DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

Docket No. OCC-2013-0009

RIN 1557-AD70

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 226

Docket No. R-1443

RIN 7100-AD90

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Docket No. CFPB-2013-0020

RIN 3170-AA11

Appraisals for Higher-Priced Mortgage Loans – Supplemental Proposal

AGENCIES: Board of Governors of the Federal Reserve System (Board); Bureau of Consumer Financial Protection (Bureau); Federal Deposit Insurance Corporation (FDIC); Federal Housing Finance Agency (FHFA); National Credit Union Administration (NCUA); and Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board, Bureau, FDIC, FHFA, NCUA, and OCC (collectively, the Agencies) are proposing to amend Regulation Z, which implements the Truth in Lending

Act (TILA), and the official interpretation to the regulation. This proposal relates to a final rule issued by the Agencies on January 18, 2013 (2013 Interagency Appraisals Final Rule or Final Rule), which goes into effect on January 18, 2014. *See* 78 FR 10368 (Feb. 13, 2013). The Final Rule implements a provision added to TILA by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or Act) requiring appraisals for "higher-risk mortgages." For certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the Final Rule requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. The Agencies are proposing amendments to the Final Rule implementing these requirements; specifically, the Agencies are proposing exemptions from the rules for: (1) transactions secured by existing manufactured homes and not land; (2) certain "streamlined" refinancings; and (3) transactions of $25,000 or less.

DATES: Comments must be received on or before September 9, 2013, except that comments on the Paperwork Reduction Act analysis in part VIII of the Supplementary Information must be received on or before **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title "Appraisals for Higher-Priced Mortgage Loans – Supplemental Proposal" to facilitate the organization and distribution of comments among the Agencies. Commenters also are encouraged to

identify the number of the specific question for comment to which they are responding. Interested parties are invited to submit written comments to:

Board: You may submit comments, identified by Docket No. R-1443 or RIN 7100 – AD90, by any of the following methods:

- *Agency Web Site:* http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- *Federal eRulemaking Portal:* http://www.regulations.gov. Follow the instructions for submitting comments.
- *E-mail:* regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- *Fax:* (202) 452-3819 or (202) 452-3102.
- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments will be made available on the Board's web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW, Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

Bureau: You may submit comments, identified by Docket No. CFPB-2013-0020 or RIN 3170-AA11, by any of the following methods:

- *Electronic*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *Mail*: Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20552.
- *Hand Delivery/Courier in Lieu of Mail*: Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20552.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to http://www.regulations.gov. In addition, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FDIC: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* http://www.regulations.gov. Follow the instructions for submitting comments.
- *Agency Web site:* http://www.FDIC.gov/regulations/laws/federal/propose.html.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- *Email:* comments@FDIC.gov.

Comments submitted must include "FDIC" and "Truth in Lending Act (Regulation Z)." Comments received will be posted without change to http://www.FDIC.gov/regulations/laws/federal/propose.html, including any personal information provided.

FHFA: You may submit your comments, identified by regulatory information number (RIN) 2590-AA58, by any of the following methods:

- *E-mail*: Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to RegComments@fhfa.gov. Please include "RIN 2590-AA58" in the subject line of the message.
- *Federal eRulemaking Portal*: http://www.regulations.gov. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by the Agency. Please include "RIN 2590-AA58" in the subject line of the message.
- *Hand Delivered/Courier*: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA58, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW, Washington, DC 20024.

The package should be logged in at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service*: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA58, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW, Washington, DC 20024.

Copies of all comments will be posted without change, including any personal information you provide, such as your name, address, email address, and phone number, on the FHFA Internet Web site at http://www.fhfa.gov. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., Eastern Time, at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW, Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649-3804.

NCUA: You may submit comments, identified by RIN 3133-AE21, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *NCUA Web Site*: http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx Follow the instructions for submitting comments.
- *E-mail*: Address to regcomments@ncua.gov. Include "[Your name] Comments on Appraisals for Higher-Priced Mortgage Loans – Supplemental Proposal" in the e-mail subject line.

- *Fax*: (703) 518-6319. Use the subject line described above for e-mail.
- *Mail*: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- *Hand Delivery/Courier in Lieu of Mail*: Same as mail address

You can view all public comments on NCUA's website at http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Appraisals for Higher-Priced Mortgage Loans – Supplemental Proposal" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—"regulations.gov":** Go to http://www.regulations.gov. Enter "Docket ID OCC-2013-0009" in the Search Box and click "Search". Results can be filtered using the filtering tools on the left side of the screen. Click on "Comment Now" to submit public comments.
- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- **E-mail:** regs.comments@occ.treas.gov.

- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- **Hand Delivery/Courier:** 400 7th Street, SW, Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- **Fax:** (571) 465-4326.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC-2013-0009" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- **Viewing Comments Electronically:** Go to http://www.regulations.gov. Enter "Docket ID OCC-2013-0009" in the Search box and click "Search." Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the "Help" tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments,

viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7th Street, SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Docket: You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT:

Board: Lorna Neill or Mandie Aubrey, Counsels, Division of Consumer and Community Affairs, at (202) 452-3667, Carmen Holly, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, at (202) 973-6122, or Kara Handzlik, Counsel, Legal Division, (202) 452-3852, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Bureau: Owen Bonheimer, Counsel, or William W. Matchneer, Senior Counsel, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20552, at (202) 435-7000.

FDIC: Beverlea S. Gardner, Senior Examination Specialist, Risk Management Section, at (202) 898-3640, Sandra S. Barker, Senior Policy Analyst, Division of Consumer Protection, at (202) 898-3615, Mark Mellon, Counsel, Legal Division, at (202) 898-3884, Kimberly Stock, Counsel, Legal Division, at (202) 898-3815, or Benjamin

Gibbs, Senior Regional Attorney, at (678) 916-2458, Federal Deposit Insurance Corporation, 550 17th St, NW, Washington, DC 20429.

FHFA: Susan Cooper, Senior Policy Analyst, (202) 649-3121, Lori Bowes, Policy Analyst, Office of Housing and Regulatory Policy, (202) 649-3111, Ming-Yuen Meyer-Fong, Assistant General Counsel, Office of General Counsel, (202) 649-3078, Federal Housing Finance Agency, 400 Seventh Street, SW, Washington, DC, 20024.

NCUA: John Brolin and Pamela Yu, Staff Attorneys, or Frank Kressman, Associate General Counsel, Office of General Counsel, at (703) 518-6540, or Vincent Vieten, Program Officer, Office of Examination and Insurance, at (703) 518-6360, or 1775 Duke Street, Alexandria, Virginia, 22314.

OCC: Robert L. Parson, Appraisal Policy Specialist, (202) 649-6423, G. Kevin Lawton, Appraiser (Real Estate Specialist), (202) 649-7152, Carolyn B. Engelhardt, Bank Examiner (Risk Specialist – Credit), (202) 649-6404, Charlotte M. Bahin, Senior Counsel or Mitchell Plave, Special Counsel, Legislative & Regulatory Activities Division, (202) 649-5490, Krista LaBelle, Special Counsel, Community and Consumer Law Division, (202) 649-6350, or 400 Seventh Street, SW, Washington D.C. 20219.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

As discussed in detail under part II of this Supplementary Information, section 1471 of the Dodd-Frank Act created new TILA section 129H, which establishes special appraisal requirements for "higher-risk mortgages." 15 U.S.C. 1639h. The Agencies adopted the 2013 Interagency Appraisals Final Rule to implement these requirements (adopting the term "higher-priced mortgage loans" (HPMLs) instead of "higher-risk

mortgages"). The Agencies believe that several additional exemptions from the new appraisal rules may be appropriate. Specifically, the Agencies are proposing an exemption for transactions secured by an existing manufactured home and not land, certain types of refinancings, and transactions of $25,000 or less (indexed for inflation). The Agencies solicit comment on these proposed exemptions. In addition, the Agencies are proposing a different definition of "business day" than the definition used in the Final Rule, as well as a few non-substantive technical corrections.

A. Proposed Exemption for Transactions Secured Solely by an Existing Manufactured Home and Not Land

The Agencies propose to exempt transactions secured solely by an existing (used) manufactured home and not land from the HPML appraisal requirements, but seek comment on whether an alternative valuation type should be required.

The Agencies propose to retain coverage of loans secured by existing manufactured homes and land. The Agencies also propose to retain the exemption for transactions secured by new manufactured homes, but are seeking further comment on the scope of this exemption and whether certain conditions on the exemption might be appropriate.

B. Proposed Exemption for Certain Refinancings

The Agencies are also proposing to exempt from the HPML appraisal rules certain types of refinancings with characteristics common to refinance products often referred to as "streamlined" refinances. Specifically, the Agencies propose to exempt an extension of credit that is a refinancing where the owner or guarantor of the refinance loan is the current owner or guarantor of the existing obligation. In addition, the periodic

payments under the refinance loan must not result in negative amortization, cover only interest on the loan, or result in a balloon payment. Finally, the proceeds from the refinance loan may only be used to pay off the outstanding principal balance on the existing obligation and to pay closing or settlement charges.

C. Proposed Exemption for Extensions of Credit of $25,000 or Less

Finally, the Agencies are also proposing an exemption from the HPML appraisal rules for extensions of credit of $25,000 or less, indexed every year for inflation.

D. Effective Date

The Agencies intend that exemptions adopted as a result of this supplemental proposal will be effective on January 18, 2014, the same date on which the Final Rule will become effective. In the section-by-section analysis below, the Agencies request comment on a number of conditions that might be appropriate to require creditors to meet to qualify for the proposed exemptions. If the Agencies adopt any conditions on an exemption, the Agencies will consider establishing a later effective date for those conditions, to allow creditors sufficient time to adjust their compliance systems, if necessary.

Question 1: The Agencies request comment on the need for a later effective date for any condition on a proposed exemption discussed in the section-by-section analysis below, and the appropriate effective date for those conditions.

II. Background

In general, the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, seeks to promote the informed use of consumer credit by requiring disclosures about its costs and terms, as well as other information. TILA requires additional disclosures for loans

secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. For most types of creditors, TILA directs the Bureau to prescribe regulations to carry out the purposes of the law and specifically authorizes the Bureau to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Bureau's judgment are necessary or proper to effectuate the purposes of TILA, or prevent circumvention or evasion of TILA.[1] 15 U.S.C. 1604(a).

For most types of creditors and most provisions of the TILA, TILA is implemented by the Bureau's Regulation Z. *See* 12 CFR part 1026. Official Interpretations provide guidance to creditors in applying the rules to specific transactions and interpret the requirements of the regulation. *See* 12 CFR part 1026, Supp. I. However, as explained in the Final Rule, the new appraisal section of TILA addressed in the Final Rule (TILA section 129H, 15 U.S.C. 1639h) is implemented not only for all affected creditors by the Bureau's Regulation Z, but also by OCC regulations and the Board's Regulation Z (for creditors overseen by the OCC and the Board, respectively). *See* 12 CFR parts 34 and 164 (OCC regulations) and part 226 (the Board's Regulation Z); *see also* § 1026.35(c)(7) and 78 FR 10368, 10415 (Feb. 13, 2013). The Bureau's, the OCC's and the Board's versions of the 2013 Interagency Appraisals Final Rule and

[1] For motor vehicle dealers as defined in section 1029 of the Dodd-Frank Act, TILA directs the Board to prescribe regulations to carry out the purposes of TILA and authorizes the Board to issue regulations. 15 U.S.C. 5519; 15 U.S.C. 1604(i).

corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA adopted the Bureau's version of the regulations under the Final Rule.[2]

The Dodd-Frank Act[3] was signed into law on July 21, 2010. Section 1471 of the Dodd-Frank Act's Title XIV, Subtitle F (Appraisal Activities), added TILA section 129H, 15 U.S.C. 1639h, which establishes appraisal requirements that apply to "higher-risk mortgages." Specifically, new TILA section 129H prohibits a creditor from extending credit in the form of a "higher-risk mortgage" loan to any consumer without first:

- Obtaining a written appraisal performed by a certified or licensed appraiser who conducts an appraisal that includes a physical inspection of the interior of the property and is performed in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and the regulations prescribed thereunder.
- Obtaining an additional appraisal from a different certified or licensed appraiser if the "higher-risk mortgage" finances the purchase or acquisition of a property from a seller at a higher price than the seller paid, within 180 days of the seller's purchase or acquisition. The additional appraisal must include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

A creditor that extends a "higher-risk mortgage" must also:

[2] *See* NCUA: 12 CFR 722.3; FHFA: 12 CFR Part 1222. The FDIC adopted the Bureau's version of the regulations, but did not adopt a cross-reference to the Bureau's regulations in FDIC regulations. *See* 78 FR 10368, 10370 (Feb. 13, 2013).
[3] Public Law 111-203, 124 Stat. 1376 (Dodd-Frank Act).

- Provide the applicant, at the time of the initial mortgage application, with a statement that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the applicant's expense.
- Provide the applicant with one copy of each appraisal conducted in accordance with TILA section 129H without charge, at least three days prior to the transaction closing date.

New TILA section 129H(f) defines a "higher-risk mortgage" with reference to the annual percentage rate (APR) for the transaction. A "higher-risk mortgage" is a "residential mortgage loan"[4] secured by a principal dwelling with an APR that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set—

- By 1.5 or more percentage points, for a first lien residential mortgage loan with an original principal obligation amount that does not exceed the amount for "jumbo" loans (*i.e.*, the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date of the interest rate set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454));
- By 2.5 or more percentage points, for a first lien residential mortgage "jumbo" loan (*i.e.*, having an original principal obligation amount that exceeds the amount

[4] *See* Dodd-Frank Act section 1401; TILA section 103(cc)(5), 15 U.S.C. 1602(cc)(5) (defining "residential mortgage loan"). New TILA section 103(cc)(5) defines the term "residential mortgage loan" as any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open-end credit plan. 15 U.S.C. 1602(cc)(5).

for the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date of the interest rate set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454)); or

- By 3.5 or more percentage points, for a subordinate lien residential mortgage loan.

The definition of "higher-risk mortgage" expressly excludes "qualified mortgages," as defined in TILA section 129C, and "reverse mortgage loans that are qualified mortgages," as defined in TILA section 129C. 15 U.S.C. 1639c.

The Agencies published proposed regulations for public comment on September 5, 2012, that would implement these higher-risk mortgage appraisal provisions (2012 Interagency Appraisals Proposed Rule or 2012 Proposed Rule). 77 FR 54722 (Sept. 5, 2012). The Agencies issued the 2013 Interagency Appraisals Final Rule on January 18, 2013. The Final Rule was published in the **Federal Register** on February 13, 2013, and is effective on January 18, 2014. *See* 78 FR 10368 (Feb. 13, 2013).

III. Summary of the 2013 Interagency Appraisals Final Rule

A. Loans Covered

To implement the statutory definition of "higher-risk mortgage," the Final Rule used the term "higher-priced mortgage loan" or HPML, a term already in use under the Bureau's Regulation Z with a meaning substantially similar to the meaning of "higher-risk mortgage" in the Dodd-Frank Act. In response to commenters, the Agencies used the term HPML to refer generally to the loans that could be subject to the Final Rule because they are closed-end credit and meet the statutory rate triggers, but the Agencies

separately exempted several types of HPML transactions from the rule. The term "higher-risk mortgage" encompasses a closed-end consumer credit transaction secured by a principal dwelling with an APR exceeding certain statutory thresholds. These rate thresholds are substantially similar to rate triggers that have been in use under Regulation Z for HPMLs.[5] Specifically, consistent with TILA section 129H, a loan is an HPML under the Final Rule if the APR exceeds the APOR by 1.5 percentage points for first-lien conventional or conforming loans, 2.5 percentage points for first-lien jumbo loans, and 3.5 percentage points for subordinate-lien loans.[6]

Consistent with TILA, the Final Rule exempts "qualified mortgages" from the requirements of the rule. Qualified mortgages are defined in § 1026.43(e) of the Bureau's final rule implementing the Dodd-Frank Act's ability-to-repay requirements in TILA section 129C (2013 ATR Final Rule).[7] 15 U.S.C. 1639c.

In addition, the Interagency Appraisals Final Rule excludes from its coverage the following classes of loans:

(1) transactions secured by a new manufactured home;

(2) transactions secured by a mobile home, boat, or trailer;

(3) transactions to finance the initial construction of a dwelling;

(4) loans with maturities of 12 months or less, if the purpose of the loan is a "bridge" loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling; and

---

[5] Added to Regulation Z by the Board pursuant to the Home Ownership and Equity Protection Act of 1994 (HOEPA), the HPML rules address unfair or deceptive practices in connection with subprime mortgages. *See* 73 FR 44522, July 30, 2008; 12 CFR 1026.35.

[6] The existing HPML rules apply the 2.5 percent over APOR trigger for jumbo loans only with respect to a requirement to establish escrow accounts. *See* 12 CFR 1026.35(b)(3)(v).

[7] 78 FR 6408 (Jan. 30, 2013).

(5) reverse mortgage loans.

B. Requirements that Apply to All Appraisals Performed for Non-Exempt HPMLs

Consistent with TILA, the Final Rule allows a creditor to originate an HPML that is not exempt from the Final Rule only if the following conditions are met:

- The creditor obtains 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.

Also consistent with TILA, the following requirements also apply with respect to HPMLs subject to the Final Rule:

- At application, the consumer must be provided with a statement regarding the purpose of the appraisal, that the creditor will provide the applicant a copy of any written appraisal, and that the applicant may choose to have a separate appraisal conducted for the applicant's own use at his or her own expense; and
- The consumer must be provided with a free copy of any written appraisals obtained for the transaction at least three business days before consummation.

C. Requirement to Obtain an Additional Appraisal in Certain HPML Transactions

In addition, the Final Rule implements the Act's requirement that the creditor of a "higher-risk mortgage" obtain an additional written appraisal, at no cost to the borrower, when the loan will finance the purchase of the consumer's principal dwelling and there has been an increase in the purchase price from a prior acquisition that took place within 180 days of the current purchase. TILA section 129H(b)(2)(A), 15 U.S.C. 1639h(b)(2)(A). In the Final Rule, using their exemption authority, the Agencies set

thresholds for the increase that will trigger an additional appraisal. An additional appraisal will be required for an HPML (that is not otherwise exempt) if either:

- The seller is reselling the property within 90 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 10 percent; or
- The seller is reselling the property within 91 to 180 days of acquiring it and the resale price exceeds the seller's acquisition price by more than 20 percent.

The additional written appraisal, from a different licensed or certified appraiser, 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, and any improvements made to the property between the date of the previous sale and the current sale.

Finally, in the Final Rule the Agencies expressed their intention to publish a supplemental proposal to request comment on possible exemptions for "streamlined" refinance programs and smaller dollar loans, as well as loans secured by certain other property types, such as existing manufactured homes. *See* 78 FR 10368, 10370 (Feb. 13, 2013). Accordingly, the Agencies are publishing this Proposed Rule.

IV. Legal Authority

TILA section 129H(b)(4)(A), added by the Dodd-Frank Act, authorizes the Agencies jointly to prescribe regulations implementing section 129H. 15 U.S.C. 1639h(b)(4)(A). In addition, TILA section 129H(b)(4)(B) grants the Agencies the authority jointly to exempt, by rule, a class of loans from the requirements of TILA section 129H(a) or section 129H(b) if the Agencies determine that the exemption is in the

public interest and promotes the safety and soundness of creditors. 15 U.S.C. 1639h(b)(4)(B).

V. Section-by-Section Analysis

For ease of reference, unless otherwise noted, the Supplementary Information refers to the section numbers of the proposed provisions that would be published in the Bureau's Regulation Z at 12 CFR 1026.35(c). As explained in the Final Rule, separate versions of the regulations and accompanying commentary were issued as part of the Final Rule by the OCC, the Board, and the Bureau, respectively. 78 FR 10367, 10415 (Feb. 13, 2013). No substantive difference among the three sets of rules was intended. The NCUA and FHFA adopted the rules as published in the Bureau's Regulation Z at 12 CFR 1026.35(a) and (c), by cross-referencing these rules in 12 CFR 722.3 and 12 CFR Part 1222, respectively. The FDIC adopted the rules as published in the Bureau's Regulation Z at 12 CFR 1026.35(a) and (c), but did not cross-reference the Bureau's Regulation Z.

Accordingly, in this **Federal Register** notice, the proposed provisions are separately published in the HPML appraisal regulations of the OCC, the Board, and the Bureau. No substantive difference among the three sets of proposed rules is intended.

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(6) Business Day

The term "business day" is used with respect to two requirements in the Final Rule. First, the Final Rule requires the creditor to provide the consumer with a disclosure that "shall be delivered or placed in the mail not later than the third business day after the

creditor receives the consumer's application for a higher-priced mortgage loan" subject to § 1026.35(c). § 1026.35(c)(5)(i) and (ii). Second, the Final Rule requires the creditor to provide to the consumer a copy of each written appraisal obtained under the Final Rule "[n]o later than three business days prior to consummation of the loan." § 1026.35(6)(i) and (ii).

The Agencies propose to define "business day" in the Final Rule to mean "all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day." § 1026.2(a)(6). The Agencies propose this definition for consistency with disclosure timing requirements under both the existing Regulation Z mortgage disclosure timing requirements and the Bureau's proposed rules for combined mortgages disclosures under TILA and the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2601 *et seq.* (2012 TILA-RESPA Proposed Rule). *See* § 1026.19(a)(1)(ii) and (a)(2); *see also* 77 FR 51116 (Aug. 23, 2012) (*e.g.*, proposed § 1026.19(e)(1)(iii) (early mortgage disclosures) and (f)(1)(ii) (final mortgage disclosures).

Under existing Regulation Z, early disclosures must be delivered or placed in the mail not later than the seventh business day before consummation of the transaction; if the disclosures need to be corrected, the consumer must receive corrected disclosures no later than three business days before consummation (the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered). *See* § 1026.19(a)(2)(i)-(ii). For these purposes, "business day" is defined as quoted

previously. One reason that the Agencies propose to align the definition of "business day" under the Final Rule with the definition of "business day" for these disclosures is to avoid the creditor having to provide the copy of the appraisal under the HPML rules and corrected Regulation Z disclosures at different times (because different definitions of "business day" would apply).[8]

The proposed definition of "business day" is also intended to align with the definition of "business day" for the timing requirements of mortgage disclosures under the 2012 TILA-RESPA Proposal. *See* proposed § 1026.2(a)(6). The 2012 TILA-RESPA Proposal would require the creditor to deliver the early mortgage disclosures "not later than the third business day after the creditor receives the consumer's application." Proposed § 1026.19(e)(1)(iii). The 2012 TILA-RESPA Proposal would require the final mortgage disclosures "not later than three business days before consummation." Proposed § 1026.19(f)(1)(ii). For these purposes, "business day" would be defined as the Agencies propose to define "business day" in the Final Rule.

If the Bureau adopts this aspect of the 2012 TILA-RESPA Proposal, then using the proposed definition of "business day" in the Final Rule would ensure that the HPML appraisal notice and the early mortgage disclosures have to be provided at the same time (no later than three "business days" after the creditor receives the consumer's application). This would also ensure that the copy of the HPML appraisal and the final mortgage disclosures have to be provided at the same time (no later than three "business days" before consummation). The Agencies believe that this alignment will facilitate

[8] If the Agencies do not adopt the proposed definition of "business day," the definition that would apply would be "a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions." § 1026.2(a)(6).

compliance and reduce consumer confusion by reducing the number of disclosures that consumers might receive at different times.

Section 1026.35 Requirements for Higher-Priced Mortgage Loans

35(c) Appraisals for Higher-Priced Mortgage Loans

35(c)(2) Exemptions

35(c)(2)(i)

Qualified Mortgages

By statute, qualified mortgages "as defined in [TILA] section 129C" are exempt from the special appraisal rules for "higher-risk mortgages." 15 U.S.C. 1639c; TILA section 129H(f)(1), 15 U.S.C. 1639h(f)(1). The Agencies implemented this exemption in the Interagency Appraisals Final Rule by cross-referencing § 1026.43(e), the definition of qualified mortgage issued by the Bureau in its 2013 ATR Final Rule. *See* § 1026.35(c)(2)(i). The Bureau defined qualified mortgage under authority granted to the Bureau to issue ability-to-repay rules and define qualified mortgage. *See, e.g.*, TILA section 129C(a)(1), (b)(3)(A), and (b)(3)(B)(i), 15 U.S.C. 1639c(a)(1), (b)(3)(A), and (b)(3)(B)(i).

To align the regulation with the statute, the Agencies propose to revise the cross-referenced definition of qualified mortgage to include all qualified mortgages "as defined pursuant to TILA section 129C." 15 U.S.C. 1639c. In addition to authority granted to the Bureau, TILA section 129C grants authority to the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), and the Rural Housing Service (RHS), which is a part of USDA, to define the types of loans "insure[d], guarantee[d], or administer[ed]" by

those agencies, respectively, that are qualified mortgages. TILA section 129H(b)(3)(B)(ii), 15 U.S.C. 1639h(b)(3)(B)(ii). The Agencies recognize that HUD, VA, USDA, and RHS may issue rules defining qualified mortgages pursuant to their TILA section 129C authority. Therefore, the Agencies propose to expand the definition of qualified mortgages that are exempt from the HPML appraisal rules to cover qualified mortgages as defined by HUD, VA, USDA, and RHS. 15 U.S.C. 1639c.

Question 2: The Agencies request comment on this proposed revision.

35(c)(2)(ii)

35(c)(2)(ii)(A)

Loans Secured by a New Manufactured Home

In the Final Rule, the Agencies exempted several classes of loans from the HPML appraisal rules, including transactions secured by a "new manufactured home."[9] § 1026.35(c)(2)(ii). The exemption for transactions secured by a new manufactured home applies regardless of whether the transaction is also secured by the land on which it is sited. *See* comment 35(c)(2)(ii)-1. The reasons for the exemption were discussed in the Final Rule.[10] The Agencies' general rationale was that alternative means for valuing new manufactured homes exist that, based upon the Agencies' understanding of historical practice, appeared more appropriate for these types of transactions. The Final Rule did not address loans secured by "existing" (used) manufactured homes, which are, therefore, subject to the appraisal requirements unless the Agencies adopt an exemption.

[9] The Final Rule also exempts qualified mortgages; reverse mortgage loans; transactions secured by a mobile home, boat, or trailer; transactions to finance the initial construction of a dwelling; and loans with maturities of 12 months or less, if the purpose of the loan is a "bridge" loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling. *See* § 1026.35(c)(2).
[10] 78 FR 10368, 10379-80 (Feb. 13, 2013).

The Agencies propose to retain the exemption for transactions secured by new manufactured homes in re-numbered § 1026.35(c)(2)(ii)(A), but are seeking further comment on the scope of this exemption and whether certain conditions on the exemption might be appropriate. The Agencies further propose to re-number and revise comment 35(c)(2)(ii)-1 as proposed comment 35(c)(2)(ii)(A)-1. The proposed revisions to this comment are for clarity only; no substantive change is intended.

Loans secured solely by a new manufactured home and not land. As noted previously, the Final Rule exempted HPMLs secured solely by a new manufactured home and not land from the HPML appraisal rules – thus, the Final Rule applies no valuation requirement to these transactions.

Question 3: However, based on additional research and outreach, the Agencies seek comment on whether consumers in these transactions would benefit by receiving from the creditor a unit value estimate from an objective third-party source, such as an independent cost guide.

Since the Final Rule was issued, consumer advocates have expressed concerns that some transactions in the lending channel for new home-only (chattel) transactions can result in consumers owing more than the manufactured home is worth. For this type of loan, consumer and affordable housing advocates assert that networks of manufacturers, broker/dealers, and lenders are common, and that these parties can coordinate sales prices and loan terms to increase manufacturer, dealer, and lender profits, even where this leads to loan amounts that exceed the collateral value. Advocates have raised concerns that, where the original loan amount exceeds the collateral value and the consumer is unaware of this fact, the consumer is often unprepared for difficulties

that can arise when seeking to refinance or sell the home at a later date. They have also noted that that chattel manufactured home loan transactions tend to have much higher rates than conventional mortgage loans.[11] Some consumer advocates have suggested that giving the consumer third-party information about the unit value could be helpful in educating the consumer, particularly as to the risk that the loan amount might exceed the collateral value, and might prompt the consumer to ask questions about the transaction. Consumer advocates and other outreach participants had questions about the accuracy of available cost services for estimating the unit value of new manufactured homes. They asserted, for example, that where a manufactured home will be sited can have a major impact on the value of the home and that cost services do not in all cases sufficiently account for that aspect of the value.[12] Nonetheless, some advocates expressed the view that giving the consumer some cost estimate would be beneficial.

Based on input from lenders and manufactured home valuation providers, the Agencies understand that in new home-only transactions, third-party cost services are not typically used to value the property. Instead, many creditors use the manufacturer's invoice, or wholesale unit price, and lend a percentage of that amount, which might exceed 100 percent to reflect, for example, a dealer mark-up and siting costs. As discussed in the Supplementary Information to the Proposed Rule, outreach participants

---

[11] *See, e.g.*, Howard Baker and Robin LeBaron, FAIR MORTGAGE COLLABORATIVE, Toward a Sustainable and Responsible Expansion of Affordable Mortgages for Manufactured Homes (March 2013) at 10 (reporting that "[c]hattel loans typically feature higher interest rates than mortgages: current rates range between 6% and 14%, depending on the borrower's credit history and the size of the downpayment, compared to 2.5% to 5% for mortgages at the present time."). This report is available at http://cfed.org/assets/pdfs/IM_HOME_Loan_Data_Collection_Project_Report.pdf.

[12] The National Automobile Dealers Association (NADA) Manufactured Housing Cost Guide provides for adjustments based on, among other factors, the state in which the home is located and the quality of the land-lease community in which the home is located, if applicable. *See* NADAguides.com Value Report, available at www.nadaguides.com/Manufactured-Homes/images/forms/MHOnlineSample.pdf.

have indicated that this practice – similar to that sometimes used for automobiles – is longstanding in new manufactured home transactions.[13] Lenders asserted that this method saves costs for consumers and creditors and has been found to be reasonably effective and accurate for purposes of ensuring a safe and sound loan.

Question 4: In light of additional concerns expressed about valuations in new manufactured home chattel transactions, the Agencies request comment on whether it may be appropriate to condition the exemption from the HPML appraisal requirements on the creditor providing the consumer with a third-party estimate of the manufactured home unit cost.

Question 5: If so, the Agencies request comment on which third-party estimate(s) should be used for this purpose.

Question 6: The Agencies also request comment on when this information should be required to be provided.[14]

Question 7: The Agencies request comment on whether the consumer typically receives unit cost information in a new manufactured home chattel transaction and what, if any, cost information from an independent third party source might be reasonably available to creditors, reliable, and useful to a consumer.

Question 8: The Agencies further request comment on the utility of third-party unit cost information to consumers in these transactions (even if the creditor is using a different method to value the home).

---

[13] *See* 77 FR 54722, 54732-33 (Sept. 5, 2012).

[14] Unless the manufactured home alone, without land, is titled as real property under state law, loans secured solely by a manufactured home are not subject to the early disclosure requirements under Regulation Z, 12 CFR 1026.19, because they are not subject to RESPA. *See* § 1026.19(a)(1)(i) and 12 CFR 1024.2 (defining "federally related mortgage loan" to include only loans secured by residential real property). Therefore, the Agencies believe that in some chattel transactions, the time between application and consummation may be relatively short.

Question 9: The Agencies understand that the location of the property can impact the value of the home, even if the property on which the unit is sited is not owned by the consumer, and seek more information about the impact on home value of a unit's location and whether cost services are available that account adequately for differences in location.

Question 10: The Agencies further request comment on whether readily-accessible, publicly-available information exists that consumers could use to determine whether their loan amount exceeds the collateral value in a new manufactured home chattel transaction, and whether consumers are generally aware of this information.[15]

Question 11: Finally, the Agencies request comment on potential burdens and costs of imposing this condition on the exemption, and any implications for consumer access to credit (again, noting that any of these loans that are qualified mortgages are exempt under the separate exemption for qualified mortgages, § 1026.35(c)(2)(i)).

Loans secured by a new manufactured home and land. Since issuing the Final Rule, the Agencies have obtained additional information on valuation methods for manufactured homes.

Appraisers and state appraiser boards consulted in outreach efforts confirmed that USPAP-compliant real property appraisals with interior inspections are possible and conducted with at least some regularity in these transactions.[16] The Agencies understand that these appraisals value the land and the home together as a package based upon

[15]The Bureau's new Regulation B valuation disclosure rules under the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.* (2013 ECOA Valuations Rule), consistent with current ECOA Regulation B, does not provide for the consumer to receive a copy of the manufacturer's invoice. *See* 12 CFR 1002.14(c) and comment 14(c)-2.iii (current Regulation B); *see also* 78 FR 7216 (Jan. 31, 2013) (issuing new 12 CFR 1002.14(b)(3) and comment 1002.14(b)(3)-3.iv, with an effective date of January 18, 2014).
[16] Comments on the Proposed Rule from a large real estate agent trade association also suggested that exempting these transactions may not be appropriate.

comparable transactions that have been exposed to the open market (as would be done with a site-built home or any other existing home).[17] They also can document additional value based on siting costs and the home's location, and in some cases can identify visible discrepancies between the manufacturer's specifications and the actual home once it is sited.

In addition, USPAP-compliant real property appraisals are regularly conducted for all transactions under federal government agency and government-sponsored enterprise (GSE) manufactured home loan programs.[18] HUD Title II program standards, for example, which apply to transactions secured by a manufactured home and land titled together as real property, require USPAP-compliant appraisals.[19]

A representative of manufactured home appraisers and a manufactured home community development financial institution (CDFI) representative stated that they conduct appraisals for loans secured by a new manufactured home and land before the home is sited based on plans and specifications for the new home. An interior property inspection occurs once the home is sited (although the CDFI representative indicated that it did not always use a state-certified or -licensed appraiser for the final inspection).

---

[17] *See*, *e.g.*, Texas Appraiser Licensing and Certification Board, "Assemblage As Applied to Manufactured Housing," available at http://www.talcb.state.tx.us/pdf/USPAP/AssemblageAsAppliedToMfdHousing.pdf.

[18] *See*, *e.g.*, HUD: 24 CFR 203.5(e); HUD Handbook 4150.2, Valuations for Analysis for Home Mortgage Insurance for Single Family One- to Four-Unit Dwellings (HUD Handbook 4150.2), chapter 8.4 and App. D; USDA: 7 CFR 3550.62(a) and 3550.73; USDA Direct Single Family Housing Loans and Grants Field Office Handbook (USDA Handbook), chapters 5.16 and, 9.18; VA: VA Lenders Handbook, VA Pamphlet 26-7 (VA Handbook), chapters 7.11, 11.3, and 11.4; Fannie Mae: Fannie Mae Single Family 2013 Selling Guide B5-2.2-04, Manufactured Housing Appraisal Requirements (04/01/2009); Freddie Mac: Freddie Mac Single Family Seller/Servicer Guide, H33: Manufactured Homes / H33.6: Appraisal requirements (02/10/12).

[19] Title II appraisal standards are available in HUD Handbook 4150.2. For supplemental standards for manufactured housing, see HUD Handbook 4150.2, chapters 8-1 through 8-4. The valuation protocol in Appendix D of HUD Handbook 4150.2 calls for a certification that the appraisal is USPAP compliant (page D-9).

These outreach participants suggested that, in their experience, qualified certified- or -licensed appraisers are not unduly difficult to find to perform these appraisals.[20]

In commenting on the Proposed Rule and in outreach, lenders have raised concerns that comparable sales ("comparables") of other manufactured homes can be particularly difficult to find. The Agencies understand that this can be a barrier to obtaining a manufactured home appraisal, especially in certain loan programs that require appraisals of manufactured homes to use a certain number of manufactured home comparables and have other restrictions on the comparables that may be used.[21] The Agencies note, however, that USPAP does not require that manufactured home comparables be used. USPAP allows the appraiser to use site-built or other types of home construction as comparables with adjustments where necessary.[22] A current version of the Appraisal Institute seminar on manufactured housing appraisals confirms that when necessary, USPAP appraisals can use non-manufactured homes as comparables, making adjustments where needed.[23] Based on their experience, an appraiser representative and a manufactured home CDFI representative in informal outreach with the Agencies stated that comparable properties have not been unduly difficult to find, even in rural areas.

---

[20] For HUD-insured loans secured by real property – a manufactured home and lot together – the Federal Housing Administration (FHA) requires creditors to use a HUD Title II Roster appraiser that can certify to prior experience appraising manufactured homes as real property. *See* HUD Title I Letter 481, Appendix 10-5.

[21] *See* Robin LeBaron, FAIR MORTGAGE COLLABORATIVE, Real Homes, Real Value: Challenges, Issues and Recommendations Concerning Real Property Appraisals of Manufactured Homes (Dec. 2012) at 19-28. This report is available at http://cfed.org/assets/pdfs/Appraising_Manufacture_Housing.pdf.

[22] *See* HUD Handbook 4150.2, chapter 8.4 (providing the following instructions on appraisals for manufactured homes insured under HUD's Title II program: "If there are no manufactured housing sales within a reasonable distance from the subject property, use conventionally built homes. Make the appropriate and justifiable adjustments for size, site, construction materials, quality, etc. As a point of reference, sales data for manufactured homes can usually be found in local transaction records.").

[23] *See* Appraisal Institute, "Appraising Manufactured Housing – Seminar Handbook," Doc. PS009SH-F (2008) at Part 8, 8-110.

Question 12: Based on this information, the Agencies request comment and information concerning whether to require USPAP-compliant appraisals with interior property inspections conducted by a state-licensed or -certified appraiser for HPMLs secured by both a new manufactured home and land.

Question 13: The Agencies also seek comment on whether some other valuation method should be required as a condition of the exemption from the HPML appraisal requirements.

At the same time, the Agencies believe that questions remain about the impact on the industry and consumers of requiring USPAP-compliant real property appraisals with interior inspections in transactions secured by a new manufactured home and land for which these types of appraisals are not already required. For example, manufactured home lenders commented on the Proposed Rule and shared in subsequent outreach that they typically do not conduct an interior inspection appraisal of a new manufactured home, but use other methods, such as relying on the manufacturer's invoice for the new home and conducting a separate, USPAP-compliant appraisal of the land.[24] Thus, requiring a USPAP-compliant appraisal with an interior inspection could require systems changes for some manufactured home lenders. If the USPAP-compliant appraisal with an interior inspection required under the Final Rule were more expensive than existing methods, then imposing the requirements of the Final Rule on these transactions would lead to additional costs that could be passed on in whole or in part to consumers.

[24] Some consumer and affordable housing advocates and appraisers in outreach have expressed the view that separately valuing the component parts of a manufactured home plus land transaction can result in material inaccuracies.

Question 14: Accordingly, the Agencies request data on the extent to which a USPAP-compliant real property appraisal with an interior property inspection would be of comparable cost to, or more or less expensive than, a USPAP-compliant appraisal of a lot combined with an invoice price for the home unit.

Question 15: The Agencies also request comment on the potential burdens on creditors and consumers and any potential reduction in access to credit that might result from imposing requirement for a USPAP-compliant appraisal with an interior property inspection on all manufactured home creditors of loans secured by both a new manufactured home and land. In this regard, the Agencies ask commenters to bear in mind that any of these transactions that are qualified mortgages are exempt from the HPML appraisal requirements under the separate exemption for qualified mortgages. *See* § 1026.35(c)(2)(i).

Question 16: Finally, the Agencies request comment on whether and the extent to which consumers in these transactions typically receive information about the value of their land and home and, if so, what information is received.

35(c)(2)(ii)(B)

Loans Secured Solely by an Existing Manufactured Home and Not Land

In new § 1026.35(c)(2)(ii)(B), the Agencies propose to exempt transactions secured solely by an existing (used) manufactured home and not land from the HPML appraisal requirements. Proposed comment 35(c)(2)(ii)(B)-1 would clarify that an HPML secured by a manufactured home and not land would not be subject to the appraisal requirements of § 1026.35(c), regardless of whether the home is titled as realty by operation of state law. The Agencies recognize that in certain states residential

structures such as manufactured homes may be deemed real property, even though they are not titled together with the land.[25] The Agencies believe that the barriers discussed in more detail below to producing USPAP-compliant real property appraisals with interior property inspections for manufactured homes in home-only transactions are the same regardless of whether a jurisdiction categorizes the manufactured home as personal property (chattel) or real property.

Question 17: The Agencies request comment on this view and approach.

The Agencies also considered an exemption for loans secured by both an existing manufactured home and land, but are not proposing an exemption for these HPMLs. A discussion of the proposed treatment of both types of loans (secured solely by an existing manufactured home and secured by an existing manufactured home plus land) is below.

Loans secured solely by an existing manufactured home and not land. The Agencies propose an exemption for transactions secured solely by an existing manufactured home and not land based on additional research and outreach. For the loans secured solely by an existing manufactured home and not land, the Agencies understand that current valuation practices generally do not involve using a state-certified or -licensed appraiser to perform a USPAP- and FIRREA-compliant real property appraisal with an interior property inspection, as required under TILA section 129H and the Final Rule. 15 U.S.C. 1639h. Outreach to manufactured home lenders indicated that they typically obtain replacement cost estimates derived from nationally-published cost services, taking into account the age (to derive depreciated values) and regional location of the home. One cost service adjustment form often used for this purpose also allows

[25] *See*, N.H. Rev. Stat. Ann § 477:44 (2013).

for an adjustment based upon the quality of the land-lease community where the property is located (if applicable).[26] Lenders have indicated that this method saves costs for consumers and creditors and has been found to be reasonably effective and accurate for purposes of ensuring a safe and sound loan.

In addition, lender commenters on the Proposed Rule raised concerns about the availability of data on comparable sales that may be used by appraisers for loans secured by an existing manufactured home and not land. They indicated that data from used manufactured home sales not involving land (usually titled as personal property) are not currently recorded in multiple listing services of most states, for example, so an appraiser's ability to obtain information on comparable manufactured homes without land is more limited than in real estate transactions. A provider of manufactured home valuation services subsequently confirmed to the Agencies that manufactured home sales information is generally not available through standard real estate data sources. The Agencies also understand that, in many states, appraisers are not currently required to be licensed or certified in order to perform personal property appraisals.

Accordingly, the Agencies believe that an exemption for these transactions from the HPML appraisal rules would be in the public interest because it would facilitate continued consumer access to HPML financing for existing manufactured homes, which are an important source of affordable housing.[27] The Agencies believe that this exemption also would promote the safety and soundness of creditors, because creditors

---

[26] *See* NADA, Manufactured Housing Cost Guide, available at NADAguides.com Value Report, available at www.nadaguides.com/Manufactured-Homes/images/forms/MHOnlineSample.pdf.

[27] *See generally*, Howard Baker and Robin LeBaron, FAIR MORTGAGE COLLABORATIVE, Toward a Sustainable and Responsible Expansion of Affordable Mortgages for Manufactured Homes (March 2013) at 9. This report is available at http://cfed.org/assets/pdfs/IM_HOME_Loan_Data_Collection_Project_Report.pdf.

would be able to continue using currently prevalent valuation methods, which can facilitate offering products that they have relied on to ensure profitability and product diversity to mitigate risk.

At the same time, consumer and affordable housing advocates have raised concerns about consumers borrowing more money than the home is worth in these transactions, which, as noted, also tend to have much higher rates than conventional loans secured by site-built homes.[28] The Agencies generally believe that consumers and creditors benefit when an accurate valuation is obtained for a credit transaction secured by the consumer's home. The Agencies further recognize that a manufactured home that has been previously occupied is subject to depreciation and might have wear and tear or other physical changes that can make the property value more difficult to assess than that of a new manufactured home.[29] The value of the home also may have changed as a result of changes in the broader housing market.

Question 18: The Agencies request comment on whether the proposed exemption should be conditioned on the creditor obtaining an alternative valuation (*i.e.*, a valuation other than a USPAP- and FIRREA-compliant real property appraisal with an interior property inspection) that is tailored to estimating the value of an existing manufactured home without land and providing a copy of it to the consumer.

The Agencies believe that an exemption conditioned in this way may be in keeping with the intent behind TILA section 129H to ensure that consumers have access

[28]*See, e.g.*, Howard Baker and Robin LeBaron, FAIR MORTGAGE COLLABORATIVE, Toward a Sustainable and Responsible Expansion of Affordable Mortgages for Manufactured Homes (March 2013) at 10.
[29]The Agencies understand that appraisers typically limit their valuations to clearly visible features or physical changes to the home that can impact value. Detailed examinations of wear and tear are the purview of home inspections, which generally are the responsibility of the consumer to obtain.

to information about the value of the home that would secure the loan before entering into an HPML. *See* TILA section 129H(c), 15 U.S.C. 1639h(c) (requiring a creditor to provide the applicant with a copy of any appraisal obtained under TILA section 129H).

Question 19: To inform the Agencies in considering this condition, the Agencies request information on whether creditors typically obtain valuations for loans secured solely by an existing manufactured home and not land and, if so, what types of valuations they obtain.

Question 20: The Agencies also seek commenters' views on the efficacy and accuracy of any prevailing valuation methods used for these loans. Some of these methods are discussed below.

As noted, the Agencies are aware that HUD has property valuation standards for HUD-insured loans secured by an existing manufactured home and not land.[30] In addition, for appraisals of manufactured homes "classified as personal property," HUD standards call for, among other requirements, the use of "an independent fee appraiser who has been certified by NADA to use NADA's National Appraisal System."[31] Specifically, among other requirements, creditors of these types of HUD-insured loans must obtain an appraisal reflecting the retail value of comparable manufactured homes in similar condition and in the same geographic area.[32] Relevant HUD appraisal requirements for these loans also include specifications for appraiser qualifications,

[30] *See* HUD Title I Letter 481 (Aug. 14, 2009), Appendices 8-9, C, and 10-5. The Agencies note that the HUD Title I program appraisal requirements are for determining eligibility for insurance that benefits the creditor.
[31] *See* HUD Title I Letter 481 (Aug. 14, 2009), Appendices 8-9, C, and 10-5, issued pursuant to authority granted to HUD under section 2(b)(10) of the National Housing Act, 12 U.S.C. 1703(b)(10). The Agencies understand that the NADA National Appraisal System is an appraisal method involving both the comparable sales and the cost approach.
[32] *See id*.

information that the creditor must provide to the appraiser, and the creditor's review of the appraisal.[33] The Agencies have concerns, however, that appraisers trained to conduct the types of appraisals required by HUD for its Title I program may be limited, but seek information on the availability of individuals to perform appraisals compliant with HUD Title I standards.

USPAP Standards 7 and 8 for personal property provide guidance for appraising personal property based on several approaches – the sales comparison approach, cost approach, and income approach – which are to be used as the appraiser determines necessary to produce a credible appraisal.[34] The Agencies are aware that there are comparable-based methods of valuing existing manufactured homes without land other than the method prescribed for the HUD Title I program. In addition, for the cost approach, cost services are available for creditors to consult and make adjustments based on several factors (which might differ depending on the cost service used), such as the property age, condition, the land-lease community, and the home's geographic location.[35] These resources enable the creditor to obtain a depreciated replacement cost for an existing manufactured home.

Question 21: The Agencies request comment on whether, to obtain the proposed exemption from the HPML appraisal rules for HPMLs secured by an existing

---

[33] *See id.* VA and USDA manufactured home programs do not involve transactions secured solely by a manufactured home and not land; thus, these programs do not incorporate special requirements for valuing these types of properties.

[34] *See, e.g.*, USPAP Standards Rule 7-4.

[35] *See, e.g.*, NADAguides.com Value Report, available at www.nadaguides.com/Manufactured-Homes/images/forms/MHOnlineSample.pdf; *see also* Fannie Mae Single Family 2013 Selling Guide B5-2.2-04, Manufactured Housing Appraisal Requirements (04/01/2009) and Freddie Mac Single Family Seller/Servicer Guide, H33: Manufactured Homes / H33.6: Appraisal requirements (02/10/12) (referencing the NADA Manufactured Housing Appraisal Guide® and the Marshall & Swift® Residential Cost Handbook as resources for manufactured home cost information).

manufactured home without land, a creditor should have to comply with the appraisal requirements for a manufactured home classified as personal property under HUD's Title I Manufactured Home Loan Insurance Program, or similar requirements involving comparable sales.

Question 22: In this regard, the Agencies also seek additional comment and information on the availability of: (1) comparable sales data for appraisers to use in an appraisal of a manufactured home alone, without land; and (2) state-certified or -licensed appraisers to appraise these properties.

Question 23: The Agencies also request comment on whether the proposed exemption would appropriately be conditioned on the creditor obtaining, and providing to the consumer, a valuation of the dwelling that uses an independently published cost guide with appropriate adjustments for factors such as home condition, accessories, location, and community features, as applicable.

Question 24: The Agencies request comment on whether use of a cost service with adjustments generally involves a physical inspection of the property, who conducts that physical inspection, and whether any condition on the proposed exemption allowing use of a cost service estimate with adjustments should require a physical inspection of the unit.

Question 25: In addition, the Agencies seek comment on whether an appropriate condition for an exemption from the HPML appraisal rules would be more generally that the creditor have obtained and provided to the consumer an appraisal compliant with USPAP Standards 7 and 8 for personal property. The Agencies are considering whether

it would be appropriate to provide the creditor with more than one option for obtaining an alternative valuation as a condition of this exemption.

Loans secured by an existing manufactured home and land. The Agencies considered also exempting transactions that are secured by both an existing manufactured home and land. However, at this stage, the Agencies believe that an exemption for these transactions from the USPAP-compliant real property appraisal standards in the Final Rule would not be in the public interest and promote the safety and soundness of creditors. As discussed in the section-by-section analysis of § 1026.35(c)(2)(ii)(A), federal government and GSE manufactured home loan programs generally require compliance with USPAP real property appraisal standards for appraisals in connection with transactions secured by both a manufactured home and land. The Agencies believe that these requirements may reflect that conducting a USPAP-compliant appraisal following USPAP Standards 1 and 2 for real property appraisals are feasible for existing manufactured homes together with land. This view was affirmed by several participants in informal outreach with experience in the area of manufactured home loan appraisals, who indicated that USPAP-compliant real property appraisals with an interior inspection are feasible and performed with regularity in these types of transactions.

For these reasons, the Agencies are not proposing to exempt loans secured by an existing manufactured home and land from the HPML appraisal requirements. The Agencies note that some commenters on the Proposed Rule recommended that the Agencies exempt these types of "land/home" transactions.[36]

[36] *See* 78 FR 10368, 10379-80 (Feb. 13, 2013).

Question 26: The Agencies request further comment whether to exempt these transactions and, if so, why an exemption would be in the public interest and promote the safety and soundness of creditors.

35(c)(2)(vii)

Certain Refinancings

The Agencies are also proposing to exempt from the HPML appraisal rules certain types of refinancings with characteristics common to refinance products often referred to as "streamlined" refinances. Specifically, the Agencies propose to exempt an extension of credit that is a refinancing where the owner or guarantor of the refinance loan is the current owner or guarantor of the existing obligation. In addition, the regular periodic payments under the refinance loan must not result in negative amortization, cover only interest on the loan, or result in a balloon payment. Finally, the proceeds from the refinance loan may be used solely to pay off the outstanding principal balance on the existing obligation and to pay closing or settlement charges.

As discussed more fully below, the Agencies believe that this exemption would be in the public interest and promote the safety and soundness of creditors. The following discussion of this proposed exemption includes a description of "streamlined" refinancing programs; a summary of the comments regarding an exemption for refinancings received on the 2012 Interagency Appraisals Proposed Rule; and an explanation of the requirements of, and conditions on, the proposed exemption.

Background

In an environment of historically low interest rates, the federal government has supported "streamlined" refinance programs as a way to promote the ongoing recovery of

the consumer mortgage market. Notably, the Home Affordable Refinance Program (HARP) was introduced by the U.S. Treasury Department in 2009 to provide refinance relief options to consumers following the steep decline in housing prices as a result of the financial crisis. The HARP program was expanded in 2011 and is currently set to expire in 2015.

Federal government agencies – HUD, VA, and USDA – as well as the GSEs have developed "streamlined" refinance programs to address consumer, creditor and investor risks.[37] These programs enable many consumers to refinance the balance of those mortgages through an abbreviated application and underwriting process.[38] Under these programs, consumers with little or no equity in their homes,[39] as well as consumers with significant equity in their homes,[40] can restructure their mortgage debt, often at lower interest rates or payment amounts than under their existing loans.[41]

---

[37] Under existing GSE "streamlined" refinance programs, Freddie Mac and Fannie Mae purchase and guarantee "streamlined" refinance loans for consumers under HARP (whose existing loans have loan-to-value ratios (LTVs) over 80 percent) as well as for consumers whose existing loans have LTVs at or below 80 percent.

[38] *See* Fannie Mae Single Family Selling Guide, chapter B5-5, section B5-5.2 (Refi Plus® and DU Refi Plus® loans); Freddie Mac Single Family Seller/Servicer Guide, chapters A24, B24, and C24 (Relief Refinance® Loans); HUD Handbook 4155.1, chapters 3.C and 6.C (Streamline Refinances) and Title I Appendix 11-3 (manufactured home streamline refinances); USDA Rural Development Admin. Notice 4615 (Rural Refinance Pilot); and VA Lenders Handbook, chapter 6 (Interest Rate Reduction Refinance Loans, or IRRRLs). Creditworthiness evaluations generally are not required for Refi Plus, Relief Refinance, HUD Streamline Refinance, or IRRRL loans unless borrower monthly payments would increase by 20 percent or more. *See* HUD Handbook 4155.1, chapter 6.C.2.d; Fannie Mae Single Family Selling Guide, chapter B5-5, section B5-5.2 (Refi Plus and DU Refi Plus loans); Freddie Mac Single Family Seller/Servicer Guide, chapters A24, B24, and C24; VA Lenders Handbook, chapter 6.1.c.

[39] For example, HARP supports refinancing through the GSEs for borrowers whose LTV exceeds 80 percent and whose existing loans were consummated on or before May 31, 2009. See http://www.makinghomeaffordable.gov/programs/lower-rates/Pages/harp.aspx.

[40] *See, e.g.*, Freddie Mac 2011 Annual Report at Table 52, reporting that the majority of Freddie Mac funding for Relief Refinances in 2011 was for borrowers with LTVs at or below 80%. This report is available at http://www.freddiemac.com/investors/er/pdf/10k_030912.pdf.

[41] Over two million streamlined refinance transactions occurred under FHA and GSE programs in 2012 (including both HPML and non-HPML refinances). According to public data recently reported by FHFA, 1,803,980 streamlined refinance loans occurred under Fannie Mae or Freddie Mac streamlined refinance programs. *See* FHFA Refinance Report for February 2013, available at http://www.fhfa.gov/webfiles/25164/Feb13RefiReportFinal.pdf. The Agencies estimate, based upon data

Valuation requirements of "streamlined" refinance programs. The "streamlined" underwriting for certain refinancings often, but not always, does not include a USPAP-compliant appraisal with an interior-inspection appraisal. One reason for this is that, in currently prevailing "streamlined" refinance programs, the value of the property securing the existing and refinance obligations is not considered to determine borrower eligibility for the refinance. The owner or guarantor of the existing loan retains the credit risk, and the "streamlined" refinance does not change the collateral component of that risk.

For "streamlined" refinances where the LTV exceeds or nearly exceeds 100 percent, the principal concern is not whether the creditor or investor could in the near term recoup the mortgage amount by foreclosing upon and selling the securing property. The immediate goals for these loans are to secure payment relief for the borrower and thereby avoid default and foreclosure; to allow the borrower to take advantage of lower interest rates; or to restructure their mortgage obligation to build equity more quickly – all of which reduce risk for creditors and investors and benefit consumers.

However, a valuation – usually through an automated valuation model (AVM) – may be obtained to estimate LTV for determining the appropriate securitization pool for the loan. LTV as determined by this valuation can also affect the terms offered to the consumer. Sometimes an appraisal is required when the property is not standardized, or the current holder of the loan does not have what it deems to be sufficient information about the property in its databases.

Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac each have "streamlined" refinance programs: Fannie Mae DU ("Desktop Underwriter®") Refi Plus

---

received from FHA during outreach to prepare this proposal, that the FHA insured 378,000 loans under its "Streamline" program in 2012.

and Refi Plus® and Freddie Mac Relief Refinance-Same Servicer/Open Access®. Under these programs, Fannie Mae must hold both the old and new loan, as must Freddie Mac under its program. An appraisal is not required when the GSEs are confident in an estimate of value, which is then provided to lenders originating loans under these programs.[42]

HUD/FHA. The HUD "Streamline" Refinance program administered by the Federal Housing Administration (FHA) permits but generally does not require a creditor to obtain an appraisal.[43] The Agencies understand that almost all FHA "streamlined" refinances are done without requiring an appraisal.[44] The FHA program does not require an alternative valuation type for transactions that do not have appraisals.

VA and USDA. VA and USDA programs do not require appraisals. The FHA, VA, and USDA streamline refinance programs also do not require an alternative valuation type for transactions that do not have appraisals.

Private "streamlined" refinance programs. The Agencies also believe that private creditors may offer "streamlined" refinance programs for borrowers meeting certain eligibility requirements.

Question 27: The Agencies seek comment and relevant data on how often private creditors obtain alternative valuation estimates in these transactions (*i.e.*, streamlined

[42]For GSE "streamlined" refinance transactions purchased in 2012 at LTVs of above 80 percent, AVM estimates were obtained for approximately 81 percent and appraisals (either interior inspection or exterior-only) were obtained for approximately 19 percent. For GSE "streamlined" refinance transactions purchased in 2012 at LTVs of 80 percent or below, AVM estimates were obtained for approximately 87 and appraisals (either interior inspection or exterior-only) were obtained for approximately 13 percent.
[43] *See, e.g.*, HUD Handbook 4155.1, chapter 6.C.1.
[44] According to data from FHA, in calendar year 2012, only 1.1 percent of FHA streamline refinances required an appraisal.

refinances outside of the government agency and GSE programs discussed above) when no appraisal is conducted.[45]

Public Comments on the 2012 Proposed Rule

A number of commenters on the 2012 Proposed Rule – a trade association representing community banks, a credit union association, a bank, and GSEs – recommended that the Agencies exempt refinancings. Some of these commenters expressed a view that the Dodd-Frank Act's "higher-risk mortgage" appraisal rules were not appropriate for refinancings designed to move a borrower into a more stable mortgage product with affordable payments. These types of refinancings often involve an abbreviated or "streamlined" underwriting process to facilitate the reduction of risks that the existing loan may pose for the consumer, the primary market creditor, and secondary market investors. Commenters pointed out, among other things, that these types of refinancings can be important credit risk management tools in the primary and secondary markets, and can reduce foreclosures, stabilize communities, and stimulate the economy. GSE commenters indicated that in many cases loans originated under federal government "streamlined" refinance programs do not require appraisals and asserted that doing so would interfere with these programs.

Consumer advocates did not comment on the 2012 Proposed Rule, but in subsequent informal outreach with the Agencies for this proposal, expressed concerns about not requiring appraisals in HPML "streamlined" refinance programs. They

[45] In general, FIRREA regulations governing appraisal requirements permit the use of an "evaluation" (or in the case of NCUA, a "written estimate of market value") rather than an appraisal in same-creditor refinances that involve no new monies except to pay reasonable closing costs and, in the case of the NCUA, no obvious and material change in market conditions or physical adequacy of the collateral. *See* OCC: 12 CFR §§ 34.43 and 164.3; Board: 12 CFR 225.63; FDIC: 12 CFR 323.3; NCUA: 12 CFR 722.3. *See also* OCC, Board, FDIC, NCUA, *Interagency Appraisal and Evaluation Guidelines*, App. A-5, 75 FR 77450, 77466-67 (Dec. 10, 2010).

expressed the view that a quality appraisal that is also required to be made available to the consumer can be a tool to prevent fraud in refinance transactions. They also pointed out instances in which an appraisal on a refinance transaction revealed appraisal fraud on the original purchase transaction.

Question 28: The Agencies invite further comment on these and related concerns, and appropriate means of addressing these concerns as part of this rulemaking.

Discussion

The Agencies decline to propose an exemption for all refinance loans, as a few commenters suggested. The appraisal rules in TILA Section 129H apply to "residential mortgage loans" that are higher-priced and secured by the consumer's principal dwelling. TILA section 129H(f), 15 U.S.C. 1639h(f). The term "residential mortgage loan" includes refinance loans.[46] Accordingly, the Agencies believe that an exemption for all HPML refinances would be overbroad. For example, in refinances involving additional cash out to the consumer, consumer equity in the home can decrease significantly, increasing risks, so the Agencies do not believe an exemption from this rule would be appropriate.

The Agencies do, however, believe that a narrower exemption for certain types of HPML refinance loans, generally consistent with the program criteria for "streamlined" refinances under GSE and federal government agency programs, would be in the public interest and promote the safety and soundness of creditors. The Agencies recognize that, by reducing the risk of foreclosures and helping borrowers better afford their mortgages,

[46] "The term 'residential mortgage loan' means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan …" TILA section 103(cc)(5), 15 U.S.C. 1602(cc)(5).

"streamlined" refinancing programs can contribute to stabilizing communities and the economy, both now and in the future. "Streamlined" HPML refinances can help borrowers who are at risk of default in the near future, as well as those who might not default in the near term, but could significantly benefit by refinancing into a lower rate mortgage for considerable cost savings over time. The Agencies also recognize that "streamlined" refinancing programs assist creditors and secondary market investors in managing credit risks. Originating HPML refinances that are beneficial to consumers can be important to creditors to ensure the continuing performance of loans on their books and to strengthen customer relations. For investors holding these loans, the "streamlined" refinances can reduce financial risks associated with potential defaults and foreclosures.

The Agencies believe that an exemption from the HPML appraisal rules for certain HPML refinances would ensure that the time and cost generated by new appraisal requirements are not introduced into HPML transactions that are not qualified mortgages but that are part of programs to help consumers avoid defaults and improve their financial positions, and help creditors and investors avoid losses and mitigate credit risk.

As discussed previously, the Agencies understand that, under the "streamlined" underwriting standards for several government and GSE refinancing programs, a full interior inspection appraisal is often not required. One reason for this is that the current value of the property securing the existing and refinance obligations generally is not considered to determine borrower eligibility for the refinance. The owner or guarantor of the existing loan retains the credit risk, and the "streamlined" refinance does not change the collateral component of that risk.

In a "streamlined refinance," the principal concern is not valuing the collateral to determine whether the creditor or investor could in the near term recoup the mortgage amount by foreclosing upon and selling the securing property if necessary. Goals for these loan programs include securing payment relief for the borrower and thereby avoid default and foreclosure; allowing the borrower to take advantage of lower interest rates; and enabling the borrower to restructure his or her mortgage obligation to build equity more quickly – all of which reduce risk of default and thereby promote the safety and soundness of creditors and investors and benefit consumers.

Relationship to the 2013 ATR Final Rule. Under the Bureau's 2013 ATR Final Rule, loans eligible to be purchased, guaranteed, or insured by Fannie Mae, Freddie Mac, HUD, VA, USDA, or RHS are subject to the general ability-to-repay rules (found in § 1026.43(c)). *See* § 1026.43(e)(4)(ii). However, if they meet certain criteria,[47] they are considered "qualified mortgages" entitled to either a presumption of compliance or a safe harbor ensuring compliance with the general ability-to-repay rules, depending on the loan's interest rate.[48] *See* § 1026.43(e)(1), (e)(4). (Of course, they also can be "qualified mortgages" if they meet all the ability-to-repay criteria under the general definition of "qualified mortgage" *See* § 1026.43(e)(2).) As qualified mortgages, they are exempt from the HPML appraisal rules. *See* § 1026.35(c)(2)(i).

[47] *See* § 1026.43(e)(4)(i)(A) (cross-referencing § 1026.43(e)(2)(i) through (iii), which require that the loan not result in negative amortization or provide for interest-only or balloon payments; limit the loan term at 30 years; and cap points and fees to three percent of the loan amount (with a higher cap for loans under $100,000).

[48] Creditors making qualified mortgages that are "higher-priced" are entitled to a rebuttal presumption of compliance with the general ability-to-repay rules, while creditors making qualified mortgages that are not "higher-priced" are entitled to a safe harbor of compliance. A "higher-priced covered transaction" under the Bureau's 2013 ATR Rule is a transaction covered by the general ability-to-repay rules "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 first-lien covered transaction, or by 3.5 or more percentage points for a subordinate-lien covered transaction." § 1026.43(b)(4).

However, the Agencies believe that the separate exemption for certain refinances from the HPML appraisal requirement proposed in § 1026.35(c)(2)(vii) may be needed. First, the 2013 ATR Final Rule limits the qualified mortgage status of loans purchased or guaranteed by Fannie Mae and Freddie Mac under the special rules of § 1026.43(e)(4) . However, these loans will not be eligible to be qualified mortgages if consummated on or after January 10, 2021, unless they meet the general definition of a qualified mortgage in § 1026.43(e)(2). *See* § 1026.43(c)(4)(iii)(B). For loans eligible to be insured or guaranteed under a HUD, VA, USDA, or RHA program, the qualified mortgage status conferred under § 1026.43(e)(4)(i) would be replaced for each type of loan when those agencies respectively issue rules defining a qualified mortgage based on each agency's own programs. *See* § 1026.43(e)(4)(iii)(A); *see also* TILA section 129C(b)(3)(ii), 15 U.S.C. 1639c(b)(3)(ii).

Second, the Agencies believe that many private "streamlined" mortgage programs are likely to have similar benefits to consumers, creditors, and credit markets as those under GSE and government agency programs. However, not all private "streamlined" refinances that are HPMLs will be qualified mortgages because some could exceed the 43 percent debt-to-income ratio cap or fail to meet other qualified mortgage conditions. *See, e.g.*, § 1026.42(e)(2). The Agencies believe that an exemption for not only GSE and government agency "streamlined" refinances, but also refinance loans under proprietary "streamlined" refinance programs, may be warranted.

The Agencies considered limiting an exemption from the HPML appraisal rules for private "streamlined" refinances to refinances of non-standard to standard mortgages that would qualify for an exemption from the ability-to-repay rules under new

§ 1026.43(d) of the 2013 ATR Final Rule. However, the Agencies believe that the refinances exempt from the ability-to-repay rules under § 1026.43(d) include a universe of refinances that is narrower than the Agencies believe desirable for an exemption from the HPML appraisal rules. For example, to qualify for the ability-to-repay exemption as a refinance under § 1026.43(d), the existing obligation must be an adjustable-rate mortgage (ARM), an interest-only loan, or a negative amortization loan. *See* § 1026.43(d)(1)(i). In addition, among other conditions, the creditor must have considered whether the refinance loan "likely will prevent a default by the consumer on the non-standard mortgage once the loan is recast" out of the introductory rate under an ARM or higher payments under an interest-only or negative amortization loan. *See* § 1026.43(d)(3)(ii). However, the Agencies believe that "streamlined" refinance programs can benefit consumers and promote the safety and soundness of financial institutions even where the consumer is not at risk of imminent default.

Definition of "refinancing." Proposed § 1026.35(c)(2)(vii) defines a "refinancing" to mean "refinancing" in § 1026.20(a).[49] However, in contrast to the definition of "refinancing" under § 1026.20(a), a "refinancing" under proposed § 1026.35(c)(2)(vii) does not restrict who the creditor is for either the refinancing or the

[49] Section 1026.20(a) defines a "refinancing" as follows: "A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. The following shall not be treated as a refinancing:
(1) A renewal of a single payment obligation with no change in the original terms.
(2) A reduction in the annual percentage rate with a corresponding change in the payment schedule.
(3) An agreement involving a court proceeding.
(4) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in section 1026.4(d).
(5) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart."

existing obligation. Commentary to § 1026.20(a) clarifies that a "refinancing" under § 1026.20(a) includes "only refinancings undertaken by the original creditor or a holder or servicer of the original obligation." *See* comment 20(a)-5. By contrast, the proposed exemption allows a different creditor to extend the refinance loan, as long as the owner or guarantor remains the same on both the existing loan and the refinance. This aspect of the proposal is discussed more fully below.

35(c)(2)(vii)(A)

Same owner or guarantor. Consistent with "streamlined" refinance programs discussed previously, proposed § 1026.35(c)(2)(vii)(A) requires that, for the exemption for certain refinancings to apply, the owner or guarantor of the refinance loan must be the current owner or guarantor of the existing obligation. The Agencies propose to include this requirement as a condition of obtaining the refinance loan exemption from the HPML appraisal rules because the Agencies believe that this restriction is important to promote the safety and soundness of financial institutions and in turn benefits the public.

The proposed rule uses the terms "owner or guarantor" rather than the term "holder" to clarify that the proposed regulation refers to the entity that either owns the credit risk because the loan is held in its portfolio or that guarantees the credit risk on a loan held in an asset-backed securitization. For example, assume Fannie Mae holds an existing obligation in its portfolio, which is then refinanced under one of Fannie Mae's "streamlined" refinance programs into a loan with a better rate and lower payments for the consumer. Fannie Mae might then decide to place the new refinance loan into a pool of loans guaranteed by Fannie Mae; in this case, Fannie Mae would technically be the guarantor, not the "owner." However, under the proposal, the refinance would meet the

condition of proposed § 1026.35(c)(2)(vii)(A)(1) because the owner or guarantor remains the same on the refinance loan as on the existing obligation. Proposed comment 35(c)(2)(vii)(A)-1 clarifies that the term "owner" in § 1026.35(c)(2)(vii)(A) refers to an entity that owns and holds a loan in its portfolio.

This comment would further clarify that "owner" does not refer to an investor in a mortgage-backed security. This proposed clarification is intended to ensure that creditors do not have to look to the individual owners of mortgage-backed securities to determine the same-owner status. The rationale for the same-owner requirement is not based upon the pooled mortgage situation where more than one investor holds an indirect interest in a loan through ownership of a mortgage-backed security. Accordingly, this comment also clarifies that the term "guarantor" in proposed § 1026.35(c)(2)(vii)(A)(1) refers to the entity that guarantees the credit risk on a loan held by the entity in a mortgage-backed security.

The Agencies believe that conditioning the exemption on the owner or guarantor remaining the same helps to promote the safety and soundness of creditors. This includes situations in which the refinancing creditor either owns the existing loan or has arranged to transfer the loan to a GSE or other entity that owns the existing loan. In these cases, the owner or guarantor of the refinance already holds the credit risk. In addition, the owner or guarantor of the existing obligation may have familiarity with the property or relevant market conditions as a result of having evaluated property value documents when taking on the original credit risk, as well as ongoing portfolio monitoring. By contrast, when the owner or guarantor of the "streamlined" refinance is not also the owner or guarantor of the existing loan, then the "streamlined" refinance involves new

risk to the owner or guarantor of the "streamlined" refinance, whose safety and soundness would therefore be better served by a USPAP-compliant appraisal with an interior inspection.[50]

The Agencies generally believe that the "same owner or guarantor" criterion for the proposed exemption makes it unnecessary to require that the creditor (which is not necessarily the owner of the loan) also be the same for both the existing obligation and the refinance loan. If consumers can shop for a "streamlined" refinancing among multiple creditors without having to obtain an appraisal, they may be able to obtain better rates and terms.

As a general matter, the purpose of the exemption for certain refinance transactions is to facilitate transactions that can be beneficial to borrowers even though they are higher-priced loans. When the consumer is not obtaining additional funds to increase the amount of the debt, and the entity that will own or guaranty the refinance loan is already the credit risk holder on the existing loan, there may be insufficient benefit from obtaining a new appraisal to warrant the additional cost.

Questions have been raised, however, about whether safety and soundness issues might arise in some situations that would warrant an appraisal, even when the risk holder will remain the same. Specifically, in some private refinance transactions, the originating

[50] Legislative history of the Dodd-Frank Act also suggests that Congress believed that certain underwriting requirements were not necessary in refinances where the holder of the credit risk remains the same: "However, certain refinance loans, such as VA-guaranteed mortgages refinanced under the VA Interest Rate Reduction Loan Program or the FHA streamlined refinance program, which are rate-term refinance loans and are not cash-out refinances, may be made without fully reunderwriting the borrower . . . . It is the conferees' intent that the Federal Reserve Board and the CFPB use their rulemaking authority . . . to extend the same benefit for conventional streamlined refinance programs where the party making the refinance loan already owns the credit risk. This will enable current homeowners to take advantage of current loan interest rates to refinance their mortgages." Statement of Sen. Dodd, 156 Cong. Rec. S5928 (July 15, 2010).

creditor for the refinance loan may be assuming "put-back" risk. This risk may be lessened if the holder or guarantor is a federal agency or GSE that operates under guidelines that limit the put-back risk for the originator.

Question 29: Accordingly, the Agencies solicit comment on the circumstances in which the originator's assumption of put-back risk raises safety and soundness concerns that weigh in favor of requiring the originator to obtain a USPAP-compliant appraisal with an interior property inspection for a "streamlined" refinance loan.

Question 30: The Agencies also seek information on the valuation practices of private creditors for refinanced loans where the private owner or guarantor remains the same and the loans are not sold to a GSE or insured or guaranteed by a federal government agency, including how often no valuation is obtained.[51]

35(c)(2)(vii)(B)

Prohibition on certain risky features. Proposed § 1026.35(c)(2)(vii)(B) would require that a refinancing eligible for an exemption from the HPML appraisal rules not allow for negative amortization ("cause the principal balance to increase"), interest-only payments ("allow the consumer to defer repayment of principal"), or a balloon payment, as defined in § 1026.18(s)(5)(i).[52]

Proposed comment 35(c)(2)(vii)(B)-1 would state that, under § 1026.35(c)(2)(vii)(D), a refinancing must provide for regular periodic payments that do not: result in an increase of the principal balance (negative amortization), allow the

[51] *See* OCC: 12 CFR §§ 34.43 and 164.3; Board: 12 CFR 225.63; FDIC: 12 CFR 323.3; NCUA: 12 CFR 722.3. *See also* OCC, Board, FDIC, NCUA, *Interagency Appraisal and Evaluation Guidelines*, App. A-5, 75 FR 77450, 77466-67 (Dec. 10, 2010).

[52] Section 1026.18(s)(5)(i) defines "balloon payment" as "a payment that is more than two times a regular periodic payment."

consumer to defer repayment of principal (*see* comment 43(e)(2)(i)-2), or result in a balloon payment. The comment would thus clarify that the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. The comment would further state that, except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. The comment would cross-reference comment 43(c)(5)(i)-4 of the Bureau's 2013 ATR Final Rule for an explanation of the term "substantially equal."[53] The comment would also clarify that a single-payment transaction is not a refinancing meeting the requirements of § 1026.35(c)(2)(vii) because it does not require "regular periodic payments."

The information provided by a USPAP-compliant real property appraisal with an interior property inspection may be particularly important for creditors and consumer where these features are present. For example, additional equity may be needed to support a loan with negative amortization, and the risk of default might be higher for loans with interest-only and balloon payment features.

[53] Comment 43(c)(5)(i)-4 states as follows: "In determining whether monthly, fully amortizing payments are substantially equal, creditors should disregard minor variations due to payment-schedule irregularities and odd periods, such as a long or short first or last payment period. That is, monthly payments of principal and interest that repay the loan amount over the loan term need not be equal, but the monthly payments should be substantially the same without significant variation in the monthly combined payments of both principal and interest. For example, where no two monthly payments vary from each other by more than 1 percent (excluding odd periods, such as a long or short first or last payment period), such monthly payments would be considered substantially equal for purposes of this section. In general, creditors should determine whether the monthly, fully amortizing payments are substantially equal based on guidance provided in § 1026.17(c)(3) (discussing minor variations), and § 1026.17(c)(4)(i) through (iii) (discussing payment-schedule irregularities and measuring odd periods due to a long or short first period) and associated commentary."

The Agencies recognize that consumers who need immediate relief from payments that they cannot afford might benefit in the near term by refinancing into a loan that allows interest-only payments for a period of time. However, the Agencies believe that a reliable valuation of the collateral is important when the consumer will not be building any equity for a period of time. In that situation, the consumer and credit risk holder may be more vulnerable should the property decline in value than they would be if the consumer were paying some principal as well.[54]

The Agencies also recognize that, in most cases, balloon payment mortgages are originated with the expectation that a consumer will be able to refinance the loan when the balloon payment comes due. These loans are made for a number of reasons, such as to control interest rate risk for the creditor or as a wealth management tool, usually for higher-asset consumers. Regardless of why a balloon mortgage is made, however, there is always risk that a consumer will not be able to either independently make the balloon payment or refinance, with significant consequences if something unexpected happens and the consumer cannot do so. To protect the creditor's safety and soundness, the creditor should have a firm understanding of the value of the collateral and the trajectory of property values in the area in making a balloon mortgage. This can help the creditor adjust loan and payment terms to mitigate default risk, which benefits both the creditor and the consumer.

The Agencies note that the GSE and government "streamlined" refinance programs described above do not allow these features, in part because helping a

[54] The Agencies acknowledge that these increased risks may be lower where the interest-only period is relatively short (such as one or two years), because the payments in the early years of a mortgage are heavily weighted toward interest; thus the consumer would be paying down little principal even in making fully amortizing payments.

consumer pay off debt more quickly is one of the goals of these programs.[55] In addition, the prohibition on risky features for this proposed exemption is consistent with provisions in the Dodd-Frank Act reflecting congressional concerns about these loan terms. For example, in Dodd-Frank Act provisions regarding exemptions from certain ability-to-repay requirements for refinancings under HUD, VA, USDA, and RHS programs, Congress similarly required that the refinance loan be fully amortizing and prohibited balloon payments.[56] The proposal is also consistent with a provision in the Bureau's 2013 ATR Final Rule that exempts from all ability-to-repay requirements the refinancing of a "non-standard mortgage" into a "standard mortgage." *See* § 1026.43(d). To be eligible for this exemption from the ability-to-repay rules, the refinance loan must, among other criteria, not allow for negative amortization, interest-only payments, or a balloon payment. *See* § 1026.43(d)(1)(ii). Further, no GSE or federal government agency "streamlined" refinance program allows these features. The Agencies believe that these statutory provisions and program restrictions reflect a judgment on the part of Congress, government agencies, and the GSEs that refinances with negative amortization, interest-only payment features, or balloon payments may increase risks to consumers and creditors.

In sum, the Agencies are concerned that negative amortization, interest-only payments, and balloon payments are loan features that may increase a loan's risk to

[55] *See*, *e.g.*, Fannie Mae, "Home Affordable Refinance (DU Refi Plus and Refi Plus) FAQs" (June 7, 2013) at 11 (describing options for meeting the requirement that the refinance provide a borrower benefit); Freddie Mac, "Freddie Mac Relief Refinance Mortgages[SM] – Open Access Eligibility Requirements" (January 2013) at 1 (describing options for meeting the requirement that the refinance provide a borrower benefit).

[56] *See* Dodd-Frank Act section 1411(a)(2), TILA section 129C(a)(5)(E) and (F), 15 U.S.C. 1639c(a)(5)(E) and (F). TILA section 129C(a)(5) authorizes HUD, VA, USDA, and RHS to exempt "refinancings under a streamlined refinancing" from the Act's income verification requirement of the ability-to-repay rules. 15 U.S.C. 1639c(a)(5). *See also* TILA section 129c(a)(4), 15 U.S.C. 1639c(a)(4).

consumers as well as to primary and secondary mortgage markets.[57] Thus, in the Agencies' view, permitting these non-qualified mortgage HPML refinances to proceed without USPAP-compliant real property appraisals with interior inspections would not be consistent with the Agencies' exemption authority, which permits exemptions only if they promote the safety and soundness of creditors and are in the public interest.

Question 31: The Agencies request comment on whether prohibiting the regular periodic payments on the refinance loan from resulting in negative amortization, payment of only interest, or a balloon payment is an appropriate condition for an exemption from the HPML appraisal rules for "streamlined" refinances.

35(c)(2)(vii)(C)

No cash out. Proposed § 1026.35(c)(2)(vii)(C) would require that the proceeds from a refinancing eligible for an exemption from the HPML appraisal rules be used for only two purposes: (1) to pay off the outstanding principal balance on the existing first-lien mortgage obligation; and (2) to pay closing or settlement charges required to be disclosed under RESPA.

Proposed comment 35(c)(2)(vii)(C)-1 would state that the exemption for a refinancing under § 1026.35(c)(2)(vii) is available only if the proceeds from the refinancing are used exclusively for two purposes: paying off the consumer's existing first-lien mortgage obligation and paying for closing costs, including paying escrow amounts required at or before closing. According to this comment, if the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not

[57] *See also* OCC, Board, FDIC, NCUA, "Interagency Guidance on Nontraditional Mortgage Product Risks," 71 FR 58609 (Oct. 4, 2006).

qualify for the refinancing exemption from the HPML appraisal rules under § 1026.35(c)(2)(vii).

The Agencies also view the proposed limitation on the use of the refinance loan's proceeds as necessary to ensure that the principal balance of the loan does not increase, or increases only minimally. This in turn helps ensure that the consumer is not losing significant additional equity and that the holder of the credit risk is not taking on significant new risk, in which case a full interior inspection appraisal to assess the change in risk could be beneficial to both parties.

The Agencies also note that limiting the use of proceeds to allow for no extra cash out for the consumer other than closing costs is consistent with prevailing "streamlined" refinance programs.[58] It is also consistent with the exemption from the Bureau's ability-to-repay rules for refinances of "non-standard mortgages" into "standard mortgages."[59] *See* § 1026.43(d)(1)(ii)(E). The Agencies believe that consistency across mortgage rules can help facilitate compliance and ease compliance burden.

Question 32: The Agencies request comment on this proposed condition on the "streamlined" refinance exemption, and whether other protections are warranted to ensure that the loan's principal balance and overall costs to the consumer do not materially increase.

Question 33: In this regard, the Agencies specifically seek comment on whether the Agencies should require that financed points and fees on the refinance loan not

[58] *See*, *e.g.*, Fannie Mae Single Family Selling Guide, chapter B5-5, Section B5-5.2; Freddie Mac Single Family Seller/Servicer Guide, chapters A24, B24 and C24.

[59] Under the 2013 ATR Final Rule, a refinance loan or "standard mortgage" is one for which, among other criteria, the proceeds from the loan are used solely for the following purposes: (1) to pay off the outstanding principal balance on the non-standard mortgage; and (2) to pay closing or settlement charges required to be disclosed under RESPA. *See* § 1026.43(d)(1)(ii)(E).

exceed a certain percent, such as the percentage caps for points and fees on qualified mortgages. *See* § 1026.43(e)(3); *see also* § 1026.43(d)(1)(ii)(B) (capping points and fees for refinances of "non-standard mortgages" into "standard mortgages" exempt from ability-to-repay requirements). For example, the Agencies heard from consumer advocates that frequent, serial refinancing with higher points and fees could lead to a significant loss of equity, and increased exposure for creditors, that would warrant a new appraisal for the same or similar reasons that an appraisal would be important where additional cash out is obtained.

Additional condition: obtaining an alternative valuation and providing a copy to the consumer.

Question 34: The Agencies also seek comment on whether the exemption for refinance loans should be conditioned on the creditor obtaining an alternative valuation (*i.e.*, a valuation other than a FIRREA- and USPAP-compliant real property appraisal with an interior inspection) and providing a copy to the consumer three days before consummation. In requesting comment on this issue, the Agencies note that the purpose of TILA section 129H is, in part, to protect consumers by ensuring that they receive a copy of an appraisal with an interior property inspection of the home before entering into a HPML that is not a qualified mortgage. 15 U.S.C. 1639h. Specifically, TILA section 129H mandates providing a copy of an appraisal with an interior property inspection for HPMLs that are not exempt from the appraisal requirements, three days before closing,

with no option to waive this right. *See* TILA section 129H(c), 15 U.S.C. 1639h(c).[60] The Agencies' Final Rule implements these requirements. *See* § 1026.35(c)(6).

A refinanced mortgage loan is a significant financial commitment: for example, the refinance loan can have an extended term, typically as long as 30 or 40 years; the refinance loan can be an adjustable-rate mortgage that creates interest rate risk in the future; the refinance loan may actually have increased payments (for example, if the term of the new loan is shorter); and a "streamlined" refinance transaction has transaction costs.

Question 35: Because refinances do involve potential risks and costs, the Agencies seek comment on whether conditioning the proposed exemption on creditors obtaining an alternative valuation and giving a copy to the consumer would better position consumers to consider alternatives to refinancing, and whether consumers seeking refinances typically need or want to consider alternatives. These alternatives might include, among others, remaining in the home with the existing loan; refinancing through a different program that would involve underwriting, potentially at a better rate or other improved terms; seeking a possible loan modification; or selling the home.

Question 36: The Agencies seek comment and relevant data on whether this additional condition would be necessary. In this regard, the Agencies understand that some type of estimate of value is typically developed in a "streamlined" refinance transaction. For example, for any loan not eligible for a federal government program or

[60] A similar requirement under ECOA permits the consumer to waive the right to receive a copy of valuations or appraisals in connection with an application for a first-lien mortgage secured by a dwelling no later than three days before closing. The consumer may not, however, waive the right to receive copies of valuations or appraisals altogether. *See* ECOA section 701(e)(2), 15 U.S.C. 1691(e)(2). Regulations implementing this provision were adopted by the Bureau earlier this year in the 2013 ECOA Valuations Rule. *See* 78 FR 7216 (Jan. 31, 2013); Regulation B, 12 CFR § 1002.14(a)(1).

to be sold to a GSE, federally-regulated depositories have to obtain either an "evaluation" or an appraisal for a refinance transaction.[61]

In addition, as of January 2014, amendments to ECOA, implemented by the Bureau in revised Regulation B, will require all creditors to provide to credit applicants free copies of appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling.[62] *See* 12 CFR 1002.14(a)(1); 78 FR 7216 (Jan. 31, 2013) (2013 ECOA Valuations Final Rule). The copies must be provided to the applicant promptly upon completion or three business days before consummation. *See id*. Regulation B defines "valuation" to mean "any estimate of the value of a dwelling developed in connection with an application for credit."[63] *Id.* § 1002.14(b)(3).

The Agencies recognize, however, that estimates of value might not always be required by federal law or investors. For example, certain non-depositories and depositories are not subject to the appraisal and evaluation requirements that apply to depositories under FIRREA, and might not obtain a valuation on a "no cash out" refinance.

---

[61] *See* OCC: 12 CFR §§ 34.43 and 164.3; Board: 12 CFR 225.63; FDIC: 12 CFR 323.3; NCUA: 12 CFR 722.3. *See also* OCC, Board, FDIC, NCUA, *Interagency Appraisal and Evaluation Guidelines*, 75 FR 77450, 77458-61 and App. A, 77465-68 (Dec. 10, 2010). In addition, as noted (*see infra* note 42), data on GSE "streamlined" refinances indicates that either an AVM or an appraisal (interior inspection or exterior-only) was obtained for all "streamlined" refinances purchased by the GSEs in 2012.

[62] All refinances proposed for an exemption would be first-lien mortgage loans.

[63] "Valuation" is separately defined in Regulation Z, § 1026.42(b)(3). That definition does not include AVMs, however, which was deemed appropriate for purposes of the appraisal independence rules under § 1026.42. Here, however, the Agencies believe that an estimate of value provided to the consumer could appropriately include an AVM.

Question 37: The Agencies request comment generally on the extent to which either appraisals or other valuation tools such as AVMs or broker price opinions are used in connection with "streamlined" refinances by non-depositories in particular.

Question 38: The Agencies also seek comment on whether additional criteria or guidance would be needed to describe the type of home value estimate that a creditor would have to obtain and provide to the consumer and, if so, what the additional criteria or guidance should address.

Other conditions. The Agencies are not proposing additional conditions in the regulation text on the types of refinancings eligible for the exemption from the HPML appraisal rules. In this way, the Agencies seek to maintain flexibility for government agencies, GSEs, and private creditors to adapt and change their borrower eligibility requirements and other requirements for "streamlined" HPML refinances to address changing market environments and factors that may be unique to their programs. At this time the Agencies do not see the need to impose conditions that address borrower eligibility, such as requiring that the borrower have been on-time with payments on the existing mortgage for a certain period of time.

For example, some "streamlined" refinance programs currently require that borrower eligibility criteria be met, such as that the consumer have been current on the existing obligation for a certain period of time.[64] Some of these programs also provide that certain benefits must be present in the transaction, such a lower monthly payment or

[64] *See also* 2013 ATR Final Rule § 1026.43(d)(2)(iv) and (v). The exemption from the ability-to-repay rules for refinances of "non-standard mortgages" into "standard mortgages" under the 2013 ATR Final Rule requires that, among other conditions: (1) the consumer made no more than one payment more than 30 days late on the non-standard mortgage in 12-month period before applying for the standard mortgage; and (2) the consumer made no payments more than 30 days late in the six-month period before applying for the standard mortgage. *See* § 1026.43(d)(2)(iv) and (v).

lower interest rate. For this proposed exemption from the HPML appraisal requirements for refinances, the Agencies are not proposing to impose conditions that address borrower eligibility or to define what types of benefits must result from the transaction. The Agencies believe that it is unclear how the need for a particular type of appraisal (versus some other type of valuation that the creditor may perform under other regulations or its own policies) relates to borrower eligibility requirements or the existence of a borrower benefit in the new transaction.

Question 39: However, the Agencies request comment on whether the Agencies should adopt additional criteria for HPML "streamlined" refinancings that would be exempt from the HPML appraisal rules, including, but not limited to, requirements regarding whether the consumer has an on-time payment history and whether consumer "benefits" exist as part of the refinance transaction. The Agencies request that commenters supporting inclusion of these types of criteria explain why and comment on what the parameters of an on-time payment history should be and how "benefit" should be defined.

Conclusion

For the reasons discussed previously, the Agencies believe that an exemption from the HPML appraisal rules for refinances under the proposed conditions would be "in the public interest and promotes the safety and soundness of creditors." TILA section 129H(b)(4)(B), 15 U.S.C. § 1639h(b)(4)(B). The Agencies believe that an exemption from the HPML appraisal rules for these loans would ensure that the time and cost of new appraisal requirements are not introduced into non-qualified mortgage HPML transactions that are part of programs designed to help consumers avoid defaults and

improve their financial positions, and help creditors and investors avoid losses and mitigate credit risk. The Agencies further believe that the exemption is appropriately narrow in scope to capture the types of refinancings that Congress has generally expressed an intent to facilitate, without being overbroad by exempting all HPML refinances from the HPML appraisal rules. *See*, *e.g.*, TILA sections 129C(a)(5) and (6), 15 U.S.C. 1639c(a)(5) and (6).[65]

35(c)(viii)

Extensions of Credit for $25,000 or Less

The Agencies are also proposing an exemption from the HPML appraisal rules for extensions of credit of $25,000 or less, indexed every year for inflation. In the 2012 Proposed Rule, the Agencies requested comment on exemptions from the final rule that would be appropriate. In response, several commenters recommended an exemption for smaller dollar loans. These commenters generally believed that interior inspection appraisals on these loans would significantly raise total costs as a proportion of the loan and thus potentially be detrimental to consumers.

Public Comments on the 2012 Proposed Rule

Commenters on the 2012 Proposed Rule that indicated support for a smaller dollar loan exemption included a state credit union association, representatives of six banks, two manufactured housing trade associations, a national community development organization, and two individuals. No comments received opposed an exemption for smaller dollar loans, though no comments were received from consumers or consumer advocates.

[65] *See also* Statement of Sen. Dodd, 156 Cong. Rec. S5928 (July 15, 2010).

The commenters on this issue shared concerns that requiring an appraisal for smaller dollar residential mortgage loans would result in excessive costs to consumers without sufficient offsetting benefits. Some asserted that applying the HPML appraisal rules to smaller loans might disproportionately burden smaller institutions and potentially reduce access to credit for their consumers.

In outreach since the Final Rule was issued, however, a consumer advocacy group expressed the view that low- to moderate-income (LMI) consumers obtaining or refinancing loans secured by lower-value homes may have a particular need for the protections of the HPML appraisal rules. During informal outreach with the Agencies for this proposal, consumer advocates expressed the view that requiring quality appraisals for smaller dollar loans, and requiring that they be provided to the consumer, can help prevent the kinds of appraisal fraud that can lead to consumers borrowing more money than is supported by the equity in their home or taking out loans that are otherwise not appropriate for them.

Regarding the appropriate threshold for a smaller loan exemption, the comments varied widely. One individual commenter suggested that a smaller dollar loan amount appropriate for an exemption from the final rule would be $10,000 or less. A comment letter from a community bank indicated that a $25,000 home improvement loan might not be an appropriate transaction type to cover in a final rule; this commenter asserted that to avoid the burden and expense to the consumer of the HPML appraisal rules, a community

bank would have to lower its rates on smaller loans to below HPML levels, which could make them unprofitable.[66]

A national manufactured housing trade association asserted that the median price of a manufactured home is $27,000[67] and that, relative to these small loan amounts, the cost of a traditional interior inspection appraisal is "extremely expensive" and could reduce manufactured home lending. Similarly, a bank representative asserted that when the purchase price is $30,000, for example, the cost of a traditional appraisal is "substantial." Comments from a community bank representative, the community development organization, and another individual indicated that loans of $50,000 or less might be appropriately exempted. A state bank commenter suggested that loans of $100,000 or less should be exempt. Finally, a state manufactured housing trade association recommended exempting manufactured home loans under $125,000.

Discussion

The Agencies are concerned that the potential burden and expense of imposing the HPML appraisal requirements on HPMLs of $25,000 or less (that are not qualified mortgages) will outweigh potential consumer protection benefits in many cases. The primary concern is the expense to the consumer of an interior inspection appraisal, which

[66] This comment was filed before the Agencies had finalized exemptions from the HPML appraisal rules, including the exemption for "qualified mortgages." *See* § 1026.35(c)(2); *see also* 2013 ATR Final Rule (defining "qualified mortgage" at § 1026.42(e)).

[67] The trade association's estimate of median manufactured home prices was based on the U.S. Census Bureau's 2009 American Housing Survey. According to the 2011 American Housing Survey, the median purchase price of all existing occupied manufactured homes is $30,000 (median value self-reported by respondents also is the same). *See* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C13OO&prodType=table. However, this median price reflects purchases that may have occurred as much as a decade earlier (*see id.* for acquisition dates). The average price of manufactured homes purchased more recently is higher; as of March 2013, the average price was $62,400. *See* http://www.census.gov/construction/mhs/mhsindex.html.

could be significant and unduly burdensome to consumers of smaller loans. Thus, an appraisal requirement could hamper consumers' use of smaller home equity loans for home improvements, educational or medical expenses, and debt consolidation.[68] The interior inspection appraisal requirement also may pose an additional cost for consumers who seek to purchase lower-dollar homes (using HPMLs that are not qualified mortgages); these tend to be LMI consumers who are less able to afford extra financing costs than higher-income consumers.

In addition, the Agencies believe that the proposed exemption can facilitate creditors' ability to meet consumers' smaller dollar credit needs. This could in turn promote the soundness of an institution's operations by supporting profitability and an institution's ability to spread risk over a variety of products. Public comments on the 2012 Proposed Rule suggested that applying the rule to smaller dollar loans might affect smaller institutions in particular, and that for these institutions the reduction in costs and burdens associated with this exemption would be most beneficial.

Question 40: The Agencies seek data from commenters on this point.

Finally, the Agencies believe that creditors would generally be better able to absorb losses that might be associated with a loan of $25,000 or less than with, for

[68] The Agencies recognize that, absent an exemption for smaller dollar loans from the HPML appraisal rules (which apply solely to closed-end loans), consumers might have the option of borrowing a home equity line of credit (HELOC) rather than a closed-end home equity loan (HEL) to avoid the costs of an appraisal. However, the Agencies are aware that HELs and HELOCs are not in all cases readily interchangeable. HELs and HELOCs are different product types used by consumers for different purposes; they also present different risks for creditors. As a consequence, they are priced differently and are subject to different sets of rules. *See*, *e.g.*, § 1026.42(a)(1) (implementing a statutory exemption for HELOCs from TILA's ability-to-repay rules; *see* TILA sections 103(cc)(5) and 129C(a)(1), 15 U.S.C. 1602(cc)(5) and 1639c(a)(1)).

example, a typical home purchase loan, which is several times larger than a $25,000 loan.[69]

$25,000 threshold. A $25,000 threshold is within the range of thresholds recommended by proponents of a smaller dollar loan exemption in their comments on the 2012 Proposed Rule, noted previously. In light of public comments, the Agencies examined data submitted under the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.*, as one reference point for informing an exemption for smaller dollar loans. A subordinate-lien home improvement loan is one example of a loan type for which, in the Agencies' view, an interior inspection appraisal might be burdensome on a consumer without sufficient off-setting consumer protection or safety and soundness benefits.[70] Based on HMDA data, the Agencies found that in 2009, the mean loan size for subordinate-lien home improvement loans that were HPMLs was $26,000 and the median loan size for this category of loans was $17,000.[71] In 2010, the mean loan size was $24,900 for subordinate-lien home improvement loans that were HPMLs and the median loan size for this category of loans was $19,000.[72] In 2011, the corresponding loan sizes for subordinate-lien home improvement loans that were HPMLs were $26,500 (mean) and $20,000 (median).[73]

---

[69] Based on HMDA data, for example, the mean loan size in 2011 for a first-lien, home purchase HPML secured by a one- to four-family site-built property was $141,600; the median loan size for this category of loans was 109,000. *See* Robert B. Avery, Neil Bhutta, Kenneth B. Brevoort, and Glenn Canner, "The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act," Table 10, FR Bulletin, Vol. 98, no. 6 (Dec. 2012) http://www.federalreserve.gov/pubs/bulletin/2012/PDF/2011_HMDA.pdf.

[70] Consumer advocates have expressed concerns to the Agencies that home improvement loans can be part of schemes that are abusive to consumers in some cases, such as when little or no work or substandard work is performed. Whether an appraisal requirement could be used to combat these abuses is unclear.

[71] *See* Federal Financial Institutions Examination Council (FFIEC), Home Mortgage Disclosure Act (HMDA), http://www.ffiec.gov/Hmda/default.htm.

[72] *See id.*

[73] *See id.*

The Agencies recognize that loan types other than home improvement loans would qualify for the proposed exemption and that other data and considerations may be relevant to determining the appropriate threshold.

Question 41: The Agencies are proposing a threshold for a smaller dollar loan exemption of $25,000 or less, but request comment on whether a lower or higher threshold is appropriate and, if so, why. The Agencies strongly encourage commenters to offer data to support their view of an appropriate threshold.

Annual adjustment for inflation. The Agencies also propose to adjust the threshold for inflation every year, based on the percentage increase of Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Thus, under the proposal, if the CPI-W decreases in an annual period, the percentage increase would be zero, and the dollar amount threshold for the exemption would not change. The Agencies note that inflation adjustments for other thresholds in Regulation Z are also annual, and believe that consistency across mortgage rules can facilitate compliance.[74]

Question 42: The Agencies request comment on whether the threshold for a smaller dollar loan exemption should be adjusted periodically for inflation and whether the period for adjustments should be one year or some other period.

In comments 35(c)(2)(viii)-1, -2, and -3, the Agencies propose to provide the threshold amount and additional guidance on applying it. Proposed comment 35(c)(2)(viii)-1 sets forth the applicable threshold to be updated every year. This comment states that, for purposes of § 1026.35(c)(2)(viii), the threshold amount in effect

[74] *See* 12 CFR 1026.3(b) (exempting from Regulation Z for loans over the applicable threshold dollar amount, adjusted annually); 12 CFR 1026.32(a)(1)(ii) (setting the points and fees trigger for high-cost mortgages, adjusted annually).

during a particular one-year period is the amount stated in comment 35(c)(2)(viii) for that period. The comment states that the threshold amount is adjusted effective January 1 of every year by the percentage increase in the CPI-W that was in effect on the preceding June 1. The comment goes on to state that every year, the comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. The comment states that any increase in the threshold amount will be rounded to the nearest $100 increment, and provides the following examples: if the percentage increase in the CPI-W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the percentage increase in the CPI-W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. Finally, the comment states that, from January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

Proposed comment 35(c)(2)(viii)-2 states that a transaction meets the condition for an exemption under § 1026.35(c)(2)(viii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

Proposed comment 35(c)(2)(viii)-3 clarifies that a transaction does not meet the condition for an exemption under § 1026.35(c)(2)(viii) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. As an example, the comment assumes a closed-end loan that qualified for an exemption under § 1026.35(c)(2)(viii) at consummation in year one is refinanced in year ten and that the

new loan amount is greater than the threshold amount in effect in year ten. The comment states that, in these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 1026.35(c) applies. The comment cross-references § 1026.35(c)(2) and § 1026.35(c)(4)(vii) for other exemptions from the HPML appraisal rules.

Additional condition: providing a copy of a valuation to the consumer.

Question 43: The Agencies seek comment on whether certain conditions should be placed on the proposed exemption from the HPML appraisal requirements for loans of $25,000 or less.

In particular, the Bureau has concerns that, as a result of borrowing so-called "smaller" dollar home purchase or home equity loans, some consumers may be at risk of high LTVs, including LTVs that lead to going "underwater" – owing more than their home is worth. Data suggest that many existing homes are worth under $25,000 and that many consumers with lower value homes are underwater or nearly underwater.[75] In addition, based upon HMDA data, more than half of subordinate liens originated in 2011 were at or below $25,000.[76] Studies suggest that subordinate-lien loans and other forms of equity extraction can make consumers more likely to default, as they reduce the

[75] As of 2011, approximately 2.8 million homes had a value of less than $20,000. *See* 2011 American Housing Survey, "Value, Purchase Price, and Source of Down Payment – Owner Occupied Units (NATIONAL)," available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C13OO&prodType=table. A recent study shows that at the end of 2012, 10.4 million properties with a residential mortgage (21.5 percent of residential properties with a mortgage) were in "negative equity" and an additional 11.3 million had less than 20 percent equity. This study also suggests that negative equity is greater with smaller home values (*i.e.*, below $200,000). *See* Core Logic Press Release and Negative Equity Report Q4 2012 (Mar. 19, 2013) available at http://www.corelogic.com.

[76] *See* FFIEC, HMDA, http://www.ffiec.gov/Hmda/default.htm.

amount of equity in the home and raise LTVs.[77] Receiving a written valuation might be helpful in informing a consumer's decision to take the loan by making the consumer better aware of how the value of the home compares to the amount that the consumer might borrow.

Question 44: The Agencies seek comment on the risks that smaller dollar loans could lead to high LTV or "underwater" loans without the knowledge of the consumer, including whether these risks outweigh the burden to the consumer of added appraisal costs and transaction time in covered transactions. *See* § 1026.35(c)(2) for additional exemptions.

Question 45: The Agencies also request comment on protections that may reduce these risks if loans of $25,000 or less are generally exempt from the HPML requirement for a USPAP-compliant appraisal with an interior inspection.

Question 46: In particular, the Agencies request comment on whether the exemption should be conditioned on the creditor providing the consumer with any estimate of the value of the home that the creditor relied on in making the credit decision.[78]

---

[77] *See, e.g.*, Steven Laufer, "Equity Extraction and Mortgage Default," Financial and Economics Discussion Series, Federal Reserve Board Division of Research & Statistics and Monetary Affairs (2013-30), available at http://www.federalreserve.gov/pubs/feds/2013/201330/201330pap.pdf. *See also, e.g.*, Michael LaCour-Little, California State University-Fullerton, Eric Rosenblatt and Vincent Yao, Fannie Mae, "A Close Look at Recent Southern California Foreclosures," (May 23, 2009), available at http://www.areuea.org/conferences/papers/download.phtml?id=2133.

[78] Subordinate-lien loans are not covered by ECOA's requirement that the creditor provide the consumer with a copy of valuations and appraisals obtained in connection with an application. *See* 15 U.S.C. 1691(e)(1), implemented by the 2013 ECOA Valuations Rule at 12 U.S.C. 1002.14 (eff. Jan. 18, 2014). Thus, the consumer of a subordinate-lien smaller dollar loan would not have a right to receive valuations from the creditor under ECOA.

Question 47: To inform the Agencies' consideration of this condition, the Agencies seek data from commenters on the extent to which creditors anticipate originating HPMLs of $25,000 or less that are not qualified mortgages.

Question 48: The Agencies also seek comment on the extent to which creditors typically obtain an estimate of the value of the home to calculate the LTV or combined LTV (CLTV) associated with a transaction of $25,000 or less. The Agencies note that FIRREA's appraisal and evaluation regulations apply to federally-regulated depositories, but that certain non-depositories and depositories are not subject to FIRREA.[79]

Question 49: In addition, the Agencies request comment on whether and what guidance would be needed regarding the type and quality of valuation that would meet the condition (or, if the creditor obtained more than one valuation, which valuation the creditor should provide).

Question 50: The Agencies further request comment on whether other limitations on the exemption might be more appropriate. One alternative might be to limit the exemption to loans that do not bring the consumer's CLTV over a certain threshold. The Agencies seek comment on what an appropriate threshold would be and the valuation sources on which a creditor should appropriately rely to calculate CLTV for this alternative limitation on the exemption.

Question 51: The Agencies request comment and data on whether adding these or similar criteria to qualify for a smaller dollar exemption is an appropriate and adequate means for addressing the concerns raised about high LTV lending.

---

[79] *See* OCC: 12 CFR §§ 34.43 and 164.3; Board: 12 CFR 225.63; FDIC: 12 CFR 323.3; NCUA: 12 CFR 722.3. *See also* OCC, Board, FDIC, NCUA, *Interagency Appraisal and Evaluation Guidelines*, App. A-5, 75 FR 77450, 77466-67 (Dec. 10, 2010).

Question 52: Finally, the Agencies also seek comment and data on whether these conditions would likely result in creditors of smaller dollar HPMLs (that are not exempt as qualified mortgages) deciding to forego the exemption and charge the consumer for an appraisal, offer the consumer an open-end home equity product instead (which is not covered by the HPML appraisal rules), or not offer a loan at all.

35(c)(6) Copy of Appraisals

35(c)(6)(ii) Timing

In the Final Rule, comment 35(c)(6)(ii)-2 provides that, for appraisals prepared by the creditor's internal appraisal staff, the date that a consumer receives a copy of an appraisal as required under § 1026.35(c)(6) is the date on which the appraisal is completed. The Agencies propose to delete this comment as unnecessary, because the relevant timing requirement is based on when the creditor provides the appraisal, not when the consumer receives it. *See* § 1026.35(c)(6)(i).

VI. Bureau's Dodd-Frank Act Section 1022(b)(2) Analysis[80]

In developing this supplemental proposal, the Bureau has considered potential benefits, costs, and impacts to consumers and covered persons.[81] In addition, the Bureau has consulted, or offered to consult with HUD and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies. The Bureau also held discussions with or solicited

[80] The analysis and views in this Part VI reflect those of the Bureau only, and not necessarily those of all of the Agencies.

[81] Specifically, Section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas.

feedback from the USDA, RHS, and VA regarding the potential impacts of this supplemental proposal on their loan programs.

In this supplemental proposal, the Agencies are proposing to exempt three additional classes of HPMLs from the 2013 Interagency Appraisals Final Rule: (1) certain refinance HPMLs whose proceeds are used exclusively to satisfy an existing first-lien loan and to pay for closing costs; (2) new HPMLs that have a principal amount of $25,000 or less (indexed to inflation); and (3) HPMLs secured by existing manufactured homes but not land. As discussed in the section-by-section analysis, the Agencies also are seeking comment on whether to place conditions on these proposed exemptions that would ensure the consumer receives a copy of a home value estimate in transactions covered by the exemptions.

The Bureau will further consider the benefits, costs and impacts of the proposed provisions and asks interested parties to provide general information, data, research results and other information that may inform the analysis of the benefits, costs, and impacts.

A. Potential Benefits and Costs to Consumers and Covered Persons

This analysis considers the benefits, costs, and impacts of the key provisions of the Interagency Appraisals Supplemental Proposal relative to the baseline provided by existing law, including the 2013 Interagency Appraisals Final Rule and the Bureau's ATR Rules.[82]

[82] The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

The Bureau has relied on a variety of data sources to analyze the potential benefits, costs and impacts of the proposed rule.[83] However, in some instances, the requisite data are not available or are quite limited. Data with which to quantify the benefits of the proposed rule are particularly limited. As a result, portions of this analysis rely in part on general economic principles to provide a qualitative discussion of the benefits, costs, and impacts of the rule.

The primary source of data used in this analysis is data collected under the Home Mortgage Disclosure Act (HMDA). The empirical analysis generally uses 2011 data, including from the 4th quarter 2011 bank and thrift Call Reports,[84] the 4th quarter 2011 credit union call reports from the NCUA, and de-identified data from the National Mortgage Licensing System (NMLS) Mortgage Call Reports (MCR)[85] for the 4th quarter

[83] The estimates in this analysis are based upon data and statistical analyses performed by the Bureau. To estimate counts and properties of mortgages for entities that do not report under the Home Mortgage Disclosure Act (HMDA), the Bureau has matched HMDA data to Call Report data and National Mortgage Licensing System (NMLS) and has statistically projected estimated loan counts for those depository institutions that do not report these data either under HMDA or on the NCUA call report. The Bureau has projected originations of HPMLs in a similar fashion for depositories that do not report HMDA. These projections use Poisson regressions that estimate loan volumes as a function of an institution's total assets, employment, mortgage holdings, and geographic presence. Neither HMDA nor the Call Report data have loan level estimates of debt-to-income (DTI) ratios that, in some cases, determine whether a loan is a qualified mortgage. To estimate these figures, the Bureau has matched the HMDA data to data on the historic-loan-performance (HLP) dataset provided by the FHFA.
This allows estimation of coefficients in a prohibit model to predict DTI using loan amount, income, and other variables. This model is then used to estimate DTI for loans in HMDA.

[84] Every national bank, State member bank, and insured nonmember bank is required by its primary Federal regulator to file consolidated Reports of Condition and Income, also known as Call Report data, for each quarter as of the close of business on the last day of each calendar quarter (the report date). The specific reporting requirements depend upon the size of the bank and whether it has any foreign offices. For more information, see http://www2.fdic.gov/call_tfr_rpts/.

[85] The NMLS is a national registry of non-depository financial institutions including mortgage loan originators. Portions of the registration information are public. The Mortgage Call Report data are reported at the institution level and include information on the number and dollar amount of loans originated, and the number and dollar amount of loans brokered. The Bureau noted in its summer 2012 mortgage proposals that it sought to obtain additional data to supplement its

of 2011 also were used to identify financial institutions and their characteristics. Most of the analysis relies on a dataset that merges this depository institution financial data from Call Reports with the data from HMDA including HPML counts that are created from the loan-level HMDA dataset. The unit of observation in this analysis is the entity: if there are multiple subsidiaries of a parent company, then their originations are summed and revenues are total revenues for all subsidiaries.

Other portions of the analysis rely on property-level data regarding parcels and their related financing from DataQuick[86] Tabulations of the DataQuick data are used for estimation of the frequency of properties being sold within 180 days of a previous sale. In addition, in analyzing alternatives for the proposed exemption for certain refinances, the Bureau has considered data provided by FHFA and FHA regarding valuation practices under their streamlined refinance programs (and in particular regarding the frequency with which appraisals or automated valuations are conducted). These FHFA and FHA data are described below in greater detail.

1. Overview: Estimated Number of Covered HPMLs

To estimate the number of additional HPMLs that could be exempted by the proposal, it is first necessary to recall the number of HPMLs that are covered by the Final

---

consideration of the rulemakings, including additional data from the NMLS and the NMLS Mortgage Call Report, loan file extracts from various lenders, and data from the pilot phases of the National Mortgage Database. Each of these data sources was not necessarily relevant to each of the rulemakings. The Bureau used the additional data from NMLS and NMLS Mortgage Call Report data to better corroborate its estimate the contours of the non-depository segment of the mortgage market. The Bureau has received loan file extracts from three lenders, but at this point, the data from one lender is not usable and the data from the other two is not sufficiently standardized nor representative to inform consideration of the Final Rule or this supplemental proposal. Additionally, the Bureau has thus far not yet received data from the National Mortgage Database pilot phases.

[86] DataQuick is a database of property characteristics on more than 120 million properties and 250 million property transactions.

Rule. The 2013 Interagency Appraisal Rule exempts all qualified mortgages under the Bureau's 2013 ATR Final Rule. *See* § 1026.35(c)(2)(i).[87] Therefore, the only additional loans that would be exempted by the proposed rule would be HPMLs that are not qualified mortgages. Under special temporary provisions in the Bureau's 2013 ATR Final Rule, any loans eligible for purchase or guarantee by HUD, USDA, or VA (until they adopt their own qualified mortgage rules or 2021, whichever is earlier), or by GSEs (until 2021), generally would be qualified mortgages. *See* §1026.43(e)(4). This temporary qualified mortgage definition incorporates the criteria in § 1026.43(e)(2)(i)-(iii) – a limit on the mortgage term of 30 years, regular periodic payments without changes in payment amounts except as part of an adjustable-rate or step-rate product, no negative amortization, no balloon payments except in certain cases, and a cap on points and with points and fees of three percent. The Bureau believes that virtually all transactions that are eligible for purchase, insurance, or guarantee by HUD, FHA, VA, or GSEs, as applicable, would meet these criteria. The Bureau requests additional data from commenters on the extent to which the three transaction types covered by this proposal may exceed the three percent cap on points and fees and therefore not satisfy the definition of a qualified mortgage.[88]

[87] This exemption implemented the statute, which excluded qualified mortgages from the scope of the HPML appraisal requirements. 15 USC 1639h(f)(1). The Bureau notes, however, that in order for qualified mortgages to be eligible for the qualified residential mortgage (QRM) exemption from Dodd-Frank Act risk retention requirements, a USPAP appraisal would be required under rules proposed under other provisions of the Dodd-Frank Act. *See* Proposed Credit Retention Rule, 76 FR 24090, 24125 (April 29, 2011) (QRM Proposal "proposing that a QRM be supported by a written appraisal that conforms to generally accepted appraisal standards, as evidenced by [USPAP]" and other specified laws).

[88] In the absence of data indicating otherwise, the Bureau believes few if any streamlined refinance HPMLs would fail to meet qualified mortgage definitions by virtue of having points and fees in excess of three percent. Indeed, points and fees on streamlined refinances may be

The Bureau seeks data from commenters on this point. Accordingly, the Bureau believes that almost all if not all of the loans that would be exempted solely by virtue of the proposed exemptions would be transactions originated by private lenders for their own portfolio, which are not eligible for purchase, insurance, or guarantee by HUD, USDA, VA, or GSEs,[89] and which also are not qualified mortgages under the general definition at § 1026.43(e)(2). This definition includes the criteria in § 1026.43(e)(2)(i)-(iii) discussed above as well as one additional criterion – a maximum debt-to-income ratio of 43 percent at § 1026.43(e)(2)(iv).

As discussed in the Section 1022(b) analysis in the 2013 Final Interagency Appraisals Rule, the Bureau estimates, based upon 2011 HMDA data, that there were 26,000 HPMLs that would not have been qualified mortgages, 12,000 of which were purchase-money mortgages, 12,000 of which were first-lien transactions that were

---

lower than other mortgage loans because of the reduced complexity in refinance transactions generally and the further reduced complexity of the streamlined origination process. In addition, for HPMLs secured by existing manufactured homes, the Bureau believes that the points and fees threshold for qualified mortgages would be less likely to be exceeded, insofar as these transactions are less likely to include loan originator compensation to dealers or their employees, whose business focuses more on new manufactured homes. (In any event, the Bureau also has proposed comment 32(b)(1)(ii)-5 to the 2013 ATR Final Rule to clarify that the sales price for manufactured homes does not include points and fees, and that payments of the sales commission to dealer employees also does not count as points and fees. *See* Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z) (proposed rule issued June 24, 2013), *available at* http://files.consumerfinance.gov/f/201306_cfpb_proposed-modifications_mortgage-rules.pdf. Finally, for smaller dollar closed-end dwelling-secured transactions, such as home equity loans up to $25,000, the Bureau has not identified data indicating that in the current market a significant number of these transactions have points and fees at the elevated levels for smaller loans in the 2013 ATR Final Rule. *See* § 1026.43(e)(3)(i)(C)-(E) (setting points and fees caps of eight percent for loans up to $12,500, $1,000 for loans from $12,500 up to $20,000, and five percent for loans from $20,000 up to $60,000).

[89] Focusing on whether the loan is insured or guaranteed, instead of eligible for insurance or guarantee, is conservative; the qualified mortgage exemption, at § 1026.43(e)(4), is defined in terms of eligibility.

refinancings, and 2,000 of which were closed-end subordinate lien mortgages that were not part of a purchase transaction. For purposes of this Section 1022(b) analysis, the Bureau refers to these loans as "covered loans." The impact on creditors and consumers of the proposed exemptions – which at most would exempt some of these estimated 26,000 covered loans annually – is discussed below.

The impact of the proposed exemptions on creditors and consumers generally varies by exemption. It should be noted, however, that there are no mandatory costs imposed on creditors as a result of any of the proposed exemptions. Creditors are not required to utilize an exemption. Therefore, any associated burdens are also optional. Moreover, voluntary compliance costs should be minimal: Creditors complying with the 2013 Interagency Appraisals Final Rule should be able to incorporate these exemptions into their underwriting process and personnel training with little additional cost.

2. Streamlined Refinances

The Agencies are proposing to exempt first-lien refinances that satisfy certain restrictions, many of which are commonly referred to as "streamlined refinances." As discussed in the preceding section-by-section analysis, the Agencies are seeking comment on whether this proposed exemption should be subject to the condition that the creditor obtain an estimate of the value of the dwelling that will secure the refinancing and provide a copy of it to the consumer before consummation.

Background on Possible Condition on Proposed Exemption

Before discussing the proposed exemption in detail, it would be useful to first discuss the request for comment on conditioning the exemption on obtaining and providing a home value estimate to the consumer. This condition would apply to any

loan that is otherwise eligible for the streamlined refinance exemption and that is not exempt under another provision of the Final Rule, such as the exemption for qualified mortgages, § 1026.35(c)(2)(i). Other types of valuations[90] that are offered in the marketplace typically include exterior appraisals, automated valuation model (AVM) reports, and broker-price opinions, among others. Alternative forms of valuation might not be as accurate as a USPAP- and FIRREA-compliant appraisal with an interior inspection; for example, they might implicitly assume an interior of average quality. Nonetheless, the Bureau believes a valuation provides the consumer with more information with which to make decisions than no valuation. Obviously, more accurate valuations (including valuations that are more current and based upon more rigorous, validated methods) provide more meaningful information than less accurate valuations. However, the cost of providing this information also must be considered, particularly in a streamlined refinance transaction because the consumer already owns the home and thus the appraisal would not inform a home purchase decision. The Bureau estimates the cost of a full appraisal with an interior inspection to be approximately $350 in addition to the time required to obtain the appraisal. For an alternative valuation method such as an AVM, the Bureau believes the cost may be as little as $5 and the time to obtain it may be only a few minutes.[91] The Bureau seeks comment on the costs, benefits, and impacts of

[90] In this analysis under Section 1022(b) of the Dodd-Frank Act, the Bureau uses the term "valuation" generically to refer to any estimate of value of the dwelling.

[91] Based upon research in anticipation of this proposal, the Bureau has not identified easily-accessible public information on current pricing practices of AVM providers. The Bureau notes, however, that one GSE charges a flat fee of $20 per loan for a report that includes an estimated home value. This report is primarily a risk assessment tool to assist loan originators (http://www.loanprospector.com/about/#howmuch). It provides many features, including a no-fee home estimate (http://www.freddiemac.com/hve/faq.html#3). Given that the home estimate is not listed on the report's web page (http://www.loanprospector.com/about/#howmuch), the

conditioning the proposed exemption on the requirement that the creditor obtain an estimate of value and provide a copy of it to the consumer. The Bureau also seeks data on the accuracy of AVMs relative to full interior appraisals.

Discussion of Proposed Exemption

In practice, the refinances eligible for the proposed exemption would fall into two categories. The first category is refinances held in the portfolios of private creditors or sold to a private investor that satisfy all of the criteria for an exempt refinance under proposed § 1026.35(c)(2)(vii). The second category is refinances under GSE, FHA, USDA, or VA programs that satisfy the proposed criteria. The Bureau believes that virtually all transactions in the second category (under any public refinance programs) already would be exempted from this rule by virtue of being qualified mortgages under § 1043(e)(4). As discussed in the section-by-section analysis above, however, under the 2013 ATR Final Rule streamlined refinances under GSE programs originated in or after 2021 would not be qualified mortgages if they do not meet all of the general criteria for a qualified mortgage in the 2013 ATR Final Rule, including debt-to-income limits. *See* § 1026.43(e)(2).

Private Refinances

Refinances originated by private creditors that are not eligible under public programs still could satisfy the criteria in the proposed exemption. The Bureau believes that the condition in the proposed exemption of no cash-out except for closing costs would be satisfied in most private HPML refinances. In the current market, cash-out

---

Bureau assumes that the value of the estimate itself is relatively minor, in particular far less than $20 per loan. Even if the estimate itself is not available for a much lower price than $20, the price introduces competitive pressure that constrains other AVM providers from charging more for their services.

refinances have become less common.[92] In addition, when the consumer's existing loan is a "non-standard" loan, creditors may seek to qualify for the exemption from the ability-to-repay rules of the 2013 ATR Final Rule for the refinance of a "non-standard" mortgage into a "standard" mortgage. To qualify, the "standard" refinance must involve no cash out to the consumer: the proceeds may be used only to pay off the existing principal obligation and for closing costs. *See* § 1026.43(d)(ii)(E). Thus, the Bureau believes that the most reasonable assumption is that lenders are unlikely to originate private cash-out HPML refinance mortgages that are not qualified mortgages. Moreover, the proposed exemption from this rule would reduce costs of the loan if an appraisal is not otherwise required, and therefore create an additional economic incentive to refinance without taking cash out. From the 2013 Interagency Appraisals Final Rule, Section 1022(b) Analysis, 78 FR at 10419, the Bureau estimates that roughly 12,000 refinances were covered loans.[93] Because the Bureau does not estimate that non-qualified mortgages will be originated under public programs, the Bureau estimates that these 12,000 covered loans would be private refinances. Some of these private refinances would be ineligible for the proposed exemption due to having a different holder/guarantor, having negative amortization or interest-only features, or having

[92] *See* Fannie Mae Annual Report 2011, at 156, and Fannie Mae Annual Report 2012, at 127 (reporting that "cash out" refinances have been decreasing from 2009-2012, including for the conventional business, from 27% to 20% to 17% to 14% in these four years, just as other refinances have been increasing). *See also* American Housing Survey (2011), Table C-14b-OO (approximately 14% of homes with a refinance had obtained the refinance for purposes of receiving cash), *available a*t http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C14BOO&prodType=table.

[93] The actual number may be lower, however, to the extent any of these refinances do not meet the additional restriction in the proposed exemption – that the owner or guarantor of the new refinance loan is the same as the owner or guarantor of the existing loan being refinanced.

balloon payments. The Bureau seeks data from commenters on how many of these private refinance loans would have these features. However, the Bureau believes that the vast majority of private refinance loans will not have these features. Accordingly, the Bureau believes this is a reasonable estimate of the number of refinance loans that would be covered by the proposed exemption.

As indicated in the section-by-section analysis above, the Agencies are seeking data from commenters on the extent to which creditors obtain appraisals or other valuations in no-cash out portfolio refinances that are not originated under public programs.

The Bureau also believes that conditioning the exemption on obtaining a valuation and providing a copy of it to the consumer would be consistent with existing industry valuation practices for private refinances. The Bureau believes that creditors that do not obtain an appraisal obtain an alternative valuation. For example, private streamlined refinance programs administered by banks, thrifts, or credit unions are subject to FIRREA regulations and the Interagency Appraisal and Evaluation Guidelines. Under these standards, the creditors must obtain "evaluations," which can include (but not consist solely of) estimates from AVMs, to support streamlined refinances that are kept on their portfolio and are not backed by public programs.[94]Because the Bureau understands that an "evaluation" must include an estimate of the property value, 75 FR 77450, 77461 (Dec. 10, 2010), creditors in these programs also would be required already

[94] *See* OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b) (FDIC); NCUA: 12 CFR 722.3(d); *see also* OCC, Board, FDIC, NCUA, *Interagency Appraisal and Evaluation Guidelines*, 75 FR 77450, 77461 (Dec. 10, 2010) (Parts XII-XIV).

to provide copies of these estimates to consumers under the Bureau's 2013 ECOA Valuations Rule, 12 CFR 1002.14(a)(1).

Public Program Refinances including Streamlined Refinance Programs

As mentioned above, in the short and medium term, the Bureau believes that no public program refinance loans will be covered loans because they will be exempt as qualified mortgages. Accordingly, the proposed exemption would only affect some of the HPML refinances under GSE programs starting in 2021 (and some HPML refinances under HUD, USDA, and VA programs at that time if those agencies have not already adopted their own qualified mortgage rules) – an impact that is too remote to quantify at this time as the state of the GSEs, the public refinance programs, and the market environment at that time is not possible to predict.

Below, the Bureau analyzes the impact of the proposed exemption for certain refinances on covered persons and consumers.

a. Covered Persons

Any creditors originating refinances that are currently covered loans and which meet the criteria of the proposed exemption could choose to make use of the proposed exemption, which would reduce burden. In particular, these loans would not be subject to the estimated per-loan costs described in the 2013 Interagency Appraisals Final Rule.[95] For these transactions, these creditors would not be required to spend time reviewing the appraisals conducted for conformity to this rule, and providing copies of those appraisals to applicants.

[95] *See* Section 1022(b) analysis, 78 FR at 10418-21.

The Bureau is requesting that commenters provide data on the rate at which appraisals and other valuations are conducted for private refinances. If the Bureau is able to obtain this additional information, it can better estimate the burden that would be reduced if the proposed exemption is finalized for private refinances.

In addition, the Bureau believes that conditioning the proposed exemption on the creditor obtaining and providing the consumer with an alternative valuation would not significantly decrease the amount of burden relieved by the exemption. Such alternative valuations cost significantly less than full interior appraisals and, in many cases, already are required by regulations or are otherwise obtained under current industry practice and therefore subject to disclosure to the consumer under the Bureau's 2013 ECOA Valuations Rule. According to the data that was provided to the Agencies by the FHFA, in 2012, all GSE streamlined refinance transactions have either an automated valuation estimate (more than 80%) or an appraisal performed (less than 20%). The Bureau also understands that the Agencies' FIRREA regulations also generally mandate alternative valuation methods for streamlined refinances where appraisals are not used and the transaction is not sold to, guaranteed by, or insured by a government agency or GSE.[96] A condition on the proposed exemption still could allow flexibility for creditors to determine the type of alternative valuation to provide; and just as Section 129H(d) of TILA notes that the appraisal required under the Dodd-Frank Act for covered HPMLs is for the creditor's sole use, a condition would not necessarily prevent a creditor from informing the consumer that he or she uses the alternative valuation "at their own risk." As noted in the section-by-section analysis above, the Agencies seek comment on the

[96] *See* OCC: 12 CFR 34.43(b); Board: 12 CFR 225.63(b); FDIC: 12 CFR 323.3(b) (FDIC); NCUA: 12 CFR 722.3(d).

extent to which creditors originating loans eligible for the proposed exemption obtain valuations currently. In any case, even if a condition were adopted, use of the proposed exemption would be voluntary.

b. Consumers

For those consumers whose HPML streamlined refinance would not have been a qualified mortgage (such as those HPMLs not associated with public programs and not otherwise meeting the general definition of qualified mortgage), the proposed exemption would ensure the rule – including its appraisal requirement – does not apply to their loan. This can result in several types of cost savings to consumers of these loans. First, as discussed in the in the 2013 Interagency Appraisals Final Rule, the Bureau believes the cost of appraisals – $350 on average – is generally passed on to consumers.[97] In addition, streamlined refinance transactions may close more quickly without an appraisal, and recent data indicates that these refinances in the current rate environment have interest rates on average nearly two percent lower than the loan being refinanced.[98] As a result, those consumers described above typically would save money because the transaction will not have to wait to close until an appraisal is conducted and reviewed: for example, if the consumer can close a refinance transaction two weeks earlier because a full appraisal is not performed, that will provide the consumer with an additional two weeks of payments at the reduced interest rate of the refinance loan. The exemption therefore

[97] Section 1022(b) Analysis, 78 FR at 10420.
[98] *See* Freddie Mac Press Release, "84 Percent of Refinancing Homeowners Maintain or Reduce Mortgage Debt in Fourth Quarter" (Feb. 4, 2013), *available at* http://freddiemac.mwnewsroom.com/press-releases/84-percent-of-refinancing-homeowners-maintain-or-r-pinksheets-fmcc-981668. *See also* Fannie Mae 2012 Annual Report at 11 (reporting $237 average decrease in monthly payment under Fannie Mae Refi Plus® program in fourth quarter 2012).

may result in some reduced interest rate expenses for consumers seeking private streamlined refinance HPMLs that are not qualified mortgages and which would not have otherwise had an appraisal. The Bureau believes that the number of consumers affected by this benefit annually is quite small: of the 12,000 estimated private refinances eligible for the exemption discussed above, only the fraction that would not otherwise have had an appraisal would benefit.[99]

The Bureau is uncertain, however, whether the proposed exemption would make it more likely that the transaction is consummated for these consumers. As noted above, when an appraisal is not conducted, an evaluation is generally required under FIRREA regulations for depository institutions. The Bureau does not believe, and had not identified any data indicating, that an appraisal is any more or less likely than an evaluation to cause a transaction to fail (for example because the valuation exceeds the price, or causes the loan to exceed any LTV limits). Accordingly, the Bureau requests data from commenters on whether the exemption would increase the likelihood of consummation for refinances eligible for the exemption. If the exemption made consummation of the transaction more likely for these consumers, the Bureau believes this would provide a benefit to these consumers whenever the refinance transaction is beneficial for the consumer.

As discussed in the Bureau's analysis under Section 1022 in the 2013 Interagency Appraisals Final Rule, in general, consumers who are borrowing HPMLs that are covered loans and who would not otherwise have appraisals conducted for the transaction could

[99] The Bureau does not have information indicating that there a significant number of other streamlined refinance HPMLs that are not otherwise qualified mortgages.

benefit from an appraisal being conducted.[100] Benefits of appraisals in residential mortgage transactions generally can range from having a valuation that better accounts for the interior and exterior of their particular property, to having information that can be used to evaluate insurance coverage levels and real estate tax valuations, to being better informed as to the value of their property before making a final decision to enter into a new transaction, among others. Consumers who are better informed before consummating a streamlined refinance loan would be better able to assess their alternatives, which can include the following, among others:

- Remaining in the home with the existing loan;
- Refinancing through a different program at a better rate or other improved terms (such as not requiring mortgage insurance)[101];
- Seeking a modification;
- Selling the home; or
- Negotiating with the servicer to provide the deed-in-lieu without defaulting, among others.

Of course, in a refinance transaction, a consumer having better home value information through an appraisal will not affect the consumer's decision of whether to buy the home in the first place. Nonetheless, when considering a refinance loan, the appraisal can inform the consumer with respect to options to pursue such as those listed above, which could be more beneficial or appropriate for the consumer than refinancing the loan.[102]

---

[100] Section 1022(b) Analysis, 78 FR at 10417-18.
[101] The proposed exemption already excludes loans with terms that are generally viewed as reducing consumer protection, such as negative amortization, interest-only, or balloons.
[102] Indeed, unlike in a home purchase transaction, in a streamlined refinance transaction (unless the originating creditor on the new loan is the same as on the existing loan), the consumer has an

For example, if the appraisal establishes that the value of the dwelling is higher than otherwise estimated, the consumer's cost of credit could decrease and the consumer might even be able to borrow at rates below HPML thresholds. On the other hand, if an appraisal establishes that the value of the dwelling is lower than otherwise estimated, the consumer might be better positioned to consider alternative options discussed above. The new appraisal also may alert the consumer, in some cases, to flaws or even to an inflated valuation in the original appraisal used to purchase the home.

The cost to consumers of the proposed exemption therefore would be the loss of these potential benefits for the number of covered loans that would be newly-exempted by the proposed exemption and which would not have otherwise included an appraisal. As noted above, the Bureau estimates this would be very few transactions.

Nonetheless, to mitigate the loss of potential benefits to consumers arising from not having an appraisal in an exempt refinance transaction, the Agencies are seeking comment on whether to condition the proposed exemption on the creditor obtaining and providing to the consumer an alternative valuation as a condition of the loan being eligible for the proposed streamlined refinance exemption. The Bureau believes that, in general, a consumer's receipt of a home value estimate other than an appraisal can mitigate the information disadvantage when an appraisal is not obtained. More specifically, the Bureau believes that the cost of getting an AVM estimate is minimal and that it is already done as a standard business practice in many cases. Also, the Bureau believes that the cost of a broker price opinion (BPO) or any other reasonable valuation

---

absolute three-day right of rescission under Regulation Z, § 1026.23. This right underscores the need for consumers to be informed prior to its expiration.

method that would be permitted under applicable law is well below the cost of a USPAP-compliant appraisal. The Bureau seeks comment on these assumptions.

As discussed in the section-by-section analysis above, the Agencies also are requesting comment on whether consumers would benefit from a condition on the exemption relating to the amount of transaction costs that can be charged. One of the principal reasons why an appraisal may be less important to a consumer in a streamlined refinance transaction is that, except for closing costs that may be financed by the loan, the consumer is not losing equity. This rationale appears to be strongest if the exemption cannot be used in refinance transactions that also finance high transaction costs, especially given that consumers can engage in serial refinancing. Serial refinancing at high points and fees that are financed can reduce a consumer's equity as much if not more than a cash-out refinance.

3. Smaller Dollar Loans

As discussed in the section-by-section analysis above, the Agencies are proposing to exempt HPMLs secured by new loans with principal amounts of $25,000 or less (indexed to inflation) from the HPML appraisal rules, while seeking comment on whether the threshold for the exemption should be different. The Agencies also are seeking comment on whether to condition this exemption on the creditor providing the consumer with a copy of a valuation, as described in more detail in the section-by-section analysis above. The Bureau estimates the number of transactions potentially eligible for this exemption as follows: HMDA data for 2011 indicates there were approximately 25,000 HPMLs at or below $25,000 that were not insured or guaranteed by government agencies or purchased by the GSEs (so, not qualified mortgages on that basis). Of these, the

Bureau estimates that 4,800 were HPMLs with debt-to-income above 43 percent (so they would not meet the more general definition of a qualified mortgage). Accordingly, the Bureau estimates that approximately 4,800 covered loans are originated annually in an amount up to $25,000.[103] Of these estimated 4,800 covered loans at or below $25,000, the Bureau estimates that the types most affected by this proposed exemption, in that they would be unlikely to include appraisals if the exemption applies, would be home improvement loans, subordinate lien transactions not for home improvement purposes, and transactions secured by manufactured homes. The HPML appraisal rules could lead to significant changes in valuation methods used for these types of loans. For example, current practice includes appraisals for only an estimated five percent of subordinate lien transactions as explained in the 2013 Interagency Appraisals Final Rule.[104]

a. Covered Persons

Creditors originating smaller dollar covered loans would experience some reduced burden as a result of the proposed exemption for HPMLs of $25,000 or less. If the proposed exemption were adopted, these loans would not be subject to the estimated per-loan costs described in the 2013 Interagency Appraisals Finale Rule.[105] For these transactions, creditors would not need to spend time or resources on complying with the requirements in the HPML appraisal rules: checking for applicability of the second appraisal requirement on a flipped property (in a purchase transaction) and paying for that appraisal when the requirement applies, obtaining and reviewing the appraisals

[103] As discussed above, the Bureau does not believe that a significant number of smaller dollar HPML would exceed the points and fees threshold in the 2013 ATR Final Rule, but is requesting data from commenters on this issue. If a significant number of smaller dollar HPMLs did exceed that threshold, then the number of loans eligible for the proposed exemption would increase.
[104] *See* 78 FR at 10419.
[105] *See* Section 1022(b) analysis, 78 FR at 10418-21.

conducted for conformity to this rule, providing a copy of the required disclosure, and providing copies of these appraisals to applicants. Creditors therefore may find it relatively easier to originate HPMLs that are eligible for this exemption, for example if they are not qualified mortgages.

Even if the proposed exemption reduces the number of interior inspection appraisals conducted for smaller dollar HPMLs, the overall impact of this proposed exemption on creditors is likely minimal for most creditors given that only 4,800 such loans were made among 12,000 creditors.

Finally, the Bureau does not estimate that the burden reduced by the exemption would be significantly lowered by conditioning the exemption on the creditor providing the consumer a copy of a valuation that the creditor relied on in extending credit. As noted above, for depository institutions and credit unions, FIRREA regulations generally require evaluations when an appraisal is not obtained because the transaction amount is below $250,000; thus, the Bureau estimates that most transactions of $25,000 involve a home estimate of some type. In first lien transactions, providing copies of valuations is already required under the 2013 ECOA Valuations Rule, so the condition would impose no added burden. *See* 12 CFR 1002.14(a)(1). For subordinate lien transactions, the cost of such a condition would not be more than the small cost of copying and mailing a valuation, or scanning and transmitting it electronically.[106] The Bureau seeks data from commenters on the extent to which depository institutions, credit unions, and non-depository institutions obtain appraisals or other types of valuations in these transactions.

[106] Of course, this cost also would not be more than the cost of complying with the Final Rule without the proposed exemption, as the Final Rule requires providing a copy of an appraisal to the consumer in covered transactions. *See* § 1026.35(c)(6).

b. Consumers

For consumers who seek to borrow smaller dollar loans, such as home improvement loans and other subordinate lien transactions, and who are not able to obtain a qualified mortgage, the proposed exemption for smaller dollar HPMLs (at or less than $25,000) would provide some benefits. Industry practice prior to implementation of the 2013 Final Rule suggests that appraisals are not otherwise frequently done for home improvement and subordinate lien transactions.[107] Thus, by not requiring an appraisal, the cost of which typically would be passed on to consumers, the proposed exemption could facilitate access to smaller dollar HPMLs that are not otherwise exempt from the HPML appraisal rules. Without an exemption, some consumers may try to avoid the cost of an appraisal by either not entering into a smaller dollar HPML (unless it is otherwise exempt from the rules, such as a qualified mortgage) or pursuing an alternative source of credit that is not subject to the rules, such as an open-end home equity line of credit.

Under the proposed exemption, consumers in smaller dollar HPMLs (that are not otherwise exempt) would lose the benefits of the Final Rule, however. As discussed in the Bureau's analysis under Section 1022 in the Final Rule, in general, consumers who are borrowing HPMLs could benefit from an appraisal. For HPMLs that are not purchase transactions, the general benefits discussed above may be relatively less valuable to the consumer in some cases, given the lower size of the loan and also the likelihood that the consumer already would have had an appraisal in the original purchase transaction. Nonetheless, having an appraisal could provide a particularly significant benefit to those consumers who are informed by the appraisal that they have significantly less equity in

[107] 78 FR at 10419.

their home than they realize. A smaller dollar mortgage could push these consumers even further into negative equity, without the consumers realizing it. This effect is even more pronounced for consumers whose homes have lower value. All else equal, a $25,000 loan will pose greater risk to a consumer whose home is worth $20,000, than to a consumer whose house is worth $200,000. According to a periodic government survey, as of 2011 more than 2.75 million homes were worth less than $20,000, including a greater proportion of homes whose owners were below the poverty level or elderly.[108] In addition, according to a recent study, as of the end of 2012, 10.4 million properties with a residential mortgage were in "negative equity" and an additional 11.3 million had less than 20 percent equity.[109] In addition, some recent studies suggest that subordinate liens can increase the risk of default, as they reduce the amount of equity in the home.[110]

---

[108] See 2011 American Housing Survey, "Value, Purchase Price, and Source of Down Payment – Owner Occupied Units (NATIONAL)," C-13-OO, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C13OO&prodType=table. In addition, in seven metropolitan statistical areas, as of the end 2012 the median home value was less than $100,000. See National Association of Realtors® Median Sales Price of Existing Single-Family Homes for Metropolitan Statistical Areas Q4 2012, *available at* http://www.realtor.org/sites/default/files/reports/2013/embargoes/hai-metro-2-11-asdlp/metro-home-prices-q4-2012-single-family-2013-02-11.pdf.

[109] Core Logic Press Release and Negative Equity Report Q4 2012 (Mar. 19, 2013), *available at* http://www.corelogic.com.

[110] *See* Steven Laufer, "Equity Extraction and Mortgage Default," Financial and Economics Discussion Series Federal Reserve Board Division of Research & Statistics and Monetary Affairs (2013-30), *available at* http://www.federalreserve.gov/pubs/feds/2013/201330/201330pap.pdf . The study concludes, at 2, that "through cash-out refinances, second mortgages and home equity lines of credit, … homeowners [in the sample studied] had extracted much of the equity created by the rising value of their homes. As a result, their loan-to-value (LTV) ratios were on average more than 50 percentage points higher than they would have been without this additional borrowing and the majority had mortgage balances that exceeded the value of their homes."). *See also* Michael LaCour-Little, California State University-Fullerton, Eric Rosenblatt and Vincent Yao, Fannie Mae, "A Close Look at Recent Southern California Foreclosures," (May 23, 2009) at 17 (finding that, based upon a sample of homes, the existence of a subordinate lien is correlated more strongly with default than whether the home was purchased in 2005-06 period), *available at* http://www.areuea.org/conferences/papers/download.phtml?id=2133.

Moreover, based upon HMDA data, more than half of subordinate liens originated in 2011 were at or below $25,000.

Therefore, smaller dollar loans of $25,000 or less could still pose significant risks to consumers who own these lower-value homes or other homes that are highly leveraged, consuming most or all of any remaining equity. In some of those cases, knowledge of the current value of the home could prevent consumers from unwittingly using up too much equity in their homes or going underwater or going further underwater, which could make it more difficult for them to sell or refinance in the future. The Bureau therefore seeks comment on the extent to which smaller dollar loans of $25,000 or less are nonetheless higher LTV loans, for example resulting in combined loan-to-value of 90 percent or more.[111] In addition, the section-by-section analysis above seeks comment on whether the exemption should include a condition – such as providing the consumer with a copy of a valuation relied upon by the creditor in the transaction;[112] the purpose of the condition would be to prevent consumers from entering into loans that unwittingly use up most or all of the equity in their homes and which also could impede their ability to refinance or sell their home in the future.

---

[111] *See, e.g.*, GAO Report GAO/GCD-98-169, High Loan-to-Value Lending – Information on Loans Exceeding Home Value (Aug. 1998), *available at* http://www.gao.gov/assets/230/226291.pdf at 2 ("data provided by a lender responsible for about one-third of HLTV lending showed that, in 1997, HLTV loans averaged about $30,000. The data also showed that the average contract interest rate was between 13 and 14 percent, with an average loan term of 25 years. The average combined indebtedness of the first mortgage and the HLTV loan represented about 110 percent of the borrower's property value, although in some cases the combined loans reached or exceeded 125 percent of value.").

[112] The consumer would not otherwise receive a copy of valuations for a subordinate lien transaction because the requirement to provide the consumer with a copy of valuations obtained in connection with an application for credit under Regulation B, 12 CFR 1002.14(a), does not apply to subordinate-lien loans.

In summary, the cost of the proposed exemption to consumers would be the loss of benefits generally associated with appraisals for the number of covered loans that would be newly-exempted by the proposed exemption for smaller dollar loans – that is, for an estimated 4,800 loans annually, assuming that none of these loans currently get full interior appraisals. This cost could be mitigated by conditioning the exemption in a manner that reduces the risk the consumer would unwitting borrow an amount that consumes available equity in the home.

4. Proposed Approach to Transactions Secured by Manufactured Homes

As discussed in the section-by-section analysis above, the market for manufactured home loans can be classified according to collateral type: new home only, new home and land, existing home only, and existing home and land. The proposal seeks comment on whether changes are warranted to the exemption adopted 2013 Interagency Appraisals Final Rules regarding transactions secured by new homes. Such changes may include narrowing the exemption to apply only to transactions secured by a new manufactured home but not land. The proposal also seeks comment on conditioning the exemption for transactions secured by new manufactured homes on obtaining and providing the consumer with a home value estimate other than a USPAP- and FIRREA-compliant appraisal with an interior inspection prior to consummation. (The types of estimates that might satisfy such a condition are discussed in the section-by-section analysis above.) As also discussed in the section-by-section analysis above, the Agencies are proposing to exempt HPMLs secured by existing manufactured homes, and are seeking comment on conditioning this proposed exemption on obtaining and providing a home value estimate to the consumer. The Agencies' proposed exemption for existing

manufactured homes would not apply when land provides security; as indicated in the section-by-section analysis above, the Agencies believe that USPAP-compliant appraisals are feasible and commonly performed for these transactions.

To assess the impact of the proposal's provisions concerning manufactured housing, it is necessary to estimate the volume of transactions potentially affected, by collateral type. The Bureau's analysis of 2011 HMDA data, matched with the historic loan performance (HLP) data from the FHFA, indicates that roughly eight percent of all manufactured home purchases were covered loans: HPMLs that were not qualified mortgages because the debt-to-income ratio exceeded 43 percent and the loan was not insured, guaranteed, or purchased by a federal government agency or GSE.[113] Because HMDA data does not differentiate between transactions with each of the relevant collateral types, including new versus used, the Bureau is applying this ratio to each of the transaction types to derive the estimated number of covered loans below. Manufactured home loans of $25,000 or less also would be exempt under the proposed smaller dollar exemption discussed above. For purposes of this discussion, however, the Bureau analyzes all manufactured home loans regardless of amount.

Transactions financing the purchase of a new manufactured home. Census data reports shipment of approximately 51,000 new manufactured homes in 2011, with approximately 17 percent titled as real estate.[114] For purposes of this analysis, the Bureau assumes that all of these homes were used as principal dwellings for consumers and that all of these purchases were financed. In addition, the Bureau believes that the proportion

---

[114] See Cost & Size Comparisons: New Manufactured Homes, *available at* http://www.census.gov/construction/mhs/pdf/sitebuiltvsmh.pdf.

of homes titled as real estate is a reasonable estimate of the number of new manufactured home purchase transactions that are secured in part by land.[115] The Bureau therefore estimates that based upon 2011 data approximately 42,400 new manufactured home sales were financed by chattel loans (which can include homes located on leased land such as in trailer parks and other land-lease communities) and 8,600 transactions were secured by new manufactured homes and land. Applying a factor of approximately eight percent, the Bureau estimates that, of these, almost 3,400 were chattel HPMLs that were not qualified mortgages, and almost 700 were land and home-secured HPMLs that were not qualified mortgages.[116]

Transactions financing the purchase of an existing manufactured home. Census data also reports an estimated 369,000 move-ins to owner-occupied manufactured homes in 2011.[117] As noted above, approximately 51,000 new manufactured homes were shipped. Therefore, the Bureau estimates that approximately 318,000 existing manufactured homes were purchased in 2011. Again, the Bureau assumes that all of these purchases were financed. Further, based upon a review of nearly two decades of Census data on shipments of new manufactured homes, the Bureau estimates that approximately one third of the existing manufactured homes are titled as real property. Therefore, the Bureau estimates that approximately 105,000 purchases of existing

[115] Only a few states provide for treating manufactured homes sited on leased land as real property.

[116] This estimate would increase to the extent any other manufactured home purchase HPMLs would not be qualified mortgages solely because they exceed caps on points and fees in the Bureau's ATR Rule. As noted in the footnote at the outset of the Section 1022 analysis above, however, the Bureau believes this is less likely based upon existing and potentially forthcoming clarifications on this issue.

[117] The Census report refers to these homes as "manufactured/mobile homes", but the Census definitions note that all of these homes are "HUD Code homes", which is the fundamental characteristic of what are currently referred to as manufactured homes.

manufactured homes also involved the acquisition of land which provided security for the purchase loan[118], while approximately 213,000 purchases were secured only by the manufactured home (chattel loans). Applying the same eight percent factor for other purchases discussed above, of these, approximately 17,000 were chattel HPMLs that were not qualified mortgages, and approximately 8,400 were land- and home-secured HPMLs that were not qualified mortgages. As with new homes, this estimate would increase to the extent that any other manufactured home purchase HPMLs would not be qualified mortgages solely because they exceed caps on points and fees in the Bureau's 2013 ATR Rule.

Refinances and home improvement loans on existing manufactured homes. The Bureau's analysis of 2011 HMDA data, matched with the HLP data from the FHFA, indicates that, approximately, for every four covered purchase manufactured housing loans, there is one refinance or home improvement loan. Applying this factor of 4:1, approximately 4,300 (17,000/4) were chattel HPMLs that were not qualified mortgages, and approximately 2,100 (8,400/4) were land and home-secured HPMLs that were not qualified mortgages.[119]

a. Covered Persons

Transactions Secured by New Manufactured Homes

The proposal seeks comment on narrowing the exemption adopted in the Final Rule to cover only transactions secured solely by a new manufactured home but not land.

[118] According to data provided by HUD for the fiscal year 2011, approximately 5,900 existing manufactured homes were purchased together with land under the FHA Title II program.
[119] These estimates would increase to the extent any other manufactured home purchase HPMLs would not be qualified mortgages solely because they exceed caps on points and fees in the Bureau's ATR Rule. As noted in the footnote at the outset of the Section 1022 analysis above, however, the Bureau believes this is less likely based proposed clarifications on this issue.

The proposal also seeks comment on conditioning the exemption for those transactions on providing to the consumer an estimate of the replacement cost of the new manufactured home, including any appropriate adjustments, using a third-party published cost service such as the NADAGuides.com Value Report[120] or other methods discussed in more detail in the section-by-section analysis. The proposal also seeks comment on maintaining the exemption for transactions secured by both new manufactured homes and land but conditioning that exemption on use of an alternative valuation method.

If the exemption were narrowed to no longer cover HPMLs secured by both a new manufactured home and land, the creditor would need to obtain USPAP- and FIRREA-compliant appraisal with an interior inspection in these transactions. The Bureau believes the cost of this appraisal is not likely to be significantly higher than the cost of current valuation practices in these transactions. As discussed in the section-by-section analysis above, the Bureau understands that GSE, HUD Title II, USDA, and VA manufactured housing finance programs all require USPAP-compliant appraisals on standard GSE forms for transactions secured by manufactured homes and land, and that thousands of these transactions occur each year in these programs, some at HPML rates. Even if a creditor's appraisal does not meet the appraisal standards for these programs (for example, GSE requirements mandating a minimum number of manufactured homes be used as comparables), it still may comply with USPAP.[121] In addition, based upon

[120] A sample of this report, as noted in the section-by-section analysis, is available at http://www.nadaguides.com/Manufactured-Homes/images/forms/MHOnlineSample.pdf.

[121] Outreach to a large appraiser trade association indicates that between 1998 and 2007 nearly 10,000 individuals took their in-person or online seminars on appraising manufactured housing. The current version of these seminar materials, as well as outreach to state appraisal boards and related research, confirms that when necessary USPAP appraisals can use non-manufactured

further research, the Bureau has confirmed that USPAP appraisals of manufactured homes and land cost approximately the same on average as USPAP appraisals of other types of homes and land titled together as real property.[122] Moreover, information obtained in outreach and research from a large manufactured housing lender and a large bank indicate that it is common to obtain at least an appraisal of the land in these transactions. The Bureau believes that the cost of a USPAP-complaint appraisal of a vacant lot is unlikely to cost more than the average $350 cost for a USPAP-compliant appraisal of a home. Therefore, based upon available information, the Bureau does not believe that narrowing the exemption to exclude these transactions is likely to lead to significant new costs for creditors.

If the exemption were conditioned on obtaining an estimate of the value of the new manufactured home from a published cost service (such as a NADA Guide Valuation Report or a report from the Marshall & Swift Cost Estimator) and providing this to the consumer, the costs likely would be minimal. The Bureau has received information in outreach indicating that annual subscriptions to the NADA Guide may cost between $100 and $200 for an unlimited number of value reports, while similar unlimited-use subscriptions to the Marshall & Swift service may cost approximately

---

homes as comparables, making adjustments where needed. Therefore, the Bureau does not believe that appraiser availability and appraisal feasibility should affect its cost estimates here.

[122] For example, a survey in Texas – the state with the highest number of new manufactured home purchases – estimated that manufactured home appraisals cost approximately the same as single-family appraisals. *See* Texas A&M Univ. Real Estate Center, Univ. of Chicago, and Univ. of Houston, "The Texas Appraisers and Appraisal Management Company Survey" (Oct. 2012) at Table 2 (indicating that manufactured home appraisal costs cluster in the range of $351-400). In addition, in all nine Veterans Administration (VA) regions, VA appraiser fee schedules either do not separately break out the cost of manufactured home appraisals or provide for fees that are the same or lower than single-family appraisals.

$1,200. [123] In addition, for transactions secured by both a new manufactured home and land, if this condition also required obtaining an appraisal of the land, costs are unlikely to increase in many of these transactions because information obtained in outreach suggests appraisals of the land already are a common practice in these transactions. The Bureau seeks comment on the frequency with which the type of valuation information is described in this paragraph is obtained in a new manufactured home transaction.

Finally, the proposal requests comment on whether any condition on the exemption also should call for the consumer to receive a copy of the valuation obtained before consummation. The Bureau does not believe this aspect of any condition on an exemption would add significant burden. For first-lien transactions, delivery already would be required under Regulation B. *See* 12 CFR 1002.14(a)(1). For first- and subordinate-lien transactions, transmission generally would occur electronically and the cost would be minimal, as discussed in the Bureau's Section 1022(b) analysis in the Final Rule, 78 FR at 10421.

Transactions Secured by Existing Manufactured Homes and Not Land

Creditors originating covered transactions secured by existing manufactured homes but not land that would be covered loans would experience some reduced burden as a result of the proposed exemption. In particular, these loans would not be subject to the estimated per-loan costs for a USPAP-complaint appraisal described in the 2013

[123] The average cost per-loan would therefore depending on the covered person's total level of lending activity. This cost also could increase to the extent the condition were to require the creditor to gather information necessary to make adjustments to the estimate from the published cost service, such as information on the land lease community or location, or information necessary to confirm the accuracy of the estimate from the published cost service, such as verifying by interior inspection that the proper model was sited. The extent of cost increase generated by these steps would depend on how often they are performed under existing practice.

Interagency Appraisals Final Rule.[124] For these transactions, creditors also would not need to spend time or resources on complying with the requirements in the HPML appraisal rules: checking for applicability of the second appraisal requirement on a flipped property (in a purchase transaction) and paying for that appraisal when the requirement applies, obtaining and reviewing the appraisals conducted for conformity to this rule, and providing disclosures and appraisal report copies to applicants.

USPAP-complaint appraisals may currently be conducted for transactions secured by existing manufactured homes but not land much less frequently than in connection with HPMLs overall. For example, the Bureau believes that USPAP is a set of standards typically followed by appraisers who are state-certified or licensed, and that state laws generally do not require certifications or licenses to appraise personal property. Therefore, even though USPAP includes standards for the appraisal of personal property, it is unclear that these standards are applied when individuals who are not state-licensed or state-certified value manufactured homes. Indeed, the Bureau believes that currently, in some transactions, lenders may simply prepare their own estimates of the value of the home without engaging a licensed or certified appraiser.

As a result, for purposes of analyzing the benefits of the proposed exemption, the Bureau assumes that very few, if any, transactions secured by existing manufactured homes but not land include USPAP-compliant appraisals.[125] While the Bureau believes that this is a reasonable assumption, it seeks nationally-representative data from

[124] *See* Section 1022(b) analysis, 78 FR at 10418-21.

[125] Outreach to a provider of reports including comparables on existing manufactured homes in transactions secured by the home but not land indicates that they provide these reports to some of the lenders in the industry, and sell a total of approximately 3,000 reports at an average price of nearly $300. In addition, a large industry trade association also maintains a service that provides reports on comparables for manufactured homes located in larger lease communities.

commenters on valuation practices for these transactions. Meanwhile, the estimated burden reduced as a result of this proposed exemption would be the difference between the cost of a USPAP-complaint appraisal (which the Bureau assumes would be no more than the cost of an appraisal in a transaction secured by a site-built home, i.e., $350) and the cost of current valuation practices, such as obtaining an estimate from a published cost service or an evaluation in the case of financial institutions subject to FIRREA regulations. The Bureau believes that most lenders obtain estimates from published cost services in most if not all of these transactions, thus, the Bureau believes the burden reduction of the exemption would be approximately the same, regardless of whether the exemption were conditioned on the creditor obtaining an estimate based upon a published cost service.[126]

b. Consumers

The Bureau believes that consumers using HPMLs that are not qualified mortgages in an amount over $25,000 to purchase, improve, or refinance any manufactured home generally would benefit as much as any other type of homeowner from an estimate of the value of the home, including an appraisal, in the ways discussed in the Bureau's analysis under Section 1022 in the 2013 Interagency Appraisals Final Rule. In some cases, this benefit could be even greater; some recent data suggests the risk of negative equity may be as much as two times greater for owners of manufactured homes than for owners of other types of housing. One reason that negative equity may be

[126] The creditor also may have some per-transaction costs for obtaining information about the condition of the home, including through an inspection, used to develop the cost estimate. The Bureau believes, however, that it is standard industry practice for lenders to obtain information about the condition of the home as part of their underwriting process, whether by hiring a third party property inspector or obtaining photos of the home from the borrower.

a more acute risk in manufactured home transactions is that, according to research and outreach conducted by the Agencies, the loan amount can frequently exceed the collateral value from the outset of the transaction without the consumer's knowledge.[127] Obtaining an appraisal, or in some cases an alternative valuation, can be an important means of informing the consumer (and creditor) of the equity position in the home at the time of consummation and preventing transactions where the consumer unknowingly begins home ownership in a negative equity position. This type of knowledge can be critical to making informed choices about what type of transactions to pursue. If a consumer who purchases a manufactured home has negative equity at the time of purchase (or a consumer who seeks to make home improvements has negative equity at the time of the improvements), this decreases the chance that the consumer will build equity for a significant period of time and, according to outreach with a consumer advocacy group, the consumer is more likely to face impediments when seeking to refinance the HPML (which in the case of chattel lending is more often at a high rate than loans for other types of housing) or sell the home (which can be an important loss mitigation option if the HPML becomes difficult to afford).

Transactions Secured by New Manufactured Homes

For HPMLs secured by new manufactured homes, as discussed in the section-by-section analysis above, the Agencies are seeking comment on options for ensuring the consumer is informed of the value of the dwelling serving as collateral – whether via

[127] *See* American Housing Survey, "Mortgage Characteristics – Owner Occupied Units (NATIONAL)," Table C14a-OO (2011) (as of 2011, 39% of manufactured homes had outstanding loan-to-value (LTV) ratios of over 100%, while the overall rate for owner-occupied housing was only 19%), *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C14AOO&prodType=table.

narrowing or placing conditions on the exemption. If the exemption were narrowed to exclude transactions secured by both manufactured homes and land so that an appraisal is required and consumers receive an appraisal report copy, then, as noted above, information obtained in outreach suggests that the cost of the valuation (which typically is passed on to the consumer) would not necessarily increase relative to existing practice. Similarly, valuation costs would not necessarily increase if the exemption were conditioned on following an alternative practice, such as adding the appraised value of the land alone to the estimated value of the home using a cost approach, because that practice appears to be common currently.

Finally, for transactions secured by a new manufactured home but not land, published cost estimates are not likely to add a significant expense, as discussed above. Any of these options also would ensure that consumers are informed of an estimate of the value of the manufactured home. Otherwise, the manufacturer's invoice may be the only document relating to the value of the home, and the consumer would not have a right to receive a copy of that document under the ECOA Valuations Rule.[128]

Transactions Secured by Existing Manufactured Homes and Not Land

For consumers seeking refinances or home improvement loans secured by existing manufactured homes, seeking to sell existing manufactured homes, or seeking to buy existing manufactured homes without using land as collateral for the transaction, the proposed exemption for transactions secured by existing manufactured homes but not land could provide a significant benefit if it would be difficult for a significant number of these transactions to be consummated without an exemption. The Bureau does not have

[128] *See* 12 CFR 1002.14(a); comment 14(b)(3)-3.iv (clarifying that the manufacturer's invoice is not a valuation that must be provided to the consumer under Regulation B).

information indicating that USPAP-complaint appraisals by state-certified or state-licensed appraisers for these transactions are common industry practice. In the section-by-section analysis above, the Agencies also have requested comment on how often state-certified or state-licensed appraisers are available to service these transactions. If such appraisers are not consistently available in these transactions, then without the exemption, buyers using HPMLs to purchase, and owners using HPMLs to refinance, existing manufactured homes without offering land as security could be faced with a significant barrier. Consumers selling their homes could be similarly affected because the Bureau believes that many buyers of these properties use HPMLs that are not qualified mortgages, which would make it difficult to find a buyer who could close the loan using an available valuation method.

As discussed in the Bureau's analysis under Section 1022 in the 2013 Interagency Appraisals Final Rule, in general, consumers who are borrowing HPMLs that are covered by the rule nonetheless could benefit if an appraisal can be conducted. If the proposed exemption is for transactions secured by existing manufactured homes and not land is adopted, these benefits could be lost if creditors do not obtain a reliable home estimate in the transaction.[129] The Agencies therefore have sought comment on conditioning the proposed exemption on use of a different type of home estimate, such as an independent estimate based upon comparables (as is required in HUD Title I transactions) or an estimate from a published cost service is more likely to achieve all of these same benefits. At least the latter type of valuation appears to be more common for these types of transactions based upon industry comments on the 2012 Interagency Appraisals Proposal

[129] Section 1022(b) Analysis, 78 FR at 10417-18.

and further outreach and research in preparation for this proposal. As a result, the proposed exemption with such a condition would help to preserve access to credit for consumers seeking HPMLs secured by existing manufactured homes but not land (and not otherwise exempt as a qualified mortgage or in an amount of $25,000 or less) because the transactions could be supported not only by a market value (comparable-based) appraisal if available but also by an estimate from a published cost service. Allowing for a broader range of valuation options helps to ensure access to this type of credit for consumers who own or are seeking to buy existing manufactured homes without offering land as security for the transaction.

As noted in the section-by-section analysis, consumer advocates in outreach raised questions about the accuracy of estimates derived from a published cost service such as the NADA Guide value report in part because this method of estimating home values does not analyze the market value of the home in the particular location based upon comparables. The Bureau notes, however, that one cost method – the NADAGuide.com Value Report – provides for adjustments based upon region and land-ease community which can take into account location factors. In addition, comparable-based estimates for existing manufactured homes can cost nearly $300 according to outreach to one provider, which the Bureau believes would be significantly more costly than an estimate based upon a published cost service. If such a valuation for a new manufactured home would be similarly priced, then it would be significantly more expensive than the cost estimate noted above (which can be used for new manufactured homes as well as existing manufactured homes). The Bureau believes that a lower-cost method would result in less cost passed along to the consumer. In any event, for both

new and existing manufactured homes, the Bureau requests data from commenters on the cost and accuracy of valuations developed from local market comparables, and valuations based upon published cost services that provide for adjustments such as those noted above.

Transactions Secured by Existing Manufactured Homes and Land

Finally, as noted above, the Bureau does not believe that continuing to require USPAP-compliant appraisals for transactions secured by existing manufactured homes and land would pose any significant impediment to these transactions, as the cost of the appraisal is on par with that of other homes and the process used of selecting and adjustment comparables also is standard.

B. Potential Specific Impacts of the Supplemental Proposal

1. *Potential Reduction in Access by Consumers to Consumer Financial Products or Services*

The proposed rule includes only exemptions. Exempting loans from the requirements of the HPML Appraisal Rule will not reduce access to credit. While the Agencies are seeking comment on whether to include certain conditions on these proposed exemptions as discussed in the section-by-section analysis, these conditions would not reduce access to credit. The cost of complying with any conditions, if adopted, would not exceed the cost of complying with the HPML Appraisal Rule (which in turn could increase the cost of credit) because any exemptions are optional and thus cost or burdens of exemptions also are optional. In addition, as discussed above, the Agencies are seeking comment on whether to narrow the exemption for new manufactured homes and/or to include conditions on this exemption. The Bureau does not believe that

requiring a USPAP- and FIRREA-compliant appraisal with an interior inspection for transactions secured by a new manufactured home and land or conditioning these or other new manufactured home transactions on the alternative valuation methods described above would reduce access to credit in these transactions. Such valuation methods at most would entail only slightly increased costs where different from existing methods, such that they do not carry the potential to impede access to credit.

2. *Impact of the Proposed Rule on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, As Described in Section 1026 of the Dodd-Frank Act*

Small depository banks and credit unions may originate loans of $25,000 or less more often, relative to their overall origination business, than other depository institutions (DIs) and credit unions. Therefore, relative to their overall origination business, these small depository banks and credit unions may experience relatively benefits from the proposed exemption for smaller dollar loans. These benefits would not be high in absolute dollar terms, however, because the number of transactions that would be uniquely exempted by the proposed small loan exemption is still relatively low – less than 5,000, as discussed above.

Otherwise, the Bureau does not believe that the impact of the proposal would be substantially different for the DIs and credit unions with total assets below $10 billion than for larger DIs and credit unions. The Bureau has not identified data indicating that small depository institutions or small credit unions disproportionately engage in lending secured by manufactured homes. Finally, the Bureau has not identified data indicating that these institutions engage in streamlined refinances that would be newly-exempted by

the proposed exemption at any greater rate than other financial institutions. The Bureau requests relevant data on the impact of the proposed rule on DIs and credit unions with total assets below $10 billion.

3. Impact of the Proposed Rule on Consumers in Rural Areas

The Bureau understands that a significantly greater proportion of existing manufactured homes are located in rural areas compared to other single-family homes.[130] Therefore, any impacts of the proposed exemption for transactions secured by these homes (but not land) would proportionally accrue more often to rural consumers. With respect to streamlined refinances, the Bureau does not believe that streamlined refinances are more or less common in rural areas. Accordingly, the Bureau currently believes that the proposed exemption for streamlined refinances would generate a similar benefit for consumers in rural areas as for consumers in non-rural areas. Finally, the Bureau does not believe the magnitude of the difference of the smaller dollar loans originated, between consumers in rural areas and not in rural areas, is significant. The Bureau requests comment and relevant data on the impact of the proposed rule on rural areas.

VII. Regulatory Flexibility Act

Board

[130] Census data from 2011 indicates that approximately 45 percent of owner-occupied manufactured homes are located outside of metropolitan statistical areas, compared with 21 percent of owner-occupied single-family homes. *See* U.S. Census Bureau, 2011 American Housing Survey, General Housing Data – Owner-Occupied Units (National), *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C01OO&prodType=table. *See also* Housing Assistance Council Rural Housing Research Note, "Improving HMDA: A Need to Better Understand Rural Mortgage Markets," (Oct. 2010), *available at* http://www.ruralhome.org/storage/documents/notehmdasm.pdf. Industry comments on the 2012 Interagency Appraisals Proposed Rule noted that manufactured homes sited on land owned by the buyer are predominantly located in rural areas; one commenter estimated that 60 percent of manufactured homes are located in rural areas.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments apply to certain banks, other depository institutions, and non-bank entities that extend HPMLs.[131] The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[132] The size standard to be considered a small business is: $175 million or less in assets for banks and other depository institutions; and $7 million or less in annual revenues for the majority of nonbank entities that are likely to be subject to the proposed regulations. Based on its analysis, and for the reasons stated below, the Board believes that the proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

The Board requests public comment on all aspects of this analysis.

A. Reasons for the Proposed Rule

This proposal relates to the 2013 Interagency Appraisals Final Rule, issued jointly by the Agencies on January 18, 2013, which goes into effect on January 18, 2014. *See* 78 FR 10368 (Feb. 13, 2013). The Final Rule implements a provision added to TILA by the

[131]For its RFA analysis, the Board considered all creditors to which the Final Rule applies. The Board's Regulation Z at 12 CFR 226.43 applies to a subset of these creditors. *See* § 226.43(g).
[132] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

Dodd-Frank Act requiring appraisals for "higher-risk mortgages." For certain mortgages with an annual percentage rate that exceeds the APOR by a specified percentage (designated as "HPMLs" in the Final Rule), the Final Rule requires creditors, among other requirements, to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. The definition of higher-risk mortgage in new TILA section 129H expressly excludes qualified mortgages, as defined in TILA section 129C, as well as open-end mortgages reverse mortgage loans that are qualified mortgages as defined in TILA section 129C.

The Agencies are now proposing amendments to the Final Rule to exempt the following transactions: (1) transactions secured by existing manufactured homes and not land; (2) certain "streamlined" refinancings; and (3) transactions of $25,000 or less. The Agencies are also proposing to revise the Final Rule's definition of "business day."

B. Statement of Objectives and Legal Basis

As discussed above, section 1471 of the Dodd-Frank Act created new TILA section 129H, which establishes special appraisal requirements for "higher-risk mortgages." 15 U.S.C. 1639h. The Final Rule implements these requirements and includes certain exemptions from the Rule's requirements. The Agencies believe that several additional exemptions from the new appraisal rules may be appropriate. Specifically, the Agencies are proposing an exemption for transactions secured by an existing manufactured home (and not land), certain types of refinancings, and transactions of $25,000 or less (indexed for inflation). In addition, the Agencies are proposing to revise the Final Rule's definition of "business day" for consistency with

disclosure timing requirements under existing Regulation Z mortgage disclosure timing requirements and the Bureau's proposed rules for combined mortgage disclosures under TILA and the RESPA (2012 TILA-RESPA Proposed Rule). *See* § 1026.19(a)(1)(ii) and (a)(2); *see also* 77 FR 51116 (Aug. 23, 2012) (*e.g.*, proposed § 1026.19(e)(1)(iii) (early mortgage disclosures) and (f)(1)(ii) (final mortgage disclosures).

The legal basis for the proposed rule is TILA section 129H(b)(4). 15 U.S.C. 1639h(b)(4). TILA section 129H(b)(4)(A), added by the Dodd-Frank Act, authorizes the Agencies jointly to prescribe regulations implementing section 129H. 15 U.S.C. 1639h(b)(4)(A). In addition, TILA section 129H(b)(4)(B) grants the Agencies the authority jointly to exempt, by rule, a class of loans from the requirements of TILA section 129H(a) or section 129H(b) if the Agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors. 15 U.S.C. 1639h(b)(4)(B).

C. Description of Small Entities to Which the Regulation Applies

The proposed rule applies to creditors that make HPMLs subject to 12 CFR 1026.35(c) (published by the Board in 12 CFR 226.43). In the Board's Regulatory Flexibility Analysis for the Final Rule, the Board relied primarily on data provided by the Bureau to estimate the number of small entities that would be subject to the requirements of the rule.[133] According to the data provided by the Bureau, approximately 3,466 commercial banks, 373 savings institutions, 3,240 credit unions, and 2,294 non-depository institutions are considered small entities and extend mortgages, and therefore are potentially subject to the Final Rule.

[133] *See* the Bureau's Regulatory Flexibility Analysis in the Final Rule (78 FR 10368, 10424 (Feb. 13, 2013)).

Data currently available to the Board are not sufficient to estimate how many small entities that extend mortgages will be subject to 12 CFR 1026.35(c) (published by the Board in 12 CFR 226.43), given the range of exemptions provided in the Final Rule, including the exemption for qualified mortgages. Further, the number of these small entities that will make HPMLs that would qualify for the proposed exemptions is unknown.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule does not impose any new recordkeeping, reporting, or compliance requirements on small entities. The proposed rule would reduce the number of transactions that are subject to the requirements of the Final Rule. The Final Rule generally applies to creditors that make HPMLs subject to 12 CFR 1026.35(c) (published by the Board in 12 CFR 226.43), which are generally mortgages with an APR that exceeds the APOR by a specified percentage, subject to certain exemptions. The proposal would exempt three additional classes of HPMLs from the Final Rule: HPMLs secured by existing manufactured loans (but not land); certain refinance HPMLs whose proceeds are used exclusively to satisfy an existing first-lien loan and to pay for closing costs; and new HPMLs that have a principal amount of $25,000 or less (indexed to inflation). Accordingly, the proposal would decrease the burden on creditors by reducing the number of loan transactions that are subject to the Final Rule.

F. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any Federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revisions.

G. Discussion of Significant Alternatives

The Board is not aware of any significant alternatives that would further minimize the economic impact of the proposed rule on small entities. The proposed rule would exempt three additional classes of HPMLs from the Final Rule and not impose any new recordkeeping, reporting, or compliance requirements on small entities.

Bureau

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[134] These analyses must "describe the impact of the proposed rule on small entities."[135] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[136] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[137]

An IRFA is not required for this proposal because if adopted it would not have a significant economic impact on a substantial number of small entities.

The analysis below evaluates the potential economic impact of the proposed rule on small entities as defined by the RFA. The analysis generally examines the regulatory

---

[134] 5 U.S.C. 601 *et. seq.*

[135] *Id.* at 603(a). For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. *Id.* at 601(6). A "small business" is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. *Id.* at 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." *Id.* at 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. *Id.* at 601(5).

[136] *Id.* at 605(b).

[137] *Id.* at 609.

impact of the provisions of the proposed rule against the baseline of the Final Rule the Agencies issued on January 18, 2013.

A. Number and Classes of Affected Entities

The proposed rule would apply to all creditors that extend closed-end credit secured by a consumer's principal dwelling. All small entities that extend these loans are potentially subject to at least some aspects of the proposal. This proposal may impact small businesses, small nonprofit organizations, and small government jurisdictions. A "small business" is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[138] Under such standards, depository institutions with $175 million or less in assets are considered small; other financial businesses are considered small if such entities have average annual receipts (*i.e.*, annual revenues) that do not exceed $7 million. Thus, commercial banks, savings institutions, and credit unions with $175 million or less in assets are small businesses, while other creditors extending credit secured by real property or a dwelling are small businesses if average annual receipts do not exceed $7 million.

The Bureau can identify through data under HMDA, Reports of Condition and Income (Call Reports), and data from the National Mortgage Licensing System (NMLS) the approximate numbers of small depository institutions that would be subject to the final rule. Origination data is available for entities that report in HMDA, NMLS or the credit union call reports; for other entities, the Bureau has estimated their origination activities using statistical projection methods.

[138] 5 U.S.C. 601(3). The current SBA size standards are located on the SBA's website at http://www.sba.gov/content/table-small-business-size-standards.

The following table provides the Bureau's estimate of the number and types of entities to which the proposed rule would apply:[139]

Table 1. Counts of Creditors by Type.

Category	NAICS Code	Total Entities	Small Entities	Entities That Originate Any Mortgage Loans[b]	Small Entities that Originate Any Mortgage Loans
Commercial Banking	522110	6,505	3,601	6,307[a]	3,466[a]
Savings Institutions	522120	930	377	922[a]	373[a]
Credit Unions[c]	522130	7,240	6,296	4,178[a]	3,240[a]
Real Estate Credit[d e]	522292	2,787	2,294	2,787	2,294[a]
Total		17,462	12,568	14,194	9,373
Source: 2011 HMDA, Dec 31, 2011 Bank and Thrift Call Reports, Dec 31, 2011 NCUA Call Reports, Dec 31, 2011 NMLSR Mortgage Call Reports.					
[a] For HMDA reporters, loan counts from HMDA 2011. For institutions that are not HMDA reporters, loan counts projected based on Call Report data fields and counts for HMDA reporters. [b] Entities are characterized as originating loans if they make one or more loans.					
[c] Does not include cooperativas operating in Puerto Rico. The Bureau has limited data about these institutions or their mortgage activity.					
[d] NMLSR Mortgage Call Report (MCR) for 2011. All MCR reporters that originate at least one loan or that have positive loan amounts are considered to be engaged in real estate credit (instead of purely mortgage brokers). For institutions with missing revenue values, the probability that institution was a small entity is estimated based on the count and amount of originations and the count and amount of brokered loans.					
[e] Data do not distinguish nonprofit from for-profit organizations, but Real Estate Credit presumptively includes nonprofit organizations.					

B. Impact of Proposed Exemptions

The provisions of the proposed rule all provide or modify exemptions from the HPML appraisal requirements. Measured against the baseline of the burdens imposed by the 2013 Interagency Appraisals Final Rule, the Bureau believes that these proposed provisions impose either no or insignificant additional burdens on small entities. The Bureau believes that these proposed provisions would reduce the burdens associated with implementation costs, additional valuation costs, and compliance costs stemming from the HPML appraisal requirements. The Bureau also notes that creditors voluntarily

[139] The Bureau assumes that creditors who originate chattel manufactured home loans are included in the sources described above, but to the extent commenters believe this is not the case, the Bureau seeks data from commenters on this point.

choose whether to avail themselves of the exemptions.

1. Exemption for Certain Transactions Secured by Manufactured Homes

The proposed rule would exempt from the HPML appraisal requirements a transaction secured by an existing manufactured home and not land. This provision would remove certain burdens imposed by the Final Rule on small entities extending HPMLs covered by the final rule when they are secured solely by existing manufactured homes, whether for refinance, home improvement, purchase transactions, or other purposes. The burdens removed would be those of providing a consumer notice, determining the applicability of the second appraisal requirement in purchase transactions, and obtaining, reviewing, and disclosing to consumers USPAP- and FIRREA-compliant appraisals. As discussed in the section-by-section analysis above, the Agencies are seeking comment on whether, to be eligible for this burden-reducing exemption, the creditor should be required to obtain an estimate of the value of the home based upon a published cost service method, a method required under HUD Title I programs, or an otherwise USPAP-complaint method, and provide a copy to the consumer no later than three business days before closing.

The requirement of obtaining an alternative valuation to qualify for the exemption might result in relatively less regulatory burden reduction. However, the Bureau understands from outreach that at least a cost estimate is often obtained in these transactions and, in any event, even if such a condition were adopted in the Final Rule, the decision to obtain an alternative estimate would be voluntary under this rule and the Bureau presumes that a small entity would not do so unless the exemption provided a net burden reduction versus obtaining a USPAP appraisal. Thus, the Bureau believes that the

creditors would still experience a significant benefit from the exemption, even with this additional requirement. The Bureau requests comment on the impact of this proposed exemption on small entities. The Bureau also requests comment on how the impact would change, if at all, if the Agencies included a condition that the creditor obtain an estimate of the value of the home and provide this to the consumer.

As also discussed in the Bureau's Section 1022(b) analysis and in the section-by-section analysis, the Agencies are seeking comment on whether to narrow the scope of the exemption for new manufactured homes, and thereby subject transactions secured by both a new manufactured home and land to the HPML appraisal rules in the Final Rule, or to a condition that another type of valuation be obtained. If so narrowed or conditioned, the exemption adopted in the 2013 Final Rule would no longer relieve as much burden in these transactions. However, the Bureau believes it already is a common existing practice for creditors in these transactions to obtain either (1) an appraisal of the land and a separate estimate of the value of the home or (2) an appraisal of the land and home together. As discussed in the Section 1022 analysis above, the Bureau does not believe that there is a significant difference in cost between these methods. As also discussed in the Section 1022 analysis above, the Bureau does not believe there would be a significant cost to obtaining an estimate of the value of the home using a published cost service, including with adjustments. Accordingly, if the exemption from the requirement to obtain an appraisal were removed, or if the exemption were conditioned on obtaining an appraisal of the land and an estimate of the home using a published cost service, the Bureau does not believe these changes would impose significant economic impacts. Further, regardless, the requirements relating to "flipped" properties would not apply to a

new home.

Finally, as discussed in the Bureau's Section 1022(b) analysis and in the section-by-section analysis, the Agencies are seeking comment on whether to require the creditor to provide the consumer with a cost estimate of the value of the new manufactured home in transactions that are secured by a new manufactured home but not land. If adopted, this condition would not significantly change the amount of burden reduced by the existing exemption in these transactions, which comprise the significant majority of transactions involving new manufactured homes. The Bureau believes that the cost of obtaining an estimate of the value of the new manufactured home using a third-party cost source, and making appropriate adjustments, would be significantly less than the cost of obtaining a USPAP-complaint appraisal.

2. Proposed Exemption for "Streamlined" Refinancing Programs

The proposed rule would provide an exemption for any transaction that is a refinancing satisfying certain conditions. In brief, the proceeds of the loan may only be used to pay off an existing first lien loan and to pay closing or settlement charges is exempt from the HPML appraisal requirements, provided the new loan has the same owner or guarantor as the existing loan, and provided further that the new loan provides for periodic payments that do not cause the principal balance to increase, allow for deferment in payment of principal, or result in a balloon payment.

This provision would remove the burden to small entities extending any HPMLs covered by the Final Rule under "streamlined" refinance programs of providing a consumer notice and obtaining, reviewing, and disclosing to consumers USPAP- and FIRREA-compliant appraisals. Under an alternative discussed in the section-by-section

analysis above, to be eligible for this burden-reducing exemption, the creditor would need to obtain a valuation – which need not be a USPAP- and FIRREA-compliant appraisal – and provide it to the consumer no later than three business days before closing.

The regulatory burden reduction might be lower since a creditor would have to determine whether the refinancing loan is of the type that meets the exemption requirements. However, the Bureau believes that little if any additional time would be needed to make these determinations, as they depend upon basic information relating to the transaction that is typically already known to the creditor. Regulatory burden reduction might also be lower due to any additional condition the Agencies could adopt such as the condition of obtaining a valuation and providing it to the consumer, if one is not otherwise obtained through the normal creditor process as required by FIRREA regulations for some creditors and disclosed to the consumer as already required by the 2013 ECOA Valuations Rule. In either case, however, the decision to ensure eligibility for the exemption is voluntary and the Bureau presumes that a small entity would not do so unless the exemption provided a net burden reduction. The Bureau requests comment on the impact of this proposed exemption on small entities.

3. Proposed Exemption for Smaller Dollar Loans

The proposed rule would exempt from the HPML appraisal requirements loans equal to or less than $25,000, adjusted annually for inflation. This provision would remove burden imposed by the final rule on small entities extending any HPMLs covered by the final rule up to $25,000.

Regulatory burden reduction might also be lower due to any additional condition the Agencies could adopt such as the condition of obtaining a valuation and/or providing

the consumer with a copy of any valuation the creditor has obtained in connection with the application. However, the decision to ensure eligibility for the exemption is voluntary and the Bureau presumes that a small entity would not do so unless the proposed exemption provided a net burden reduction. The Bureau requests comment on the impact of this proposed exemption on small entities.

C. Conclusion

Each element of this proposal would reduce economic burden for small entities. The proposed exemption for HPMLs secured by existing manufactured homes and not land would lessen any economic impact resulting from the HPML appraisal requirements. The proposed exemption for "streamlined" refinance HPMLs also would lessen any economic impact on small entities extending credit pursuant to those programs, particularly those relating to the refinancing of existing loans held on portfolio. The proposed exemption for smaller-dollar HPMLs similarly would lessen burden on small entities extending credit in the form of HPMLs up to the threshold amount.

These impacts would be reduced to the extent the transactions are not already exempt from the Final Rule as qualified mortgages. While all of these proposed exemptions may entail additional recordkeeping costs, the Bureau believes that these costs are minimal and outweighed by the cost reductions resulting from the proposal. Small entities for which such cost reductions are outweighed by additional record keeping costs may choose not to utilize the proposed exemptions.

Certification

Accordingly, the undersigned certifies that if adopted this proposal would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on the analysis above and requests any relevant data.

FDIC

The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[140] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the SBA to include banking organizations with total assets of less than or equal to $175 million) and publishes its certification and a short, explanatory statement in the Federal Register together with the rule.

As of March 31, 2013, there were approximately 3,711 small FDIC-supervised banks, which include 2,275 state nonmember banks and 158 state-chartered savings banks. The FDIC analyzed the 2011 HMDA[141] dataset to determine how many loans by FDIC-supervised banks might qualify as HPMLs under section 129H of the TILA as added by section 1471 of the Dodd-Frank Act. This analysis reflects that only 70 FDIC-supervised banks originated at least 100 HPMLs, with only four banks originating more

[140] *See* 5 U.S.C. 601 *et seq*.

[141] The FDIC based its analysis on the HMDA data, as it provided a proxy for the characteristics of HPMLs. While the FDIC recognizes that fewer higher-price loans were generated in 2011, a more historical review is not possible because the average offer price (a key data element for this review) was not added until the fourth quarter of 2009. The FDIC also recognizes that the HMDA data provides information relative to mortgage lending in metropolitan statistical areas, but not in rural areas.

than 500 HPMLs. Further, the FDIC-supervised banks that met the definition of a small entity originated on average less than 8 HPMLs of $25,000 or less each in 2011.

The proposed rule relates to the 2013 Interagency Appraisals Final Rule, issued by the Agencies on January 18, 2013, which goes into effect on January 18, 2014. The 2013 Interagency Appraisals Final Rule requires that creditors satisfy the following requirements for each HPML they originate that is not exempt from the Final Rule:

- The creditor must obtain a written appraisal; the appraisal must be performed by a certified or licensed appraiser; and the appraiser must conduct a physical property visit of the interior of the property.
- At application, the consumer must be provided with a statement regarding the purpose of the appraisal, that the creditor will provide the applicant a copy of any written appraisal, and that the applicant may choose to have a separate appraisal conducted for the applicant's own use at his or her own expense.
- The consumer must be provided with a free copy of any written appraisals obtained for the transaction at least three (3) business days before consummation.
- The creditor of an HPML must obtain an additional written appraisal, at no cost to the borrower, when the loan will finance the purchase of a consumer's principal dwelling and there has been an increase in the purchase price from a prior acquisition that took place within 180 days of the current purchase.

The Agencies are now proposing to amend the 2013 Interagency Appraisals Final Rule to provide the following changes and exemptions to requirements of the Final Rule:

- To provide a different definition of "business day" than the definition used in the Final Rule, as well as a few non-substantive technical corrections.

- To exempt transactions secured solely by an existing (used) manufactured home and not land.
- To exempt certain types of refinancings with characteristics common to refinance products often referred to as "streamlined" refinances.
- To exempt extensions of credit of $25,000 or less, indexed every year for inflation.

The proposed rule would exempt certain transactions that qualify as HPMLs under the 2013 Interagency Appraisals Final Rule from the appraisal requirements of the Final Rule, resulting in reduced regulatory burden to FDIC-supervised institutions that would have otherwise been required to obtain an appraisal and comply with the requirements for such HPML transactions.

It is the opinion of the FDIC that the proposed rule will not have a significant economic impact on a substantial number of small entities that it regulates in light of the fact that: 1) the proposed rule would reduce regulatory burden on small institutions by exempting certain transactions from the requirements of the 2013 Interagency Appraisals Final Rule; and 2) the FDIC previously certified that the 2013 Interagency Appraisals Final Rule would not have a significant economic impact on a substantial number of small entities. Accordingly, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Nonetheless, the FDIC seeks comment on whether the proposed rule, if adopted in final form, would impose undue burden on, or have unintended consequences for, small

FDIC-supervised institutions and whether there are ways such potential burden or consequences could be minimized in a manner consistent with section 129H of TILA.

FHFA

The supplemental proposal to amend the 2013 Interagency Appraisals Final Rule applies only to institutions in the primary mortgage market that originate mortgage loans. FHFA's regulated entities—Fannie Mae, Freddie Mac, and the Federal Home Loan Banks—operate in the secondary mortgage markets. In addition, these entities do not come within the meaning of small entities as defined in the RFA. *See* 5 U.S.C. 601(6).

NCUA

The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[142] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the Federal Register together with the rule. NCUA defines small entities as small credit unions having less than fifty million dollars in assets[143] in contrast to the definition of small entities in the rules issued by the SBA, which include banking organizations with total assets of less than or equal to $175 million.

However, for purposes of the 2013 Interagency Appraisals Final Rule and for consistency with the Agencies, NCUA reviewed the dataset for FICUs that met the small

[142] *See* 5 U.S.C. 601 *et seq*.
[143] NCUA Interpretative Ruling and Policy Statement (IRPS) 87-2, 52 FR 35231 (Sept. 18, 1987); *as amended by* IRPS 03-2, 68 FR 31951 (May 29, 2003); *and* IRPS 13-1, 78 FR 4032, 4037 (Jan. 18, 2013).

entity standard for banking organizations under the SBA's regulations. As of March 31, 2012, there were approximately 6,060, FICUs with total assets of $175 million or less. Of the FICUs which reported 2010 HMDA data, 452 reported at least one HPML. The data reflects that only three FICUs originated at least 100 HPMLs, with no FICUs originating more than 500 HPMLs, and eighty-eight percent of reporting FICUs originating 10 HPMLs or less. Further, FICUs that met the SBA's definition of a small entity originated an average of 4 HPML loans each in 2010. [144]

The 2013 Interagency Appraisals Final Rule requires that creditors satisfy the following requirements for each HPML they originate that is not exempt from the Final Rule:

- The creditor must obtain a written appraisal; the appraisal must be performed by a certified or licensed appraiser; and the appraiser must conduct a physical property visit of the interior of the property.
- At application, the consumer must be provided with a statement regarding the purpose of the appraisal, that the creditor will provide the applicant a copy of any written appraisal, and that the applicant may choose to have a separate appraisal conducted for the applicant's own use at his or her own expense.
- The consumer must be provided with a free copy of any written appraisals obtained for the transaction at least three (3) business days before consummation.

[144] With only a fraction of small FICUs reporting data to HMDA, NCUA also analyzed FICUs not observed in the HMDA data. Using the total number of real estate loans originated by FICUs with less than $175M in total assets, NCUA estimated the average number of HPMLs per real estate loan originated. Using this ratio to interpolate the likely number of HPML originations, the analysis suggests that small FICUs originate on average less than 2 HPML loans each year.

- The creditor of an HPML must obtain an additional written appraisal, at no cost to the borrower, when the loan will finance the purchase of a consumer's principal dwelling and there has been an increase in the purchase price from a prior acquisition that took place within 180 days of the current purchase.

The Agencies are now proposing to amend the 2013 Interagency Appraisals Final Rule to provide the following changes and exemptions to requirements of the Final Rule:

- To provide a different definition of "business day" than the definition used in the Final Rule, as well as a few non-substantive technical corrections.
- To exempt transactions secured solely by an existing (used) manufactured home and not land from the HPML appraisal requirements.
- To exempt from the HPML appraisal rules certain types of refinancings with characteristics common to refinance products often referred to as "streamlined" refinances.
- To exempt from the HPML appraisal rules extensions of credit of $25,000 or less, indexed every year for inflation.

As previously explained, the proposed rule would align the definition of "business day" under the Final Rule with the definition of "business day" for the required disclosures to, among other things, improve streamlining and consistency in Regulation Z disclosures by avoiding the creditor having to provide the copy of the appraisal under the HPML rules and corrected Regulation Z disclosures at different times (because different definitions of "business day" would apply). In addition, the proposed rule would exempt certain transactions that qualify as HPMLs under the 2013 Interagency Appraisal Final Rule from the requirements of the Final Rule, resulting in reduced regulatory burden to

FICUs that would have otherwise been required to obtain an appraisal and comply with the requirements for such HPML transactions. NCUA believes these proposed changes will only serve to lessen regulatory burdens imposed by the Final Rule.

In light of the fact that few loans made by FICUs would qualify as HPMLs, the fact that the NCUA certified that the 2013 Interagency Appraisal Final Rule would not have a significant economic impact on a substantial number of small entities, and that the proposal would only further reduce any regulatory burdens imposed on small credit unions by the Final Rule, NCUA believes the proposed rule will not have a significant economic impact on small FICUs.

For the reasons provided above, NCUA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

OCC

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 603 of the RFA is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks, savings institutions and other depository credit intermediaries with assets less than or equal to $175 million[145] and trust companies with total assets of $7 million or less) and publishes its certification and a short, explanatory statement in the *Federal Register* along with its proposed rule.

[145] " A financial institution's assets are determined by averaging assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's Table of Size Standards.

As described previously in this preamble, section 1471 of the Dodd-Frank Act establishes a new TILA section 129H, which sets forth appraisal requirements applicable to higher-risk mortgages (termed "higher-priced mortgage loans" or HPMLs in the 2013 Interagency Appraisals Final Rule). The statute expressly excludes from these appraisal requirements coverage of "qualified mortgages," the terms of which have been established by the CFPB as an exemption from its new TILA mortgage "ability to repay" underwriting requirements rule. In addition, the Agencies may jointly exempt a class of loans from the requirements of the statute if the Agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.

The Agencies issued the Final Rule on January 18, 2013, which will be effective on January 18, 2014. Pursuant to the general exemption authority in the statute, the Final Rule exempts from coverage of the HPML appraisal rules the following transactions: transactions secured by new manufactured homes; transactions secured by mobile homes, boats, or trailers; transactions to finance the initial construction of a dwelling; temporary or "bridge" loans with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months; and reverse mortgage loans. The Agencies are issuing this supplemental proposed rule to include three additional exemptions from the HPML appraisal requirements of section 129H of TILA: transactions secured solely by an existing manufactured home and not land; certain "streamlined" refinancings; and extensions of credit of $25,000 or less, indexed every year for inflation.

The OCC currently supervises 1,842 banks (1,204 commercial banks, 63 trust companies, 527 federal savings associations, and 48 branches or agencies of foreign

banks). We estimate that less than 1,309 of the banks supervised by the OCC are currently originating one- to four - family residential mortgage loans that could be HPMLs. Approximately 737 OCC supervised banks are small entities based on the SBA's definition of small entities for RFA purposes. Of these, the OCC estimates that 428 banks originate mortgages and therefore may be impacted by the proposed rule.

The OCC classifies the economic impact of total costs on a bank as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense. The OCC estimates that the average cost per small bank, if the proposed rule is promulgated, will be zero. The proposal does not impose new requirements on banks or include new mandates. The OCC assumes any costs (e.g., alternative valuations) or requirements that may be associated with the proposed exemptions will be less than the cost of compliance for a comparable loan under the Final Rule.

Therefore, we believe the proposed rule will not have a significant economic impact on a substantial number of small entities. The OCC certifies that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

Board, Bureau, FDIC, NCUA and OCC

Certain provisions of the 2013 Interagency Appraisals Final Rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq*.). *See* 78 FR 10368, 10429 (Feb. 13, 2013). Under the PRA, the Agencies may not conduct or sponsor, and a person is not required to

respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this joint notice of proposed rulemaking to amend the 2013 Final Rule have been submitted to OMB for review and approval by the Bureau, FDIC, NCUA, and OCC under section 3506 of the PRA and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Title of Information Collection: HPML Appraisals.

Frequency of Response: Event generated.

Affected Public: Businesses or other for-profit and not-for-profit organizations.[146]

Bureau: Insured depository institutions with more than $10 billion in assets, their depository institution affiliates, and certain non-depository mortgage institutions.[147]

FDIC: Insured state non-member banks, insured state branches of foreign banks, and certain subsidiaries of these entities.

OCC: National banks, Federal savings associations, Federal branches or agencies of foreign banks, or any operating subsidiary thereof.

Board: State member banks, uninsured state branches and agencies of foreign banks.

NCUA: Federally-insured credit unions.

Abstract:

[146] The burdens on the affected public generally are divided in accordance with the Agencies' respective administrative enforcement authority under TILA section 108, 15 U.S.C. 1607.

[147] The Bureau and the Federal Trade Commission (FTC) generally both have enforcement authority over non-depository institutions for Regulation Z. Accordingly, for purposes of this PRA analysis, the Bureau has allocated to itself half of the Bureau's estimated burden for non-depository mortgage institutions. The FTC is responsible for estimating and reporting to OMB its share of burden under this proposal.

The collection of information requirements in the 2013 Final Rule are found in paragraphs (c)(3)(i), (c)(3)(ii), (c)(4), (c)(5), and (c)(6) of 12 CFR 1026.35.[148] This information is required to protect consumers and promote the safety and soundness of creditors making HPMLs subject to 12 CFR 1026.35(c). This information is used by creditors to evaluate real estate collateral securing HPMLs subject to 12 CFR 1026.35(c) and by consumers entering these transactions. The collections of information are mandatory for creditors making HPMLs subject to 12 CFR 1026.35(c). The 2013 Final Rule requires that, within three business days of application, a creditor provide a disclosure that informs consumers of the purpose of the appraisal, that the creditor will provide the consumer a copy of any appraisal, and that the consumer may choose to have a separate appraisal conducted at the expense of the consumer (Initial Appraisal Disclosure). *See* 12 CFR 1026.35(c)(5). If a loan is a HPML subject to 12 CFR 1026.35(c), then the creditor is required to obtain a written appraisal prepared by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction (Written Appraisal), and provide a copy of the Written Appraisal to the consumer. *See* 12 CFR 1026.35(c)(3)(i) and (c)(6). To qualify for the safe harbor provided under the 2013 Final Rule, a creditor is required to review the Written Appraisal as specified in the text of the rule and Appendix N. *See* 12 CFR 1026.35(c)(3)(ii).

A creditor is required to obtain an additional appraisal (Additional Written Appraisal) for a HPML that is subject to 12 CFR 1026.35(c) if (1) the seller acquired the

[148] As explained in the section-by-section analysis, these requirements are also published in regulations of the OCC (12 CFR 34.203(c)(1), (c)(2), (d), (e) and (f)) and the Board (12 CFR 226.43(c)(1), (c)(2), (d), (e), and (f)). For ease of reference, this PRA analysis refers to the section numbers of the requirements as published in the Bureau's Regulation Z at 12 CFR 1026.35(c).

property securing the loan 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the resale price exceeds the seller's acquisition price by more than 10 percent; or (2) the seller acquired the property securing the loan 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the resale price exceeds the seller's acquisition price by more than 20 percent. *See* 12 CFR 1026.35(c)(4). The Additional Written Appraisal must meet the requirements described above and also analyze: (1) the difference between the price at which the seller acquired the property and the price the consumer agreed to pay; (2) changes in market conditions between the date the seller acquired the property and the date the consumer agreed to acquire the property; and (3) any improvements made to the property between the date the seller acquired the property and the date on which the consumer agreed to acquire the property. *See* 12 CFR 1026.35(c)(4)(iv). A creditor is also required to provide a copy of the Additional Written Appraisal to the consumer. 12 CFR 1026.35(c)(6).

The requirements provided in the 2013 Final Rule were described in the PRA section of that rule. *See* 78 FR 10368, 10429 (February 13, 2013). As described in its section 1022 analysis in the 2013 Final Rule and in Table 3 to that rule, the estimated burdens allocated to the Bureau reflected an institution count based upon data that had been updated from the proposal stage and reduced to reflect those exemptions in the 2013 Final Rule for which the Bureau has identified data. As discussed in the 2013 Final Rule, the other Agencies did not adjust the calculations to account for the exempted transactions provided in the 2013 Final Rule. Accordingly, the estimated burden calculations in Table 3 in the 2013 Final Rule are overstated.

Calculation of Estimated Burden

As explained in the 2013 Final Rule, for the Initial Appraisal Disclosure, the creditor is required to provide a short, written disclosure within three days of application. Because the disclosure is classified as a warning label supplied by the Federal government, the Agencies have assigned it no burden for purposes of this PRA analysis.[149]

The estimated burden for the Written Appraisal requirements includes the creditor's burden of reviewing the Written Appraisal in order to satisfy the safe harbor criteria set forth in the rule and providing a copy of the Written Appraisal to the consumer. Additionally, as discussed above, an Additional Written Appraisal containing additional analyses is required in certain circumstances. The Additional Written Appraisal must meet the standards of the Written Appraisal. The Additional Written Appraisal is also required to be prepared by a certified or licensed appraiser different from the appraiser performing the Written Appraisal, and a copy of the Additional Written Appraisal must be provided to the consumer. The creditor must separately review the Additional Written Appraisal in order to qualify for the safe harbor provided in the 2013 Final Rule.

The Agencies continue to estimate that respondents will take, on average, 15 minutes for each HPML that is subject to 12 CFR 1026.35(c) to review the Written Appraisal and to provide a copy of the Written Appraisal. The Agencies further continue to estimate that respondents will take, on average, 15 minutes for each HPML that is subject to 12 CFR 1026.35(c) to investigate and verify the need for an Additional Written

[149] The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within the definition of "collection of information." 5 CFR 1320.3(c)(2).

Appraisal and, where necessary, an additional 15 minutes to review the Additional Written Appraisal and to provide a copy of the Additional Written Appraisal. For the small fraction of loans requiring an Additional Written Appraisal, the burden is similar to that of the Written Appraisal.

The Agencies use the estimated burden from the PRA section of the 2013 Final Rule as the starting baseline for analyzing the impact the three exemptions in the proposal would have on PRA burden if adopted. The estimated number of appraisals per respondent for the FDIC, Board, OCC, and NCUA respondents has been updated to account for the exemption for qualified mortgages adopted in the 2013 Final Rule, which had not been accounted for in the table published at that time, as discussed in the PRA section of the Final Rule. *See* 78 FR 10368, 10430-31 (February 13, 2013). In addition, the impact of the proposed rule has been considered as follows:

First, the Agencies find that, currently, only a small minority of refinances involves cash out beyond the levels eligible for this proposed exemption, and as a result most refinance loans may qualify for this exemption. The Agencies therefore assume that the proposed exemption for certain refinances affects all the refinance loans discussed in the analysis under Section 1022(b)(2) of the 2013 Final Rule, and thus would eliminate all of the approximately 1,200 new appraisals that had been estimated to result from these refinances as a result of Final Rule (out of the 3,800 total new Written Appraisals estimated to occur in the Final Rule, or roughly 32%).

Second, based on the HMDA 2011 data, the Agencies find that 12 percent of all HPMLs are under $25,000. The Agencies believe that this implies that there will be,

proportionately, 12 percent fewer appraisals based on the exemption for small dollar loans.

Third, the Agencies find that many of the transactions secured by existing manufactured homes and not land involve either refinances (all of which are conservatively assumed to be covered by the proposed exemption for certain refinances), or smaller dollar loans (which cover many types of manufactured housing transactions).[150] While covered HPMLs above smaller dollar levels that are secured by existing manufactured homes and not land may be newly-exempted, these transactions may need alternative valuations depending upon how the exemption is finalized. The Agencies therefore conservatively make no adjustment to the data in the first panel of Table 3 in the 2013 Final Rule as a result of that proposed exemption.[151]

The numbers above affect only the first panel in the Table 3 of the PRA section of the Final Rule. Refinances are not subject to the requirement to obtain an Additional Written Appraisal under the 2013 Final Rule, and it is conservatively assumed that none of the smaller dollar loans or the loans secured by manufactured homes sited on leased land were used to purchase homes being resold within 180 days with the requisite price

[150] In particular, the Bureau believes that a substantial proportion of the existing manufactured homes that are sold would be sold for less than $25,000. According to the Census Bureau 2011 American Housing Survey Table C-13-OO, the average value of existing manufactured homes is $30,000. See http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C13OO&prodType=table. The estimate includes not only the value of the home, but also appears to include the value of the lot where the lot is also owned. According to the AHS Survey, the term "value" is defined as "the respondent's estimate of how much the property (house and lot) would sell for if it were for sale. Any nonresidential portions of the property, any rental units, and land cost of mobile homes, are excluded from the value. For vacant units, value represents the sales price asked for the property at the time of the interview, and may differ from the price at which the property is sold. In the publications, medians for value are rounded to the nearest dollar." See http://www.census.gov/housing/ahs/files/Appendix%20A.pdf.

[151] The Bureau assumes that manufactured housing loans secured solely by a manufactured home and not land mortgages are reflected in the data provided by the institutions to the datasets that are used by the Bureau (Call Reports for Banks and Thrifts, Call Reports for Credit Unions, and NMLS's Mortgage Call Reports), and thus are reflected in the Bureau's loan projections utilized for the table below. The Bureau is asking for comment if any institutions believe that this is not the case.

increases to trigger that requirement (and thus the proposed exemptions for those loans will not reduce any burden associated with that requirement). Accordingly, only the first panel in Table 3 from the 2013 Final Rule is being updated and the estimates in the second and third panels remain the same. The updated table is reproduced below. The one-time costs are also not affected.

The following table summarizes the resulting burden estimates.

Estimated PRA Burden

Table ___. Summary of PRA Burden Hours for Information Collections in HPML Appraisals Final Rule if the Exemptions in the Supplemental Proposal are Adopted[152]

	Estimated Number of Respondents	Estimated Number of Appraisals Per Respondent[153]	Estimated Burden Hours Per Appraisal	Estimated Total Annual Burden Hours
	[a]	[b]	[c]	[d] = (a*b*c)
Review and Provide a Copy of Written Appraisal				
Bureau[154],[155],[156],[157]				
Depository Inst. > $10 B in total assets + Depository Inst. Affiliates	132	3.73	0.25	123
Non-Depository Inst. and Credit Unions	2,853	0.23	0.25	82[158]
FDIC	2,571	0.	0.25	93
Board[159]	418	0.18	0.25	19
OCC	1,399	0.16	0.25	55
NCUA	2,437	0.07	0.25	44

[152] Some of the intermediate numbers are rounded, resulting in Estimated Total Annual Hours not precisely matching up with columns a, b, and c.

[153] The "Estimated Number of Appraisals Per Respondent" reflects the estimated number of Written Appraisals and Additional Written Appraisals that will be performed solely to comply with the 2013 Final Rule. It does not include the number of appraisals that will continue to be performed under current industry practice, without regard to the Final Rule's requirements.

[154] The information collection requirements (ICs) in the 2013 Final Rule (and this proposed rule) will be incorporated with the Bureau's existing collection associated with Truth in Lending Act (Regulation Z) 12 CFR 1026 (OMB No. 3170-0015 / 3170-0026).

[155] The burden estimates allocated to the Bureau are updated using the data described in the Bureau's section 1022 analysis in the 2013 Final Rule and in the Bureau's section 1022 analysis above, including significant burden reductions after accounting for qualified mortgages that are exempt from the Final Rule, and burden reductions after accounting for loans in rural areas that are exempt from the Additional Written Appraisal requirement in the Final Rule.

[156] There are 153 depository institutions (and their depository affiliates) that are subject to the Bureau's administrative enforcement authority. In addition, there are 146 privately-insured credit unions that are subject to the Bureau's administrative enforcement authority. For purposes of this PRA analysis, the Bureau's respondents under Regulation Z are 135 depository institutions that originate either open or closed-end mortgages; 77 privately-insured credit unions that originate either open or closed-end mortgages; and an estimated 2,787 non-depository institutions that are subject to the Bureau's administrative enforcement authority. Unless otherwise specified, all references to burden hours and costs for the Bureau respondents for the collection under Regulation Z are based on a calculation that includes half of the burden for the estimated 2,787 non-depository institutions and 77 privately-insured credit unions.

[157] The Bureau calculates its burden by including both HMDA reporting creditors and the HMDA non-reporting creditors, based on the 2012 counts. The other Agencies only report the burden for HMDA reporting creditors, based on the 2011 counts.

[158] The Bureau assumes half of the burden for the non-depository mortgage institutions and the credit unions supervised by the Bureau. The FTC assumes the burden for the other half.

[159] The ICs in the 2013 Final Rule will be incorporated with the Board's Reporting, Recordkeeping, and Disclosure Requirements associated with Regulation Z (Truth in Lending), 12 CFR part 226, and Regulation AA (Unfair or Deceptive Acts or Practices), 12 CFR part 227 (OMB No. 7100-0199). The burden estimates provided in this proposed rule pertain only to the ICs associated with the Final Rule.

Total	9,810			416
Investigate and Verify Requirement for Additional Written Appraisal				
Bureau				
Depository Inst. > $10 B in total assets + Depository Inst. Affiliates	132	20.05	0.25	662
Non-Depository Inst. and Credit Unions	2,853	1.22	0.25	435
FDIC	2,571	0.78	0.25	502
Board	418	0.97	0.25	102
OCC	1,399	0.85	0.25	299
NCUA	2,437	0.38	0.25	232
Total	9,810			2,232
Review and Provide a Copy of Additional Written Appraisal				
Bureau				
Depository Inst. > $10 B in total assets + Depository Inst. Affiliates	132	0.64	0.25	21
Non-Depository Inst. and Credit Unions	2,853	0.04	0.25	14
FDIC	2,571	0.02	0.25	15
Board	418	0.03	0.25	3
OCC	1,399	0.02	0.25	8
NCUA	2,437	0.01	0.25	5
Total	9,810			66

Notes:
1) Respondents include all institutions estimated to originate HPMLs that are subject to 12 CFR 1026.35(c).
2) There may be an additional ongoing burden of roughly 75 hours for privately-insured credit unions estimated to originate HPMLs that are subject to 12 CFR 1026.35(c). The Bureau will assume half of the burden for non-depository institutions and the privately-insured credit unions.

Finally, as explained in the PRA section of the 2013 Final Rule, respondents must also review the instructions and legal guidance associated with the Final Rule and train loan officers regarding the requirements of the Final Rule. The Agencies continue to estimate that these one-time costs are as follows: Bureau: 36,383 hours; FDIC: 10,284 hours; Board 3,344 hours; OCC: 19,586 hours; NCUA: 7,311 hours.[160]

The Agencies have a continuing interest in the public opinion of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to the OMB desk officer for the Agencies by mail to U.S. Office of Management and

[160] As discussed in the PRA section of the 2013 Final Rule, estimated one-time burden continues to be calculated assuming a fixed burden per institution to review the regulations and fixed burden per estimated loan officer in training costs. As a result of the different size and mortgage activities across institutions, the average per-institution one-time burdens vary across the Agencies. *See* 78 FR 10368, 10432 (February 13, 2013).

Budget, Office of Information and Regulatory Affairs, Washington, D.C., 20503, or by the internet to oira_submission@omb.eop.gov, with copies to the Agencies at the addresses listed in the **ADDRESSES** section of this **SUPPLEMENTARY INFORMATION**.

FHFA

The 2013 Final Rule and this proposal do not contain any collections of information applicable to the FHFA, requiring review by OMB under the PRA. Therefore, FHFA has not submitted any materials to OMB for review.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in Lending.

12 CFR Part 226

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 722

Appraisal, Credit, Credit unions, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 1222

Government sponsored enterprises, Mortgages, Appraisals.

*** * * * ***

Department of the Treasury

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend 12 CFR part 34, as previously amended at 78 FR 10368, 10432 (Feb. 13, 2013), effective January 18, 2014, as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 25b, 29, 93a,371, 1463, 1464, 1465,1701j-3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* 5412(b)(2)(B) and 15 U.S.C. 1639h

* * * * *

Subpart G—Appraisals for Higher-Priced Mortgage Loans

2. Section 34.202 is amended by adding new paragraph (a) and re-designating current paragraphs (a) – (c) as paragraphs (b) – (d) as follows:

SECTION 34.202—Definitions applicable to higher priced mortgage loans.

* * * * *

(a) *Business day* has the same meaning as in 12 CFR 1026.2(a)(6).

SECTION 34.203—Appraisals for higher-priced mortgage loans

3. Section 34.203 is amended by revising paragraph (b) as follows:

* * * * *

(b) *Exemptions*. The requirements in paragraphs (c) through (f) of this section do not apply to the following types of transactions:

(1) A qualified mortgage pursuant to 15 U.S.C. 1639c;

(2) A transaction:

(i) Secured by a new manufactured home; or

(ii) Secured solely by an existing manufactured home and not land.

* * * * *

(5) A loan with a maturity of 12 months or less, if the purpose of the loan is a "bridge" loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

* * * * *

(7) An extension of credit that is a refinancing, as defined under 12 CFR § 1026.20(a) except that the creditor need not be the original creditor or a holder or servicer of the original obligation, and that meets the following criteria:

(i) The owner or guarantor of the refinance loan is the current owner or guarantor of the existing obligation;

(ii) The regular periodic payments under the refinance loan do not:

(A) Cause the principal balance to increase;

(B) Allow the consumer to defer repayment of principal; or

(C) Result in a balloon payment, as defined in 12 CFR § 1026.18(s)(5)(i); and

(iii) The proceeds from the refinance loan are used solely for the following purposes:

(A) To pay off the outstanding principal balance on the existing obligation; and

(B) To pay closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*; and

(8) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in Appendix C to Subpart G – OCC Interpretations, *see* Section 34.203(b)(8) of Appendix C to Subpart G.

* * * * *

3. In Appendix C to Subpart G – OCC Interpretations:

A. *Paragraph 203(b)(2)* is redesignated *Paragraph 203(b)(2)(A)*.

B. Under redesignated *Paragraph 203(b)(2)(A)*, paragraph 1 is amended.

C. New *Paragraph 203(b)(2)(B)* is added.

D. New *Paragraph 203(b)(7)* is added.

E. New *Paragraph 203(b)(8)* is added.

F. Under *Paragraph 203(f)(2)*, paragraph 2 is deleted and current paragraph 3 is redesignated paragraph 2.

The revisions read as follows:

APPENDIX C TO SUBPART G—OCC INTERPRETATIONS

* * * * *

Subpart G —Appraisals for Higher-Priced Mortgage Loans

* * * * *

34.203(b) Exemptions

Paragraph 34.203(b)(2)(A).

1. *Secured by new manufactured home.* A higher-priced mortgage loan secured by a new manufactured home is not subject to the appraisal requirements of Subpart G, regardless of whether the transaction is also secured by the land on which it is sited is not a "higher-priced mortgage loan" subject to the appraisal requirements of Subpart G.

Paragraph 34.203(b)(2)(B).

1. *Secured solely by an existing manufactured home and not land.* A higher-priced mortgage loan secured by a manufactured home and not land is not subject to the appraisal requirements of Subpart G, regardless of whether the home is titled as realty by operation of state law.

* * * * *

Paragraph 34.203(b)(7).

Paragraph 34.203(b)(7)(i).

1. *Owner or guarantor*. The term "owner" in § 34.203(b)(7)(i)(A) means an entity that owns and holds a loan in its portfolio. "Owner" does not refer to an investor in a mortgage-backed security. The term "guarantor" in § 34.203(b)(7)(i)(A)(1) refers to the entity that guarantees the credit risk on a loan that the entity holds in a mortgage-backed security.

Paragraph 34.203(b)(7)(ii).

1. *Regular periodic payments.* Under § 34.203(b)(7)(ii), the regular periodic payments on the refinance loan must not: result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (*see* Official Staff Interpretations to the Bureau's Regulation Z, comment 43(e)(2)(i)-2); or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term "substantially equal," see Official Staff Interpretations to the Bureau's Regulation Z, comment 43(c)(5)(i)-4. In addition, a single-payment transaction is not a refinancing meeting the requirements of § 34.203(b)(7) because it does not require "regular periodic payments."

Paragraph 34.203(b)(7)(iii).

1. *Permissible use of proceeds.* The exemption for a refinancing under § 34.203(b)(7) is available only if the proceeds from the refinancing are used exclusively for two purposes: paying off the consumer's existing first-lien mortgage obligation and paying for closing costs, including paying escrow amounts required at or before closing. If the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under § 34.203(b)(7) from the appraisal requirements in Subpart G.

Paragraph 34.203(b)(8).

1. *Threshold amount*. For purposes of § 34.203(b)(8), the threshold amount in effect during a particular one-year period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Every year, this comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the percentage increase in the CPI-W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the percentage increase in the CPI-W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

2. *Qualifying for exemption – in general*. A transaction is exempt under § 34.203(b)(8) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

3. *Qualifying for exemption – subsequent changes*. A transaction does not meet the condition for an exemption under § 34.203(b)(8) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 34.203(b)(8) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount

in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of Subpart G with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of Subpart G applies. *See* § 34.203(b) and § 34.203(d)(7).

* * * * *

34.203(f) Copy of Appraisals

* * * * *

34.203(f)(2) Timing

* * * * *

[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.**]**.

►2◄**[**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 § 34.203. A consumer of a higher-priced mortgage loan subject to § 34.302 may not waive the timing requirement to receive a copy of the appraisal under § 34.203(f)(1).

Board of Governors of the Federal Reserve System

Authority and Issuance

For the reasons stated above, the Board of Governors of the Federal Reserve System proposes to amend Regulation Z, 12 CFR part 226, as previously amended at 78 FR 10368, 10437 (Feb. 13, 2013), effective January 18, 2014, as follows:

PART 226—TRUTH IN LENDING ACT (REGULATION Z)

4. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. 111-24 section 2, 123 Stat. 1734; Pub. L. 111-203, 124 Stat. 1376.

* * * * *

Subpart A—General

5. Section 226.2 is amended by revising paragraph (a)(6) as follows:

§ 226.2—Definitions and rules of construction

(a) *Definitions*. For purposes of this part, the following definitions apply:

* * * * *

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under sections 1026.15 and 1026.23, and for purposes of sections 226.19(a)(1)(ii), 226.19(a)(2), 226.31, ►226.43, ◄and 226.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

Subpart E—Special Rules for Certain Home Mortgage Transactions

6. Section 226.43 is amended by revising paragraph (b) as follows:

§ 226.43—Appraisals for higher-priced mortgage loans

* * * * *

(b) *Exemptions*. The requirements in paragraphs **[**(c)(3) through (6)**]** ►(c) through (f)◄ of this section do not apply to the following types of transactions:

(1) A qualified mortgage as defined [in 12 CFR 1026.43(e)]►pursuant to 15 U.S.C. 1639c◄;

(2) A transaction►:

(i) S◄[s]ecured by a new manufactured home;► or

(ii) Secured solely by an existing manufactured home and not land.◄

* * * * *

(5) A loan with ►a◄ maturity of 12 months or less, if the purpose of the loan is a "bridge" loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

* * * * *

►(7) An extension of credit that is a refinancing, as defined under 12 CFR § 1026.20(a), except that the creditor need not be the original creditor or a holder or servicer of the original obligation, and that meets the following criteria:

(i) The owner or guarantor of the refinance loan is the current owner or guarantor of the existing obligation;

(ii) The regular periodic payments under the refinance loan do not:

(A) Cause the principal balance to increase;

(B) Allow the consumer to defer repayment of principal; or

(C) Result in a balloon payment, as defined in 12 CFR § 1026.18(s)(5)(i); and

(iii) The proceeds from the refinance loan are used solely for the following purposes:

(A) To pay off the outstanding principal balance on the existing obligation; and

(B) To pay closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*; and

(8) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in the official staff commentary to this paragraph (b)(8).◄

* * * * *

7. In Supplement I to part 226, under *Section 1026.43—Appraisals for Higher-Priced Mortgage Loans:*

A. *Paragraph 43(b)(2)* is redesignated *Paragraph 43(b)(2)(A).*

B. Under redesignated *Paragraph 43(b)(2)(A)*, paragraph 1 is amended.

C. New *Paragraph 43(b)(2)(B)* is added.

D. New *Paragraph 43(b)(7)* is added.

E. New *Paragraph 43(b)(8)* is added.

F. Under *Paragraph 43(f)(2)*, paragraph 2 is deleted and current paragraph 3 is redesignated as paragraph 2.

The revisions read as follows:

SUPPLEMENT I TO PART 226—OFFICIAL INTERPRETATIONS

* * * * *

Section 1026.43—Appraisals for Higher-Priced Mortgage Loans

* * * * *

43(b) Exemptions

Paragraph 43(b)(2)►(i)◄.

1. *Secured by new manufactured home.* A ►higher-priced mortgage loan◄**[**transaction**]** secured by a new manufactured home► is not subject to the appraisal requirements of § 226.43, ◄regardless of whether the transaction is also secured by the land on which it is sited **[**is not a "higher-priced mortgage loan" subject to the appraisal requirements of § 226.43**]**.

►*Paragraph 43(b)(2)(ii).*

1. *Secured solely by an existing manufactured home and not land.* A higher-priced mortgage loan secured by a manufactured home and not land is not subject to the appraisal requirements of § 226.43, regardless of whether the home is titled as realty by operation of state law.◄

* * * * *

► *Paragraph 43(b)(7).*

Paragraph 43(b)(7)(i).

1. *Owner or guarantor*. The term "owner" in § 226.43(b)(7)(i) means an entity that owns and holds a loan in its portfolio. "Owner" does not refer to an investor in a mortgage-backed security. The term "guarantor" in § 226.43(b)(7)(i) refers to the entity that guarantees the credit risk on a loan that the entity holds in a mortgage-backed security.

Paragraph 43(b)(7)(ii).

1. *Regular periodic payments.* Under § 226.43(b)(7)(ii), the regular periodic payments on the refinance loan must not: result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (*see* Official Staff Interpretations to the Bureau's Regulation Z, comment 43(e)(2)(i)-2); or result in a

balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term "substantially equal," see Official Staff Interpretations to the Bureau's Regulation Z, comment 43(c)(5)(i)-4. In addition, a single-payment transaction is not a refinancing meeting the requirements of § 226.43(b)(7) because it does not require "regular periodic payments."

Paragraph 43(b)(7)(iii).

1. *Permissible use of proceeds.* The exemption for a refinancing under § 226.43(b)(7) is available only if the proceeds from the refinancing are used exclusively for two purposes: paying off the consumer's existing first-lien mortgage obligation and paying for closing costs, including paying escrow amounts required at or before closing. If the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under § 226.43(b)(7) from the appraisal requirements in § 226.43.

Paragraph 43(b)(8).

1. *Threshold amount*. For purposes of § 226.43(b)(8), the threshold amount in effect during a particular one-year period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that

was in effect on the preceding June 1. Every year, this comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the percentage increase in the CPI-W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the percentage increase in the CPI-W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

2. *Qualifying for exemption – in general*. A transaction is exempt under § 226.43(b)(8) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

3. *Qualifying for exemption – subsequent changes*. A transaction does not meet the condition for an exemption under § 226.43(b)(8) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.43(b)(8) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 226.43 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 226.43 applies. *See* § 226.43(b) and § 226.43(d)(7).◄

* * * * *

43(f) Copy of Appraisals

* * * * *

43(f)(2) Timing

* * * * *

[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.**]**.

►2◄**[**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 § 226.43. A consumer of a higher-priced mortgage loan subject to § 226.43 may not waive the timing requirement to receive a copy of the appraisal under § 226.43(f)(1).

Bureau of Consumer Financial Protection

Authority and Issuance

For the reasons stated above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as previously amended, including on February 13, 2013 (78 FR 10368, 10442 (Feb. 13, 2013)), effective January 18, 2014, as follows:

PART 1026—TRUTH IN LENDING ACT (REGULATION Z)

8. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 et seq.

* * * * *

Subpart A—General

9. Section 1026.2 is amended by revising paragraph (a)(6) as follows:

§ 1026.2—Definitions and rules of construction

(a) *Definitions*. For purposes of this part, the following definitions apply:

* * * * *

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under sections 1026.15 and 1026.23, and for purposes of sections 1026.19(a)(1)(ii), 1026.19(a)(2), 1026.31, ►1026.35(c), ◄and 1026.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

Subpart E—Special Rules for Certain Home Mortgage Transactions

3. Section 1026.35 is amended by revising paragraph (c)(2) as follows:

§ 1026.35—Requirements for higher-priced mortgage loans

* * * * *

(c) *Appraisals*[*for higher-priced mortgage loans*].

* * * * *

(2) *Exemptions*. The requirements in paragraphs (c)(3) through (6) of this section do not apply to the following types of transactions:

(i) A qualified mortgage as defined [in 12 CFR 1026.43(e)]►pursuant to 15 U.S.C. 1639c◄;

(ii) A transaction►:

(A) S◄[s]ecured by a new manufactured home;► or

(B) Secured solely by an existing manufactured home and not land.◄

* * * * *

(v) A loan with ►a◄ maturity of 12 months or less, if the purpose of the loan is a "bridge" loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

* * * * *

►(vii) An extension of credit that is a refinancing, as defined under § 1026.20(a) except that the creditor need not be the original creditor or a holder or servicer of the original obligation, and that meets the following criteria:

(A) The owner or guarantor of the refinance loan is the current owner or guarantor of the existing obligation;

(B) The regular periodic payments under the refinance loan do not:

(*1*) Cause the principal balance to increase;

(*2*) Allow the consumer to defer repayment of principal; or

(*3*) Result in a balloon payment, as defined in § 1026.18(s)(5)(i); and

(C) The proceeds from the refinance loan are used solely for the following purposes:

(*1*) To pay off the outstanding principal balance on the existing obligation; and

(*2*) To pay closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*; and

(viii) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect

increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in the official staff commentary to this paragraph (c)(2)(viii).◄

* * * * *

10. In Supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans:*

A. *Paragraph 35(c)(2)(ii)* is redesignated *Paragraph 35(c)(2)(ii)(A)*.

B. Under redesignated *Paragraph 35(c)(2)(ii)(A)*, paragraph 1 is amended.

C. New *Paragraph 35(c)(2)(ii)(B)* is added.

D. New *Paragraph 35(c)(2)(vii)* is added.

E. New *Paragraph 35(c)(2)(viii)* is added.

F. Under *Paragraph 35(c)(6)(ii)*, paragraph 2 is deleted and current paragraph 3 is redesignated paragraph 2.

The revisions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(c)(2) Exemptions

Paragraph 35(c)(2)(ii)►(A)◄.

1. *Secured by new manufactured home.* A ►higher-priced mortgage loan◄**[**transaction**]** secured by a new manufactured home► is not subject to the appraisal requirements of § 1026.35(c), ◄regardless of whether the transaction is also

secured by the land on which it is sited **[**is not a "higher-priced mortgage loan" subject to the appraisal requirements of § 1026.35(c)**]**.

►*Paragraph 35(c)(2)(ii)(B).*

1. *Secured solely by an existing manufactured home and not land.* A higher-priced mortgage loan secured by a manufactured home and not land is not subject to the appraisal requirements of § 1026.35(c), regardless of whether the home is titled as realty by operation of state law.◄

* * * * *

► *Paragraph 35(c)(2)(vii).*

Paragraph 35(c)(2)(vii)(A)

1. *Owner or guarantor*. The term "owner" in § 1026.35(c)(2)(vii)(A) means an entity that owns and holds a loan in its portfolio. "Owner" does not refer to an investor in a mortgage-backed security. The term "guarantor" in § 1026.35(c)(2)(vii)(A)(1) refers to the entity that guarantees the credit risk on a loan that the entity holds in a mortgage-backed security.

Paragraph 35(c)(2)(vii)(B)

1. *Regular periodic payments.* Under § 1026.35(c)(2)(vii)(D), the regular periodic payments on the refinance loan must not: result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (*see* comment 43(e)(2)(i)-2); or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an

adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term "substantially equal," see comment 43(c)(5)(i)-4. In addition, a single-payment transaction is not a refinancing meeting the requirements of § 1026.35(c)(2)(vii) because it does not require "regular periodic payments."

Paragraph 35(c)(2)(vii)(C).

1. *Permissible use of proceeds.* The exemption for a refinancing under § 1026.35(c)(2)(vii) is available only if the proceeds from the refinancing are used exclusively for two purposes: paying off the consumer's existing first-lien mortgage obligation and paying for closing costs, including paying escrow amounts required at or before closing. If the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under § 1026.35(c)(2)(vii) from the appraisal requirements in § 1026.35(c).

Paragraph 35(c)(2)(viii).

1. *Threshold amount*. For purposes of § 1026.35(c)(2)(viii), the threshold amount in effect during a particular one-year period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Every year, this comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the percentage increase in the CPI-W would result in a $950

increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the percentage increase in the CPI-W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

2. *Qualifying for exemption – in general*. A transaction is exempt under § 1026.35(c)(2)(viii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

3. *Qualifying for exemption – subsequent changes*. A transaction does not meet the condition for an exemption under § 1026.35(c)(2)(viii) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.35(c)(2)(viii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 1026.35(c) applies. *See* § 1026.35(c)(2) and § 1026.35(c)(4)(vii). ◄

* * * * *

35(c)(6) Copy of Appraisals

* * * * *

35(c)(6)(ii) Timing

* * * * *

[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.**]**

►2◄**[**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) may not waive the timing requirement to receive a copy of the appraisal under § 1026.35(c)(6)(i).

Dated: July 9, 2013

Thomas J. Curry (signed)

Thomas J. Curry
Comptroller of the Currency

[THIS SIGNATURE PAGE RELATES TO THE PROPOSED RULE TITLED, "APPRAISALS FOR HIGHER-PRICED MORTGAGE LOANS – SUPPLEMENTAL PROPOSAL"]

By order of the Board of Governors of the Federal Reserve System, July 10, 2013.

Robert deV. Frierson (signed)

Robert deV. Frierson,
Secretary of the Board.

[THIS SIGNATURE PAGE RELATES TO THE PROPOSED RULE TITLED, "APPRAISALS FOR HIGHER-PRICED MORTGAGE LOANS – SUPPLEMENTAL PROPOSAL"]

By the National Credit Union Administration Board on July 9, 2013.

Mary Rupp (signed)
Mary Rupp
Secretary of the Board

[THIS SIGNATURE PAGE RELATES TO THE PROPOSED RULE TITLED, "APPRAISALS FOR HIGHER-PRICED MORTGAGE LOANS – SUPPLEMENTAL PROPOSAL"]

Dated: July 9, 2013.

Richard Cordray (signed)

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[THIS SIGNATURE PAGE RELATES TO THE PROPOSED RULE TITLED, "APPRAISALS FOR HIGHER-PRICED MORTGAGE LOANS – SUPPLEMENTAL PROPOSAL"]

Dated at Washington, D.C., this 9th day of July, 2013.
By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman (signed)

Robert E. Feldman,
Executive Secretary.

[THIS SIGNATURE PAGE RELATES TO THE PROPOSED RULE TITLED, "APPRAISALS FOR HIGHER-PRICED MORTGAGE LOANS – SUPPLEMENTAL PROPOSAL"]

Edward J. Demarco (signed) July 8, 2013

Edward J. DeMarco, Date
Acting Director, Federal Housing Finance Agency.