

REGULATORY ALERT

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

DATE: February 2014 **NO:** 14-RA-07
TO: Federally Insured Credit Unions
SUBJ: Appraisals for Higher-Priced Mortgage Loans
ENCL: [TILA Higher-Priced Mortgage Loans \(HPML\) Appraisal Rule - Small Entity Compliance Guide](#)

This Regulatory Alert supersedes and replaces Regulatory Alert 13-RA-08 (September 2013).

Dear Board of Directors and Chief Executive Officer:

If your credit union receives an application for a higher-priced mortgage loan (HPML), you must comply with the new HPML Appraisal Rule.¹ Under the rule, a mortgage loan is an HPML if it is a closed-end transaction, secured by a consumer's principal dwelling, and has an interest rate above a certain threshold, as described in more detail below.

Before you originate an HPML, you must:

- 1) Obtain one or more appraisals meeting specified standards;
- 2) Provide information to applicants regarding your use of the appraisals; and
- 3) Give applicants a copy of each appraisal you used.

You must also consider the requirements of the new Equal Credit Opportunity Act Appraisals and Written Valuations Rule (ECOA Valuations Rule),² addressed in NCUA Regulatory Alert 13-RA-07. The overlap between the two rules is detailed later in this alert.

The effective date for both the HPML Appraisal Rule and ECOA Valuations Rule was January 18, 2014. Modified exemptions for loans secured by manufactured homes will be effective on July 18, 2015.

¹ 78 FR 10368 (Feb. 13, 2013).

² 78 FR 7215 (Jan. 31, 2013).

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Truth in Lending Act (TILA) by adding a new section to establish certain appraisal requirements for creditors.³ TILA and its implementing rule, Regulation Z, seek to promote the informed use of consumer credit by requiring disclosures about the costs and terms of credit. TILA requires disclosures for loans, including those secured by consumers' homes.

NCUA, along with the Consumer Financial Protection Bureau (CFPB), Federal Reserve Board, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, and Office of the Comptroller of the Currency (collectively, the Agencies) adopted the HPML Appraisal Rule to implement these new appraisal requirements.⁴ A Small Entity Compliance Guide for the rule, developed by CFPB, is embedded [here](#). The specific requirements of the HPML Appraisal Rule are provided in § 1026.35(c) of the CFPB's regulation and apply in addition to the requirements of NCUA's Appraisal Standards Rule provided in 12 CFR Part 722.

On December 12, 2013, the Agencies issued a supplemental final rule,⁵ providing additional exemptions from the appraisal requirements for certain subsets of higher-priced mortgage loans. The additional exemptions are intended to save borrowers time and money, while still ensuring the loans are financially sound. Most of the amendments made by the supplemental final rule also took effect on January 18, 2014.⁶

Which Loans Are Covered?

The HPML Appraisal Rule applies to first-lien or subordinate-lien HPMLs that are closed-end and secured by the consumer's principal dwelling. A loan is "higher-priced" if it meets any one of the following conditions:

- It is a first-lien mortgage (other than a jumbo mortgage) with an annual percentage rate (APR) that exceeds the Average Prime Offer Rate (APOR) published by CFPB at the time the APR is set by 1.5 percentage points or more;
- It is a first-lien jumbo mortgage with an APR that exceeds the APOR published by CFPB at the time the APR is set by 2.5 percentage points or more. A jumbo mortgage is 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; or
- It is a subordinate-lien mortgage with an APR that exceeds the APOR published by CFPB at the time the APR is set by 3.5 percentage points or more.

³ Public Law 111-203, 124 Stat. 1376, §§ 1471, 1474 (2010).

⁴ 78 FR 10368 (Feb. 13, 2013).

⁵ 78 FR 78520 (Dec. 26, 2013).

⁶ For loan applications received on or after July 18, 2015, the supplemental final rule sets forth certain additional requirements for a credit union to qualify for the exemption for loans secured by a manufactured home, which are discussed in more detail in this alert.

The following table illustrates the conditions that would make a closed-end mortgage loan “higher-priced.”

Table 1: Higher-Priced Mortgage Triggers

The loan is a higher-priced mortgage IF it is...			... and APR > APOR by at least
First lien	Jumbo	Subordinate lien	
✓			1.5%
✓	✓		2.5%
	✓	✓	3.5%
		✓	3.5%

You can find an APOR spread calculator, which will automatically import the applicable APOR to compare with your APR, online at <http://www.ffiec.gov/ratespread/newcalc.aspx>.

Which Loans Are Exempt?

The HPML Appraisal Rule exempts each of the following loans from all of its requirements:

- Qualified Mortgages, as defined in Regulation Z (12 CFR § 1026.43(e) & (f)) and the CFPB’s Ability-to-Repay/Qualified Mortgage Rule⁷;
- Reverse mortgages;
- Bridge loans for 12 months or less and intended to be used to acquire a new principal dwelling;
- Loans for initial construction of a dwelling (not limited to loans of 12 months or less); and
- Loans secured by boats, trailers, and mobile homes.

The supplemental final rule provides the following additional exemptions from the requirements of the HPML Appraisal Rule:

- Loans for \$25,000 or less, indexed every year for inflation;
- Streamlined refinance loans, where the owner or guarantor of the existing obligation remains the same on the refinancing⁸; and
- Loans secured in whole or in part by a manufactured home, for which the application is received *before* July 18, 2015.

⁷ 78 FR 6407 (Jan. 30, 2013). For more information on Qualified Mortgages, see [NCUA Regulatory Alert 14-RA-01](#) (January 2014) and [CFPB’s Small Entity Compliance Guide](#).

⁸ To qualify for this exemption, the regular periodic payments must not result in negative amortization, cover only the interest on the loan, or result in a balloon payment. Also, the proceeds from the refinance loan may only be used to pay off the existing obligation and to pay closing or settlement charges.

Which Loans Will Be Treated Differently?

For loan applications received on or *after* July 18, 2015, the following changes will apply:

- Transactions secured by a new manufactured home and land will be exempt from the requirement that the appraisal include a physical inspection of the interior of the property, but will be subject to all other HPML appraisal requirements.
- Transactions secured by an existing (used) manufactured home and land will be subject to all of the requirements of the HPML Appraisal Rule.
- Transactions secured solely by a manufactured home and not land will be exempt from the rules if the creditor gives the consumer one of three types of information about the home's value:
 - The manufacturer's invoice of the unit cost (for a transaction secured by a new manufactured home);
 - An independent cost service⁹ unit cost; or
 - A valuation¹⁰ conducted by an individual who has no financial interest in the property or credit transaction, and has training in valuing manufactured homes.¹¹

What are the Basic Requirements of the Rule?

When you originate a covered HPML, you must:

- Within three business days after receiving the application, **disclose the following statement in writing**: *"We may order an appraisal to determine the property's value and charge you for this appraisal. We will 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."*¹²
- **Obtain a written appraisal performed by a certified or licensed appraiser** in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)¹³ and its implementing regulations;¹⁴

⁹ For example, a value report from the National Automotive Dealers Association (NADA) Guides.

¹⁰ As discussed in the section-by-section analysis of the supplemental final rule, 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."

¹¹ An example would be an appraisal conducted according to procedures approved by the U.S. Department of Housing and Urban Development (HUD) for existing (used) home-only transactions.

¹² 78 FR 10368, 10443 (Feb. 13, 2013).

¹³ P.L. 101-73, 103 Stat. 183, Title XI (Aug. 9, 1989).

¹⁴ See 12 CFR Part 722.

- **Have the appraiser physically visit the interior** of the property; and
- At least three business days before the transaction closing date, **give the applicant a free copy of each written appraisal** conducted for the mortgage. You can send the copy electronically with the applicant’s consent, as required by the Electronic Signatures in Global and National Commerce Act (E-SIGN Act).

If there is more than one applicant, you are required to give a copy of the disclosure and appraisal to only one of the applicants.¹⁵ If you determine that you are not going to close a loan, you still must give the applicant a copy of the written appraisal within 30 days of determining the transaction will not close.

Additional Requirements for Flipped Properties

When a home is being resold within 180 days of its acquisition by the seller, commonly referred to as “flipping,” additional appraisal requirements may apply. If the consumer is applying for an HPML to buy a flipped property, an additional appraisal is required if the price reflected in the consumer’s purchase agreement is a certain amount higher than the seller’s acquisition price. These amounts are:

- More than a 10 percent price increase if the seller acquired the property in the past 90 days; or
- More than a 20 percent price increase if the seller acquired the property in the past 91 to 180 days.¹⁶

To determine the seller’s acquisition price, use the amount the seller paid without the cost of financing the property.

If the price increase exceeds the above specified amounts, you must obtain an additional appraisal from a different certified or licensed appraiser unless an exemption applies. You cannot charge the applicant for the additional appraisal. The additional appraisal must meet the same requirements as the first appraisal. The additional appraisal also must analyze the difference in the original sales price and the subsequent sales price, changes in market conditions, and property improvements the seller made.

Exemptions for Flipped Properties

Several types of transactions are exempted from the additional appraisal requirement. You do *not* have to order an additional appraisal when an HPML is used to acquire a flipped property from:

¹⁵ You cannot charge fees for photocopying or to cover the cost of postage to provide copies of appraisals. You also cannot raise the consumer’s interest rate or markup other fees to cover this cost.

¹⁶ The rule also provides guidance on how to calculate the 0-90 and 91-180 day periods for prior sales. Documents that you reasonably can rely upon for this purpose include copies of the recorded deed from the seller, a property tax bill, and an owner’s title insurance policy purchased by the seller.

- A local, state, or federal government agency;
- A person who acquired the title from the holder of a defaulted mortgage on the property via foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedures through exercise of the holder's rights in the defaulted loan;
- A nonprofit entity as part of a local, state, or federal government program that lets nonprofits acquire title to single-family properties for resale from a seller who itself acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedures;
- A person who inherited the property or acquired it through a court-ordered dissolution of a marriage, civil union or domestic partnership, or through the partition of the seller's joint or marital assets;
- An employer or relocation agency in connection with an employee relocation; or
- A servicemember¹⁷ who received a deployment or permanent change of station order after purchasing the property.

You also do *not* have to order an additional appraisal when an HPML is used to acquire a flipped property if the property is:

- Located in a presidentially-declared disaster area during any time period during which the federal financial institutions regulatory agencies¹⁸ waive the requirements in Title XI of FIRREA and any implementing regulations; or
- Located in a rural county located in the U.S. Department of Agriculture's Economic Research Service Urban Influence Codes 4, 6, 7, 8, 9, 10, 11, or 12. CFPB has published a list of these counties.¹⁹

How Can You Ensure that an Appraisal Qualifies for the Rule's Safe Harbor?

Appendix N to Regulation Z provides a list of steps you can take to ensure that any required appraisal meets the requirements of the HPML Appraisal Rule. To gain safe harbor protection for an HPML appraisal, follow these steps:

- Order an appraisal from a certified or licensed appraiser in the state where the property is located;

¹⁷ See 50 U.S.C. Appendix 511(1).

¹⁸ The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration.

¹⁹ See 12 CFR § 1026.35(c)(4)(vii)(H) and (b)(2)(iv)(A). See also <http://www.consumerfinance.gov/blog/exemption-from-escrow-requirement-for-small-creditors-in-rural-or-underserved-counties>

- Require the appraiser to follow USPAP and Title XI of FIRREA and any implementing regulations in effect at the time the appraiser signs the appraiser's certification;
- Confirm that the appraisal:
 - Identifies the creditor who ordered the appraisal, the property, and the interest being appraised;
 - Indicates whether the appraiser analyzed the contract price;
 - Addresses conditions in the property's neighborhood;
 - Addresses the condition of the property and any improvements to the property;
 - Indicates which valuation approaches the appraiser used and includes a reconciliation if the appraiser used more than one valuation approach;
 - Provides an opinion of the property's market value and an effective date for the opinion;
 - Indicates that the appraiser performed a physical property visit of the interior of the property; and
 - Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of USPAP and Title XI of FIRREA and any implementing regulations; and
- Use the National Registry²⁰ to verify that the appraiser is certified or licensed in the state where the property is located on the date of the appraiser's certification.

The safe harbor applies only if you do not have actual knowledge contradicting the facts or certifications made in the written appraisal.²¹

How Do the HPML Appraisal Rule and ECOA Valuations Rule Overlap?

The ECOA Valuations Rule requires you to provide consumers with disclosures and free copies of appraisals and other written valuations.²² First-lien HPMLs covered by the HPML Appraisal Rule are also subject to the ECOA Valuations Rule. In addition, the disclosure requirements of both rules overlap. **You may use the ECOA Valuations Rule disclosure to comply with the notice requirement of the HPML Appraisal Rule.**

²⁰ <https://www.asc.gov/National-Registry/NationalRegistry.aspx>

²¹ Although you may outsource your appraisal review to a third party, you remain responsible for complying with the rule. Using an automated review process can also be appropriate, but you remain responsible for the effectiveness of those processes.

²² See [NCUA Regulatory Alert 13-RA-07](#) (July 2013).

The ECOA Valuations Rule imposes a different deadline structure for providing copies of appraisals to consumers. Under the ECOA Valuations Rule, the copies of appraisals must be provided promptly upon completion of a loan application or three business days before closing, whichever is earlier. As a result, if the appraisal is completed early in the application process, then the “promptly upon completion” deadline will come first, since it will be earlier than the three business days before the loan closing deadline under the HPML Appraisal Rule. **If the transaction is subject to both rules, then you must comply with the earlier deadline.**

Under the ECOA Valuations Rule, an applicant can waive the right to receive copies of the appraisal three business days before closing. Under the HPML Appraisal Rule, however, an applicant cannot waive the right to receive a copy of the appraisals three business days before closing.

What Guidance Is Available?

- Full text of the [HPML Appraisal Rule published in the Federal Register](#):
- Full text of the [supplemental rule published in the Federal Register](#):
- CFPB resources to help you understand the rule and [subsequent adjustments](#);
- CFPB [compliance materials](#)

If you have questions, please contact NCUA’s Office of Consumer Protection at 703-518-1140 or ComplianceMail@ncua.gov, your regional office, or state supervisory authority.

Sincerely,

/s/

Debbie Matz
Chairman