

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1002

[Docket No. CFPB–2012–0032]

RIN 3170–AA26

### Equal Credit Opportunity Act (Regulation B)

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Proposed rule; request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation B, which implements the Equal Credit Opportunity Act (ECOA), and the official interpretation to the regulation, which interprets the requirements of Regulation B. The proposed revisions to Regulation B would implement an ECOA amendment concerning appraisals that was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). In general, the proposed revisions to Regulation B would require creditors to provide free copies of all written appraisals and valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. The proposal also would require creditors to notify applicants in writing of the right to receive a copy of each written appraisal or valuation at no additional cost.

**DATES:** Comments must be received on or before October 15, 2012, except that comments on the Paperwork Reduction Act analysis in part VIII of the Supplementary Information must be received on or before October 22, 2012.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2012–0032 or RIN 3170–AA26, 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.

**FOR FURTHER INFORMATION CONTACT:** John H. Brolin, 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.

#### SUPPLEMENTARY INFORMATION:

##### I. Summary of the Proposed Rule

In response to the recent mortgage crisis, Congress amended the Equal Credit Opportunity Act (ECOA) to require creditors to automatically provide applicants with a copy of appraisal reports and valuations prepared in connection with certain mortgage loans. The Consumer Financial Protection Bureau (Bureau) is now proposing a rule to implement those changes, which were enacted in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>1</sup> Specifically, the proposed rule would amend the regulations implementing ECOA to:

- Cover applications for credit to be secured by a first lien on a dwelling.
- Require creditors to notify applicants within three business days of receiving an application of their right to receive a copy of written appraisals and valuations developed.
- Require creditors to provide applicants a copy of all written appraisals and valuations promptly after receiving an appraisal or valuation, but in no case later than three business days prior to consummation of the mortgage.
- Permit applicants to waive the timing requirement to receive copies three days prior to consummation. However, applicants who waive the timing requirement must still be given a copy of all written appraisals and valuations at or prior to closing.
- Prohibit creditors from charging additional fees for providing a copy of written appraisals and valuations, but permit creditors to charge applicants a reasonable fee to reimburse the creditor for the cost of the appraisal or valuation unless otherwise required by law.

##### II. Statutory Background

###### A. The Equal Credit Opportunity Act

The ECOA<sup>2</sup> makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. ECOA applies to all credit—commercial as well as consumer—without regard to the nature or type of the credit or the creditor.

Historically, section 701(e) of ECOA has provided that a credit applicant has the right to request copies of appraisal reports used in connection with his or her application for mortgage credit. The right to request copies of appraisals was added to ECOA in December 1991 as part of the Federal Deposit Insurance Corporation Improvement Act (FDICIA).<sup>3</sup> The Senate report on FDICIA suggests that one purpose of ECOA section 701(e) was to make it easier for loan applicants to determine whether a

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

<sup>2</sup> 15 U.S.C. 1691 *et seq.*

<sup>3</sup> Public Law 102–242, 105 Stat. 2236 (1991).

loan was denied due to a discriminatory appraisal.<sup>4</sup>

With the enactment of the Dodd-Frank Act,<sup>5</sup> general rulemaking authority for ECOA transferred from the Board of Governors of the Federal Reserve System (Board) to the Bureau on July 21, 2011. Pursuant to the Dodd-Frank Act and ECOA, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation B, 12 CFR part 1002, implementing ECOA (except with respect to persons excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act). 76 FR 79442 (Dec. 21, 2011). This rule did not impose any new substantive obligations but did make technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. The Bureau's Regulation B took effect on December 30, 2011.

### B. Dodd-Frank Act Amendments Concerning Appraisals

Congress enacted the Dodd-Frank Act after a cycle of unprecedented expansion and contraction in the mortgage market sparked the most severe U.S. recession since the Great Depression.<sup>6</sup> The Dodd-Frank Act created the Bureau and consolidated various rulemaking and supervisory authorities in the new agency, including the authority to implement ECOA.<sup>7</sup> At the same time, Congress imposed new statutory requirements governing mortgage practices with the intent to restrict the practices that contributed to the crisis and provide additional protections to consumers.

Sections 1471 through 1474 of the Dodd-Frank Act established a number of new requirements for appraisal activities, including requirements relating to appraisal independence, appraisals for higher-risk mortgages, regulation of appraisal management companies, automated valuation models, and providing copies of

appraisals and valuations.<sup>8</sup> Many of the Dodd-Frank Act appraisal provisions are required to be implemented through joint rulemakings involving several federal agencies. The amendment to ECOA section 701(e), however, does not require a joint rulemaking. As discussed below, the amendments to section 701(e) overlap with the notice and copy requirements of a Dodd-Frank Act amendment to the Truth in Lending Act (TILA) applicable to higher-risk mortgage loans. The Dodd-Frank Act amendment to TILA, which adds section 129H, is required to be implemented through joint rulemaking. See TILA section 129H(b)(4)(A); 15 U.S.C. 1639h(b)(4)(A).

### ECOA Appraisal Requirements

Section 1474 of the Dodd-Frank Act<sup>9</sup> amended ECOA section 701(e) to require that creditors provide copies of appraisals and valuations to loan applicants at no additional cost and without requiring applicants to affirmatively request such copies. Amended ECOA section 701(e) generally provides that:

- A creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant's application for a loan that is or would be secured by a first lien on a dwelling. The appraisal documentation must be provided promptly, and in no case later than three days prior to closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn. However, the applicant may waive the timing requirement that such appraisals or valuations be provided three days prior to closing, except where otherwise required by law.

- The creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant, though the creditor may impose a reasonable fee on the applicant to reimburse the creditor for the cost of the appraisal.

- At the time of application, the creditor shall notify applicants in writing of the right to receive a copy of each written appraisal and valuation under ECOA section 701(e).

Amended ECOA section 701(e)(6) defines the term "valuation" as

<sup>8</sup> See TILA sections 129H and 129E as established by Dodd-Frank Act sections 1471 and 1472, 15 U.S.C. 1639h; sections 1124 and 1125 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) as established by Dodd-Frank Act sections 1473(f)(2), 12 U.S.C. 3353, and 1473(q), 12 U.S.C. 3354; and sections 701(e) of ECOA as amended by Dodd-Frank Act section 1474, 15 U.S.C. 1691(e).

<sup>9</sup> Public Law 111-203, 124 Stat. 1376, section 1474 (2010).

including "any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism."

### Higher-Risk Mortgage Appraisal Requirements

On the same day that this proposal is released by the Bureau, the Bureau is also releasing a proposal to implement section 1471 of the Dodd-Frank Act, which added new appraisal requirements for higher-risk mortgages that are subject to joint implementation by the Board, 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). This provision, which is codified in new TILA section 129H(d), contains disclosure requirements that are similar to ECOA section 701(e) in that creditors must provide consumers, at least three days prior to closing, a copy of any appraisal prepared in connection with a higher-risk mortgage. 15 U.S.C. 1639h(c). Creditors must also provide consumers, at the time of the initial mortgage application, a statement that any appraisal prepared for the mortgage is for the creditor's sole use and that the consumer may choose to have a separate appraisal conducted at his or her own expense. *Id.* 1639h(d). Section 1471 of the Dodd-Frank Act defines the term "higher-risk mortgage" generally as a residential mortgage loan, other than a reverse mortgage, that is secured by a principal dwelling with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction by a specified percentage. *Id.* 1639h(f).

### C. Other Rulemakings

In addition to this proposal and the higher-risk mortgage rulemaking discussed above, the Bureau currently is engaged in six other rulemakings relating to mortgage credit to implement requirements of the Dodd-Frank Act:

- **TILA-RESPA Integration:** On July 9, 2012, the Bureau released a proposed rule and forms combining the TILA mortgage loan disclosures with the Good Faith Estimate (GFE) and settlement statement required under RESPA pursuant to Dodd-Frank Act section 1032(f) as well as sections 4(a) of RESPA and 105(b) of TILA, as amended by Dodd-Frank Act sections 1098 and 1100A, respectively (2012

<sup>4</sup> For additional legislative history on the appraisal provision as originally added by the FDICIA see S. Rep. No. 167, 102d Cong., 1st Sess.; S. Rep. No. 461, 101st Cong., 2d Sess.; 137 Cong. Rec. S2519 (daily ed. February 28, 1991); 136 Cong. Rec. S14592, 14598-99 (daily ed. October 5, 1990).

<sup>5</sup> Public Law 111-203, 124 Stat. 1376, section 1474 (2010).

<sup>6</sup> For more discussion of the mortgage market, the financial crisis, and mortgage origination generally, see the Bureau's 2012 TILA-RESPA Proposal, available at <http://www.consumerfinance.gov/regulations/>.

<sup>7</sup> Sections 1011 and 1021 of title X of the Dodd-Frank Act, the "Consumer Financial Protection Act," Public Law 111-203, sections 1001-1100H, codified at 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481-5603.

TILA-RESPA Proposal).<sup>10</sup> 12 U.S.C. 2603(a); 15 U.S.C. 1604(b).

- **HOEPA:** On the same day that the Bureau released the 2012 TILA-RESPA Proposal, the Bureau also released a proposal to implement Dodd-Frank Act requirements expanding protections for “high-cost” mortgage loans under HOEPA, pursuant to TILA sections 103(bb) and 129, as amended by Dodd-Frank Act sections 1431 through 1433 (2012 HOEPA Proposal).<sup>11</sup> 15 U.S.C. 1602(bb) and 1639.

- **Servicing:** The Bureau is in the process of developing a proposal to implement Dodd-Frank Act requirements regarding force-placed insurance, error resolution, and payment crediting, as well as forms for mortgage loan periodic statements and “hybrid” adjustable-rate mortgage reset disclosures, pursuant to sections 6 of RESPA and 128, 128A, 129F, and 129G of TILA, as amended or established by Dodd-Frank Act sections 1418, 1420, 1463, and 1464. The Bureau has publicly stated that in connection with the servicing rulemaking the Bureau is considering proposing rules on reasonable information management, early intervention for troubled and delinquent borrowers, and continuity of contact, pursuant to the Bureau’s authority to carry out the consumer protection purposes of RESPA in section 6 of RESPA, as amended by Dodd-Frank Act section 1463. 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g.

- **Loan Originator Compensation:** The Bureau is in the process of developing a proposal to implement provisions of the Dodd-Frank Act requiring certain creditors and mortgage loan originators to meet duty of care qualifications and prohibiting mortgage loan originators, creditors, and the affiliates of both from receiving compensation in various forms (including based on the terms of the transaction) and from sources other than the consumer, with specified exceptions, pursuant to TILA section 129B as established by Dodd-Frank Act sections 1402 and 1403. 15 U.S.C. 1639b.

- **Ability to Repay:** The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring creditors to determine that a consumer can repay a mortgage loan and establishing standards for compliance, such as by making a “qualified mortgage,” pursuant to TILA section 129C as established by Dodd-Frank Act sections 1411 and 1412

(Ability to Repay Rulemaking). 15 U.S.C. 1639c.

- **Escrows:** The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring certain escrow account disclosures and exempting from the higher-priced mortgage loan escrow requirement loans made by certain small creditors, among other provisions, pursuant to TILA section 129D as established by Dodd-Frank Act sections 1461 and 1462 (Escrows Rulemaking). 15 U.S.C. 1639d.

With the exception of the requirements being implemented in the TILA-RESPA proposal, the Dodd-Frank Act requirements referenced above generally will take effect on January 21, 2013, unless final rules implementing those requirements are issued on or before that date and provide for a different effective date. To provide an orderly, coordinated, and efficient comment process, the Bureau is generally setting the deadlines for comments on this and other proposed mortgage rules based on the date the proposal is issued, instead of the date the notice is published in the **Federal Register**. Because the precise date of publication cannot be predicted in advance, this method will allow interested parties that intend to comment on multiple proposals to plan accordingly and will ensure that the Bureau receives comments with sufficient time remaining to issue final rules by January 21, 2013. However, consistent with the requirements of the Paperwork Reduction Act, the comment period for the proposed analysis under that Act will end 60 days after publication of this notice in the **Federal Register**.

The Bureau regards the foregoing rulemakings as components of a larger undertaking; many of them intersect with one or more of the others. Accordingly, the Bureau is coordinating carefully the development of the proposals and final rules identified above. Each rulemaking will adopt new regulatory provisions to implement the various Dodd-Frank Act mandates described above. In addition, each of them may include other provisions the Bureau considers necessary or appropriate to ensure that the overall undertaking is accomplished efficiently and that it ultimately yields a regulatory scheme for mortgage credit that achieves the statutory purposes set forth by Congress, while avoiding unnecessary burdens on industry.

Thus, many of the rulemakings listed above involve issues that extend across two or more rulemakings. In this context, each rulemaking may raise

concerns that might appear unaddressed if that rulemaking were viewed in isolation. For efficiency’s sake, however, the Bureau is publishing and soliciting comment on proposed answers to certain issues raised by two or more of its mortgage rulemakings in whichever rulemaking is most appropriate, in the Bureau’s judgment, for addressing each specific issue. Accordingly, the Bureau urges the public to review this and the other mortgage proposals identified above, including those previously published by the Board, together. Such a review will ensure a more complete understanding of the Bureau’s overall approach and will foster more comprehensive and informed public comment on the Bureau’s several proposals, including provisions that may have some relation to more than one rulemaking but are being proposed for comment in only one of them.

### III. Outreach and Consumer Testing

The Bureau has conducted consumer testing relating to implementation of ECOA section 701(e) requirements in conjunction with the 2012 TILA-RESPA Proposal. A more detailed discussion of the Bureau’s overall testing and form design can be found in the report *Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures*, which is available on the Bureau’s Web site.<sup>12</sup>

In January 2011, the Bureau contracted with a communication, design, consumer testing, and research firm, Kleimann Communication Group, Inc. (Kleimann), which specializes in consumer financial disclosures. The Bureau and Kleimann developed a plan to conduct qualitative usability testing, consisting of one-on-one cognitive interviews, over several iterations of prototype integrated disclosure forms. Between January and May 2011, the Bureau and Kleimann worked collaboratively on developing a qualitative testing plan, and several prototype integrated forms for the disclosure to be provided in connection with a consumer’s application (*i.e.*, a form integrating the RESPA good faith estimate and the early TILA disclosure).<sup>13</sup> The qualitative testing

<sup>12</sup> Kleimann Communication Group, Inc., *Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures* (July 9, 2012), [http://files.consumerfinance.gov/f/201207\\_cfpb\\_report\\_tila-respa-testing.pdf](http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf).

<sup>13</sup> This discussion is limited to the testing of the disclosure to be provided in connection with a consumer’s application, which is the portion of the testing relevant to the appraisal-related disclosure in proposed § 1002.14(a)(2). As discussed in the supplementary information to the 2012 RESPA-TILA Proposal, the Bureau and Kleimann also tested prototype designs for the integrated

<sup>10</sup> Available at <http://www.consumerfinance.gov/notice-and-comment/>.

<sup>11</sup> *Id.*

plan developed by the Bureau and Kleimann was unique with respect to qualitative testing performed by other federal agencies in that the Bureau planned to conduct qualitative testing with industry participants as well as consumers. Each round of qualitative testing included at least two industry participants, including lenders from several different types of depository (including credit unions) and non-depository institutions, mortgage brokers, and closing agents.

In addition, the Bureau launched an initiative to obtain public feedback on each round of prototype disclosures at the same time it conducted the qualitative testing of the prototypes, which it titled "Know Before You Owe."<sup>14</sup> This initiative consisted of publishing and obtaining feedback on the prototype designs through an interactive tool on the Bureau's Web site or through posting the prototypes to the Bureau's blog on its Web site and providing an opportunity for the public to email feedback directly to the Bureau.

From May to October 2011, Kleimann and the Bureau conducted a series of five rounds of qualitative testing on revised iterations of integrated disclosure prototype forms. This testing was conducted in five different cities across different U.S. Census regions and divisions: Baltimore, Maryland; Los Angeles, California; Chicago, Illinois; Springfield, Massachusetts; and Albuquerque, New Mexico. After each round, Kleimann analyzed and reported to the Bureau on the results of the testing. Based on these results and feedback received from the Bureau's Know Before You Owe public outreach project, the Bureau revised the prototype disclosure forms for the next round of testing.

As part of the larger Know Before You Owe public outreach project, the Bureau tested two versions of the new appraisal-related disclosures required by both TILA section 129H and ECOA section 701(e).<sup>15</sup> The Bureau believed that it was important to test both appraisal-related disclosures together in order to determine how best to provide these two overlapping but separate disclosures in a manner that would minimize consumer confusion and

disclosure forms to be provided in connection with the closing of the mortgage loan and real estate transaction. See the Bureau's 2012 TILA-RESPA Proposal, available at <http://www.consumerfinance.gov/regulations/>.

<sup>14</sup> See <http://www.consumerfinance.gov/knowbeforeyouowe>.

<sup>15</sup> Kleimann Communication Group, Inc., *Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures* 254–256 (July 9, 2012), [http://files.consumerfinance.gov/f/201207\\_cfpb\\_report\\_tila-respa-testing.pdf](http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf).

improve consumer comprehension. Testing showed that consumers tended to find the TILA and ECOA disclosures confusing when they were given together using, in both cases, the specific language set forth in the statute.<sup>16</sup> Consumer comprehension improved when the Bureau developed a slightly longer plain language disclosure that was designed to incorporate the elements of both statutes. Based on the results of that testing, the Bureau has developed the following appraisal disclosure language: "We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost."

#### IV. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under ECOA, and the Dodd-Frank Act. On July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the "consumer financial protection functions" previously vested in certain other Federal agencies, including the Board.<sup>17</sup> The term "consumer financial protection function" is defined to include "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines."<sup>18</sup> ECOA and title X of the Dodd-Frank Act are Federal consumer financial laws.<sup>19</sup> Accordingly, the Bureau has authority to issue regulations pursuant to ECOA, as well as title X of the Dodd-Frank Act.

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof[.]" 12 U.S.C. 5512(b)(1). Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1). 12 U.S.C. 5512(b)(2). Section 1405(b) of the Dodd-Frank Act provides that, "[n]otwithstanding

<sup>16</sup> *Id.*

<sup>17</sup> Public Law 111–203, 124 Stat. 1376, section 1061(b)(7); 12 U.S.C. 5581(b)(7).

<sup>18</sup> 12 U.S.C. 5581(a)(1).

<sup>19</sup> Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws" and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining "enumerated consumer laws" to include ECOA).

any other provision of [title XIV of the Dodd-Frank Act], in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the [Bureau] may, by rule, exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the [Bureau] determines that such exemption or modification is in the interest of consumers and in the public interest." 15 U.S.C. 1601 note. Section 1401 of the Dodd-Frank Act, which amended TILA section 103(cc), 15 U.S.C. 1602(cc), generally defines residential mortgage loan as any consumer credit transaction that is secured by a mortgage on a dwelling or on residential real property that includes a dwelling other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan. Notably, the authority granted by section 1405(b) applies to "disclosure requirements" generally, and is not limited to a specific statute or statutes.

Section 703(a) of ECOA authorizes the Bureau to prescribe regulations to carry out the purposes of ECOA. Section 703(a) further states that such regulations may provide for such adjustments and exceptions for any class of transactions, that in the judgment of the Bureau are necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance. 15 U.S.C. 1691b(a). Pursuant to this authority, the Bureau proposes to implement the amended ECOA appraisal provision. 15 U.S.C. 1691(e). The proposed rule would amend existing § 1002.14 of Regulation B.

#### V. Section-by-Section Analysis

##### *Section 1002.14 Rules on Providing Appraisals and Valuations*

##### Overview

This proposal would implement amendments made by the Dodd-Frank Act to ECOA that require, among other things, that creditors provide applicants with free copies of any and all written appraisals and valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. The Bureau is proposing to implement these new requirements through amendments to existing § 1002.14 of Regulation B.

##### 14(a) Providing Appraisals and Valuations

Currently, § 1002.14(a) of Regulation B sets forth the general requirement that

a creditor shall provide a copy of the appraisal report used in connection with an application for credit that is to be secured by a lien on a dwelling. Section 1002.14(a) states that a creditor must comply with either § 1002.14(a)(1), which provides for routine delivery of copies of appraisal reports to an applicant, or § 1002.14(a)(2), which sets forth rules for providing copies of appraisal reports upon request (for creditors that do not choose to routinely provide appraisal reports to applicants). As discussed in more detail below, the Bureau is proposing to amend § 1002.14(a) to implement changes to the appraisal delivery requirements set forth in the Dodd-Frank Act. Because the Dodd-Frank Act amendments to ECOA section 701(e) eliminate the option for a creditor to provide copies of appraisals or valuations only upon written request, the Bureau is proposing to renumber portions of proposed § 1002.14(a) for clarity.

As discussed in more detail below, proposed § 1002.14(a)(1) would set forth the general requirement to provide copies of written appraisals and valuations to applicants for credit to be secured by a first lien on a dwelling, and would set forth the timing and waiver requirements for providing such copies. Proposed § 1002.14(a)(2) would require that a creditor provide a written disclosure of the applicant's right to receive a copy of such written appraisals and valuations. Proposed § 1002.14(a)(3) would prohibit creditors from charging the applicant for providing a copy of written appraisals and valuations, but would permit creditors to require applicants to pay a reasonable fee to reimburse the creditor for appraisals and valuations. Proposed § 1002.14(a)(4) would clarify that the requirements of § 1002.14(a)(1) apply regardless of whether credit is extended or denied, or if the application is incomplete or withdrawn. Proposed § 1002.14(a)(5) would allow for the copies required by § 1002.14(a)(1) to be provided in electronic form. As is discussed in more detail below, proposed § 1002.14(b) would define certain terms used in proposed § 1002.14(a).

Current comment 14(a)(2)(i)-1 addresses the notice requirements if the application subject to § 1002.14 involves more than one applicant. The Bureau is proposing to renumber current comment 14(a)(2)(i)-1 as proposed comment 14(a)-1, and to make a conforming change so that the comment accurately refers to the disclosure about copies of written appraisals and valuations rather than to a notice about the appraisal report. In addition, the proposed

comment would be amended to clarify that the comment also applies to the requirement to provide copies of written appraisals and valuations. Accordingly, the proposed comment would clarify that if there is more than one applicant, the notice about the written appraisals and valuations, and the copies of written appraisals and valuations, need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

#### 14(a)(1) In General

##### Scope

Consistent with ECOA section 701(e)(1), proposed § 1002.14(a)(1) would require a creditor to provide an applicant a copy of all written appraisals and valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling. The scope of proposed § 1002.14(a)(1) differs in several important respects from current § 1002.14(a). First, consistent with new ECOA section 701(e)(1), the proposed amendments to § 1002.14(a)(1) would broaden scope of the current requirement to provide copies of "an appraisal report" to include "all written appraisals and valuations developed." Thus, more types of documents developed to value properties would be covered.

At the same time, the amendments made to ECOA section 701(e)(1) also narrow the types of transactions that are covered by subsection (e). Specifically, the proposed rule would apply to applications for credit to be secured by a first lien on a dwelling. In contrast, current § 1002.14(a) applies to applications for credit secured by a first lien or a subordinate lien on a dwelling. Accordingly, proposed § 1002.14(a)(1) would also add the word "first" to § 1002.14(a) to narrow the scope of the proposed rule to cover only loans secured by a first lien on a dwelling, consistent with the Dodd-Frank Act amendments to section 701(e) of ECOA.

Current comments 14(a)-1 and 14(a)-2 clarify the applicability of the appraisal delivery requirements to credit for business purposes and renewals. The proposal would generally retain comments 14(a)-1 and 14(a)-2 (renumbered as comments 14(a)(1)-1 and 14(a)(1)-2), with several conforming and technical changes. Specifically, proposed comment 14(a)(1)-1 would include an updated cross-reference to the definition of "dwelling" that, as discussed below, is proposed to be moved to § 1002.14(b)(2). In addition, proposed comment 14(a)(1)-1 would be narrowed to cover only loans secured by

a first lien on a dwelling, consistent with proposed § 1002.14(a)(1). Thus, proposed comment 14(a)(1)-1 would provide that § 1002.14(a)(1) covers applications for credit to be secured by a first lien on a dwelling, as that term is defined in § 1002.14(b)(2), whether the credit is business credit (*see* § 1002.2(g)) or consumer credit (*see* § 1002.2(h)).

Proposed comment 14(a)(1)-2 would generally be consistent with current comment 14(a)-2. However, proposed comment 14(a)(1)-2 would use the statutory term "developed" provided in new ECOA section 701(e)(1) in place of the term "obtained" throughout the comment. Thus, proposed comment 14(a)(1)-2 would provide that § 1002.14(a)(1) applies when an applicant requests the renewal of an existing extension of credit and the creditor develops a new written appraisal or valuation. In addition, the proposed comment would also provide that § 1002.14(a) does not apply when a creditor uses the appraisals or valuations that were previously developed in connection with the prior extension of credit in order to evaluate the renewal request.

The Bureau requests comment on whether additional guidance is needed on the application of the requirements of proposed § 1002.14(a)(1) in the case of renewals for consumer or business purpose transactions.

The Bureau is proposing to adopt a new comment 14(a)(1)-3 that would clarify that for purposes of § 1002.14, a "written" appraisal or valuation includes, without limitation, an appraisal or valuation received or developed by the creditor: in paper form (hard copy); electronically, such as by CD or email; or by any other similar media. In addition, the proposed comment clarifies that creditors should look to § 1002.14(a)(5) regarding the provision of copies of appraisals and valuations to applicants via electronic means. The Bureau believes that its proposed interpretation of the term "written" best serves the purposes of the statute, because consumers would receive free copies of appraisals and valuations regardless of whether the creditor receives, prepares or stores these materials in paper or electronic form.

##### Timing

Proposed § 1002.14(a)(1) would clarify that a creditor must provide a copy of each written appraisal or valuation subject to § 1002.14(a)(1) promptly (generally within 30 days of receipt by the creditor), but not later than three business days prior to

consummation of the transaction, whichever is first to occur. This aspect of the proposal implements ECOA section 701(e)(1), which requires that creditors provide the copies of each written appraisal or valuation promptly, but in no case later than three days prior to the closing of the loan. The statute does not define the term “promptly.” However, current § 1002.14(a)(2)(ii) states that “promptly” means generally within 30 days. For consistency with existing § 1002.14(a)(2)(ii), under proposed § 1002.14(a)(1) the provision of a copy of written appraisals and valuations will generally be considered prompt if the written appraisals and valuations are provided within 30 days of receipt thereof by the creditor. Thus, under the proposed rule a creditor would be required to provide a copy of all appraisals and valuations within 30 days of receipt or three days prior to consummation of the transaction, whichever is first to occur.

In addition, for clarity and to be consistent with other similar regulatory requirements under TILA and RESPA, the proposed rule would use the term “consummation” in place of the statutory term “closing” and clarify that the statutory term “days” means “business days.”

#### *Waiver*

ECOA section 701(e)(2) provides that an applicant may waive the three-day requirement provided in ECOA section 701(e)(1), except where otherwise required in law. The Bureau believes that the “3 day requirement” referenced in the statute refers to the timing requirement to provide a copy of an appraisal or valuation three business days prior to closing, as opposed to the general requirement to provide copies of all appraisals and valuations. Specifically, the Bureau believes that a creditor is required to provide a copy of an appraisal or valuation developed promptly (generally within 30 days) even if the application is denied, incomplete, withdrawn, or the applicant waives the three day requirement. In addition, because creditors who order or conduct an appraisal or valuation require it to be completed before consummation of the transaction, the Bureau believes that a creditor should always be required to provide an applicant a copy of written appraisals and valuations by the date of consummation of the transaction. Accordingly, proposed § 1002.14(a)(1) provides that, notwithstanding the other requirements in § 1002.14(a)(1), an applicant may waive the timing requirement to receive a copy of an appraisal or valuation three business

days prior to consummation and agree to receive the copy at or before consummation, except as otherwise prohibited by law.

Proposed comment 14(a)(1)–4 would clarify that § 1002.14(a)(1) permits the applicant to waive the timing requirement that written appraisals and valuations be provided no later than three business days prior to consummation if the creditor provides the copy at or before consummation, except as otherwise provided by law. In addition, the proposed comment would provide that an applicant’s waiver is effective under § 1002.14(a)(1) if the applicant provides the creditor an affirmative oral or written statement waiving the 3-day timing requirement. Finally, the proposed comment would provide that if there is more than one applicant for credit in the transaction, any applicant may provide the statement.

#### *Delivery Upon Request No Longer Permitted*

Section 1474 of the Dodd-Frank Act amended ECOA section 701(e) to mandate that copies of appraisals and valuations be provided regardless of whether the consumer affirmatively requests such copies. Accordingly, for consistency with the statute, the Bureau is proposing to delete current § 1002.14(a)(1) and (a)(2), which permit creditors to choose between the “routine delivery” and “delivery upon request” methods of complying with the requirements of § 1002.14.

#### *Exemption for Credit Unions Removed*

The Board’s 1993 Final Rule on Providing Appraisal Reports (1993 Final Rule) provided an exemption from the appraisal delivery requirements in § 1002.14 for credit unions. See 58 FR 65657, 65660 (Dec. 16, 1993). In the 1993 Final Rule the Board cited to the legislative history of the 1991 ECOA amendments as the basis for the exemption for credit unions. The reasoning behind this exemption appears to have been that credit unions were already required to comply with substantially similar requirements under the regulations of the National Credit Union Administration (NCUA).<sup>20</sup> The Board also cited to a section of the legislative history noting that Congress

<sup>20</sup> See 12 CFR 701.31(c)(5) providing that each Federal credit union shall make available, to any requesting member/applicant, a copy of the appraisal used in connection with that member’s real estate-related loan application. The appraisal shall be available for a period of 25 months after the applicant has received notice from the Federal credit union of the action taken by the Federal credit union on the real estate-related loan application.

intended no change to the NCUA’s regulations in adding the requirement to provide appraisals in ECOA.<sup>21</sup>

Under 12 CFR 701.31(c)(5), Federal credit unions are still required to make available to any requesting member/applicant a copy of the appraisal used in connection with that member’s real estate-related loan application. However, the Dodd-Frank Act amendments to ECOA section 701(e) substantially alter the requirements on creditors to provide appraisals. Specifically, section 1474 of the Dodd-Frank Act expanded the scope of the requirements of ECOA section 701(e) to require creditors to provide copies of all valuations, and to eliminate the need for applicants to request copies. In addition, neither section 1474 of the Dodd-Frank Act nor the legislative history refers to an exception for credit unions subject to, and complying with, the provisions of the NCUA regulations relating to making appraisals available upon request. Accordingly, as proposed, § 1002.14 would delete the exemption for credit unions in current § 1002.14(b).

The Bureau requests comment on the removal of this exemption and whether there are additional factors the Bureau should take into consideration relating to the application of proposed § 1002.14 to credit unions.

#### *14(a)(2) Disclosure*

Consistent with ECOA section 701(e)(5), proposed § 1002.14(a)(2) provides that for applications subject to § 1002.14(a)(1), a creditor shall provide an applicant with a written disclosure, not later than the third business day after the creditor receives an application, of the applicant’s right to receive a copy of all written appraisals and valuations developed in connection with such application.

#### *Content*

Title XIV of the Dodd-Frank Act added two new appraisal related disclosure requirements for consumers. New section 701(e)(5) of ECOA, which is implemented in this proposed rule provides: “At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.” 15 U.S.C. 1691(e)(5). Similarly, section 129H(d) of TILA provides:

<sup>21</sup> The legislative history to the 1991 ECOA amendments cited to in the Board’s 1993 Final Rule on Providing Appraisals notes that the NCUA already requires credit unions to make appraisals available, and that the legislation is not intended to modify those NCUA regulations. See S. Rep. No. 102–167, at 90 (102nd Cong. 1st Sess. 1991).

At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor 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 expense of the applicant.

15 U.S.C. 1639h(d). In the absence of regulatory action to harmonize the two provisions, creditors would be required to provide two appraisal-related disclosures to consumers for certain loans (*i.e.*, a TILA and an ECOA disclosure for higher-risk mortgage loans secured by a first lien on a consumer's principal dwelling) and just one for others (*i.e.*, an ECOA disclosure for first-lien, dwelling-secured loans that are not higher-risk mortgage loans, or a TILA disclosure for higher-risk mortgage loans secured by a subordinate lien).

The Bureau believes that Congress intended the ECOA and TILA disclosures to work together to provide consumers a better understanding of their rights in the appraisal process. Accordingly, the Bureau is proposing to exercise its authority under section 703(a) of ECOA and section 1405(b) of the Dodd-Frank Act to amend form C-9 in Regulation B to include the language developed to satisfy the new appraisal-related disclosure requirements of both ECOA and TILA. The proposed sample disclosure language differs from the express statutory language provided in section 701(e)(5). However, based on the results of the testing described above, the Bureau believes that the additional explanatory text is necessary to promote consumer comprehension and to reduce any confusion associated with the TILA appraisal notification that will also have to be given to applicants for higher-risk mortgage loans. The Bureau believes this approach will also reduce compliance burden for industry by allowing a single disclosure to satisfy both statutory requirements. Accordingly, the Bureau believes that the proposed sample notice language developed to satisfy the disclosure requirements of both TILA and ECOA serves the interests of consumers, the public, and creditors. The Bureau requests comment on the proposed language and whether additional changes should be made to the text of the notification to further enhance consumer comprehension.

In addition, the Bureau notes that the model language in proposed Form C-9 refers only to appraisals, while proposed § 1002.14(a)(2) refers to "all written appraisals and valuations." The Bureau solicits comment on what, if any, adjustments or clarifications to Form C-9 would be appropriate for

creditors that perform valuations rather than, or in addition to, appraisals.

#### Timing and Method of Delivery

ECOA section 701(e)(5) requires creditors to notify applicants in writing, at the time of application, of the right to receive a copy of each written appraisal and valuation. The Bureau proposes to interpret the phrase "at the time of application" to require creditors to provide the ECOA appraisal disclosure no later than three business days after receiving an application. Proposed § 1002.14(a)(2) would require creditors to notify applicants in writing, not later than the third business day after a creditor receives such application, of the right to receive a copy of all written appraisals and valuations developed in connection with such application.

This approach is consistent with the disclosure requirements of TILA and RESPA.<sup>22</sup> Currently, creditors are required to provide disclosures under TILA and RESPA no later than the third business day after receiving a consumer's written application.<sup>23</sup> The Bureau has also proposed as part of the 2012 TILA-RESPA Proposal that the ECOA disclosure be provided as part of the Loan Estimate disclosure to be delivered not later than the third business day after application, to eliminate the need for a separate disclosure.<sup>24</sup>

The Bureau believes this approach is warranted because providing the disclosure to applicants at the same time as other similar disclosures—and possibly as part of a broader integrated disclosure document—would allow consumers to read the notification in context with other important information that must be delivered not later than the third business day after the creditor receives the application. Such an approach could reduce the number of pieces of paper that consumers receive and facilitate compliance by creditors.

The Bureau requests comment on whether providing the disclosure at

<sup>22</sup> See, e.g., 2012 TILA-RESPA Proposal, at 12 CFR 1026.19(e)(1)(iii) ("Timing. The creditor shall deliver the disclosures required under paragraph (e)(1)(i) of this section not later than the third business day after the creditor receives the consumer's application.") available at <http://www.consumerfinance.gov/regulations/>.

<sup>23</sup> See, e.g., 12 CFR 1026.19(a)(1)(i) providing in relevant part that in a mortgage transaction subject to the Real Estate Settlement Procedures Act that is secured by the consumer's dwelling \* \* \* the creditor shall make good-faith estimates of the disclosures required by § 226.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

<sup>24</sup> 2012 TILA-RESPA Proposal, at 12 CFR 1026.19(e)(1)(iii) and 1026.37(m)(1) available at <http://www.consumerfinance.gov/regulations/>.

some other time would be more beneficial to consumers, and how the disclosure should be provided where an application is submitted by phone, fax or electronically. For example, the Bureau solicits comment on whether it would be appropriate to require that creditors provide the disclosure at the same time the application is received, or even as part of the application.

The Bureau also seeks comment on the effective date if the Bureau were to finalize the proposal to include the new appraisal disclosure in the TILA-RESPA Loan Estimate. Because the 2012 TILA-RESPA Proposal likely will not be finalized on the same timeline as this proposal, creditors would likely have to revise their current ECOA disclosures to reflect the new language and distribute the disclosures as standalone forms until such time as the TILA-RESPA integrated disclosures must be provided. The Bureau believes that the burden involved would be modest since the forms are currently typically provided as standalone documents and do not require complicated dynamic systems programming to generate. The Bureau believes it is important for consumers to begin receiving information about their rights under ECOA with respect to receiving copies of appraisals. The Bureau therefore is not proposing to delay implementation of the disclosure requirement, as it is with some other mortgage-related disclosures required by the Dodd-Frank Act that the Bureau is proposing to implement as part of the integrated TILA-RESPA forms.<sup>25</sup> The Bureau seeks comment on the burden and time involved in implementing the proposed revisions to the ECOA notice.

#### 14(a)(3) Reimbursement

Consistent with ECOA sections 701(e)(3) and 701(e)(4), the proposed rule would remove current comment 14(a)(2)(ii)-1, which permits creditors to charge photocopy and postage costs incurred in providing a copy to the applicant. ECOA sections 701(e)(3) and 701(e)(4) address creditors' ability to charge certain fees relating to appraisals and valuations. Section 701(e)(3) affirms that creditors may require applicants to pay reasonable fees to reimburse the creditor for the cost of the appraisal, except where otherwise required in law. Section 701(e)(4) provides that notwithstanding this ability, however, creditors shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

The Bureau interprets the two provisions to permit creditors to charge

<sup>25</sup> See 2012 TILA-RESPA Proposal, available at <http://www.consumerfinance.gov/regulations/>.

applicants reasonable fees to reimburse the creditor for costs of the appraisal or valuation itself, but not for photocopying, postage, or similar costs associated with providing one written copy to the applicant. Accordingly, proposed § 1002.14(a)(3) generally implements sections 701(e)(3) and 701(e)(4), and provides additional details for clarity.

In addition, the proposed regulation affirms that creditors may impose fees to reimburse the costs of both valuations and appraisals. Although ECOA section 701(e)(3) does not expressly refer to valuations, the reference to both appraisals and valuations in 701(e)(4) regarding the provision of copies creates ambiguity as to congressional intent. The Bureau believes that there is both consumer and industry benefit to affirming that creditors may charge reasonable fees for reimbursement for all types of property valuations. Absent such clarification, the statutory language might be read as implicitly forbidding creditors from charging reimbursement fees for obtaining valuations, such as broker-price opinions or automated valuation models. The Bureau does not believe that Congress intended such a result, which could create an incentive for creditors to favor full appraisals over less costly forms of valuation that may be equally appropriate in particular circumstances.<sup>26</sup> Such a result would impose needless costs on loan applicants.

To the extent necessary, the Bureau relies on the authority provided in ECOA section 703(a) to provide adjustments and exceptions for any class of transactions in proposing to interpret section 701(e)(3) of ECOA as permitting creditors to charge applicants a reasonable fee to reimburse the creditor for the cost of developing an appraisal or valuation, except as otherwise provided by law. Such an adjustment effectuates the purposes of ECOA by permitting creditors to charge applicants for less costly forms of valuations that may be utilized in certain low dollar value transactions, and then pass those savings on to loan applicants. For example, the Federal

banking agencies do not require federally insured financial institutions to obtain an appraisal in low risk real estate-related financial transactions in which the transaction value is \$250,000 or less.<sup>27</sup>

Proposed comment 14(a)(3)–1 would provide examples of the specific types of charges that are prohibited under the regulation, such as photocopying fees and postage for mailing a copy of written appraisals or valuations.

Proposed comment 14(a)(3)–2 would clarify that § 1002.14(a)(3) does not prohibit creditors from imposing fees that are reasonably designed to reimburse the creditor for costs incurred in connection with obtaining actual appraisal or valuation services, so long they are not increased to cover the costs of providing documentation under § 1002.14. The Bureau does not read ECOA section 701(e)(3) as an attempt to create a proscriptive rate regime for all valuation-related activities. The Bureau notes that where Congress believed direct regulation of the amount of fees in connection with appraisal activities was required, it specified standards in the Dodd-Frank Act. *See* Dodd-Frank Act section 1472 (requiring under TILA, with regard to residential mortgage loans, that creditors and their agents pay independent appraisers fees that are “reasonable and customary” for the market area where the property is located, and specifying various sources for determining whether fees meet the standard). The Bureau does not believe that Congress intended ECOA section 701, which focuses on the provision of documentation to loan applicants rather than the substantive performance of appraisal and valuation services, to function in such a manner. Accordingly, the Bureau believes that sections 701(e)(3) and 701(e)(4) are simply designed to prevent direct or indirect upcharging related to the documentation provision that is the focus of the statute.

To further clarify the statutory language stating that creditors’ ability to seek reimbursement for the cost of the appraisal does not apply “where otherwise required in law,” proposed comment 14(a)(3)–2 also notes that other sources of law may separately prohibit creditors from charging fees to reimburse the costs of appraisals, and are not overridden by section 701(e)(3). For instance, section 1471 of the Dodd-

Frank Act requires creditors to obtain a second interior appraisal in connection with certain higher-risk mortgage loans, but prohibits creditors from charging applicants for the cost of the second appraisal. TILA section 129H(b)(2)(B); 15 U.S.C. 1639h(b)(2)(B).

The Bureau requests comment on the proposed text and whether additional guidance is needed to comply with the requirements of proposed § 1002.14(a)(3).

#### *14(a)(4) Withdrawn, Denied or Incomplete Applications*

Consistent with ECOA section 701(e)(1), proposed § 1002.14(a)(4) would provide that the requirements of § 1002.14(a)(1) apply whether credit is extended or denied or if the application is incomplete or withdrawn. This language would expand on the language in current § 1002.14(a)(1), which already requires that creditors using the routine delivery option of compliance provide copies of appraisal reports “whether credit is granted or denied or the application is withdrawn.” Specifically, under the proposed rule creditors would also be required to provide copies of appraisals and valuations in situations where an applicant provides only an incomplete application.

#### *14(a)(5) Copies in Electronic Form*

Section 1002.4(d)(2) of Regulation B currently provides that the disclosures required to be provided in writing by this part may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The Bureau believes that it is appropriate to allow creditors to provide applicants with copies of written appraisals and valuations in electronic form if the applicant consents to receiving the copies in such form. Accordingly, proposed § 1002.14(a)(5) would provide that the copies of written appraisals and valuations required by § 1002.14(a)(1) may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act.

#### *14(b) Definitions*

Proposed § 1002.14(b) would set forth three definitions, discussed below. The Bureau requests comment on whether there are additional terms that should be defined for purposes of this rule, and how best to define those terms in a manner consistent with ECOA section 701(e).

<sup>26</sup> According to estimates for the average cost of an appraisal provided by the U.S. Government Accountability Office (GAO), consumers on average pay \$300–450 for full interior appraisal. *See Residential Appraisals: Opportunities to Enhance Oversight of an Evolving Industry* GAO–11–653, pg. 22 (July 2011). Other forms of valuation, however, tend to cost less than appraisals. Broker Price Opinions typically cost \$65–125; valuations derived from an automated valuation model typically cost \$5–25. *See Id.*, pgs. 17–18; *see also Real Estate Appraisals: Appraisal Subcommittee Needs to Improve Monitoring Procedures*–12–147, pg. 39 (Jan. 2012).

<sup>27</sup> *See, e.g.*, 12 CFR 323.3(a)(1) exempting real estate-related financial transactions with a transaction value of less than \$250,000 from the FDIC’s rule requiring FDIC insured institutions to obtain an appraisal performed by a State certified or licensed appraiser for all real estate-related financial transactions.



## 14(b)(1) Consummation

As discussed above, for clarity and to be consistent with other similar regulatory requirements under TILA and RESPA, proposed § 1002.14(a)(1) would use the term “consummation” in place of the statutory term “closing.” In addition, the proposed rule would define the term “consummation” in a manner that mirrors the definition of the term provided in § 1026.2(a)(13) of Regulation Z. 12 CFR 1026.2(a)(13). Accordingly, proposed § 1002.14(b)(1) would define the term “consummation” as the time that a consumer becomes contractually obligated on a credit transaction.

Proposed comment 14(b)(1)–1 would clarify that when a contractual obligation on the consumer’s part is created is a matter to be determined under applicable law; § 1002.14 does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

Proposed comment 14(b)(1)–2 would clarify that consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.

## 14(b)(2) Dwelling

Proposed § 1002-1.14(b)(2) would retain the definition of the term “dwelling” in current § 1002.14(c). Specifically, proposed § 1002.14(b)(2) would define the term “dwelling” as a residential structure that contains one to four units whether or not that structure is attached to real property. Proposed paragraph (b)(2) further provides that the term “dwelling” includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

## 14(b)(3) Valuation

Consistent with ECOA section 701(e)(6), proposed § 1002.14(b)(3) defines “valuation” as any estimate of the value of a dwelling developed in connection with a creditor’s decision to provide credit. The commentary to the proposed rule would include the list of examples provided in ECOA section 701(e)(6).

Proposed comment 14(b)(3)–1 would amend current comment 14(c)–1 to

provide the following examples of valuations:

- A report prepared by an appraiser (whether or not certified and licensed), including written comments and other documents submitted to the creditor in support of the person’s estimate or opinion of the property’s value.
- A document prepared by the creditor’s staff that assigns value to the property, if a third-party appraisal report has not been used.
- An internal review document reflecting that the creditor’s valuation is different from a valuation in a third party’s appraisal report (or different from valuations that are publicly available or valuations such as manufacturers’ invoices for mobile homes).
- Values developed pursuant to a methodology or mechanism required by a government sponsored enterprise, including written comments and other documents submitted to the creditor in support of the estimate of the property’s value.
- Values developed by an automated valuation model, including written comments and other documents submitted to the creditor in support of the estimate of the property’s value.
- A broker price opinion prepared by a real estate broker, agent, or sales person, including written comments and other documents submitted to the creditor in support of the estimate of the property’s value.

The Bureau requests comment on whether this list should include other examples of valuations. In addition, the Bureau requests comments on whether additional clarification is needed about what types of information would not constitute a valuation for purposes of § 1002.14.

The Bureau understands that many documents prepared in the course of a mortgage transaction may contain information regarding the value of a dwelling, but are not themselves a written appraisal or valuation. The Bureau does not believe that consumers would benefit from being given duplicative information concerning written appraisals and valuations. Additionally, it is important for creditors to be able to easily distinguish between documents that must be provided to applicants and those that are not required to be provided. Accordingly, proposed comment 14(b)(3)–2 would amend current comment 14(c)–2 to clarify that not all documents that discuss or restate a valuation of an applicant’s property constitute “written appraisals and valuations” for purposes § 1002.14(a)(1). In addition, the proposed comment

would provide the following list of examples of documents that discuss the valuation of the applicant’s property but nonetheless are not “written appraisals and valuations:”

- Internal documents, that merely restate the estimated value of the dwelling contained in a written appraisal or valuation being provided to the applicant.
- Governmental agency statements of appraised value that are publically available.
- Valuations lists that are publically available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers’ invoices for mobile homes.

The Bureau requests comment on whether this list of examples is too broad or whether additional examples should be included and why.

#### V. Section 1022(b)(2) of the Dodd-Frank Act

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts to consumers and covered persons,<sup>28</sup> and has consulted or offered to consult with the Federal banking agencies, FHFA, the Department of Housing and Urban Development, and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The proposed rule would amend Regulation B, which implements the Equal Credit Opportunity Act, and the official interpretation to the regulation, which interprets the requirements of Regulation B. The proposed revisions to Regulation B would implement an Equal Credit Opportunity Act amendment concerning appraisals and other valuations that was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In general, the proposed revisions to Regulation B would require creditors to provide free copies of all written appraisals and valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. The proposal also would require creditors to notify applicants in writing of the right to receive a copy of each written appraisal or valuation at no additional cost.

<sup>28</sup> 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.

Section 1022 permits the Bureau to consider the benefits, costs, and impacts of the proposed rule solely compared to the state of the world in which the statute takes effect without an implementing regulation. To provide the public better information about the benefits and costs of the statute, however, the Bureau has chosen to consider the benefits, costs, and impacts of the major provisions of the proposed rule against a pre-statutory baseline (*i.e.*, the benefits, costs, and impacts of the relevant provisions of the Dodd-Frank Act and the regulation combined).<sup>29</sup>

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

The primary source of data used in this analysis comes from data collected under the Home Mortgage Disclosure Act (HMDA).<sup>30</sup> Because the latest wave of complete data available is for loans made in calendar year 2010, the empirical analysis generally uses the 2010 market as the baseline. Data from fourth quarter 2010 bank and thrift Call

<sup>29</sup> The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline. The Bureau, as a matter of discretion, has chosen to describe a broader range of potential effects to more fully inform the rulemaking.

<sup>30</sup> The Home Mortgage Disclosure Act (HMDA), enacted by Congress in 1975, as implemented by the Bureau's Regulation C requires lending institutions annually to report public loan-level data regarding mortgage originations. For more information, see <http://www.ffiec.gov/hmda>. It should be noted that not all mortgage lenders report HMDA data. The HMDA data capture roughly 90–95 percent of lending by the Federal Housing Administration and 75–85 percent of other first-lien home loans. Depository institutions (including credit unions) with assets less than \$39 million (in 2010), for example, and those with branches exclusively in non-metropolitan areas and those that make no purchase money mortgage loans are not required to report to HMDA. Reporting requirements for non-depository institutions depend on several factors, including whether the company made fewer than 100 purchase money or refinance loans, the dollar volume of mortgage lending as share of total lending, and whether the institution had at least five applications, originations, or purchased loans from metropolitan areas. Robert B. Avery, Neil Bhutta, Kenneth P. Brevoort & Glenn B. Canner, *The Mortgage Market in 2010: Highlights from the Data Reported under the Home Mortgage Disclosure Act*, 97 Fed. Res. Bull., December 2011, at 1, 1 n.2.

Reports,<sup>31</sup> fourth quarter 2010 credit union call reports from the National Credit Union Administration (NCUA), and de-identified data from the National Mortgage Licensing System (NMLS) Mortgage Call Reports (MCR)<sup>32</sup> for the first and second quarter of 2011 were also used to identify financial institutions and their characteristics. 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. The Bureau seeks comment on the use of these data sources, the appropriateness to this purpose, and alternative or additional sources of information.

#### *Potential Benefits and Costs to Covered Persons and Consumers*

*Consumers.* Since the proposed rule requires creditors to deliver copies of valuations, including appraisals, to consumers and creditors are explicitly prohibited from charging consumers for these copies, consumers do not bear any direct costs from the proposed rule. The provision of the free copy of the valuation provides consumers with details about the valuation and the condition of the property. Although most consumers receive much of this information from a home inspection and although the appraisal is done for the creditor, each valuation provides the consumer with another independent evaluation. This detailed information may be particularly valuable to the consumer when the appraised value is less than the buyer's offer.<sup>33</sup>

The proposed rule would change the process of obtaining a copy from one where the consumer must request one to one where the copy is given as the default. This would likely result in more consumers obtaining copies of their valuations since, despite low transaction costs, there is evidence that

<sup>31</sup> 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/](http://www2.fdic.gov/call_tfr_rpts/).

<sup>32</sup> The Nationwide Mortgage Licensing System 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, the number and dollar amount of loans brokered.

<sup>33</sup> The value of the information may vary depending on when in the home purchase and loan origination process he or she receives the information.

default rules can have significant effects on outcomes in various settings.<sup>34</sup> Consumers who previously may have requested copies of valuations in the absence of the amendment save the time and effort required to make requests.

Individual consumers engage in real estate transactions infrequently, so developing the expertise to value real estate is costly and consumers often rely on experts, such as real estate agents, and list prices to make price determinations. These methods may not lead a consumer to an accurate valuation of a property. For example, there is evidence that real estate agents sell their own homes for significantly more than other houses, which suggests that sellers may not be able to accurately price the homes that they are selling.<sup>35</sup> Other research, this time in a laboratory setting, provides evidence that individuals are sensitive to anchor values when estimating home prices.<sup>36</sup> In such cases, an independent signal of the value of the home should benefit the consumer. Having a professional valuation as a point of reference may help consumers gain a more accurate understanding of the home's value and improve overall market efficiency, relative to the case where the knowledge of true valuations is more limited.<sup>37</sup>

*Covered Persons.* In the context of the proposed rule, "covered persons" includes depository institutions such as banks, credit unions, and thrifts, as well as non-depository lenders such as independent mortgage banks. The Bureau estimates that of the roughly 15,000 depository institutions, just fewer than 12,000 originate mortgage loans. Another 2,500 non-depository institutions engage in real estate credit, based on data from the NMLS MCR. The

<sup>34</sup> John Beshears, James Choi, David Laibson, & Brigitte Madrian. "The Importance of Default Options for Retirement Savings Outcomes: Evidence from the United States." Chap. 5 in *Social Security Policy in a Changing Environment*, Jeffrey Brown, Jeffrey Liebman & David A. Wise eds. (Chicago, IL: University of Chicago Press), 169–195. Eric Johnson and Daniel Goldstein. "Do Defaults Save Lives?" *Science* 302 (2003) 1338–1339.

<sup>35</sup> Steven Levitt and Chad Syverson. "Market Distortions When Agents are Better Informed: The Value of Information In Real Estate Transactions." *The Review of Economics and Statistics* 90 no.4 (2008): 599–611.

<sup>36</sup> Peter Scott and Colin Lizieri. "Consumer House Price Judgments: New Evidence of Anchoring and Arbitrary Coherence." *Journal of Property Research* 29 no. 1 (2012): 49–68.

<sup>37</sup> For example, in Quan and Quigley's theoretical model where buyers and seller have incomplete information, trades are decentralized, and prices are the result of pairwise bargaining, "[t]he role of the appraiser is to provide information so that the variance of the price distribution is reduced." Daniel Quan and John Quigley. "Price Formation and the Appraisal Function in Real Estate Markets." *Journal of Real Estate Finance and Economics* 4 (1991): 127–146.

proposed rule codifies the common practice of sending copies of all written appraisals to consumers who obtain loans secured by a first lien on a dwelling. In outreach calls to industry, all respondents reported providing copies of appraisals to borrowers as a matter of course if a loan is originated.<sup>38</sup> In addition, the proposed rule requires that copies of appraisals and valuations be sent in the event that an application is received but does not result in a loan being originated. Note that while the proposed rule prohibits creditors from charging consumers for these copies, the cost of compliance is offset in part by the costs saved by no longer having to respond to consumer requests for copies. Because responding to a request involves querying a loan file, finding the appraisal, and then going through the process of sending copies of valuations to the consumer, the cost of responding to a single consumer request may be higher than the cost of routinely providing a copy of valuations for a given loan.

Under the proposed rule, covered persons would incur the paperwork costs, for a set of applications and originations, of replicating and sending (either electronically or physically) copies of the appraisals and valuations.<sup>39</sup> Based on outreach to industry the Bureau assumes that appraisals and copies of other valuations are currently sent to consumers for 100% of first lien transactions that result in an origination and that copies of appraisals and valuations conducted for applications that do not result in a loan are not sent to consumers. As a result, the paperwork costs result from those applications that do not result in originations. The Bureau also believes that a second appraisal is conducted, and is sent, for any property with a loan size equal to or above \$600,000. Further, appraisals are considered to be of

inadequate quality 10% of the time, necessitating a second appraisal.

To measure these paperwork costs, counts of originations and applications for reporting depository institutions and credit unions are obtained from the HMDA data; for non-HMDA reporters, counts are imputed using accepted statistical techniques that allow estimates based on the data available in Call reports.<sup>40</sup> Different techniques are used to extrapolate from the applications and originations data available in HMDA for reporting IMBs to the broader set of all IMBs.

Covered persons would also incur some costs in reviewing the proposed rule and in training the relevant employees.<sup>41</sup> To estimate these costs, the number of loan officers who may require training is estimated based on the application or origination estimates.

The total costs from the proposed rule are approximately \$14 million or just under \$1.70 for each loan originated. The bulk of these costs arise from the paperwork requirements; roughly ten percent results from the one-time review and training costs.

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

Since the proposed rule, which largely codifies existing practice, is limited to relatively low cost clerical tasks and does not require the creditor to obtain any additional goods or services, the proposed rule is not likely to have an appreciable impact on the cost of credit for consumers or on loan volumes.

#### *Impact of the Proposed Rule on Depository Institutions and Credit Unions With \$10 Billion or Less in Total Assets, As Described in Section 1026<sup>42</sup> and the Impact of the Proposed Rule on Consumers in Rural Areas*

For smaller depository institutions, those with total assets of \$10 billion or

less, the proposed rule is estimated to cost \$4.6 million. Because of their smaller size, fixed training and reviewing costs are spread over fewer applications and originations and as a result, the average cost would increase slightly; for each loan these institutions originate, the cost is estimated to be roughly \$1.80.

The Bureau does not anticipate that the proposed rule would have a unique impact on consumers in rural areas.

#### *Additional Analysis Being Considered and Request for Information*

In addition to the comment solicited elsewhere in this proposed rule, the Bureau requests commenters to submit data and to provide suggestions for additional data to assess the issues discussed above and other potential benefits, costs, and impacts of the proposed rule. The Bureau also requests comment on the use of the data described above. Further, the Bureau seeks information or data on the proposed rule's potential impact on consumers in rural areas as compared to consumers in urban areas. The Bureau also seeks information or data on the potential impact of the proposed rule on depository institutions and credit unions with total assets of \$10 billion or less as described in Dodd-Frank Act section 1026 as compared to depository institutions and credit unions with assets that exceed this threshold and their affiliates.

## **VI. Regulatory Flexibility Act**

The Regulatory Flexibility Act (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, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.<sup>43</sup> The Bureau also is subject to certain additional procedures under the RFA involving the

authority under Section 1025. However, these banks are included in this discussion for convenience.

<sup>43</sup> 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. 5 U.S.C. 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. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 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. 5 U.S.C. 601(5).

<sup>38</sup> Respondents include a large bank, a trade group of smaller depository institutions, and an independent mortgage bank.

<sup>39</sup> Based on its outreach and research, the Bureau assumes that the average appraisal is 20 pages long and that printing a copy of an appraisal costs \$0.10 per page. The Bureau assumes that 84% of appraisals are sent via email, 15.75% of appraisals are sent via the United States Postal Service, and 0.25% of appraisals are sent via courier. Mailing an appraisal is assumed to cost \$2.12 based on the cost of first class mail for a 3.7oz letter (20 pages of 20 lb paper weighs 3.2oz with a 0.5oz allowance for an envelope) and requires 5 minutes of loan officer time; sending an appraisal via a courier is assumed to cost \$17 (\$15 for courier fees and \$2 for replication costs) in material costs and 5 minutes of loan officer time; and, sending a copy via email is assumed to cost \$0.05 of material cost and 1 minute of loan officer time.

<sup>40</sup> Specifically, Poisson regressions are run projecting loan volumes in these categories on the natural log of the following characteristics available in the Call reports: total 1-4 family residential loan volume outstanding, full-time equivalent employees, and assets. The regressions are run separately for each category of depository institution.

<sup>41</sup> The cost of reviewing the regulation at each institution is assumed to be the time cost of reading and reviewing the regulation, which is assumed to be 3 minutes per page for 9 pages. It is assumed that the regulation is reviewed by one lawyer at each firm, and by one compliance officer at each non-depository institution, two compliance officers at each depository institution over \$10 billion in assets, and one half a compliance officer at each smaller DI.

<sup>42</sup> Approximately 50 banks with under \$10 billion in assets are affiliates of large banks with over \$10 billion in assets and subject to Bureau supervisory

convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.<sup>44</sup> An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed rule would amend Regulation B, which implements the Equal Credit Opportunity Act, and the official interpretation to the regulation, which interprets the requirements of Regulation B. The proposed revisions to Regulation B would implement an Equal Credit Opportunity Act amendment concerning appraisals and other valuations that was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In general, the proposed revisions to Regulation B would require creditors to provide free copies of all written appraisals and valuations developed in connection

with an application for a loan to be secured by a first lien on a dwelling. The proposal also would require creditors to notify applicants in writing of the right to receive a copy of each written appraisal or valuation at no additional cost.

The empirical approach to calculating the impact the proposed regulation has on small entities subject to its requirements utilizes the same data and methodology outlined in the previous section. The analysis that follows focuses on the economic impact of the proposed rule, relative to a pre-statute baseline, for small depository institutions, credit unions and non-depository independent mortgage banks (IMBs).

The Small Business Administration classifies commercial banks, savings institutions, credit unions, and other depository institutions as small if they have assets less than \$175 million, and classifies other real estate credit firms as

small if they have less than \$7 million in annual revenues.<sup>45</sup> All institutions that extend real estate credit secured by a first lien on a dwelling are affected by the proposed rule. As shown below, the vast majority of small banks, thrifts, credit unions, and independent mortgage banks originate such loans.

Of the roughly 17,747 depository institutions, credit unions, and IMBs, 13,106 are below the relevant small entity thresholds. Of these, 9,807 are estimated to have originated mortgage loans in 2010. The Bureau has loan counts for credit unions and HMDA-reporting DIs and IMBs. For IMBs, the Bureau only has data on revenues for 560 of 2515 institutions. In order to estimate the number of these institutions that have less than \$7 million in revenues the Bureau uses an accepted statistical techniques (“nearest neighbor matching”) to impute revenues from the MCR.

TABLE 1—COUNTS AND ORIGINATIONS OF CREDITORS BY TYPE

Category	NAICS Code	Total entities	Small entity threshold	Small entities	Entities that originate any mortgage loans <sup>c</sup>	Small entities that originate any mortgage loans <sup>c</sup>
Commercial Banking <sup>a</sup> .....	522110	6596	\$175 million in assets .....	3764	6362	3597
Savings Institutions <sup>a</sup> .....	522120	1145	\$175 million in assets .....	491	1138	487
Credit Unions <sup>b</sup> .....	522130	7491	\$175 million in assets .....	6569	4359	3441
Independent Mortgage Banks <sup>d,e</sup> .....	522292	2515	\$7 million in revenues .....	2282	2515	2282
Total .....	.....	17,747	.....	13106	14374	9807

<sup>a</sup> Asset size obtained from December 2010 Call Report Data downloaded from SNL. The institutions in the category savings institutions are all thrifts.

<sup>b</sup> Asset size obtained from December 2010 NCUA Call Reports.

<sup>c</sup> For HMDA reporters, loan counts from HMDA 2010. For institutions that do not report to HMDA, loan counts projected based on call report data fields and counts for HMDA reporters.

<sup>d</sup> NMLS Mortgage Call Report (MCR) for Q1 and Q2 of 2011. All MCR reporters who originate at least one loan or have positive loan amounts are considered to be engaged in real estate credit (instead of purely mortgage brokers).

<sup>e</sup> Revenues were not missing for 560 of the 2515 institutions. For institutions with missing revenue data, values were imputed using nearest neighbor matching of the count of originations and the count of brokered loans.

Although most depository institutions, credit unions, and IMBs are affected by the proposed rule, the burden estimates below show that the proposed rule does not have a significant impact on a substantial number of small entities. As discussed above, the economic impacts include preparing and sending copies of appraisals and other valuations and the costs of reviewing the rule and training employees.

Consistent with the assumptions in the analysis of the previous section, the Bureau believes, based on its outreach, that currently it is routine business

practice for appraisals to be sent to consumers for all first lien transactions that result in an origination and that copies of appraisals and valuations conducted for applications that do not result in a loan are not sent to consumers. The Bureau also believes that a second appraisal is typically conducted, and is sent, for any property with a loan size equal to or above \$600,000. Further, appraisals are considered to be of inadequate quality 10% of the time, necessitating a second appraisal.<sup>46</sup>

Under these assumptions, the total costs for small depository institutions

and credit unions of providing copies of the appraisals or valuations and any one-time costs for reviewing the regulation and training employees are estimated to be roughly \$2.70 per loan originated. For small IMBs, the costs are estimated to be just under \$2.00 per loan originated. In both cases, the higher average costs reflect the greater importance of the fixed costs of training for smaller institutions as one-time costs are spread over fewer mortgage originations at these entities. Nevertheless, across all small entities, the costs of the rule amount to a small

<sup>44</sup> 5 U.S.C. 609.

<sup>45</sup> 13 CFR Ch. 1.

<sup>46</sup> All other assumptions regarding costs are the same as those used in the analysis under Section

1022(b)(2). These include the following assumptions regarding wages: Loan officer wages are assumed to \$30.66 per hour, lawyer wages are \$76.99 per hour, and compliance officer wages are

\$29.48 per hour. These rates are then increased to reflect that wages represent 67.5% of an employee's total compensation.

fraction of a percent of the revenue or profits from origination activity.<sup>47</sup>

#### Certification

Accordingly, the undersigned certifies that this proposal, if adopted, 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.

### VII. Paperwork Reduction Act

#### A. Overview

The Bureau's information collection requirements contained in this proposed rule, and identified as such, have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (Paperwork Reduction Act or PRA). Under the PRA, the Bureau may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number.

The title of this information collection is ECOA Appraisal Proposal. The frequency of response is on-occasion. The proposed rule would amend 12 CFR Part 1002, Equal Credit Opportunity (Regulation B). Regulation B currently contains collections of information approved by OMB. The Bureau's OMB control number for Regulation B is 3170-0013 (Equal Credit Opportunity Act (Regulation B) 12 CFR 1002). As described below, the proposed rule would amend the collections of information currently in Regulation B.

The information collection in the proposed rule would be required to provide benefits for consumers and would be mandatory. Because the Bureau does not collect any information under the proposed rule, no issue of confidentiality arises. The likely respondents would be certain businesses, for-profit institutions, and nonprofit institutions that are creditors under Regulation B.

Under the proposed rule, the Bureau generally would account for the paperwork burden for the following respondents pursuant to its enforcement/supervisory authority: insured depository institutions with more than \$10 billion in total assets, their depository institution affiliates,

and certain non-depository institutions. The Bureau and the FTC generally both have enforcement authority over non-depository institutions subject to Regulation B. Accordingly, the Bureau has allocated to itself half of its estimated burden to non-depository institutions. Other Federal agencies, including the FTC, are responsible for estimating and reporting to OMB the paperwork burden for the institutions for which they have enforcement/supervision authority. They may, but are not required to, use the Bureau's burden estimation methodology.

Using the Bureau's burden estimation methodology, the total estimated burden for the roughly 14,000 creditors subject to the proposed rule, including Bureau respondents, would be approximately 173,000 hours of ongoing burden annually and 20,000 hours in one-time burden. Since creditors already provide consumers copies of appraisals if a loan closes, the Bureau assumes that there are no required software or information technology upgrades associated with implementing the rule, because all of the actions required by the rule are already practiced by the affected institutions. The Bureau expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size, complexity, and practices of the respondent.

#### B. Information Collection Requirements

The information collection requirements in the proposed rule would be the provision of certain appraisals and other valuations to consumers. Under the proposed rule, copies of all appraisals and other valuations conducted in connection with an application for a loan to be secured by a first lien must be furnished to applicants free of charge within 3 days of application, and these copies may be delivered physically or electronically. Currently, ECOA requires that free copies be provided upon request. From outreach, the Bureau learned that it is customary to send consumers a copy of all valuations if the loan closes, but firms differed in their practices of sending out copies of valuations for loans that did not close.<sup>48</sup> Therefore, the Bureau considers the incremental paperwork burden the cost of reviewing the rule, staff training, and the cost of sending out copies of appraisals and other valuations to consumers who apply for loans that do not close, but reach the stage where an

appraisal or other valuation is conducted.

#### C. Summary of Estimated Burden for CFPB Respondents

The total annualized on-going burden for the depository institutions and credit unions with more than \$10 billion in assets (including their depository affiliates) that originate mortgage loans is estimated to be roughly 74,500 hours and the annualized ongoing burden for all non-depository institutions that originate mortgage loans is estimated to be 47,800 hours. These respondents are estimated to incur an additional 5,800 hours and 4,600 hours in one-time burden, respectively. As discussed previously, for purposes of the PRA analysis under this proposed rule, the Bureau would assume roughly 23,900 on-going burden hours and 2,300 one-time hours for the non-depository institutions.<sup>49</sup>

#### D. Comments

Comments are specifically requested concerning: (i) Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (ii) the accuracy of the estimated burden associated with the proposed collections of information; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology. All comments will become a matter of public record. Comments on the collection of information requirements should be sent to the Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the Internet to [http://oira\\_submission@omb.eop.gov](http://oira_submission@omb.eop.gov), with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the Internet to [CFPB\\_Public\\_PRA@cfpb.gov](mailto:CFPB_Public_PRA@cfpb.gov).

### VIII. Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to the text of the regulation and official interpretation. New language is shown inside ►bold-faced arrows◀, while

<sup>47</sup> Industry experts estimate that gross revenues per loan are approximately 3% of origination amount. The MBA's Mortgage Bankers Performance Report reports that in the 4th quarter of 2010 IMBs and subsidiaries reported that total production operating expenses were \$4,930 per loan, average profits were \$1,082 per loan, and average loan balance was \$208,319.

<sup>48</sup> Outreach conversations included a large bank, a trade group of smaller depository institutions, and an independent mortgage bank.

<sup>49</sup> There may be a small additional burden for privately insured credit unions estimated to originate mortgages. The Bureau will assume half of the burden these institutions.

language that would be deleted is set off with **[bold-faced brackets]**.

### List of Subjects in 12 CFR Part 1002

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Credit unions, Discrimination, Fair lending, Marital status discrimination, National banks, National origin discrimination, Penalties, Race discrimination, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination.

### Authority and Issuance

For the reasons set forth in the preamble, the Bureau of Consumer Financial Protection proposes to amend 12 CFR part 1002 and the Official Interpretations, as follows:

### PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

1. The authority citation for part 1002 continues to read as follows:

**Authority:** 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b.

2. Revise § 1002.14 to read as follows:

#### § 1002.14 Rules on providing **[appraisal reports]** **▶ appraisals and valuations** **◀**.

(a) *Providing appraisals* **▶ and valuations** **◀**. **▶▶(1) In general.** **◀** A creditor shall provide **▶an applicant** **◀a copy of [an appraisal report used]** **▶all written appraisals and valuations developed** **◀in connection with an application for credit that is to be secured by a** **▶first** **◀lien on a dwelling.** **[A creditor shall comply with either paragraph (a)(1) or (a)(2) of this section.]** **▶A creditor shall provide a copy of each such written appraisal or valuation promptly (generally within 30 days of receipt by the creditor), but not later than three business days prior to consummation of the transaction, whichever is first to occur.** Notwithstanding the foregoing, an applicant may waive the right to receive a copy three business days prior to consummation and agree to receive the copy at or before consummation, except where otherwise prohibited by law. **◀**

**[(1) Routine delivery.** A creditor may routinely provide a copy of an appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn).

(2) *Upon request.* A creditor that does not routinely provide appraisal reports shall provide a copy upon an applicant's written request.

(i) *Notice.* A creditor that provides appraisal reports only upon request shall notify an applicant in writing of the right to receive a copy of an appraisal report. The notice may be

given at any time during the application process but no later than when the creditor provides notice of action taken under § 1002.9 of this part. The notice shall specify that the applicant's request must be in writing, give the creditor's mailing address, and state the time for making the request as provided in paragraph (a)(2)(ii) of this section.

(ii) *Delivery.* A creditor shall mail or deliver a copy of this appraisal report promptly (generally within 30 days of receipt by the creditor) after the creditor receives an applicant's request, receives the report, or receives reimbursement from the applicant for the report, whichever is last to occur. A creditor need not provide a copy when the applicant's request is received more than 90 days after the creditor has provided notice of action taken on the application under § 1002.9 of this part or 90 days after the application is withdrawn.]

**▶(2) Disclosure.** For applications subject to paragraph (a)(1) of this section, a creditor shall provide an applicant with a written disclosure, not later than the third business day after the creditor receives an application, of the applicant's right to receive a copy of all written appraisals and valuations developed in connection with such application.

(3) *Reimbursement.* A creditor shall not charge an applicant for providing a copy of written appraisals and valuations as required under this section, but may require applicants to pay a reasonable fee to reimburse the creditor for the cost of the appraisal or valuation unless otherwise provided by law.

(4) *Withdrawn, denied, or incomplete applications.* The requirements set forth in paragraph (a)(1) of this section apply whether credit is extended or denied or if the application is incomplete or withdrawn.

(5) *Copies in electronic form.* The copies required by § 1002.14(a)(1) may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). **◀**

**[(b) Credit unions.** A creditor that is subject to the regulations of the National Credit Union Administration on making copies of appraisal reports available is not subject to this section.]

**[(c)]** **▶(b)** **◀ Definitions.** For purposes of paragraph (a) of this section **[, the term dwelling]** **▶:**

(1) *Consummation.* The term "consummation" means the time that a

consumer becomes contractually obligated on a credit transaction.

(2) *Dwelling.* The term "dwelling" **◀** means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. **[The term appraisal report means the document(s) relied upon by a creditor in evaluating the value of the dwelling.]**

**▶(3) Valuation.** The term "valuation" means any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit. **◀**

3. Appendix C to part 1002 is amended by revising the sixth sentence in first paragraph, and sample Form C-9 is revised to read as follows:

### Appendix C to Part 1002—Sample Notification Forms

1. This Appendix contains ten sample notification forms. Forms C-1 through C-4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under §§ 1002.9(a)(1) and (2)(i) of this part. Form C-5 is a notice of disclosure of the right to request specific reasons for adverse action under §§ 1002.9(a)(1) and (2)(ii). Form C-6 is designed for use in notifying an applicant, under § 1002.9(c)(2), that an application is incomplete. Forms C-7 and C-8 are intended for use in connection with applications for business credit under § 1002.9(a)(3). Form C-9 is designed for use in notifying an applicant of the right to receive a copy of **[an appraisal]** **▶ appraisals and valuations** **◀** under § 1002.14. Form C-10 is designed for use in notifying an applicant for nonmortgage credit that the creditor is requesting applicant characteristic information.

\* \* \* \* \*

#### Form C-9—Sample Disclosure of Right to Receive a Copy of **[an Appraisal]** **▶ Appraisals and Valuations** **◀**.

**[You have the right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application.**

**[In your letter, give us the following information:]**

**▶We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close.**

**You can pay for an additional appraisal for your own use at your own cost.** **◀**

\* \* \* \* \*

4. Supplement I to part 1002 is amended by revising Section 1002.14 to read as follows:

## Supplement I to Part 1002—Official Interpretations

\* \* \* \* \*

### ► Section 1002.14—Rules on Providing [Appraisal Reports] ► Appraisals and Valuations ◀

#### 14(a) Providing appraisals ► and valuations ◀

► 1. *Multiple applicants.* If there is more than one applicant the written disclosure about written appraisals and valuations, and the copies of written appraisals and valuations, need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent.

##### 14(a)(1) In general. ◀

1. *Coverage.* This section covers applications for credit to be secured by a ► first ◀ lien on a dwelling, as that term is defined in [§ 1002.14(c)] ► § 1002.14(b)(2) ◀, whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, [a loan to finance a child's education] ► a loan to purchase a home ◀).

2. *Renewals.* [This section] ► Section 1002.14(a)(1) ◀ applies when an applicant requests the renewal of an existing extension of credit and the creditor [obtains] ► develops ◀ a new [appraisal report] ► written appraisal or valuation ◀. This section does not apply when a creditor uses the [appraisal report] ► written appraisals and valuations ◀ that were previously [obtained] ► developed in connection with the prior extension of credit in order ◀ to evaluate the renewal request.

► 3. *Written.* For purposes of § 1002.14, a “written” appraisal or valuation includes, without limitation, an appraisal or valuation received or developed by the creditor in paper form (hard copy); electronically, such as CD or email; or by any other similar media. But see § 1002.14(a)(5) regarding the provision of copies of appraisals and valuations to applicants via electronic means.

4. *Waiver.* Section 1002.14(a)(1) permits the applicant to waive the timing requirement that written appraisals and valuations be provided no later than three business days prior to consummation if the creditor provides the copy at or before consummation, except where otherwise prohibited by law. An applicant's waiver is effective under § 1002.14(a) if the applicant provides the creditor an affirmative oral or written statement waiving the 3-day timing requirement. If there is more than one applicant for credit in the transaction, any applicant may provide the statement. ◀

##### [14(a)(2)(i) Notice.

1. *Multiple Applicants.* When an applicant that is subject to this section involves more than one applicant, the notice about the appraisal report need only be given to one applicant, but it must be given to the primary applicant where one is readily apparent. ]

##### [14(a)(2)(ii) Delivery.] ► 14(a)(3) Reimbursement. ◀

► 1. *Reimbursement.* Creditors may charge for photocopy and postage costs incurred in providing a copy of the appraisal report, unless prohibited by State or other law. If the consumer has already paid for the report—for example, as part of an application fee—the

creditor may not require additional fees for the appraisal (other than photocopy and postage costs). ]

##### ► 1. *Photocopy, postage, or other costs.*

Creditors may not charge for photocopy, postage or other costs incurred in providing a copy of a written appraisal or valuation in accordance with this section.

2. *Reasonable fee for reimbursement.* The regulation does not prohibit creditors from imposing fees that are reasonably designed to reimburse the creditor for costs incurred in connection with obtaining appraisal or valuation services, so long they are not increased to cover the costs of providing documentation under § 1002.14. However, creditors may not impose fees for reimbursement of the costs of an appraisal where otherwise provided by law. For instance, TILA prohibits a creditor from charging a consumer a fee for the performance of a second appraisal if the second appraisal is required under TILA section 129H(b)(2) (15 U.S.C. 1639h(b)(2)). ◀

##### [14(c)] 14(b) Definitions.

##### ► 14(b)(1) Consummation.

1. *State law governs.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; § 1002.14 does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit v. sale.* Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.

##### 14(b)(3) Valuation. ◀

1. [Appraisal reports. Examples of appraisal reports are:] ► Examples of valuations. Examples of valuations include: ◀

i. A report prepared by an appraiser (whether or not licensed or certified), including written comments and other documents submitted to the creditor in support of the appraiser's estimate or opinion of the property's value.

ii. A document prepared by the creditor's staff that assigns value to the property, if a third-party appraisal report has not been used.

iii. An internal review document reflecting that the creditor's valuation is different from a valuation in a third party's appraisal report (or different from valuations that are publicly available or valuations such as manufacturers' invoices for mobile homes).

► iv. Values developed pursuant to a methodology or mechanism required by a government sponsored enterprise, including written comments and other documents submitted to the creditor in support of the estimate of the property's value.

v. Values developed by an automated valuation model, including written comments and other documents submitted to

the creditor in support of the estimate of the property's value.

vi. A broker price opinion prepared by a real estate broker, agent, or sales person, including written comments and other documents submitted to the creditor in support of the estimate of the property's value. ◀

##### 2. Other [reports] ► documentation ◀

[The term “appraisal report” does not cover all documents relating to the value of the applicant's property.] ► Not all documents that discuss or restate a valuation of an applicant's property constitute “written appraisals and valuations” for purposes of § 1002.14(a). ◀ Examples of [reports not covered are:] ► documents that discuss the valuation of the applicant's property but nonetheless are not “written appraisals and valuations” include: ◀

i. Internal documents, [if a third-party appraisal report was used to establish the value of the property] ► that merely restate the estimated value of the dwelling contained in a written appraisal or valuation being provided to the applicant ◀.

ii. Governmental agency statements of appraised value ► that are publically available ◀.

iii. Valuations lists that are publicly available (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) and valuations such as manufacturers' invoices for mobile homes.

Dated: August 14, 2012.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1005

[Docket No. CFPB–2012–0036]

### Electronic Fund Transfers; Intent To Make Determination of Effect on State Laws (Maine and Tennessee)

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of intent to make preemption determination.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is publishing notice of its intent to consider and address requests received to determine whether certain provisions in the laws of Maine and Tennessee relating to unclaimed gift cards are inconsistent with and preempted by the requirements of the Electronic Fund Transfer Act and Regulation E.

**DATES:** Comments must be received on or before October 22, 2012.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2012–0036, by any of the following methods: