June 13, 2013

MEMORANDUM TO: The Board of Directors

FROM: Doreen R. Eberley
Director, Division of Risk Management Supervision

Mark E. Pearce
Director, Division of Depositor and Consumer Protection

SUBJECT: NPR: Appraisals for Higher-Priced Mortgage Loans - Supplemental Proposal

RECOMMENDATION:

Staff recommends that the Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) approve, and authorize the Executive Secretary to publish in the *Federal Register*, the attached Notice of Proposed Rulemaking (NPR) entitled "Appraisals for Higher-Priced Mortgage Loans – Supplemental Proposal" for a 60-day comment period. If approved, the NPR would be issued jointly with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Federal Housing Finance Agency (collectively, the Agencies).

The NPR would provide for additional exemptions from the appraisal requirements of the Higher-Priced Mortgage Loan Final Rule (the HPML Final Rule). This was approved by the Board on January 15, 2013, issued jointly by the Agencies on January 18, 2013, published in the *Federal Register* on February 13, 2013, and becomes effective on January 18, 2014. The Agencies intend to individually promulgate the amendments to the HPML Final Rule according to each Agency's preference, and in the same manner as the HPML Final Rule.

Concur:

Richard J. Osterman, Jr.
Acting General Counsel

BACKGROUND

Section 1471 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the DFA) added a new section 129H to the Truth in Lending Act (TILA), setting forth appraisal requirements applicable to Higher-Risk Mortgage loans or HRMs, hereinafter referred to as Higher-Priced Mortgage Loans (HPMLs). HPMLs are principal dwelling-secured, residential mortgage loans that are not qualified mortgages (QMs),[1] with an annual percentage rate (APR) in excess of the average prime offer rate (APOR)[2] for a comparable transaction as of the date the interest rate is set by one of the following thresholds:

- 1.5% for non-jumbo mortgage loans;[3]
- 2.5% for loans over the jumbo limit; or
- 3.5% above "comparable rates" for junior liens.

Before extending credit for a HPML, a creditor must:

- Obtain a written appraisal by a certified or licensed appraiser who has conducted a physical visit of the interior of the property;
- Obtain an additional written appraisal (at the creditor's expense) from a different certified or licensed appraiser if the property was previously purchased or acquired by the seller within 180 days of the current mortgage transaction at a price that was lower than the current sale price of the property. The additional appraisal must analyze any difference in sales prices, changes in market conditions, and any improvements made to the property in the period between the two mortgage loan transactions;
- Provide the borrower with a statement at the time of initial mortgage application that informs the borrower that any appraisal prepared in connection with the mortgage is for the creditor's sole use, and that the borrower may choose to have a separate appraisal conducted at the applicant's expense; and
- Provide the borrower with one copy of each appraisal without charge in connection with a HPML at least three business days prior to the transaction closing date.

---

[1] Section 1412 of the DFA separately amended TILA to require that a QM meet certain underwriting criteria in order to establish that a creditor has met the requirement to determine a borrower's ability to repay the loan at consummation. The CFPB issued a final rule to implement these criteria on January 30, 2013. *See* 78 Fed. Reg. 6407. These requirements are effective January 10, 2014.

[2] APOR is determined by reference to the average prime offer rates published by the CFPB. The average prime offer rates are a survey-based estimate of APRs currently offered on prime mortgage loans of a comparable type. The CFPB publishes two separate tables, one for fixed rate loans (the Average Prime Offer Rates – Fixed) and another for adjustable rate loans (the Average Prime Offer Rates – Adjustable). APORs are published weekly on Friday, effective as of the following Monday. *See also* the APOR definition set forth in section 129C(b) of TILA as added by section 1412 of the DFA.

[3] As of January 1, 2010, the general limit on a non-jumbo mortgage loan is $417,000 for most of the United States, apart from Alaska, Hawaii, Guam, and the US Virgin Islands, where the limit is $625,500 and certain other high-cost areas of the country.

On January 15, 2013, the FDIC Board approved the HPML Final Rule, which exempts certain real estate-related transactions from its appraisal requirements. However, the HPML Final Rule did not include any exemptions for certain "streamlined" refinancings and small-dollar loans that were suggested by commenters. During the proposal stage of the HPML Final Rule, commenters argued that such exemptions would help to keep borrowers in their homes, reduce the number of delinquent loans, and encourage the rehabilitation and reintroduction of foreclosed or otherwise unavailable property to the marketplace, thus helping to rebuild communities adversely affected by the recent economic downturn.

The Agencies did not include the exemptions suggested by the commenters due to concerns that the Agencies did not have an informed basis upon which to define these exemptions. However, the Agencies' staff recommended that an exemption for "streamlined" refinancings and small-dollar residential loans be proposed in a supplemental NPR. Agencies' staff also recommended that the NPR seek clarification on whether it is appropriate to apply the HPML Final Rule to loans secured by certain property types, such as used manufactured housing, and whether the exemption for all new manufactured homes, including those sited on land, should be narrowed.

PROPOSED SUPPLEMENTAL EXEMPTIONS TO THE HPML APPRAISAL REQUIREMENT

The supplemental NPR proposes amendments to the HPML Final Rule that would set forth three additional exemptions to the appraisal requirement for HPMLs.

First, the NPR proposes to exempt transactions secured by existing (used) manufactured homes but not the land on which they are sited. The NPR seeks comment whether an alternative valuation to an appraisal should be required and provided to the consumer in order to qualify for the exemption. The NPR also seeks comment whether the exemption for all new manufactured homes set forth in the HPML Final Rule should apply only to loans for new manufactured homes which are not additionally secured by the land on which they are sited. The proposed exemption recognizes that current industry lending practices do not require written appraisals for loans which are secured by manufactured housing, but not also by the land on which the housing is sited.

Second, the NPR proposes to exempt certain "streamlined" refinancings, so long as the owner or guarantor of the refinanced loan is the current owner or guarantor of the existing obligation. The exemption excludes loans where negative amortization could result, interest-only loans, balloon-payment loans, or "cash out" refinancings. The NPR also seeks comment whether the "same creditor" requirement should apply to private-label mortgage loans with "streamlined" refinance programs, and whether the refinancing exemption should be conditioned on the creditor obtaining a valuation and providing a copy of it to the consumer. The proposed exemption is consistent with the U.S. Government's Home Affordable Modification Program (HAMP) and other government-sponsored and bank proprietary streamlined modification programs which do not require written appraisals.

Third, the NPR exempts "small-dollar" loans, which are defined as extensions of credit of $25,000 or less, indexed annually for inflation, that are secured by the borrower's principal dwelling. The proposed exemption recognizes that the cost of a written appraisal can represent a significant closing expense for "small-dollar" loans.

CONCLUSION

For the reasons explained above, staff recommends that the Board approve the attached NPR and authorize the Executive Secretary to publish it in the *Federal Register*.

Staff members knowledgeable about this case:

Sandra Barker, DCP (X83615)

Suzy Gardner, RMS (X83640)

Mark Mellon, Legal Division (X83884)

Kim Stock, Legal Division (X83815)

Ben Gibbs, Legal Division (678-916-2458)

Attachments