in connection with an application for credit. A nonexclusive list of valuations includes:

- An appraiser’s report, whether or not the appraiser is licensed or certified, including the estimate or opinion of the property’s value
- A document your staff prepares that assigns value to the property
- A report approved by a government-sponsored enterprise for describing to the applicant an estimate developed by the enterprise’s proprietary methodology or mechanism
- Automated valuation model reports used to estimate the property’s value
- A broker price opinion prepared by a real estate broker, agent, or salesperson to estimate the property’s value

You must also share with the applicant any attachments or exhibits that are an integrated part of the valuation. If a valuation is developed in connection with the application, you must provide a copy to the applicant, even if you do not use the valuation or you use it only for a limited purpose.

Not all documents that discuss or restate a property’s value are valuations. Documents that discuss property value but are not valuations for purposes of the rule include:

- Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or other written valuation you are providing to the applicant

- Government agency statements of appraised value that are publicly available
- Publicly available lists of valuations such as published sales prices or mortgage amounts, tax assessments, and retail price ranges
- Manufacturers' invoices for manufactured homes
- Reports reflecting property inspections that do not provide an estimate or opinion of the value of the property and are not used to develop an estimate or opinion of the value of the property

### **How Do I Comply with the Rule?**

To comply with the ECOA Valuations Rule:

- You must notify the applicant in writing within three business days of application of the right to receive a copy of any appraisal developed in connection with the application. Appendix C to the rule includes sample text for this disclosure.
- If you have an application that was not originally going to be secured by a first lien on a dwelling and you later determine that it will be secured by a first lien on a dwelling, then you have three business days after you determine the change has occurred to notify the applicant about the right to receive appraisals.
- When processing an application for a closed-end loan, you must deliver copies of appraisals and other written valuations “promptly upon completion,” or three business days before consummation, whichever is earlier.
- When processing an application for an open-end loan, you must deliver copies of appraisals and other written valuations “promptly upon completion,” or three business days before account opening, whichever is earlier.
- You cannot charge the applicant for fees for photocopying or to cover the cost of postage to mail copies of appraisals or other written valuations you provide. However, you can charge a reasonable fee to reimburse the cost of developing an appraisal or other written valuation, unless applicable federal<sup>5</sup> or state law prohibits or otherwise restricts it. You cannot condition providing copies on payment of this fee.
- For applicants who waive the right to receive the required copies at least three business days before consummation or account opening, you must provide the copies either at, or prior to, consummation or account opening.

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<sup>5</sup> Fair Housing Administration and Veterans Affairs (VA) home loan programs might place limitations on fees charged for appraisal services. See, e.g., HUD Mortgagee Letter 09-28 at <http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/09-28ml.pdf> and Frequently Asked Questions at [http://portal.hud.gov/hudportal/documents/huddoc?id=faqs\\_ML09-28.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=faqs_ML09-28.pdf), and VA Appraisal Fee Schedules at [http://www.benefits.va.gov/HOMELOANS/appraiser\\_fee\\_schedule.asp?expandable=0&subexpandable=1](http://www.benefits.va.gov/HOMELOANS/appraiser_fee_schedule.asp?expandable=0&subexpandable=1).

## **When and How Do I Deliver Valuation Copies to Applicants?**

You must send valuations promptly upon completion. The “promptly upon completion” standard involves when you receive the appraisal or other written valuation and the extent of any review or revisions you complete after receiving it. “Completion” of an appraisal or other written valuation occurs when you get the last version of that appraisal or other written valuation, or when it is apparent to you that there will be only one version of that appraisal or other written valuation.

Appendix C provides examples where the “promptly upon completion” standard would be satisfied.

If you determine that you are not going to close a loan or open a credit line, you still have to give the applicant a copy of the appraisal and other written valuations promptly upon completion. If the applicant has waived that deadline, you must provide copies of the appraisal and other written valuations to the applicant 30 days after you determine the transaction will not close.

You should send the copies to the applicant’s last-known physical or electronic address. Delivery is assumed to occur three business days after mailing or transmitting the copies, or whenever you have evidence indicating that the applicant received the copies.

If there is more than one applicant, you may give the disclosure and copies to only one applicant. However, if it is readily apparent that one of the applicants is the primary applicant, the disclosure and copies should be given to that applicant.

If you get multiple versions of an appraisal or other written valuation, you have to give the applicant only the latest version. If you give the applicant a copy of an appraisal or other written valuation, and then you get a revised version of the same appraisal or written valuation, you must send the updated version to the applicant as well. You cannot charge a fee for providing the copy of an updated valuation.

An applicant may waive, in writing or orally, the timing requirements of the ECOA Valuations Rule and agree to receive copies of valuations at or before loan consummation or account opening. The waiver must take place at least three business days prior to consummation or account opening. If the transaction is a higher-priced mortgage loan covered by the 2013 Interagency Higher-Priced Mortgage Loans Appraisal Rule (HPML Appraisal Rule), there is no waiver option and you must provide copies of written appraisals no later than three business days before consummation.<sup>6</sup>

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<sup>6</sup> See 78 FR 10367 (February 13, 2013). The rule defines higher-priced mortgage loans as closed-end residential mortgage loans secured by a principal dwelling with an APR that exceeds the average prime offer rate for comparable transactions by the following thresholds: 1.5 percentage points for a first lien conforming residential mortgage loan; 2.5 percentage points for a first lien jumbo residential mortgage loan; and 3.5 percentage points for a subordinate lien residential mortgage loan. The rule exempts certain types of mortgages from coverage, including reverse mortgages and “Qualified Mortgages” as that term is defined in the Ability-to-Repay and Qualified Mortgage Standards Rule. See 78 FR.6407 (January 30, 2013). Additional exemptions to the HPML Appraisal Rule were proposed on July 9, 2013. See <http://www.ncua.gov/News/Pages/NW20130710ProposedRule.aspx>. For

When a clerical correction is made in an appraisal or other written valuation that you have already given the applicant, to avoid interrupting transactions at the last minute, you can have the applicant waive the right to receive the revision three business days before consummation. This exemption requires that the revisions must be solely to correct clerical errors in the appraisal or other written valuation and must have no impact on the estimated value, or calculation or methodology used to derive the estimate. In addition, the applicant must have already received the valuation that is being corrected (pre-correction) either promptly upon completion or three business days before consummation, whichever is earlier, and the applicant must receive the revised appraisal or other written valuation at or prior to consummation.

### **How Does the ECOA Valuation Rule Relate to the HPML Appraisal Rule?**

On January 18, 2013, NCUA and five other federal financial institution regulators issued the HPML Appraisal Rule which requires you to obtain appraisals for a subset of loans called Higher-Priced Mortgage Loans (HPMLs); provide free copies of the appraisal; and provide the applicant with a statement that any appraisals prepared for the mortgage loan are for the sole use of the creditor and that the applicant may have a separate appraisal conducted at his or her own expense.<sup>7</sup> The requirements of the HPML Appraisal Rule are likewise effective on January 18, 2014.

In addition, the HPML Appraisal Rule requires that you provide the applicant with a disclosure, within three business days of receiving the application for a HPML, indicating that you will provide a copy of any appraisal report.

For transactions covered by both the ECOA Valuation and HPML Appraisal Rules, you may use the ECOA Valuations Rule disclosure to comply with this notice. Also, when both rules apply, you should follow the rule that provides the earlier deadline for delivering appraisal copies.

### **What Guidance is Available?**

The full text of the final rule published in the Federal Register is available at: [http://files.consumerfinance.gov/f/201301\\_cfpb\\_final-rule\\_tila-appraisals-preamble.pdf](http://files.consumerfinance.gov/f/201301_cfpb_final-rule_tila-appraisals-preamble.pdf).

CFPB resources to help you understand the final rule and its implications, information about any subsequent adjustments to the final rule<sup>8</sup> and compliance materials are available at: <http://www.consumerfinance.gov/regulations/disclosure-and-delivery-requirements-for-copies-of-appraisals-and-other-written-valuations-under-the-equal-credit-opportunity-act-regulation-b/>.

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additional information about the HPML Appraisal Rule, see [http://files.consumerfinance.gov/f/201305\\_compliance-guide\\_higher-priced-mortgage-loan-appraisals-rule.pdf](http://files.consumerfinance.gov/f/201305_compliance-guide_higher-priced-mortgage-loan-appraisals-rule.pdf).

<sup>7</sup> The HPML Appraisal Rule requires that for covered loans, you perform interior-inspection appraisals that comply with the Uniform Standards of Professional Appraisal Practice and the Financial Institutions Reform Recovery and Enforcement Act (FIRREA).

<sup>8</sup> On June 21, 2013, the CFPB proposed amendments to certain mortgage lending rules, including the ECOA Valuations rule. See 78 FR 39902 (July 2, 2013). The proposed rule would provide further clarification for the term “valuation.”

If you have questions, please contact NCUA's Office of Consumer Protection (703-518-1140 or [OCPMail@NCUA.gov](mailto:OCPMail@NCUA.gov)), your regional office, or state supervisory authority.

Sincerely,

/s/

**Debbie Matz**  
Chairman