DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 34
Docket No. OCC-2013-0009
RIN 1557-AD70

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
12 CFR Part 226
Docket No. R-1443
RIN 7100-AD90

BUREAU OF CONSUMER FINANCIAL PROTECTION
12 CFR Part 1026
Docket No. CFPB-2013-0020
RIN 3170-AA11

Appraisals for Higher-Priced Mortgage Loans – Supplemental Final Rule

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

ACTION: Final Rule; official staff commentary.

SUMMARY: The Board, Bureau, FDIC, FHFA, NCUA, and OCC (collectively, the Agencies) are amending Regulation Z, which implements the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, and the official interpretation to the regulation. This final rule supplements a final rule issued by the Agencies on January 18, 2013 (January 2013 Final Rule; 78 FR 10368 (Feb. 13, 2013)), which goes into effect on January 18, 2014. The January 2013 Final Rule implements a provision added to TILA by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or Act) requiring appraisals for "higher-risk mortgages." For certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the

January 2013 Final Rule requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. On July 10, 2013, the Agencies proposed amendments to the January 2013 Final Rule implementing these requirements (2013 Supplemental Proposed Rule; 78 FR 48548 (Aug. 8, 2013)). Specifically, the Agencies proposed exemptions from the rules for transactions secured by existing manufactured homes and not land; certain streamlined refinancings; and transactions of $25,000 or less. This supplemental final rule finalizes provisions of the 2013 Supplemental Proposed Rule, with revisions.

DATES: This final rule is effective on January 18, 2014. Alternative provisions regarding manufactured home loans are effective July 18, 2015, as indicated in the **SUPPLEMENTARY INFORMATION**, regulation text and Official Staff Commentary.

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SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

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

the new appraisal rules are appropriate. Specifically, the Agencies are adopting exemptions for certain types of refinancings and transactions of $25,000 or less (indexed for inflation). The Agencies are also adopting a temporary exemption of 18 months (until July 18, 2015) for all loans secured in whole or in part by a manufactured home. Starting on July 18, 2015, transactions secured by a new manufactured home and land will be exempt from the requirement that the appraisal include a physical inspection of the interior of the property; transactions secured by an existing (used) manufactured home and land will not be exempt from the rules; and transactions secured solely by a manufactured home and not land will be exempt from the rules if the creditor gives the consumer one of three types of information about the home's value, discussed in more detail below.

The Agencies are not adopting the proposed definition of "business day" that would have differed from the definition used in the January 2013 Final Rule. A revision to the exemption for "qualified mortgages" is adopted that is similar to the proposed revision, as well as a few proposed non-substantive technical corrections.

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

The Agencies are adopting without change the proposed exemption from the HPML appraisal rules for extensions of credit of $25,000 or less, indexed every year for inflation.

B. Exemption for Certain Refinancings

The Agencies also are adopting an exemption from the HPML appraisal rules for certain types of refinancings with characteristics common to refinance products often referred to as streamlined refinances. Consistent with the proposal, the final rule exempts

a refinancing where the holder of the credit risk of the existing obligation remains the same on the refinancing. The final rule includes revised terminology and additional examples in Official Staff Commentary to clarify the meaning of this requirement. In addition, the periodic payments under the refinance loan must not result in negative amortization, cover only interest on the loan, or result in a balloon payment. Finally, the proceeds from the refinance loan may only be used to pay off the existing obligation and to pay closing or settlement charges.

C. Exemption for Transactions Secured in Whole or in Part by a Manufactured Home

All loans secured in whole or in part by a manufactured home will be exempt from the HPML appraisal rules for 18 months, until July 18, 2015. For loan applications received on or July 18, 2015, the following changes will apply:

Transactions secured by a new manufactured home and land will be exempt from the requirement that the appraisal include a physical inspection of the interior of the property, but will be subject to all other HPML appraisal requirements.

Transactions secured by an existing (used) manufactured home and land will not be exempt from the rules.

Transactions secured solely by a manufactured home and not land will be exempt from the rules if the creditor gives the consumer one of three types of information about the home's value:

- The manufacturer's invoice of the unit cost (for a transaction secured by a new manufactured home).
- An independent cost service unit cost.

- A valuation conducted by an individual who has no financial interest in the property or credit transaction, and has training in valuing manufactured homes.[1] An example would be an appraisal conducted according to procedures approved by the U.S. Department of Housing and Urban Development (HUD) for existing (used) home-only transactions.

D. Effective Date

The temporary exemption for manufactured home loans and the exemptions for certain refinancings and loans of $25,000 or less will be effective on January 18, 2014, the same date on which the January 2013 Final Rule will become effective. The Agencies find under 5 U.S.C. 553(d)(1) that these provisions may be made effective less than 30 days after publication in the Federal Register because these provisions "grant[] or recognize[] an exemption or relieve[] a restriction." 5 U.S.C. 553(d)(1). The modified exemptions for loans secured by manufactured homes will be effective on July 18, 2015.

II. Background

In general, TILA seeks to promote the informed use of consumer credit by requiring disclosures about its costs and terms, as well as other information. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. For most types of creditors, TILA directs the Bureau to prescribe regulations to carry out the purposes of the law and specifically authorizes the Bureau to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such

[1] As discussed further in the section-by-section analysis, the Agencies are adopting the definition of "valuation" at 12 CFR 1026.42(b)(3): "'Valuation' means an estimate of the value of the consumer's principal dwelling in written or electronic form, other than one produced solely by an automated model or system."

adjustments and exceptions for any class of transactions, that in the Bureau's judgment are necessary or proper to effectuate the purposes of TILA, or prevent circumvention or evasion of TILA.[2] 15 U.S.C. 1604(a).

For most types of creditors and most provisions of TILA, TILA is implemented by the Bureau's Regulation Z. *See* 12 CFR part 1026. Official Interpretations provide guidance to creditors in applying the rules to specific transactions and interpret the requirements of the regulation. *See* 12 CFR part 1026, Supp. I. However, as explained in the January 2013 Final Rule, the new appraisal section of TILA addressed in the January 2013 Final Rule (TILA section 129H, 15 U.S.C. 1639h) is implemented not only for all affected creditors by the Bureau's Regulation Z, but also by OCC regulations and the Board's Regulation Z (for creditors overseen by the OCC and the Board, respectively). *See* 12 CFR parts 34 and 164 (OCC regulations) and part 226 (the Board's Regulation Z); *see also* § 1026.35(c)(7) and 78 FR 10368, 10415 (Feb. 13, 2013). The Bureau's, the OCC's, and the Board's versions of the January 2013 Final Rule and corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA adopted the Bureau's version of the regulations under the January 2013 Final Rule.[3]

The Dodd-Frank Act[4] was signed into law on July 21, 2010. Section 1471 of the Dodd-Frank Act's Title XIV, Subtitle F (Appraisal Activities), added TILA section 129H, 15 U.S.C. 1639h, which establishes appraisal requirements that apply to "higher-risk mortgages." Specifically, new TILA section 129H prohibits a creditor from

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

[3] *See* NCUA: 12 CFR 722.3; FHFA: 12 CFR part 1222. The FDIC adopted the Bureau's version of the regulations, but did not adopt a cross-reference to the Bureau's regulations in FDIC regulations. *See* 78 FR 10368, 10370 (Feb. 13, 2013).

[4] Public Law 111-203, 124 Stat. 1376 (Dodd-Frank Act).

extending credit in the form of a "higher-risk mortgage" loan to any consumer without first:

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

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

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

New TILA section 129H(f) defines a "higher-risk mortgage" with reference to the annual percentage rate (APR) for the transaction. A "higher-risk mortgage" is a "residential mortgage loan"[5] secured by a principal dwelling with an APR that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set—

- By 1.5 or more percentage points, for a first lien residential mortgage loan with an original principal obligation amount that does not exceed the amount for "jumbo" loans (*i.e.*, the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date of the interest rate set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454));
- By 2.5 or more percentage points, for a first lien residential mortgage "jumbo" loan (*i.e.*, having an original principal obligation amount that exceeds the amount for the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date of the interest rate set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454)); or
- By 3.5 or more percentage points, for a subordinate lien residential mortgage loan.

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

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

III. Summary of the Rulemaking Process

The Agencies issued proposed regulations for public comment on August 15, 2012, that would have implemented the Dodd-Frank Act higher-risk mortgage appraisal provisions (2012 Proposed Rule). 77 FR 54722 (Sept. 5, 2012). This rule was open for public comment for 60 days (until October 15, 2012). After consideration of public comments, the Agencies issued the January 2013 Final Rule on January 18, 2013. The Final Rule was published in the **Federal Register** on February 13, 2013, and is effective on January 18, 2014. *See* 78 FR 10368 (Feb. 13, 2013).

The preamble to the January 2013 Final Rule stated that the Agencies would consider exemptions for three additional types of transactions that commenters requested the Agencies consider: (1) smaller dollar loans; (2) streamlined refinance loans; and (3) loans secured by "existing" (used) manufactured homes. On July 10, 2013, the Agencies issued the 2013 Supplemental Proposed Rule to exempt these transactions from the HPML appraisal requirements. 78 FR 48548 (Aug. 8, 2013). The 2013 Supplemental Proposed Rule sought comment on whether any of these exemptions should be conditioned on the creditor meeting an alternative standard to estimate the value of the property securing the transaction and providing that information to the consumer. Comment also was sought on the appropriate scope of, and possible conditions on, the exemption in the January 2013 Final Rule for loans secured by new manufactured homes.

The 2013 Supplemental Proposed Rule was open for public comment for 60 days (until Sept. 9, 2013).

To inform the Agencies in drafting the January 2013 Final Rule as well as the 2012 Proposed Rule, the Agencies conducted a series of public outreach meetings in January and February of 2012.[6] Agency staff conducted additional public outreach in the first half of 2013 to inform the Agencies in drafting the 2013 Supplemental Proposed Rule. In addition to reviewing public comments on the 2013 Supplemental Proposed Rule, Agency staff conducted limited public outreach in September and October to inform the Agencies in drafting this final rule.[7]

A. January 2013 Final Rule

1. Loans Covered

To implement the statutory definition of "higher-risk mortgage," the January 2013 Final Rule used the term "higher-priced mortgage loan" or HPML, a term already in use under the Bureau's Regulation Z with a meaning substantially similar to the meaning of "higher-risk mortgage" in the Dodd-Frank Act. In response to commenters, the Agencies used the term HPML to refer generally to the loans that could be subject to the January 2013 Final Rule because they are closed-end credit and meet the statutory rate triggers, but the Agencies separately exempted several types of HPML transactions from the rule.[8] The term "higher-risk mortgage" generally encompasses a closed-end consumer credit

[6] Information about these meetings is available at http://www.federalreserve.gov/newsevents/rr-commpublic/industry_meetings_20120210.pdf.
[7] Information about these meetings is available at http://www.federalreserve.gov/newsevents/rr-commpublic/industry-meetings-20131001.pdf.
[8] As noted further below, TILA section 129H(b)(4)(B) grants the Agencies the authority jointly to exempt, by rule, a class of loans from the requirements of TILA section 129H(a) or section 129H(b) if the Agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors. 15 U.S.C. 1639h(b)(4)(B).

transaction secured by a principal dwelling with an APR exceeding certain statutory thresholds. These rate thresholds are substantially similar to rate triggers that have been in use under Regulation Z for HPMLs.[9] Specifically, consistent with TILA section 129H, a loan is an HPML under the January 2013 Final Rule if the APR exceeds the APOR by 1.5 percentage points for first lien conventional or conforming loans, 2.5 percentage points for first lien jumbo loans, and 3.5 percentage points for subordinate lien loans.[10]

Consistent with TILA, the January 2013 Final Rule included an exemption for "qualified mortgages," as defined in § 1026.43(e) of the Bureau's final rule implementing the Dodd-Frank Act's ability-to-repay requirements in TILA section 129C (2013 ATR Final Rule).[11] 15 U.S.C. 1639c. For revisions to this exemption, see § 1026.35(c)(2)(i) and accompanying section-by-section analysis below.

In addition, the January 2013 Final Rule excludes from its coverage the following classes of loans:

(1) transactions secured by a new manufactured home;

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

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

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

(5) reverse mortgage loans.

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

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

[11] 78 FR 6408 (Jan. 30, 2013).

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

Consistent with TILA, the January 2013 Final Rule allows a creditor to originate an HPML that is not exempt from the January 2013 Final Rule only if the following conditions are met:

- The creditor obtains a written appraisal;
- The appraisal is performed by a certified or licensed appraiser; and
- The appraiser conducts a physical visit of the interior of the property.

Also consistent with TILA, the following requirements also apply with respect to HPMLs subject to the January 2013 Final Rule:

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

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

In addition, the January 2013 Final Rule implements the Act's requirement that the creditor of a "higher-risk mortgage" obtain an additional written appraisal, at no cost to the borrower, when the loan will finance the purchase of the consumer's principal dwelling and there has been an increase in the purchase price from a prior acquisition that took place within 180 days of the current purchase. TILA section 129H(b)(2)(A), 15 U.S.C. 1639h(b)(2)(A). In the January 2013 Final Rule, using their exemption authority,

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

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

The additional written appraisal, from a different licensed or certified appraiser, generally must include the following information: an analysis of the difference in sale prices (*i.e.*, the sale price paid by the seller and the acquisition price of the property as set forth in the consumer's purchase agreement), changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

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

B. 2013 Supplemental Proposed Rule

Based on comments received on the 2012 Proposed Rule and additional research and outreach, the Agencies believed that several additional exemptions from the new appraisal rules might be appropriate. Specifically, in the 2013 Supplemental Proposed Rule, the Agencies proposed exemptions for transactions secured by an existing

manufactured home and not land, certain types of refinancings, and transactions of $25,000 or less (indexed for inflation). The Agencies solicited comment on these proposed exemptions, as well as on the scope and possible conditions on the exemption in the January 2013 Final Rule for loans secured by a new manufactured home (with or without land). In addition, the Agencies proposed a different definition of "business day" than the definition used in the Final Rule, as well as a few non-substantive technical corrections.

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

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

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

2. Proposed Exemption for Certain Refinancings

In addition, the Agencies proposed to exempt from the HPML appraisal rules certain types of refinancings with characteristics common to refinance programs that offer "streamlined" refinances. Specifically, the Agencies proposed to exempt an extension of credit that is a refinancing where the owner or guarantor of the refinance loan is the current owner or guarantor of the existing obligation. The periodic payments

under the refinance loan could not have resulted in negative amortization, covered only interest on the loan, or resulted in a balloon payment. Further, the proceeds from the refinance loan could have been used only to pay off the outstanding principal balance on the existing obligation and to pay closing or settlement charges.

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

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

4. Effective Date

The Agencies' Proposal

The Agencies intended that exemptions adopted as a result of the 2013 Supplemental Proposed Rule would be effective on January 18, 2014, the same date on which the January 2013 Final Rule will become effective. The Agencies requested comment on a number of conditions that might be appropriate to require creditors to meet to qualify for the proposed exemptions. The Agencies stated that, if the Agencies adopted any conditions on an exemption, the Agencies would consider establishing a later effective date for those conditions to allow creditors sufficient time to adjust their compliance systems, if necessary. The Agencies requested comment on the need for a later effective date for any condition on a proposed exemption.

Public Comments

Most public commenters did not directly address whether the implementation date for any conditions on proposed exemptions should be extended beyond January 18, 2014. Four State credit union trade associations, a national credit union trade association, two State banking trade associations, a small mortgage lender, and a community banking

trade association supported delaying the implementation date for all of the HPML appraisal requirements. Two credit union trade associations recommended that, if conditions were placed on exemptions in the final rule, the Agencies should delay the implementation date to allow creditors sufficient time to adjust their systems to comply with the conditions. One commenter stated that the uncertainty regarding potential amendments to the January 2013 Final Rule made it difficult to prepare for compliance by the January 18, 2014 implementation date. Some commenters stated that the difficulty of complying with the rules by January 2014 was compounded by the multiple mortgage rules recently issued by the Bureau that are also due to become effective in January 2014, and one pointed out further that several of these rules were amended after being finalized in January 2013. The small mortgage lender noted that creating and implementing compliance programs is resource intensive, and that it is more difficult for small businesses to implement such programs than for large lenders. These commenters suggested that the Agencies delay the implementation date by varying amounts of time, from six to 18 months.

As discussed in the section-by-section analysis of § 1026.35(c)(2)(ii), several commenters focused on the implementation date of HPML appraisal rules for loans secured by manufactured homes. Manufactured housing industry commenters – two lenders and a State trade association – believed that the Agencies should delay issuing final rules on valuations for covered manufactured home loans until further study on manufactured housing valuations. The manufactured housing lenders noted that requiring appraisals in manufactured housing lending would be a significant change for the manufactured housing industry, requiring time to negotiate contracts with appraisal

management companies and to develop new disclosures that contain the appraised value, among other changes. The State manufactured housing industry trade association commenter recommended that the Agencies issue a more concrete proposal regarding manufactured housing valuations and that the effective date be at least two years after the publication of final rules.

As also discussed further in the section-by-section analysis of § 1026.35(c)(2)(ii), a national association of owners of manufactured homes, a consumer advocate group, two affordable housing organizations and a policy and research organization believed that appraisal rules applicable to transactions secured by manufactured homes (both new and existing) and land should be effective "quickly" to facilitate the development of appropriate appraisal methods for these transactions by increasing the demand for appraisals. They suggested that rules eliminating any exemptions in the January 2013 Final Rule (*i.e.*, the exemptions for loans secured by new manufactured homes, with or without land) should go into effect six months after the general effective date of January 2014, if possible, and in any event no later than January 2016. These commenters also recommended that loans secured solely by a manufactured home and not land be subject to a temporary exemption until no later than January 2016. In the intervening time, the commenters suggested that the Agencies convene a working group of stakeholders to develop standards for appraising manufactured homes.

Final Rule

The Agencies are adopting an effective date of January 18, 2014 for most provisions of this supplemental final rule, to correspond with the effective date of January 18, 2014 for the January 2013 Final Rule, which is prescribed by statute. Specifically,

the Dodd-Frank Act requires that regulations required under Title XIV of the Dodd-Frank Act, which include the HPML appraisal provisions, "be prescribed in final form before the end of the 18-month period beginning on the designated transfer date," which was July 21, 2011.[12] Accordingly, the Agencies issued the January 2013 Final Rule within 18 months of the designated transfer date, on January 18, 2013.[13] The Dodd-Frank Act also requires that regulations required under Title XIV "take effect not later than 12 months after the date of issuance of the regulations in final form."[14] Twelve months after the date of issuance of the HPML appraisal rules is January 18, 2014. Thus, the January 2013 Final Rule, as amended by this supplemental final rule, must go into effect on January 18, 2014, and will apply to applications received by the creditor on or after that date.

The Agencies have authority to exempt certain classes of loans from the HPML appraisal rules if the exemption is determined to be "in the public interest" and to "promote[] the safety and soundness of creditors." TILA section 129H(b)(4)(B); 15 U.S.C. 1639h(b)(4)(B). As discussed further in the section-by-section analysis of § 1026.35(c)(2)(ii), the Agencies believe that a temporary exemption of 18 months for transactions secured by a manufactured home meets these two exemption criteria. The temporary exemptions for loans secured by a manufactured home will go into effect on January 18, 2014, the effective date of the 2013 January Final Rule. Modified exemptions for certain types of manufactured home transactions will be effective on July 18, 2015, and applicable to applications received by the creditor on or after that date.

[12] Designated Transfer Date, 75 FR 57252 (Sept. 20, 2010).
[13] Sections 1400(c) and 1471 of the Dodd-Frank Act, in title XIV.
[14] Section 1400(c) of the Dodd-Frank Act, in title XIV.

IV. Legal Authority

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

V. Section-by-Section Analysis

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

Accordingly, in this **Federal Register** notice, the revisions to the January 2013 Final Rule adopted by the Agencies in this supplemental final rule are separately

published in the HPML appraisal regulations of the OCC, the Board, and the Bureau. No substantive difference among the three sets of revised rules is intended.

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(6) Business Day

The Agencies' Proposal

The term "business day" is used with respect to two requirements in the January 2013 Final Rule. First, the January 2013 Final Rule requires the creditor to provide the consumer with a disclosure that "shall be delivered or placed in the mail not later than the third business day after the creditor receives the consumer's application for a higher-priced mortgage loan" subject to § 1026.35(c). § 1026.35(c)(5)(i) and (ii). Second, the January 2013 Final Rule requires the creditor to provide to the consumer a copy of each written appraisal obtained under the January 2013 Final Rule "[n]o later than three business days prior to consummation of the loan." § 1026.35(6)(i) and (ii).

The Agencies proposed to define "business day" for these requirements to mean "all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day." § 1026.2(a)(6). The Agencies proposed this definition for consistency with disclosure timing requirements under both the existing Regulation Z mortgage disclosure timing requirements and the Bureau's proposed rules for combined mortgage disclosures under TILA and the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2601 *et seq.* (2012 TILA-RESPA Proposed Rule).

See § 1026.19(a)(1)(ii) and (a)(2); *see also* 77 FR 51116 (Aug. 23, 2012) (*e.g.*, proposed § 1026.19(e)(1)(iii) (early mortgage disclosures) and (f)(1)(ii) (final mortgage disclosures).

Under existing Regulation Z, early disclosures must be delivered or placed in the mail not later than the seventh business day before consummation of the transaction; if the disclosures need to be corrected, the consumer must receive corrected disclosures no later than three business days before consummation (the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered). *See* § 1026.19(a)(2)(i)-(ii). For these purposes, "business day" is defined as quoted previously. One reason that the Agencies proposed to align the definition of "business day" under the January 2013 Final Rule with the definition of "business day" for these disclosures was to avoid the creditor having to provide the copy of the appraisal under the HPML rules and corrected Regulation Z disclosures at different times (because different definitions of "business day" would apply).

The proposed definition of "business day" also was intended to align with the definition of "business day" for the timing requirements of mortgage disclosures under the 2012 TILA-RESPA Proposal. *See* proposed § 1026.2(a)(6). The 2012 TILA-RESPA Proposal would have required the creditor to deliver the early mortgage disclosures "not later than the third business day after the creditor receives the consumer's application." Proposed § 1026.19(e)(1)(iii). The 2012 TILA-RESPA Proposal would have required the final mortgage disclosures to have been provided "not later than three business days before consummation." Proposed § 1026.19(f)(1)(ii). For these purposes, "business day"

would have been defined as the Agencies proposed to define "business day" in the 2013 Supplemental Proposed Rule.

The Agencies stated in the 2013 Supplemental Proposed Rule that, if the Bureau adopted this aspect of the 2012 TILA-RESPA Proposal, then adopting the proposed definition of "business day" for the final HPML appraisals rule would ensure that the HPML appraisal notice and the early mortgage disclosures have to be provided at the same time (no later than three "business days" after the creditor receives the consumer's application). The Agencies further stated that this would also ensure that the copy of the HPML appraisal and the final mortgage disclosures would have to be provided at the same time (no later than three "business days" before consummation). The proposal to align these timing requirements was intended to facilitate compliance and reduce consumer confusion by reducing the number of disclosures that consumers might receive at different times.

Public Comments

The Agencies received fourteen comments on the proposed revision to the definition of "business day," with most commenters supporting the revised definition. A community banking trade association, an individual, two State banking trade associations, a mortgage banking trade association, four State credit union trade associations, one national credit union trade association, and a financial holding company believed that revising the definition for consistency with other disclosure timing requirements – particularly those of the combined mortgage disclosures under the 2012 TILA-RESPA Proposed Rule – would reduce regulatory burden and facilitate compliance. The State banking trade associations and the financial holding company

believed that making these disclosure requirements consistent with the timing for other mortgage disclosures could also result in better awareness and understanding of disclosures by consumers and reduce consumer confusion. One of the State banking trade associations also believed that the proposed definition provided more certainty for creditors than the definition of business day in the January 2013 Final Rule, which refers to days on which a creditor's offices are open to the public for carrying on substantially all of its business functions. *See* § 1026.2(a)(6).

A State credit union trade association, a national credit union trade association, and a community bank commenter, however, opposed the proposed revised definition of business day, instead favoring the definition in the January 2013 Final Rule. The national credit union trade association and community bank commenter stated that many credit unions and community banks are not open for most or any of their business functions on Saturdays. They argued that including Saturday as a business day would increase their regulatory burden.

Final Rule

As noted, the term "business day" is used with respect to two requirements in the January 2013 Final Rule. *See* §§ 1026.35(c)(5)(ii) and (c)(6)(ii). The amendments to the January 2013 Final Rule adopted in this rule add a third use of the term "business day." As discussed more fully in the section-by-section analysis of § 1026.35(c)(2)(ii)(C), transactions secured solely by a manufactured home and not land that are consummated on or after July 18, 2015, will be exempt from the HPML appraisal rules if the creditor obtains and gives to the consumer a copy of one of three types of valuation information

"no later than three business days prior to consummation of the transaction." § 1026.35(c)(2)(ii)(C).

For two reasons, the Agencies are not adopting the proposed definition of "business day" and instead are retaining the definition of "business day" adopted in the January 2013 Final Rule: "a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions." § 1026.2(a)(6). First, the Agencies' goal is to provide consistency with the timing requirements of other mortgage disclosures. Most public commenters who supported the Agencies' proposed amendment to the definition of "business day" used in the January 2013 Final Rule did so on the basis of favoring consistency with the timing requirements of other mortgage disclosures, particularly the combined TILA-RESPA early and final mortgage disclosures.

The proposed definition, however, would result in inconsistency because the Bureau did not adopt the definition of "business day" that includes Saturdays and excludes enumerated Federal holidays for the early mortgage disclosures and final mortgage disclosures proposed in the 2012 TILA-RESPA Proposed Rule. Instead, the definition of "business day" referring to days on which the creditor's offices are open to the public will be used for the timing requirement for those disclosures.[15] For the reasons discussed in the 2013 Supplemental Proposed Rule, the Agencies believe that the timing requirement for creditors to give consumers the disclosure required after application should be aligned with the TILA-RESPA early disclosures and that the timing requirement for creditors to give consumers copies of appraisals and other valuation

[15] *See* Bureau's 2013 TILA-RESPA Final Rule (issued Nov. 20, 2013) at p. 147 *et seq.*, available at http://files.consumerfinance.gov/f/201311_cfpb_final-rule-preamble_integrated-mortgage-disclosures.pdf.

information should generally be aligned with the timing requirement for the TILA-RESPA mortgage disclosures.

Second, the Agencies heard from commenters that many credit unions and community banks are not open for most or any of their business functions on Saturdays. As adopted, the final rule will address these concerns.

Section 1026.35 Requirements for Higher-Priced Mortgage Loans

35(c) Appraisals for Higher-Priced Mortgage Loans

35(c)(1) Definitions

The Agencies are adopting three new definitions for purposes of the HPML appraisal rules in § 1026.35(c) – "credit risk," "manufacturer's invoice," and "new manufactured home" – and re-numbering definitions adopted in the January 2013 Final Rule accordingly.

35(c)(1)(ii)

Section 1026.35(c)(1)(ii) defines "credit risk" for purposes of § 1026.35(c) to mean the financial risk that a loan will default. The Agencies are adopting a definition of "credit risk" to provide greater clarity regarding certain aspects of the exemption for certain refinance transactions, discussed in more detail in the section-by-section analysis of § 1026.35(c)(2)(vii). Under § 1026.35(c)(2)(vii), a covered HPML refinance is eligible for an exemption if one of several criteria are met, including that either (1) the credit risk of the refinance loan is retained by the person that held the credit risk on the existing obligation or (2) the refinance loan is owned, insured or guaranteed by the same Federal government agency that owned, insured or guaranteed the existing obligation. *See* § 1026.35(c)(2)(vii)(A) and comment 35(c)(2)(vii)(A)-1.

35(c)(1)(iv)

Section 1026.35(c)(1)(iv) defines "manufacturer's invoice" to mean a document issued by a manufacturer and provided with a manufactured home to a retail dealer that separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options (large appliances, built-in items and equipment), plus actual itemized charges for freight from the factory to the dealer's lot or the home site (including any rental of wheels and axles) and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category.

This definition is adopted from the definition of "manufacturer's invoice" in HUD regulations regarding Title I loans insured by the Federal Housing Administration (FHA) that are secured by a new manufactured home and not land, at 24 CFR 201.2. The Agencies believe that defining the term "manufacturer's invoice" to mirror the definition in HUD regulations is appropriate for consistency; the January 2013 Final Rule defines the term "manufactured home" by referencing HUD regulations. *See* § 1026.35(c)(1)(iii). The only aspect of the HUD definition of "manufacturer's invoice" not adopted in the final rule is a provision requiring manufacturer's certification. The Agencies do not have data regarding how often manufacturer's invoices outside of the Title I program include the manufacturer's certification prescribed in HUD regulations at 24 CFR 201.2 that apply to the Title I program. Thus, the Agencies are concerned that requiring this certification at this time might create unanticipated compliance challenges.

The final rule defines "manufacturer's invoice" to ensure that creditors understand § 1026.35(c)(2)(viii)(B)(*1*), which goes into effect on July 18, 2015. Under

§ 1026.35(c)(2)(viii)(B)(*1*), a covered HPML secured by a new manufactured home and not land is exempt from the HPML appraisal requirements of § 1026.35(c) if the creditor provides the consumer with a copy of a manufacturer's invoice for the manufactured home securing the transaction. Further details regarding this provision and other valuation-related documents that a creditor could give the consumer to qualify for the exemption are discussed in the corresponding section-by-section analysis.

35(c)(1)(vi)

Section 35(c)(1)(vi) defines "new manufactured home" to mean a manufactured home that has not been previously occupied. The Agencies believe that adopting a definition of "new manufactured home" will help prevent confusion among creditors of manufactured home transactions. The final rule differentiates between loans secured by new and existing (used) manufactured homes in the application of certain requirements, so a clear definition is intended to facilitate compliance. *See* § 1026.35(c)(2)(viii).

35(c)(2) Exemptions

The Agencies are adopting new Official Staff Commentary to § 1026.35(c)(2). Specifically, comment 35(c)(2)-1 clarifies that § 1026.35(c)(2) provides exemptions solely from the HPML appraisal requirements in Regulation Z (§ 1026.35(c)(3) through (6)). The comment states that institutions subject to the requirements of title XI of FIRREA and its implementing regulations that make a loan qualifying for an exemption under section 1026.35(c)(2) must still comply with the appraisal and evaluation requirements under FIRREA and its implementing regulations.

The Agencies are adopting this comment to ensure that creditors subject to FIRREA are aware that, for any HPML they originate that qualifies for an exemption

from the HPML appraisal requirements in § 1026.35(c), they would still be required to obtain an appraisal or evaluation in conformity with FIRREA title XI requirements.[16] These requirements are implemented in Federal banking agency regulations and further explained in the Interagency Appraisal and Evaluation Guidance.[17] Comment 35(c)(2)-1 also underscores that the HPML appraisal requirements were not intended to override existing Federal appraisal rules applicable to institutions regulated by Federal financial institutions regulatory agencies.

35(c)(2)(i)

The Agencies' Proposal

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

To align the regulation with the statute, the Agencies proposed to revise the appraisal rules' exemption for qualified mortgages to include all qualified mortgages "as defined pursuant to TILA section 129C." 15 U.S.C. 1639c. In addition to authority

[16] At least one commenter requested that the Agencies clarify that FIRREA requirements would *not* apply to loans exempt from the HPML appraisal rules. The opposite is true.
[17] *See* OCC: 12 CFR parts 34, Subpart C, and 164; Board: 12 CFR part 208, subpart E, and part 225, subpart G; FDIC: 12 CFR part 323; NCUA: 12 CFR part 722. *See also* 75 FR 77450 (Dec. 10, 2010).

granted to the Bureau, TILA section 129C grants authority to HUD, the U.S. Department of Veterans Affairs (VA), the U.S. Department of Agriculture (USDA), and the Rural Housing Service (RHS), which is a part of USDA, to define the types of loans "insure[d], guarantee[d], or administer[ed]" by those agencies, respectively, that are qualified mortgages. TILA section 129H(b)(3)(B)(ii), 15 U.S.C. 1639h(b)(3)(B)(ii). The Agencies recognized that HUD, VA, USDA, and RHS may issue rules defining qualified mortgages pursuant to their TILA section 129C authority. Therefore, the Agencies proposed to expand the definition of qualified mortgages that are exempt from the HPML appraisal rules to cover qualified mortgages as defined by HUD, VA, USDA, and RHS. 15 U.S.C. 1639c.

Public Comments

Commenters on the revision to the qualified mortgage exemption were: a State credit union trade association, a national appraiser trade association, a State banking trade association, a mortgage banking trade association, a manufactured housing lender, a national association of owners of manufactured homes, a consumer advocate group, two affordable housing organizations, and a policy and research organization. All of these commenters supported the proposed revision. The State banking trade association and State credit union trade association emphasized that the definition of qualified mortgage in the final rule should include all types of qualified mortgages, including balloon payment qualified mortgages. The mortgage banking trade association favored expanding the definition of "qualified mortgage" to include qualified mortgages as defined by HUD, VA, USDA, and RHS based on a belief that qualified mortgages as defined by these agencies will be subject to stringent product requirements and other

consumer safeguards. The manufactured housing lender also favored such an expansion based on a belief that these agencies' loan programs provide credit options for underserved consumers in lower income groups.

The Final Rule

In § 1026.35(c)(2)(i), the Agencies are adopting an exemption similar to the proposed exemption for qualified mortgages. In the final rule, the exemption for qualified mortgages applies to either:

- A loan that is a "covered transaction" under the Bureau's ability-to-repay rules – namely, a loan subject to the ability-to-repay rules of the Bureau in § 1026.43 (*see* § 1026.43(b)(1) (defining "covered transaction")) – *and* that is also a qualified mortgage under the Bureau's ability-to-repay requirements in § 1026.43 or, for loans insured, guaranteed, or administered under programs of HUD, VA, USDA, or RHS, a qualified mortgage under the applicable rules of those agencies (but only once such rules are in effect; otherwise, the Bureau's definition of a qualified mortgage applies to those loans); or
- A loan that is not a "covered transaction" under the Bureau's ability-to-repay rules, but meets the qualified mortgage criteria established in the rules of the Bureau or, for loans insured, guaranteed, or administered under programs of HUD, VA, USDA, or RHS, meets the qualified mortgage criteria under the applicable rules of those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans).

The expanded exemption adopted by the Agencies includes qualified mortgages defined by the Bureau in any of its regulations, such as loans described in § 1026.43(e) as well as § 1026.43(f). Thus, qualified mortgages exempt from the HPML appraisal rules include loans subject to the Bureau's ability-to-repay rules that:

- Meet the general criteria for a qualified mortgage under § 1026.43(e)(2).
- Meet the special criteria for a qualified mortgage under § 1026.43(e)(4).[18]
- Meet the criteria for small creditor portfolio loans in § 1026.43(e)(5).
- Meet the criteria for temporary balloon-payment qualified mortgages in § 1026.43(e)(6).
- Meet the criteria for balloon-payment qualified mortgages under § 1026.43(f).

The Agencies believe that the statutory provision exempting "qualified mortgage[s], as defined in section 129C" evidences Congress's intent to exempt all loans with the characteristics of a qualified mortgage from the HPML appraisal rules. TILA section 129H(f)(1); 15 U.S.C. 1639h(f)(1). As discussed above, TILA section 129C encompasses qualified mortgages defined by the Bureau pursuant to its authority to do so, as well as qualified mortgages defined by HUD, VA, USDA and RHS for loans in their

[18] These include loans that are eligible, based solely on criteria related to the consumer's ability to pay, to be purchased or guaranteed by Fannie Mae or Freddie Mac and loans eligible to be insured or guaranteed by HUD, VA, USDA, or RHS. To be qualified mortgages, these loans also must meet the following general criteria for a qualified mortgage: (1) provide for regular periodic payments (§ 1026.43(e)(2)(i)); (2) have a term of no more than 30 years (§ 1026.43(e)(2)(ii)); and (3) not exceed thresholds for total points and fees set out in § 1026.43(e)(3) (§ 1026.43(e)(2)(iii)). *See* § 1026.43(e)(4)(i)(A). The qualified mortgage status of loans eligible for purchase by Fannie Mae or Freddie Mac expires starting on January 11, 2021. The qualified mortgage status of loans eligible to be insured or guaranteed by HUD, VA, USDA, or RHS expires on the effective date of a rule issued by each of these respective agencies defining "qualified mortgage" for their own programs. On Sept. 30, 2013, HUD published proposed rules defining "qualified mortgage" based on its authority under TILA section 129C(b)(3)(B)(ii)(I). 15 U.S.C. 1639c(b)(3)(B)(ii)(I); 78 FR 59890 (Sept. 30, 2013).

respective programs. *See* TILA section 129C(a)(1), (b)(3)(A), and (b)(3)(B)(i), 15 U.S.C. 1639c(a)(1), (b)(3)(A), and (b)(3)(B)(i) (authority of the Bureau) and TILA section 129C(b)(3)(B)(ii), 15 U.S.C. 1639c(b)(3)(B)(ii) (authority of HUD, VA, USDA, and RHS).

Additionally, the amended qualified mortgage exemption language is intended to ensure that loans that meet the qualified mortgage criteria of the Bureau, HUD, VA, USDA, or RHS, as applicable, but are exempt from the Bureau's ability-to-repay rules in § 1026.43, are afforded an exemption from the HPML appraisal rules as well. In the Bureau's ability-to-repay rules, "qualified mortgage" is a designation only for "covered transactions," which are loans subject to the ability-to-repay requirements of TILA section 129C(a), implemented in § 1026.43(c).[19] 15 U.S.C. 1639c. The Bureau excluded certain transactions from the scope of the rules, including loans originated as part of certain programs, such as a program administered by a Housing Finance Agency, or loans originated by certain entities, such as a Community Development Financial Institution (CDFI). *See* § 1026.43(a)(3). Under the Bureau's ability-to-repay rules, these loans are not considered to be "covered transactions" and are therefore not eligible to be qualified mortgages under the Bureau's ability-to-repay rules. This is the case even if the loans meet the criteria for a qualified mortgage in the Bureau's rules.

Under the proposed exemption – for "qualified mortgages as defined pursuant to 15 U.S.C. 1639c" – loans exempted from the Bureau's ability-to-repay requirements would not be eligible for the qualified mortgage exemption from the HPML appraisal

[19] In the 2013 ATR Final Rule, "covered transaction" is defined to mean "a consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, *other than a transaction exempt from coverage under* [*§ 1026.43(a)*]" (emphasis added). "Qualified mortgage" is defined as "a covered transaction" that meets certain criteria. § 1026.43(e)(2).

rules because, technically, they are not "defined" as qualified mortgages under Bureau rules. Such excluded loans would include:

- Loans made as part of a program administered by a State housing finance agency (HFA);[20]
- Loans made by a creditor designated as a CDFI, a creditor designated as a Downpayment Assistance through Secondary Financing Provider, a creditor designated as a Community Housing Development Organization, and a creditor that is a 501(c)(3) organization and meets certain other criteria;[21] and
- Loans made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008.[22]

As discussed above, the Agencies believe that, by exempting qualified mortgages in the statute, Congress intended to exempt from the requirements those loans that have the characteristics of a qualified mortgage. The Agencies believe that if the HPML appraisal rules exempted only "qualified mortgages as defined pursuant to 15 U.S.C. 1639c," the rules would apply to transactions that Congress did not intend to subject to the appraisal requirements. By contrast, the final rule, which exempts "a loan that satisfies the criteria of a qualified mortgage," ensures that all transactions intended to be exempt from the HPML appraisal requirements are excluded from coverage.

In addition, this exemption ensures that transactions with the terms and features of a qualified mortgage are not treated differently when made by or through programs of

[20] *See* § 1026.43(a)(3)(iv).
[21] *See* § 1026.43(a)(3)(v)(A)-(D).
[22] *See* § 1026.43(a)(3)(vi).

entities that fall outside the scope of the Bureau's ability-to-repay rules in § 1026.43 than when made by other creditors. Thus, the final rule avoids the anomalous result that an HPML made through the program of an HFA, for example, would be subject to the HPML appraisal rules, whereas an HPML with the exact same terms and features made by a private creditor would not.

Accordingly, comment 35(c)(2)(i)-1 explains that, under § 1026.35(c)(2)(i), a loan is exempt from the appraisal requirements of § 1026.35(c) if either:

- The loan is—(1) subject to the Bureau's ability-to-repay requirements in § 1026.43 as a "covered transaction" (defined in § 1026.43(b)(1)) and (2) a qualified mortgage pursuant to the Bureau's rules or, for loans insured, guaranteed, or administered by HUD, VA, USDA, or RHS, a qualified mortgage pursuant to the applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's definition of a qualified mortgage applies to those loans); or
- The loan is—(1) not subject to the Bureau's ability-to-repay requirements in § 1026.43 as a "covered transaction," but (2) meets the criteria for a qualified mortgage in the Bureau's rules or, for loans insured, guaranteed, or administered by HUD, VA, USDA, or RHS, meets the criteria for a qualified mortgage in the applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans).

Comment 35(c)(2)(i)-1 further explains that loans enumerated in § 1026.43(a) are not "covered transactions" under the Bureau's ability-to-repay requirements in § 1026.43,

and thus cannot be qualified mortgages (entitled to a rebuttable presumption or safe harbor of compliance with the ability-to-repay requirements of § 1026.43, *see, e.g.*, § 1026.43(e)(1)). These include an extension of credit made pursuant to a program administered by an HFA, as defined under 24 CFR 266.5, or pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008. *See* § 1026.43(a)(3)(iv) and (vi). They also include extensions of credit made by a creditor identified in § 1026.43(a)(3)(v). The comment clarifies that, nonetheless, these loans are not subject to the appraisal requirements of § 1026.35(c) if they meet the Bureau's qualified mortgage criteria in § 1026.43(e)(2), (4), (5), or (6) or § 1026.43(f) (including limits on when loans must be consummated) or, for loans that are insured, guaranteed, or administered by HUD, VA, USDA, or RHS, in applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage apply to those loans).

The comment includes the following example: Assume that HUD has prescribed rules to define loans insured under its programs that are qualified mortgages and those rules are in effect. Assume further that a creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h), originates a loan insured by the Federal Housing Administration, which is a part of HUD. The loan is not a "covered transaction" and thus is not a qualified mortgage. *See* § 1026.43(a)(3)(v)(A) and (b)(1). Nonetheless, the transaction is eligible for an exemption from the appraisal requirements of § 1026.35(c) if it meets the qualified mortgage criteria in HUD's rules.

Finally, the comment clarifies that nothing in § 1026.35(c)(2)(i) alters the definition of a qualified mortgage under regulations of the Bureau, HUD, VA, USDA, or RHS.

35(c)(2)(ii)

The Agencies' Proposal

In the 2013 Supplemental Proposed Rule, the Agencies proposed an exemption from the HPML appraisal rules for extensions of credit of $25,000 or less. This threshold amount was based on the Agencies' consideration of an appropriate threshold in light of comments to the 2012 Proposed Rule, as well as data reported under the Home Mortgage Disclosure Act (HMDA), 15 U.S.C. 2801 *et seq*. The Agencies also proposed to adjust the threshold for inflation every year, based on the percentage increase of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Proposed comments 35(c)(2)(ii)-1, -2, and -3 provided additional guidance on the proposed exemption.

The Agencies expressed the belief that the expense to the consumer of an appraisal with an interior inspection could be significant and unduly burdensome to consumers of HPMLs of $25,000 or less that are not qualified mortgages. Thus, an appraisal requirement could hamper consumers' use of smaller home equity loans. The Agencies also stated their concern that a requirement for an appraisal with an interior inspection may pose a burdensome cost for consumers who seek to purchase lower-dollar homes using HPMLs that are not qualified mortgages; these tend to be low- to moderate-income (LMI) consumers who are less able to afford extra costs than higher-income consumers.

The Agencies stated the view that the exemption can facilitate creditors' ability to meet consumers' smaller dollar credit needs, and that this could in turn promote the soundness of an institution's operations by supporting profitability and an institution's ability to spread risk over a variety of products. The Agencies noted that public comments on the 2012 Proposed Rule suggested that the reduction in costs and burdens associated with this exemption might benefit smaller institutions in particular.

To inform the proposal, the Agencies also relied on data on mortgage lending in 2009, 2010, and 2011 reported under HMDA. The Agencies noted that, for example, an appraisal including an interior inspection for a subordinate lien home improvement loan might be burdensome on a consumer, without sufficient offsetting consumer protection or safety and soundness benefits. Therefore, the Agencies examined the mean and median loan sizes for subordinate lien home improvement loans in 2009, 2010, and 2011. Based in part on this HMDA data, the Agencies believed $25,000 was an appropriate threshold. *See* 78 Fed. Reg. 48547, 48564 (August 8, 2013).

At the same time, in light of the views expressed by consumer advocates, the Bureau had concerns that, as a result of borrowing so-called "smaller" dollar home purchase or home equity loans, some consumers may be at risk of high loan-to-value (LTV) ratios, including LTVs that lead to going "underwater" – owing more than their home is worth. The Bureau believed that receiving a written valuation might be helpful in informing a consumer's decision about whether to obtain the loan by making the consumer better aware of how the value of the home compares to the amount that the consumer might borrow. As a result, the Agencies requested comment in the 2013

Supplemental Proposed Rule regarding whether certain conditions should be placed on the proposed smaller dollar loan exemption.

Public Comments

Public Comments on the 2012 Proposed Rule

In the 2012 Proposed Rule, the Agencies requested comment on exemptions from the final rule that would be appropriate. In response, several commenters recommended an exemption for smaller dollar loans. These commenters generally believed that appraisals with interior inspections for these loans would significantly raise total costs as a proportion of the loan and thus potentially be detrimental to consumers. The commenters were concerned that requiring an appraisal for smaller dollar HPMLs would result in excessive costs to consumers without sufficient offsetting benefits. Some asserted that applying the HPML appraisal rules to smaller dollar loans might disproportionately burden smaller institutions and potentially reduce access to credit for their consumers.

Comments to the 2012 Proposed Rule varied widely regarding the appropriate threshold for a smaller dollar loan exemption. Suggested thresholds ranged from $10,000 or less up to $125,000 for certain transactions. The Agencies did not finalize a smaller dollar loan exemption in the January 2013 Final Rule, instead choosing to propose a smaller dollar loan exemption in the subsequent 2013 Supplemental Proposed Rule.

The Agencies did not receive comments on the 2012 Proposed Rule from consumers or consumer advocates. However, in informal outreach conducted by the Agencies after the January 2013 Final Rule was issued, a consumer advocacy group expressed the view that LMI consumers obtaining or refinancing loans secured by lower-

value homes may have a particular need for the protections of the HPML appraisal rules. They also expressed the view that requiring quality appraisals for smaller dollar loans, and requiring that they be provided to the consumer, can help prevent the kinds of appraisal fraud that can lead to consumers borrowing more money than is supported by the equity in their home or taking out loans that are otherwise not appropriate for them.

Public Comments on the 2013 Supplemental Proposed Rule

In the 2013 Supplemental Proposed Rule, the Agencies sought comment on a proposed exemption for loans of $25,000 or less, and whether a threshold higher or lower than $25,000 was appropriate. The Agencies encouraged commenters to include data to support their views.

Twenty-nine commenters addressed the threshold for the smaller dollar loan exemption: nine State credit union trade associations, three credit unions, one national credit union trade association, two community banks, one community banking trade association, one financial holding company, two State banking trade associations, one mortgage banking trade association, one consumer advocate group, three affordable housing organizations, one policy and research organization, one national association of owners of manufactured homes, one State manufactured housing association, one small mortgage lender, and one individual.

No commenters on this proposed exemption opposed including an exemption from the HPML appraisal requirements for smaller dollar loans. Eight commenters believed that the Agencies should either retain or reduce the $25,000 threshold. A national association of owners of manufactured homes, two affordable housing organizations, a consumer advocate group, and a policy and research organization

generally recommended that, if the Agencies adopted the exemption, the exemption threshold should be no more than $25,000. They believed that a large percentage of the transactions affected were likely to be manufactured home transactions, although they urged the Agencies to apply the exemption equally to manufactured homes and site-built homes. A State banking trade association also supported an exemption for extensions of credit of $25,000 or less, citing increased costs and burdens associated with obtaining appraisals with interior inspections. An individual commenter urged the Agencies to reduce the threshold to $10,000, believing a $25,000 threshold could lead to significant monetary risk for consumers, particularly LMI consumers.

All of the other commenters urged the Agencies to raise the threshold for the exemption. Eight State credit union trade associations, three credit unions, one national credit union trade association, one State manufactured housing association, and one small mortgage lender suggested that the threshold be raised to $50,000. Generally, these commenters supported the increase because they believed that the cost of an appraisal for transactions of lower amounts did not correspond to a meaningful benefit. They also supported regulatory relief to creditors. A credit union stated that a threshold under $50,000 may result in less lending to LMI consumers because lenders would not be willing to make the loans. A State credit union association stated that lenders may not make loans if the threshold is below $50,000 because the cost of originating and processing loans under that amount already exceeds origination fees, without a

requirement for an appraisal with an interior inspection. Another credit union noted that it obtains evaluations, rather than appraisals, for transactions below $50,000.[23]

Several commenters suggested other thresholds. A State credit union trade association commenter suggested that the threshold should be raised to $100,000 or, at a minimum, to $75,000. The commenter stated that requiring costly appraisals on smaller dollar HPMLs disproportionately hurts LMI consumers and consumers in rural areas, where appraisals can be costly and the wait time for appraisals, according to a member survey, is generally one-and-a-half to three months, but can be up to six months. A community banking trade association believed that, for loans below $100,000, the cost of an appraisal is high relative to the cost of the loan, but the credit risk to the bank is low. One community bank suggested a threshold of $35,000, noting that the average size of loans secured by a manufactured home (and not land) that are made by the bank is under $35,000. Another community bank believed that $40,000 was an appropriate threshold and expressed concerns about the cost of appraisals, especially in rural areas.

A few commenters suggested thresholds that are the same as those in other mortgage rules, asserting that this alignment would reduce regulatory burden. A mortgage banking trade association stated that the threshold should be $100,000 because the Bureau's ability-to-repay rule permits creditors to apply higher points and fees for loans below $100,000.[24] Two of the commenters suggesting a $50,000 threshold asserted that doing so would make the exemption consistent with a threshold in the Bureau's

[23] Regulations applicable to national credit unions generally require a credit union to obtain an "evaluation" rather than an appraisal for transactions with a value of $250,000 or less. *See* 12 CFR 722.3(a)(1) and (d).
[24] *See* § 1026.43(e)(3).

Regulation Z rules under the Home Ownership and Equity Protection Act of 1994 (HOEPA) for different interest rate triggers.[25]

The suggestions of some commenters focused on excluding subordinate lien transactions from the rule. A State credit union association believed $50,000 was an appropriate threshold because it would exclude from coverage of the HPML appraisal rules many subordinate lien transactions. This commenter believed that appraisals for subordinate lien loans taken concurrently with first lien loans were unnecessary because often an appraisal will have been performed for the first lien transaction. The commenter also believed that most home improvement loans are more than $25,000, so the proposed threshold could hinder the use of smaller home equity loans. The commenter asserted that the expense of the appraisal with an interior inspection could considerably raise the total costs of financing the home improvement loan.

In addition, a State banking association and a financial holding company recommended exempting home equity loans from the rule. The financial holding company noted that, in the calculation to determine HPML status, the spread between APR and APOR is smaller for first lien loans than for subordinate lien loans (1.5 percentage points above APOR and 3.5 percentage points above APOR, respectively), and objected to an appraisal requirement for first lien home equity loans in particular. This commenter recommended that the Agencies raise the APR-APOR spread to 3.5 percentage points for all home equity loans. The State banking association argued that first lien home equity loans present very little credit risk.

[25] *See* § 1026.32(a)(1)(i)(B), effective January 10, 2014. *See also* 78 FR 6856 (Jan. 31, 2013) (2013 HOEPA Final Rule).

The Agencies also sought comment on whether the threshold for the smaller dollar loan exemption should be adjusted periodically for inflation and whether the adjustments should be annually or some other period. A small mortgage lender and a State banking trade association expressed support for the annual adjustment. The small mortgage lender noted that this approach was consistent with other provisions in Regulation Z. [26]

Conditioning an exemption. In addition, the Agencies requested comment on whether conditions should be imposed on the smaller dollar loan exemption. The Agencies specifically asked whether the smaller dollar loan exemption should be conditioned on the creditor providing the consumer with an alternative estimate of the collateral value. A national association of owners of manufactured homes, two affordable housing associations, a consumer advocate group, and a policy and research organization believed that, if the Agencies adopted the exemption, consumers should be given at least the manufacturer's invoice for new manufactured home transactions, even if they fall under the threshold. These commenters believed that providing the invoice would be low cost, and yet would provide an important check on overvaluation. Another affordable housing organization believed that creditors in manufactured home transactions of $25,000 or less should be required to obtain replacement cost estimates performed by a trained, independent appraiser from a nationally-published cost service. *See also* section-by-section analysis of § 1026.35(c)(2)(viii).

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

A community bank commenter asserted that consumers should receive a copy of the valuation used by the creditor as a condition to the exemption. A small mortgage lender suggested that a government-provided tax assessment would be an appropriate valuation to provide to consumers. This commenter argued that because municipalities already use tax assessments to determine property value for tax and insurance purposes, the assessments have been proven to be sufficiently reliable. The commenter contended that requiring more costly valuation methods as a condition of the exemption might prompt creditors to determine that the exemption is unduly burdensome and stop making these smaller dollar loans.

An affordable housing organization suggested that, as a condition to the exemption (as well as other exemptions), creditors should be required to provide any valuation used to determine the security for the loan and suggested that creditors should be given flexibility to choose the appropriate valuation for the transaction. At the same time, the commenter recommended that a creditor should be required to obtain replacement cost estimates from a trained, independent appraiser and to provide these estimates to a consumer.

The Agencies did not receive comments on a number of additional comment requests, including requests for information about the risks that smaller dollar loans could lead to high LTV loans; specific data on the costs and burdens associated with the exemption, especially for smaller institutions; and data on the extent to which creditors anticipate originating HPMLs of $25,000 or less that are not qualified mortgages.

The Final Rule

The Agencies are adopting the exemption for HPMLs for extensions of credit of $25,000 or less as proposed and renumbering it § 1026.35(c)(2)(ii). The Agencies are also adopting the proposal to adjust the threshold annually, based on the percentage increase of the CPI-W. Official Staff Commentary for § 1026.35(c)(2)(ii) is also adopted as proposed.

Comment 35(c)(2)(ii)-1 explains that, for purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular one-year period is the amount stated in this comment for that period. Specifically, comment 35(c)(2)(ii)-1.i. provides that from January 18, 2014, through December 31, 2014, the threshold amount is $25,000. Comment 35(c)(2)(ii)-1 further provides that the threshold amount is adjusted effective January 1 of every year by the percentage increase in the CPI-W that was in effect on the preceding June 1. The comment also states that, every year, the comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. In addition, the comment states that any increase in the threshold amount will be rounded to the nearest $100 increment. The comment provides the following example: if the percentage increase in the CPI-W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the percentage increase in the CPI-W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

Comment 35(c)(2)(ii)-2 clarifies that a transaction is exempt under § 1026.35(c)(2)(ii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

Finally, comment 35(c)(2)(ii)-3 explains that a transaction does not meet the condition for an exemption under § 1026.35(c)(2)(ii) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. The comment provides the following example: assume a closed-end loan that qualified for a § 1026.35(c)(2)(ii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. The comment states that, in these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 1026.35(c) applies. *See* § 1026.35(c)(2) and § 1026.35(c)(4)(vii).

For the reasons discussed in the 2013 Supplemental Proposed Rule as described in "The Agencies' Proposal," the Agencies believe that the exemption finalized in § 1026.35(c)(2)(ii) is in the public interest and promotes the safety and soundness of creditors. As discussed in the 2013 Supplemental Proposed Rule, the Agencies believe that the burden and expense of imposing the HPML appraisal requirements on HPMLs of $25,000 or less that are not qualified mortgages outweigh potential consumer protection benefits in many cases. As discussed above, no commenters objected to an exemption, and many commenters generally agreed with the Agencies' assessment of the costs versus the benefits of appraisals for these loans. Commenters also noted that the cost of the appraisals would be even higher in rural areas, due to the scarcity of appraisers and the potential for added time to locate and engage an appraiser.

As noted, the Agencies received a number of comments on the 2013 Supplemental Proposed Rule suggesting that the Agencies should raise the amount of the threshold. These commenters cited the cost of the appraisals and at least one commenter provided some information about the percentage of HPMLs made by the lender that are smaller dollar, but overall very little data was offered to support the various threshold suggestions. For example, despite the Agencies' requests for data, no commenters provided data indicating that a significant number of the smaller dollar loans they originate would not be qualified mortgages and thus would be subject to the HPML appraisal requirements absent an exemption.

To inform the threshold determination, the Agencies again examined HMDA data. According to 2012 HMDA data, increasing the proposed threshold could substantially increase the proportion of HPMLs that would be exempted from the rule. For example, a $25,000 exemption would exempt 55 percent of conventional subordinate lien home improvement HPMLs from coverage and 37 percent of conventional subordinate lien home purchase HPMLs. In comparison, a $50,000 exemption would exempt 87 percent of conventional subordinate lien home improvement HPMLs and 70 percent of percent of conventional subordinate lien home purchase HPMLs.[27] The Agencies believe that increasing the threshold from $25,000 to, for example, $50,000, would exempt too large a proportion of HPMLs, such that the exemption would violate the intent of the statute to subject both first and subordinate lien loans to the appraisal requirements. The Agencies believe that a threshold of $25,000 appropriately exempts from the rule those smaller dollar loans that would benefit from the exemption, such as

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

smaller dollar home improvement loans. Moreover, the Agencies believe creditors are generally better able to absorb losses that might be associated with a loan of $25,000 or less than loans of higher amounts.

As discussed under "Public Comments," some commenters suggested exempting loans based on lien status or whether the loan is a home equity loan. For example, a State credit union association advocated for a threshold that would exclude most subordinate lien loan from the rules. A State banking association and a financial holding company recommended exempting home equity loans from the rule, particularly first lien home equity loans. The financial holding company noted that, in the calculation to determine HPML status, the spread between APR and APOR is smaller for first lien loans than for subordinate lien loans (1.5 percent above APOR and 3.5 percent above APOR, respectively). This commenter recommended that the Agencies raise the APR-APOR spread triggering HPML status to 3.5 percentage points for all home equity loans, whether first lien or subordinate lien.

The Agencies believe that an exemption based on a monetary threshold rather than an exemption based on a loan's lien status or loan purpose (home equity versus home purchase, for example) is necessary to protect consumers and more consistent with the statute. The statute clearly indicates that HPMLs secured by a consumer's principal dwelling should be covered, whether home purchase or home equity, and whether first lien or subordinate lien. *See* TILA section 129H(f), 15 U.S.C. 1639h(f). In addition, the differing APR-APOR spreads for first lien and subordinate lien loans were set by statute. *See id.* Both first lien and subordinate lien home equity loans reduce equity in a consumer's home and can put consumers at financial risk; the Agencies believe that

limiting this risk to consumers for both types of loans is appropriate. The Agencies also believe that consistency of the rule across these loan types will facilitate compliance.

Regarding comments that the threshold should match those in other mortgage rulemakings, the Agencies decline to do so because the other mortgage rules are not comparable to the appraisal requirements. The $50,000 threshold in the 2013 HOEPA Final Rule referred to by two commenters relates to which APR-APOR spread applies in determining whether a loan is "high-cost."[28] Specifically, the $50,000 threshold is relevant only if the loan is secured by a first lien on a dwelling that is personal property. This threshold was intended to capture a very specific type of loan for an exemption from an entirely different set of rules. The Agencies therefore question the basis for applying the same threshold in establishing an exemption from the HPML appraisal rules.

For similar reasons, the Agencies believe that setting the threshold at $100,000 to align with the $100,000 tier for permitting higher points and fees for qualified mortgages, as one commenter suggested, is not appropriate. *See* § 1026.43(e)(3). The smaller dollar loan thresholds in that rule were crafted in the context of ensuring a consumer's ability to repay a mortgage, not for purposes of determining whether an appraisal should be performed for a particular transaction. Moreover, the $100,000 threshold is only the highest loan amount of five tiers of loan amounts for which higher points and fees are permitted at varying levels.

For the reasons discussed above, therefore, the Agencies are maintaining the proposed $25,000 threshold in the final rule. The Agencies also are adopting the proposal to adjust the threshold for inflation every year, based on the percentage increase

[28] *See* § 1026.32(a)(1)(i)(B) as amended by 78 FR 6962 (Jan. 31, 2013).

of CPI-W. As noted, commenters supported an annual adjustment for inflation. Also, as discussed in the 2013 Supplemental Proposed Rule, inflation adjustments for other thresholds in Regulation Z are also annual, so the adjustment will provide for consistency across mortgage rules.

Conditions on the exemption. The Agencies are finalizing the smaller dollar loan exemption with no conditions. Some commenters suggested providing alternative valuations to consumers as a condition to the smaller dollar loan exemption, including providing the consumer with an estimate of the value of the collateral property that the creditor relied on in making the credit decision. However, the Agencies believe that for HPMLs of $25,000 or less that are not qualified mortgages, the added burden or cost of a condition could deter lenders from making these loans, which could harm consumers. In addition, the Agencies believe that an unconditional exemption for transactions of $25,000 or less will be simpler and easier for creditors to apply, thus facilitating compliance and enhancing the utility of the exemption.

One reason that the Agencies are not raising the exemption above $25,000 is the Agencies' concern that conditioning the exemption might then be necessary to ensure that the exemption both promotes the safety and soundness of creditors and is in the public interest. In the Agencies' view, arguments that neither an appraisal nor an alternative valuation need be obtained or provided to the consumer become increasingly less persuasive for transactions over $25,000, as larger amounts tie up greater amounts of home equity and losses become less easily absorbed by creditors. The Agencies deem it best not to add complexity by conditioning the exemption and believe that no conditions are needed at the level of $25,000 or less.

35(c)(2)(iv)

The Agencies are adopting a new comment to clarify the exemption in § 1026.35(c)(2)(iv) for "a transaction to finance the initial construction of a dwelling." Specifically, new comment 35(c)(2)(iv)-2 clarifies that the exemption for construction loans in § 1026.35(c)(2)(iv) applies to temporary financing of the construction of a dwelling that will be replaced by permanent financing once construction is complete. The exemption does not apply, for example, to loans to finance the purchase of manufactured homes that have not been or are in the process of being built, when the financing obtained by the consumer at that time is permanent. The comment cross-references § 1026.35(c)(2)(viii), which sets out the HPML appraisal rules applicable to transactions secured by manufactured homes.

The Agencies are adding this comment in response to public comments on the 2013 Supplemental Proposed Rule suggesting that manufactured home loans where the unit has not been constructed are similar to temporary construction loans exempt under § 1026.35(c)(2)(iv) and should be exempt on the same basis. The Agencies understand that manufactured home loans in this situation generally are permanent financing, and therefore the same rationale for exempting temporary construction loans, expressed in the January 2013 Final Rule, would not apply to those loans.

35(c)(2)(vii)

The Agencies' Proposal

The Agencies proposed to exempt from the HPML appraisal rules certain types of refinancings with characteristics common to refinance programs offering "streamlined" refinances. Specifically, the Agencies proposed to exempt an extension of credit that is a

refinancing where the "owner or guarantor" of the refinance loan was the "owner or guarantor" of the existing obligation. In addition, the regular periodic payments under the refinance loan could not have resulted in negative amortization, covered only interest on the loan, or resulted in a balloon payment. Finally, the proceeds from the refinance loan would have to have been used solely to pay off the outstanding principal balance on the existing obligation and to pay closing or settlement charges.

As discussed in the 2013 Supplemental Proposed Rule, the Agencies believe that this exemption would be in the public interest and promote the safety and soundness of creditors.

Background

In an environment of historically low interest rates, the Federal government has supported streamlined refinance programs as a way to promote the ongoing recovery of the consumer mortgage market. Notably, the Home Affordable Refinance Program (HARP) was introduced by the U.S. Treasury Department in 2009 to provide refinance relief options to consumers following the steep decline in housing prices as a result of the financial crisis. The HARP program was expanded in 2011 and is currently set to expire in at the end of 2015.

Federal government agencies – HUD, VA, and USDA – as well as government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, have developed streamlined refinance programs to address consumer, creditor and investor risks.[29] These programs enable many consumers to refinance the balance of those mortgages through an

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

abbreviated application and underwriting process.[30] Under these programs, consumers with little or no equity in their homes,[31] as well as consumers with significant equity in their homes,[32] can restructure their mortgage debt, often at lower interest rates or payment amounts than under their existing loans.[33]

Valuation requirements of "streamlined" refinance programs. The streamlined underwriting for certain refinancings often does not include an appraisal that conforms with USPAP or a physical inspection of the property. One reason for this is that, in currently available streamlined refinance programs, the value of the property securing the existing and refinance obligations does not determine borrower eligibility for the refinance.

Generally, the principal concern under streamlined refinance programs is not whether the creditor or investor could in the near term recoup the mortgage amount by foreclosing upon and selling the securing property. The immediate goals for these loans

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

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

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

[33] Over two million streamlined refinance transactions occurred under FHA and GSE programs in 2012 (including both HPML and non-HPML refinances). According to public data recently reported by FHFA, 1,803,980 streamlined refinance loans occurred under Fannie Mae or Freddie Mac streamlined refinance programs. *See* FHFA Refinance Report for February 2013, available at http://www.fhfa.gov/webfiles/25164/Feb13RefiReportFinal.pdf. The Agencies estimate, based upon data received from FHA during outreach to prepare this proposal, that the FHA insured 378,000 loans under its "Streamline" program in 2012.

are to secure payment relief for the borrower and thereby avoid default and foreclosure; to allow the borrower to take advantage of lower interest rates; or to restructure their mortgage obligation to build equity more quickly – all of which reduce risk for creditors and investors and benefit consumers.

The credit risk holder of the existing obligation might obtain a valuation other than an appraisal for the refinance to estimate LTV for determining the appropriate securitization pool for the loan. LTV as determined by this valuation can also affect the terms offered to the consumer. Sometimes an appraisal is required when the property is not standardized, or the credit risk holder of the existing obligation and the refinance loan does not have what it deems to be sufficient information about the property.

Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac each have streamlined refinance programs: Fannie Mae DU ("Desktop Underwriter") Refi Plus™ and Refi Plus™ and Freddie Mac Relief Refinance®-Same Servicer/Open Access. Under these programs, Fannie Mae must hold both the old and new loan, as must Freddie Mac under its program. An appraisal is not required when the GSEs are confident in an estimate of value (usually based on their respective proprietary automated valuation models (AVMs)), which is then provided to lenders originating loans under these programs.[34]

[34]For GSE streamlined refinance transactions purchased in 2012 at LTVs of above 80 percent, AVM estimates were obtained for approximately 81 percent and appraisals (either interior inspection or exterior-only) were obtained for approximately 19 percent. For GSE streamlined refinance transactions purchased in 2012 at LTVs of 80 percent or below, AVM estimates were obtained for approximately 87 and appraisals (either interior inspection or exterior-only) were obtained for approximately 13 percent.

HUD/FHA. The HUD "Streamline" Refinance program administered by the FHA permits but generally does not require a creditor to obtain an appraisal.[35] The Agencies understand that almost all FHA streamlined refinances are done without requiring an appraisal.[36] The FHA program does not require an alternative valuation type for transactions that do not have appraisals.

VA and USDA. VA and USDA programs do not require appraisals. The VA and USDA streamlined refinance programs also do not require an alternative valuation type for transactions for which an appraisal is not required.

Private "streamlined" refinance programs. The Agencies also understand that some private creditors offer streamlined refinance programs for their borrowers that meet certain eligibility requirements. In the 2013 Supplemental Proposed Rule, the Agencies sought comment and relevant data on how often private creditors obtain alternative valuation estimates in these transactions (*i.e.*, streamlined refinances outside of the government agency and GSE programs discussed previously) when no appraisal is conducted.[37] The Agencies did not receive comment on this issue.

Public Comments

Public Comments on the 2012 Proposed Rule

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[35] *See, e.g.*, HUD Handbook 4155.1, chapter 6.C.1.

[36] According to data from FHA, in calendar year 2012, only 1.1 percent of FHA streamline refinances required an appraisal.

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

A number of commenters on the 2012 Proposed Rule recommended that the Agencies exempt streamlined refinancings. Some of these commenters expressed a view that the Dodd-Frank Act's "higher-risk mortgage" appraisal rules were not appropriate for refinancings designed to move a borrower into a more stable mortgage product with affordable payments. Commenters pointed out, among other things, that these types of refinancings can be important credit risk management tools in the primary and secondary markets, and can reduce foreclosures, stabilize communities, and stimulate the economy. GSE commenters indicated that in many cases loans originated under Federal government streamlined refinance programs do not require appraisals and asserted that doing so would interfere with these programs.

Consumer advocates did not comment on the 2012 Proposed Rule, but in subsequent informal outreach with the Agencies for the 2013 Supplemental Proposed Rule, they expressed concerns about not requiring appraisals in HPML streamlined refinance programs. They expressed the view that a quality appraisal that also is required to be made available to the consumer can be a tool to prevent fraud in refinance transactions. They also pointed out instances in which an appraisal on a refinance transaction revealed appraisal fraud on the original purchase transaction. In the 2013 Supplemental Proposed Rule, the Agencies invited further comment on these and any related concerns, and appropriate means of addressing these concerns as part of this rulemaking. The Agencies did not receive additional comments on this issue as part of the 2013 Supplemental Proposed Rule, the relevant public comments on which are summarized below.

Public Comments on the 2013 Supplemental Proposed Rule

Commenters were generally supportive of exempting streamlined refinances from the HPML appraisal requirements. These included comments from a credit union, a State credit union trade association, a national mortgage banking trade association, and a national real estate trade association. The commenters stated that the exemption would encourage and enable many consumers to refinance the balance of their mortgages through an abbreviated underwriting process that will save them time and money and help them restructure their debt and lower their interest rate or mortgage payment. The State credit union association commenter stated that an appraisal is not necessary for these types of transactions as the value of the home is not the factor driving the restructuring transaction. The national real estate trade association asserted that the cost of the appraisal would increase the costs to the consumer, especially in rural areas where there are fewer appraisers, with no offsetting benefit to the consumer,

Three national appraiser organizations opposed the proposed exemption for streamlined refinances and urged the Agencies not to adopt it in the final rule. Two of these commenters asserted that a key component of a consumers' decision to refinance their loan is the market value of their home. A third national appraiser organization believed that the proposed exemption was unnecessary and inconsistent with what this commenter viewed as the Dodd-Frank Act's emphasis on risk management, particularly for HPMLs.

The Agencies solicited comment on the circumstances in which an originator's assumption of "put back" risk on a refinance loan raises safety and soundness concerns, even where the owner or guarantor on the refinance loan remains the same. Two national appraiser organizations and a State HFA offered comments related to this question. The

appraisal organizations commented that where a loan involves new risk to either government agencies or the taxpayers, an appraisal should be required. Generally, where new risk results from a transaction, an appraisal with an interior inspection should be required. These commenters added that, if the risk is already known or exists (*i.e.*, is not new risk), an exterior inspection appraisal might be sufficient.

The State HFA commented that the scope of the same "owner or guarantor" requirement should be expanded to include Federally-insured or -guaranteed streamlined refinancing transactions. The group suggested that the proposed language focused on the secondary market for mortgage loans rather than the Federal entities bearing the risk at the loan level. The Agencies understand that this State HFA has programs in which a Federally-insured or -guaranteed loan (such as by FHA or VA) might be refinanced and placed in a mortgage revenue bond guaranteed by the HFA. The State HFA expressed concerns that under this arrangement, the loan might not meet the same "owner or guarantor" criteria of the proposed refinance exemption because the HFA would be a new guarantor at the secondary market level. However, the State HFA pointed out that the refinance loan continues to be insured by FHA or guaranteed by VA at the loan level.

A State credit union organization believed that exempting refinances in which the "owner or guarantor" of the refinanced loan also is the "owner or guarantor" of the existing loan would reduce time and transaction costs. A State banking trade association commented in the context of balloon mortgages that streamlined refinances with the same "owner and guarantor" typically have lower costs than a refinance with another creditor. The national trade association that represents creditors believed that the language of the proposal requiring that the "owner or guarantor" be the same would exclude loans that

are originated by the servicer or subservicer on the original obligation, and requested clarification to allow those entities to originate streamlined refinances and still be eligible for the exemption.

As noted under "Background," the Agencies also sought information on the valuation practices of private creditors for refinanced loans where the private owner or guarantor remains the same and the loans are not sold to a GSE or insured or guaranteed by a Federal government agency. Two national organizations representing appraisers commented that when refinanced loans are not sold to the GSEs or insured or guaranteed by a government agency, creditors are likely to order appraisals with interior inspections because of the increased risk to the creditor.

Five commenters – three State credit union associations and two State banking trade associations –supported the proposed exemption for streamlined refinances but requested that the Agencies remove the proposed prohibition on balloon payments. These commenters believed that balloon mortgages can be an affordable option and serve an important role in helping consumers retain their homes. For similar reasons, one of the State credit union associations also supported eliminating the proposed prohibition on interest-only payments. A State banking trade association urged the Agencies to consider including Balloon Payment Qualified Mortgages[38] in the proposed expanded definition for qualified mortgages, arguing that these types of mortgages undergo rigorous underwriting procedures similar to those required under the general qualified mortgage provisions.[39]

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[38] *See* § 1026.43(e)(6) and (f).
[39] § 1026.43(e)(2)

In addition to the restrictions on exempt refinancings that the Agencies proposed, one State bank commenter recommended that the proceeds from the refinance be used to pay both principal and accrued interest since the majority of refinance loans today include the accrued interest of the refinanced loan into the new loan amount. This commenter stated that including accrued interest would not adversely affect the consumer and could be beneficial if the consumer does not have the cash to pay the amount.

An affordable housing organization commenter stated that any streamlined refinance resulting in higher payments, higher interest rates or longer loan terms for the consumer should not be exempt. This commenter also believed that previously refinanced loans should not be exempt to prevent an accumulation of high fees from eroding the consumer's equity.

A State credit union association commenter opposed limiting the amount of points and fees that may be financed on an exempt refinance transaction. This commenter pointed out that a points and fees test applies to "high-cost" mortgages in Regulation Z[40] and asserted that it is not necessary to include point and fee caps as part of HPML appraisal rules. This commenter also argued that to do so would create more regulatory confusion for consumers and financial institutions.

Two commenters – a national mortgage banking association and an affordable housing organization – suggested that one of the criteria for an exempt refinance transaction should be a consumer benefit. The national mortgage banking association commenter recommended that the Agencies adopt the benefits test used by the GSEs for

[40] *See* § 1026.32(a), implementing TILA section 103(aa), 15 U.S.C. 1602(aa), as amended by section 1431 of the Dodd-Frank Act (revising the points and fees triggers for determining whether a loan is a "high-cost mortgage." *See also* § 1026.43(e)(3), implementing TILA section 129C(b)(2)(A)(vii), 15 U.S.C. 1639c(b)(2)(A)(vii) (limiting points and fees that may be charged on a "qualified mortgage").

HARP loans, which requires that the new loans put borrowers in a better position by reducing their payments or moving them from a risky loan structure.[41] Similarly, the affordable housing organization commenter stated that only streamlined refinance transactions clearly lowering the consumer's risk should be exempt. On the other hand, a State credit union association commenter opposed introducing additional limits on the exemption, such as requiring that the borrower have made timely payments for a specified period or that the consumer "benefit" from the transaction in some way defined in the regulations.

The Agencies also requested comments on whether the exemption for refinance loans should be conditioned on the creditor obtaining an alternative valuation and providing a copy to the consumer three business days prior to closing. The Agencies further asked whether obtaining and providing an alternative valuation would better position the consumer to consider alternatives, and whether consumers seeking to refinance their existing first lien loan typically need or want to consider alternatives to refinancing. Lastly, the Agencies generally requested comment and data on whether a condition on the exemption is necessary.

Four commenters – a State credit union association, a national community bank trade association, a national mortgage banking association, and a financial holding company – affirmatively opposed requiring creditors to obtain an alternative valuation to qualify their refinance loans for the refinance exemption from the HPML appraisal rules. Commenters stated that doing so would hinder the refinancing process and increase the time and expense of these transactions unnecessarily. These commenters did not believe

[41] *See* Fannie Mae Selling Guide, B5-5.2-02, DU Refi Plus and Refi Plus Underwriting Considerations (9/24/2013).

that a significant benefit exists in giving an alternative valuation when consumers are not increasing the amount of their debt or changing the collateral.

Comments from a State bank and a State credit union association suggested that if an alternative valuation were required, creditors should be able to rely on an existing appraisal to the extent permitted by existing Federal appraisal regulations and the interagency appraisal guidelines,[42] which allow for using an existing appraisal prepared for another financial institution. A credit union commenter and a State credit union association commenter suggested that if an alternative is required, a "drive-by" appraisal or comparable market analysis to ensure that the home still stands and is in reasonable condition is prudent when modifying or restructuring debt to reduce foreclosures and further delinquencies.

Three national appraiser organizations and an affordable housing organization recommended that, at minimum, an alternative valuation to an appraisal with an interior inspection should be required so that consumers are better informed. The appraiser group commenters recommended that creditors obtain replacement cost estimates or other less costly services provided by appraisers, such as desktop appraisals. One appraiser group generally asserted that the consumer should be made aware of what type of valuation service was performed and by whom.

No commenters provided data relevant to whether requiring an alternative valuation as a condition of the proposed refinance exemption would be necessary or beneficial.

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[42]*See* OCC: 12 CFR 34.45(b)(2) and 12 CFR 164.5(b)(2); Board: 12 CFR 225.65(b)(2); FDIC: 12 CFR 323.5(b)(2); NCUA: 12 CFR 722.5(b)(2).

In the 2013 Supplemental Proposed Rule, the Agencies recognized that estimates of value may not always be required by Federal law or investors. For example, some creditors are not subject to the appraisal and evaluation requirements that apply to Federally regulated financial institutions[43] under FIRREA and, therefore would not be required to obtain a FIRREA-compliant valuation on a "no cash out" refinance. Thus, the Agencies requested comment on the extent to which either appraisals or other valuation tools such as AVMs or broker price opinions (BPOs) are used in connection with streamlined refinances – by non-depositories not covered by FIRREA in particular. Only one commenter, a national appraiser organization, responded to this question, stating that BPOs are not used in refinance transactions and, in fact, are illegal in many states. Moreover, this commenter pointed out that GSEs and other government agencies prohibit using BPOs in refinancing, and use their own AVMs to waive appraisal requirements when appropriate.

The Final Rule

The Agencies are adopting the exemption for certain refinancings proposed in the 2013 Supplemental Proposed Rule with modifications to some of the criteria for an exempt refinance transaction, described in the section-by-section analysis below. Consistent with the 2013 Supplemental Proposed Rule, the Agencies decline to adopt an exemption for all refinance loans, as a few commenters on the 2012 Proposed Rule suggested. The appraisal rules in TILA Section 129H apply to "residential mortgage loans" that are higher-priced and secured by the consumer's principal dwelling. TILA section 129H(f), 15 U.S.C. 1639h(f). The term "residential mortgage loan" includes

[43] *See* 12 U.S.C 3350(7) (defining "financial institution" for purposes of FIRREA and implementing regulations).

refinance loans.[44] Accordingly, the Agencies believe that an exemption for all HPML refinances would be overbroad. For example, in refinance transactions involving additional cash out to the consumer, consumer equity in the home can decrease significantly, increasing risks, so the Agencies do not believe an exemption from this rule would be appropriate.

As stated in the 2013 Supplemental Proposed Rule, the Agencies believe that a narrower exemption for certain types of HPML refinance loans, generally consistent with the program criteria for streamlined refinances under GSE and Federal government agency programs, is in the public interest and will promote the safety and soundness of creditors. The Agencies recognize that, by reducing the risk of foreclosures and helping borrowers better afford their mortgages, streamlined refinancing programs can contribute to stabilizing communities and the economy, both now and in the future. Streamlined HPML refinance transactions can help borrowers who are at risk of default in the near future, as well as those who might not default in the near term but could benefit by refinancing into a lower rate mortgage for considerable cost savings over time. The Agencies also recognize that streamlined refinancing programs assist credit risk holders to manage their risks. Originating HPML refinances that are beneficial to consumers can be important to creditors to ensure the continuing performance of loans on their books and to strengthen customer relations. For investors in these loans, the streamlined refinances can reduce financial risks associated with potential defaults and foreclosures.

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

As a general matter, the purpose of the exemption for certain refinance transactions is to facilitate transactions that can be beneficial to borrowers even though they are HPMLs. When the consumer is not obtaining additional funds to increase the amount of the debt (other than the costs related to the refinancing), and the entity that will hold the credit risk of the refinance loan is already the credit risk holder on the existing loan, the benefit from obtaining a new appraisal may be insufficient to warrant the additional cost. The Agencies believe that an exemption from the HPML appraisal rules for certain HPML refinances can ensure that the time and cost generated by new appraisal requirements are not introduced into certain HPML transactions – namely, those that are not qualified mortgages but are part of programs designed to help consumers avoid defaults and improve their financial positions, as well as help creditors and investors avoid losses and mitigate credit risk.

Definition of "refinancing"

Consistent with the proposal, § 1026.35(c)(2)(vii) in the final rule defines a "refinancing" to mean "refinancing" in § 1026.20(a). Also consistent with the proposal, the definition of "refinancing" under § 1026.35(c)(2)(vii) does not require that the creditor remain the same for both the refinancing and the existing obligation.[45] As noted in the 2013 Supplemental Proposed Rule, this is a departure from the definition of "refinancing" under § 1026.20(a); commentary to that provision clarifies that a "refinancing" under § 1026.20(a) includes "only refinancings undertaken by the original creditor or a holder or servicer of the original obligation." *See* comment 20(a)-5. By

[45] "Creditor" is defined under Regulation Z to mean, in pertinent part, "[a] person who regularly extended consumer credit that is subject to a finance charge . . ., and to whom the obligation is initially payable, either on the face of the note or by contract . . . ." § 1026.2(a)(17).

contrast, the exemption in § 1026.35(c)(2)(vii) allows a different creditor to extend the refinance loan, as long as the credit risk holder remains the same on both the existing loan and the refinance.

As stated in new comment 35(c)(2)-1, discussed previously, the Agencies emphasize that any creditor subject to regulation by a Federal financial regulatory agency remains subject to FIRREA regulations regarding appraisals and evaluations and the accompanying Interagency Appraisal and Evaluation Guidelines.[46] As such, these institutions will have to obtain an appraisal or "evaluation" under FIRREA rules for any refinance loan, regardless of whether it qualifies for an exemption from the HPML appraisal rules.

Finally, in § 1026.35(c)(2)(vii), the Agencies are clarifying that the refinance loans eligible for the exemption are limited to loans "secured by a first lien," which is consistent with the Agencies' intention in the 2013 Supplemental Proposed Rule.

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

The exemption from the HPML appraisal rules requires that the refinance transaction satisfy several criteria. These are described in the section-by-section analysis of § 1026.35(c)(2)(vii)(A), (B), and (C).

One criterion that a refinance loan must meet is that either: (1) The credit risk of the refinance loan is retained by the person that held the credit risk of the existing obligation and the credit risk is not subject, at consummation, to a commitment to be transferred to another person; or (2) the refinance loan is insured or guaranteed by the same Federal government agency that insured or guaranteed the existing obligation.

[46] *See* OCC: 12 CFR parts 34, Subpart C, and 164; Board: 12 CFR part 208, subpart E, and part 225, subpart G; FDIC: 12 CFR part 323; NCUA: 12 CFR part 722. *See also* 75 FR 77450 (Dec. 10, 2010).

*35(c)(2)(vii)(A)(*1) – *same credit risk holder*. Substantively consistent with the 2013 Supplemental Proposed Rule, § 1026.35(c)(2)(vii)(A)(*1*) allows the exemption for certain refinancings to apply if the credit risk holder is the current credit risk holder of the existing obligation (assuming the criteria in § 1026.35(c)(2)(vii)(B) and (C) are also met). The Agencies are adopting this requirement as a condition of obtaining the refinance loan exemption from the HPML appraisal rules because the Agencies believe that this restriction is important to ensuring that the exemption promotes the safety and soundness of financial institutions. An exemption for streamlined refinances from the HPML appraisal rules can help creditors more readily refinance loans to mitigate risk by placing consumer in loans with better terms. Decreased default risk for all parties is also in the public interest.

For clarity, as discussed previously, the final regulation defines "credit risk" to mean the financial risk that a loan will default. *See* § 1026.35(c)(1)(ii) and corresponding section-by-section analysis. The final rule also differs from the proposal in that it does not use the terms "guarantor" or "owner," but instead refers to the holder of the credit risk.

Based on public comments, the Agencies are concerned that the terms "guarantor" and "owner" may have multiple meanings in the mortgage markets and be confusing. For example, the Agencies are concerned that the agreements associated with loans securitized in a private-label mortgage-backed security (MBS) may include parties identified as "guarantor" and "owner," but such parties do not bear the "credit risk" as defined in this final rule. *See* § 1026.35(c)(1)(ii).

In GSE securitizations, a GSE bears all of the credit risk because it either "owns" a loan and holds the loan in portfolio, or "guarantees" the loan by placing the loan in an MBS and guaranteeing payments of principal and any interest to investors. Some of these loans might have private mortgage insurance, but the GSE is the beneficiary.

By contrast, in private-label securitizations, the credit risk is spread among multiple parties; for example, the originating credit might retain some residual risk (and will be required to for "Qualified Residential Mortgages"[47]), the other MBS investors bear certain risks depending on the "tranche" or risk tier of the investor, and private mortgage insurers or bond insurers also may guarantee some losses. Typically, when a loan in an MBS is refinanced, the loan will not remain in the same MBS.[48] The Agencies believe that where entities take on material new credit risk with a refinance, safety and soundness and the public interest are not served by exempting that refinance from the HPML appraisal rules.

At the same time, the Agencies recognize that the private-label securitization market could involve MBS structures that include an entity that provides a guarantee similar to that guarantee provided by Fannie Mae and Freddie Mac today. Therefore, the criterion in § 1026.35(c)(2)(vii)(A)(*1*) is intended to address not only GSE securitizations, but also any equivalent private-label structures that meet the requirements of the exemption. The Agencies believe that private creditor refinance transactions may have similar benefits to consumers, creditors, and credit markets as those under GSE and government agency programs. In particular, the Agencies believe that the central feature

[47] *See* 78 FR 57920 (Sept. 20, 2013).
[48] Certain disincentives for refinancing a loan out of a private-label refinance may exist, including contractual restrictions on refinancing the loan.

of public streamlined refinance programs – the credit risk holder on the existing obligation remains the credit risk holder on the refinance loan – must be in place in any private streamlined refinances that would be entitled to an exemption from the HPML appraisal requirements.

Accordingly, the Agencies are not adopting proposed comment 35(c)(2)(vii)(A)-1, which was intended to help clarify the meaning of the terms "owner" and "guarantor." Instead, the Agencies are adopting a revised version of this comment, re-numbered comment 35(c)(2)(vii)(A)(*1*)-1, that focuses on what it means to hold the credit risk on a loan for purposes of the exemption. Specifically, comment 35(c)(2)(vii)(A)(*1*)-1 states that the requirement that the holder of the credit risk on the existing obligation and the refinance loan be the same applies to situations in which an entity bears the financial responsibility for the default of a loan by either holding the loan in its portfolio or guaranteeing payments of principal and any interest to investors in a mortgage-backed security in which the loan is pooled. *See* § 1026.35(c)(1)(ii) (defining "credit risk"). The comment states that, for example, a credit risk holder could be a bank that bears the credit risk on the existing obligation by holding the loan in the bank's portfolio. Another example of a credit risk holder would be a government-sponsored enterprise that bears the risk of default on a loan by guaranteeing the payment of principal and any interest on a loan to investors in a mortgage-backed security. Finally, the comment clarifies that the holder of credit risk under § 1026.35(c)(2)(vii)(A)(*1*) does not mean individual investors in an MBS or providers of private mortgage insurance.

Consistent with the proposal (*see* proposed comment 35(c)(2)(vii)(A)-1), the Agencies do not intend that individual investors in an MBS be considered credit risk

holders under this exemption criterion. The risks held by investors in these arrangements are too disparate for these investors to be considered credit risk holders under the final rule.

The Agencies also do not intend private mortgage insurers – either at the loan level or MBS level (as bond insurers, for example) – to be credit risk holders under the final rule because the types of losses they guarantee may vary for each loan by contract, as may their valuation standards for collateral underlying loans they insure. These factors are subject to private contractual arrangements that are not publicly available. Even if the refinance loan were insured by the same private mortgage insurance provider that insured the existing obligation, the types of losses guaranteed by this provider on the refinance loan might be different from those guaranteed on the existing loan and a new party to the refinance transaction could be taking on significant new credit risk.

In new comment 35(c)(2)(vii)(A)(*1*)-2, the final rule provides two illustrations of refinance situations in which the credit risk holder would be considered the same for both the existing obligation and the refinance loan. These examples are not intended to be exhaustive. In the first illustration, the existing obligation is held in the portfolio of a bank, thus the bank holds the credit risk. The bank arranges to refinance the loan and also will hold the refinance loan in its portfolio. If the refinance transaction otherwise meets the requirements for an exemption under § 1026.35(c)(2)(vii), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance loan. In this case, the exemption would apply regardless of whether the bank arranged to refinance the loan directly or indirectly, such as through the servicer or subservicer on the existing obligation. *See* comment 35(c)(2)(vii)(A)(*1*)-2.i.

In the second illustration, the existing obligation is held in the portfolio of a GSE, thus the GSE holds the credit risk. The GSE approves a refinance of the existing obligation by the servicer of the loan and immediately purchases the refinance loan. The GSE pools the refinance loan in a mortgage-backed security guaranteed by the GSE; thus, the GSE continues to hold the credit risk on the refinance loan. If the refinance transaction otherwise meets the requirements for an exemption under § 1026.35(c)(2)(vii), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance loan. In this case, the exemption would apply regardless of whether the existing obligation were refinanced by the servicer or subservicer on the existing obligation (acting as a "creditor" under § 1026.2(a)(17)) or by a different creditor. *See* comment 35(c)(2)(vii)(A)(*1*)-2.ii.

As noted, one commenter requested clarification about whether a servicer or subservicer could originate a refinance that would be eligible for the exemption. This commenter expressed concerns that the requirement that the "owner or guarantor" remain the same would prohibit this for exempt refinances. Comment 35(c)(2)(vii)(A)(*1*)-2.ii is intended to clarify that servicers or subservicers may originate refinances that are exempt if the credit risk holder on the original obligation remains the credit risk holder on the refinance loan.

In new comment 35(c)(2)(vii)(A)(*1*)-3, the final rule notes that a creditor may at times make a mortgage loan that will be transferred or sold to a purchaser pursuant to an agreement that has been entered into at or before the time the transaction is consummated. Such an agreement is sometimes known as a "forward commitment." The comment clarifies that a refinance loan with a forward commitment does not satisfy

the requirement of § 1026.35(c)(2)(vii)(A)(*1*) if the loan will be acquired by another person pursuant to a forward commitment, such that the credit risk on the refinance loan will transfer to a person who did not hold the credit risk on the existing obligation. This comment is intended to ensure that creditors cannot evade the HPML appraisal requirement by refinancing a loan on which they hold the credit risk but then bear the credit risk on the refinance loan for only a short interim period before transferring the loan to a new longer-term credit risk holder.

Overall, the Agencies believe that the benefits of an appraisal with an interior inspection are less clear where the credit risk holder remains the same for both transactions. The credit risk holder of the existing obligation is more likely to be familiar with the property securing the transaction or relevant market conditions than a new credit risk holder. This knowledge could have resulted from the credit risk holder having evaluated property valuation documents when taking on the original credit risk, as well as ongoing portfolio monitoring. By contrast, when the credit risk holder of the refinance loan is not also the credit risk holder of the existing loan, the refinance loan involves new risk to the new credit risk holder of the refinance loan; here, safety and soundness would be better served by an appraisal in conformity with USPAP and in compliance with FIRREA that includes an interior inspection.[49]

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

As stated in the 2013 Supplemental Proposed Rule, the Agencies generally believe that requiring that the credit risk holder remain the same makes it unnecessary to require that the "creditor" (as defined under § 1026.2(a)(17)) also be the same for both the existing obligation and the refinance loan. Under Regulation Z's definition of "creditor," the creditor will not necessarily be the credit risk holder for both the existing and the refinance loans. By allowing the creditor to be different (as long as the underlying credit risk holder on the loan remains the same), the final rule provides consumers with greater ability to obtain a more beneficial loan without having to obtain an appraisal.

35(c)(2)(vii)(A)(2) – government agency programs. Section 1026.35(c)(2)(vii)(A)(*2*) provides that a refinance loan meeting the other criteria for the exemption (§ 1026.35(c)(2)(vii)(B) and (C)) could also qualify for the exemption if the Federal government agency that insured or guaranteed the existing obligation also insures or guarantees the refinance loan.

Typically these government agency loans would be qualified mortgages under the Bureau's 2013 ATR Final Rule;[50] they also potentially could be qualified mortgages under the qualified mortgage regulations of each of these agencies, once issued.[51] As qualified mortgages, they would be exempt from the HPML appraisal rules under the exemption for qualified mortgages in § 1026.35(c)(2)(i).

The Agencies are adopting a separate provision for Federal government agency loans for several reasons. First, § 1026.35(c)(2)(vii)(A)(*2*) is intended to ensure that the HPML appraisal rules will not disrupt government refinance programs, which the

[50] *See* § 1026.43(e)(4)(iii)(A); *see also* TILA section 129C(b)(3)(ii), 15 U.S.C. 1639c(b)(3)(ii).
[51] *See* 78 FR 59890 (Sept. 30, 2013).

Agencies do not believe was Congress's intent. This provision is meant to clarify the 2013 Supplemental Proposed Rule, which was intended to exempt refinances consistent with existing Federal government agency streamlined refinance programs.

Second, as noted, Federal government agency loans have valuation requirements that the affected Federal agency has deemed sufficiently protective of its interests. The Agencies do not believe that Congress intended that the HPML appraisal rules should override the established requirements and standards of Federal government agencies for their mortgage programs. Moreover, the requirements of Federal mortgage programs, including the valuation requirements, are transparent and established by publicly accountable entities. In this regard, refinances retaining FHA insurance, for instance, are distinguishable from loans with the same loan-level private mortgage insurer, whose valuation and other standards are determined by private contracts. *See also* comment 35(c)(2)(vii)(A)(*1*)-1 and accompanying section-by-section analysis.

Third, the terms "insured" and "guaranteed" are commonly used to describe the loan-level protections afforded by HUD, VA, and USDA (including RHS) against losses due to default; however, the Agencies are concerned that these terms might not be readily understood to be a part of the same credit risk holder provision under § 1026.35(c)(2)(vii)(A)(*1*). As noted, one commenter indicated, for example, that confusion might exist about whether a loan with FHA insurance or a VA guaranty that was refinanced into a loan also insured or guaranteed by FHA or VA could qualify for the exemption if the secondary market participants differed on the two loans. The Agencies therefore wish to be clear that these loans would still qualify for the exemption because the loan-level credit risk holder remains the same.

Finally, these loans might not always be "qualified mortgages" under the Bureau's ATR rules because they might not meet all of the criteria required for that status.[52] The Agencies do not believe that layering the HPML appraisal requirements onto Federal government agency loans provides sufficient benefits to warrant the drawbacks of burdening consumers and creditors in these transactions. A Federal government agency has already determined what the appropriate valuation requirements should be and, as previously discussed, these mortgage programs are intended to provide needed relief to borrowers and to mitigate credit risk for creditors. The Agencies thus believe that the safety and soundness of creditors and the public interest is served by allowing these transactions to go forward under valuation rules established by the Federal agency insuring or guaranteeing the loan.

Relationship to the 2013 ATR Final Rule. The Agencies recognize that in the near term, most Federal government program and GSE streamlined refinance loans will be exempt from the HPML appraisal rules as "qualified mortgages" under § 1026.35(c)(2)(i). Under the Bureau's 2013 ATR Final Rule, loans eligible to be purchased, guaranteed, or insured by Fannie Mae, Freddie Mac, HUD, VA, USDA, or RHS (based solely on criteria related to the consumer's ability to repay) are subject to the general ability-to-repay rules (found in § 1026.43(c)). *See* § 1026.43(e)(4)(ii). However, if they meet certain criteria,[53] they are considered "qualified mortgages" entitled to either

[52] To be "qualified mortgages," loans eligible to be insured or guaranteed by HUD, VA, USDA or RHS must not result in negative amortization or provide for interest-only or balloon payments; have a loan term exceeding 30 years; or points and fees above to three percent of the loan amount (with a higher cap for loans under $100,000).§ 1026.43(e)(4)(i)(A) (cross-referencing § 1026.43(e)(2)(i) through (iii).

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

a rebuttable or conclusive presumption of compliance with the general ability-to-repay rules, depending on the loan's interest rate.[54] *See* § 1026.43(e)(1), (e)(4).[55] As qualified mortgages, they are exempt from the HPML appraisal rules. *See* § 1026.35(c)(2)(i).

First, the 2013 ATR Final Rule limits the qualified mortgage status of loans purchased or guaranteed by Fannie Mae and Freddie Mac under the special rules of § 1026.43(e)(4). These loans will not be eligible to be qualified mortgages if consummated after January 10, 2021, unless they meet the criteria of another type of qualified mortgage. *See* § 1026.43(c)(4)(iii)(B). Second, again, GSE-eligible loans and loans eligible to be insured or guaranteed under a HUD, VA, USDA, or RHA program[56] are "qualified mortgages" only if they meet certain criteria – they must not result in negative amortization or provide for interest-only or balloon payments; have a loan term exceeding 30 years; or points and fees above to three percent of the loan amount (with a higher cap for loans under $100,000).[57]

The Agencies believe that the refinance exemption under the HPML appraisal rule should nonetheless cover Federal government agency and GSE streamlined refinance

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[54] Creditors making qualified mortgages that are "higher-priced" are entitled to a rebuttal presumption of compliance with the general ability-to-repay rules, while creditors making qualified mortgages that are not "higher-priced" are entitled to a safe harbor of compliance. A "higher-priced covered transaction" under the Bureau's 2013 ATR Rule is a transaction covered by the general ability-to-repay rules "with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first lien covered transaction, other than a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of § 1026.43; by 3.5 or more percentage points for a first lien covered transaction that is a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of § 1026.43; or by 3.5 or more percentage points for a subordinate lien covered transaction. § 1026.43(b)(4).

[55] They also can be "qualified mortgages" if, for instance, they meet all of the criteria under the general definition of "qualified mortgage." *See* § 1026.43(e)(2).

[56] For loans eligible to be insured or guaranteed under a HUD, VA, USDA, or RHA program, the qualified mortgage status conferred under § 1026.43(e)(4)(i) will be replaced for each type of loan when those agencies respectively issue rules defining a qualified mortgage based on each agency's own programs. *See* § 1026.43(e)(4)(iii)(A); *see also* TILA section 129C(b)(3)(ii), 15 U.S.C. 1639c(b)(3)(ii). *See also, e.g.*, 78 FR 59890 (Sept. 30, 2013).

[57] *See* § 1026.43(e)(4)(i)(A) (cross-referencing § 1026.43(e)(2)(i) through (iii).

loans. The exemption is appropriate here in part because the GSEs and Federal government agencies have valuation requirements to protect their interests that are transparent and publicly available. In this regard, an important distinction between the qualified mortgage provisions addressing GSE and Federal government agency loans and the HPML refinance exemption criteria in § 1026.35(c)(2)(vii)(A)(*1*) and (*2*) is that qualified mortgage status may be conferred on loans "eligible" to be purchased by a GSE or insured or guaranteed by a Federal government agency; by contrast, the HPML refinance exemption from the HPML appraisal rules requires that these loans actually are purchased by Fannie Mae or Freddie Mac or continue to be insured or guaranteed by a Federal government agency. In this way, compliance with valuation requirements established by these entities is assured as part of the justification for the exemption.

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

Prohibition on certain risky features. Consistent with the 2013 Supplemental Proposed Rule, § 1026.35(c)(2)(vii)(B) requires that a refinancing eligible for the refinance exemption from the HPML appraisal rules not allow for negative amortization ("cause the principal balance to increase"), interest-only payments ("allow the consumer to defer repayment of principal"), or a balloon payment, as defined in § 1026.18(s)(5)(i).[58]

The Agencies also are adopting without change proposed comment 35(c)(2)(vii)(B)-1 which states that, under § 1026.35(c)(2)(vii)(B), a refinancing must provide for regular periodic payments that do not: result in an increase of the principal balance (negative amortization), allow the consumer to defer repayment of principal (*see*

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

comment 43(e)(2)(i)-2), or result in a balloon payment. The comment thus clarifies that the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. The comment further states that, except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. The comment cross-references comment 43(c)(5)(i)-4 of the Bureau's 2013 ATR Final Rule for an explanation of the term "substantially equal."[59] The comment also clarifies that a single-payment transaction is not a refinancing meeting the requirements of § 1026.35(c)(2)(vii) because it does not require "regular periodic payments."

Where these features are present in an HPML that is not a qualified mortgage, the Agencies believe that the information provided by a real property appraisal in conformity with USPAP that includes an interior property inspection is important for the safety and soundness of creditors and the protection of consumers. Additional equity may be needed to support a loan with negative amortization, for example, and the risk of default might be higher for loans with interest-only and balloon payment features.

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

The Agencies recognize that consumers who need immediate relief from payments that they cannot afford might benefit in the near term by refinancing into a loan that allows interest-only payments for a period of time. However, the Agencies believe that a reliable valuation of the collateral is important when the consumer will not be building any equity for a period of time. In that situation, the consumer and credit risk holder may be more vulnerable should the property decline in value than they would be if the consumer were paying some principal as well.[60]

The Agencies also recognize that, in most cases, balloon payment mortgages are originated with the expectation that a consumer will be able to refinance the loan when the balloon payment comes due. These loans are made for a number of reasons, such as to control interest rate risk for the creditor or as a wealth management tool, usually for higher-asset consumers. Regardless of why a balloon mortgage is made, however, there is always risk that a consumer will not be able to make the balloon payment or refinance, with potentially significant consequences for the consumer and the credit risk holder if something unexpected happens and the consumer cannot do so.

The Agencies note that the GSE and government streamlined refinance programs described above do not allow these features, in part because helping a consumer pay off debt more quickly is one of the goals of these programs.[61] In addition, the prohibition on risky features for this exemption is consistent with provisions in the Dodd-Frank Act

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

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

reflecting congressional concerns about these loan terms. For example, in Dodd-Frank Act provisions regarding exemptions from certain ability-to-repay requirements for refinancings under HUD, VA, USDA, and RHS programs, Congress similarly required that the refinance loan be fully amortizing and prohibited balloon payments.[62] The final rule also is consistent with a provision in the Bureau's 2013 ATR Final Rule that exempts the refinancing of a "non-standard mortgage" into a "standard mortgage" from the requirement that the creditor make a good faith determination of the consumer's ability to repay the loan. *See* § 1026.43(d). To be eligible for this exemption from the ability-to-repay rules, the refinance loan must, among other criteria, not allow for negative amortization, interest-only payments, or a balloon payment. *See* § 1026.43(d)(1)(ii). The Agencies believe that these statutory provisions and program restrictions reflect a judgment on the part of Congress, government agencies, and the GSEs that refinances with negative amortization, interest-only payment features, or balloon payments may increase risks to consumers and creditors.

The Agencies are concerned that negative amortization, interest-only payments, and balloon payments are loan features that may increase a loan's risk to consumers as well as to primary and secondary mortgage markets.[63] Thus, in the Agencies' view, permitting these non-qualified mortgage HPML refinances to proceed without a real property appraisal in conformity with USPAP and FIRREA that includes an interior inspection would not be consistent with the Agencies' exemption authority, which

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

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

permits exemptions only if they promote the safety and soundness of creditors and are in the public interest.

As noted, several commenters requested that the prohibition on balloon payments for exempt refinances be eliminated in the final rule. One commenter also requested that the prohibition on interest-only payments be eliminated. For the reasons stated, however, the Agencies continue to believe that the prohibitions on balloon payments and interest-only payments are appropriate. In addition, the Agencies note that some of the public comments in support of eliminating the balloon payment prohibition suggested uncertainty about whether "balloon payment qualified mortgages" under the Bureau's ability-to-repay rules would be exempt. *See* § 1026.43(e)(6) and (f). As set out in the section-by-section analysis of the exemption for qualified mortgages under § 1026.35(c)(2)(i), both temporary balloon payment mortgages under § 1026.43(e)(6) and balloon payment qualified mortgages under § 1026.43(f) are exempt from the HPML appraisal rules under the exemption for qualified mortgages. The Agencies believe that this clarification helps address the concerns of commenters on this issue.

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

No cash out. Proposed § 1026.35(c)(2)(vii)(C) would have required that the proceeds from a refinancing eligible for an exemption from the HPML appraisal rules be used for only two purposes: (1) to pay off the outstanding principal balance on the existing first lien mortgage obligation; and (2) to pay closing or settlement charges required to be disclosed under RESPA. Based on comments, particularly a comment recommending that the Agencies clarify that proceeds could be used to pay accrued interest, the Agencies are revising this provision of the proposal.

Specifically, the Agencies are revising § 1026.35(c)(2)(vii)(C) to require that the proceeds from the refinance loan be used "only to satisfy the existing obligation and to pay amounts attributed solely to the costs of the refinancing." The Agencies have determined that compliance and understanding are best facilitated by generally modeling the "no cash out" aspect of the exemption on other provisions in Regulation Z regarding refinancings in the rescission context. Thus, revised § 1026.35(c)(2)(vii)(C) incorporates concepts and guidance from § 1026.23(f)(2), which sets out the portion of a refinance that is rescindable – namely, the portion that exceeds "the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing or consolidation." The Official Staff Commentary associated with § 1026.23(f)(2) clarifies, in pertinent part, that "a new advance does not include amounts attributed solely to the costs of the refinancing. These amounts would include section 1026.4(c)(7) charges (such as attorney's fees and title examination and insurance fees, if bona fide and reasonable in amount), as well as insurance premiums and other charges that are not finance charges. (Finance charges on the new transaction – points, for example – would not be considered in determining whether there is a new advance of money in a refinancing since finance charges are not part of the amount financed.)" Comment 23(f)(2)-4.

Revised comment 35(c)(2)(vii)(C)-1 provides that the "existing obligation" includes the consumer's existing first lien principal balance, any earned unpaid finance charges such as accrued interest, and any other lawful charges related to the existing loan. Accrued interest is any interest that has accumulated since the consumer's last payment of principal and interest, but that the borrower has not yet paid and has not been

capitalized into the principal balance. Accrued interest exists when a consumer makes a payment on the existing obligation on October 1st, for example, but then refinances into a new loan on October 20th. In this case, interest would have accumulated between the payment made on October 1st and the date of the refinance. However, the consumer would not have paid that accrued interest and the creditor normally would not have capitalized that interest into the principal balance.

Revised comment 35(c)(2)(vii)(C)-1 further provides that guidance on the meaning of refinancing costs is available in comment 23(f)-4. Finally, consistent with proposed comment 35(c)(2)(vii)(C)-1, the revised comment clarifies that, if the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under § 1026.35(c)(2)(vii) from the appraisal requirements in § 1026.35(c).

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

The Agencies also note that limiting the use of proceeds to allow for no extra cash out for the consumer other than closing costs is consistent with prevailing streamlined

refinance programs.[64] It is also consistent with the exemption from the Bureau's ability-to-repay rules for refinances of "non-standard mortgages" into "standard mortgages."[65] *See* § 1026.43(d)(1)(ii)(E). The Agencies believe that consistency across mortgage rules can help facilitate compliance and ease compliance burden.

Other conditions. Consistent with the proposal, the Agencies are not adopting additional conditions on the types of refinancings eligible for the exemption from the HPML appraisal rules. In this way, the Agencies seek to maintain flexibility for creditors and investors to adapt and change their borrower eligibility requirements and other requirements for streamlined HPML refinances to address changing market environments and factors that may be unique to their programs.

Regarding comments supporting a requirement that the refinance result in a "benefit" to the consumer, such as a lower payment, a lower rate, or shorter term, the Agencies continue to believe that it is unclear how the existence of a borrower benefit in the new transaction relates to what type of valuation should be required. The Agencies are also not adopting a limitation on the points and fees that may be refinanced. Congress addressed loan cost parameters for the appraisal rules by defining HPMLs as loans with interest rates above APOR by a certain percentage. The Agencies are concerned that introducing a points and fees cap into the rule could create confusion and compliance difficulties, given the statutory points and fees caps implemented in other

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

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

overlapping regulations, such as regulations regarding qualified mortgages and high-cost mortgages, noted earlier.

Other protections in the final rule ensure that the borrower, creditor and investor would be taking on no new material credit risk, which the Agencies believe should be the primary determinant of whether an appraisal with an interior inspection should be required. The Agencies also believe that borrower benefits can be difficult to define because they can be highly transaction-specific. For example, a higher rate might result in a benefit to a consumer where the higher rate results from extending the loan term to lower the consumer's payments. Here, the benefit to the consumer is an improved ability to stay in the home by making the payments more affordable. Finally, the Agencies are concerned that a "benefits" test could add complexity and burden to the exemption that might undermine its intended benefits.

The Agencies are also not adopting borrower eligibility requirements, such as that the borrower must have been on-time with payments on the existing mortgage for a certain period of time, as at least one commenter suggested. As discussed in the 2013 Supplemental Proposed Rule, GSE and Federal government agency streamlined refinance programs require that borrower eligibility criteria be met, such as that the consumer have been current on the existing obligation for a certain period of time.[66] Commenters did not, however, explain how borrower eligibility requirements relate to whether an appraisal should be required. Again, the Agencies believe that the criteria for the

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

refinance exemption in the final rule comprise those that relate to whether a more or less rigorous valuation requirement should apply; the Agencies believe that the main consideration is whether new credit risk will be taken on by the consumer, creditor, and investor. The criteria adopted in the final rule are designed to minimize additional risk on the refinance by curbing material increases in principal and ensuring that the ultimate credit risk holder remains the same. In addition, the Agencies believe that streamlined refinance programs can provide maximum benefit to consumers, creditors, and investors when creditors and investors retain some flexibility to adapt borrower eligibility and other requirements to address changing market environments and factors that may be unique to their programs.

Finally, one commenter also urged the Agencies not to apply the exemption to loans that had already been refinanced, to avoid the consumer accruing excessive origination costs with successive refinances. The Agencies share concerns about harm to consumers through serial refinancings. On balance, however, the Agencies believe that consumers who have already refinanced their loans should have the same opportunities to take advantage of lower rates as other consumers. The Agencies believe that the limit on cash out helps mitigate abuses with serial refinancings by ensuring that consumers cannot continually refinance to pay off other debts without a full assessment of the collateral value.

Conditional exemption. In the 2013 Supplemental Proposed Rule, the Agencies sought comment on whether the exemption for refinance loans should be conditioned on the creditor obtaining an alternative valuation (*i.e.*, a valuation other than a real property appraisal in conformity with USPAP and FIRREA that includes an interior inspection)

and providing a copy to the consumer three days before consummation. In requesting comment on this issue, the Agencies noted that a refinanced mortgage loan is a significant financial commitment that involves material transaction costs.

Because refinances do involve potential risks and costs, the Agencies requested commenters' views on whether the consumer would better positioned to consider alternatives to refinancing if they were given an alternative valuation. The Agencies also sought data that might be relevant to whether this additional condition would be necessary.

For reasons discussed below, the Agencies are not adopting a condition on the refinance exemption that the creditor obtain and give the consumer an alternative valuation. As noted, several commenters affirmatively opposed requiring creditors to obtain an alternative valuation. Commenters stated that doing so would hinder the process and increase the time and expense of these transactions unnecessarily. These commenters did not believe that a significant benefit exists in giving an alternative valuation when consumers are not increasing the amount of their debt or substituting the collateral.

Other commenters, while not affirmatively supporting or opposing an alternative valuation condition, suggested that if an alternative valuation is required, creditors should be able to rely on an existing appraisal to the extent permitted by existing Federal appraisal regulations and the interagency appraisal guidelines,[67] which allow for using an existing appraisal. Two commenters asked whether a creditor that is considering an extension of credit secured by a junior mortgage could use the appraisal obtained by the

[67] *See* OCC: 12 CFR parts 34, Subpart C, and 164; Board: 12 CFR part 208, subpart E, and part 225, subpart G; FDIC: 12 CFR part 323; NCUA: 12 CFR part 722. *See also* 75 FR 77450 (Dec. 10, 2010).

creditor who extended credit to the same borrower secured by a first mortgage. FIRREA real estate appraisal regulations required to be issued by the Federal financial institution regulatory agencies[68] allow a regulated institution[69] to accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution,[70] if certain conditions are met. These include that a regulated institution may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if: (1) the appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and (2) the regulated institution determines that the appraisal conforms to the requirements of this subpart and is otherwise acceptable.[71]

Still others suggested that, if an alternative is required, a "drive-by" appraisal or comparable market analysis to ensure that the home still stands and is in reasonable condition would be advisable. The Agencies believe that conditioning the exemption is not warranted, so they are not adopting this suggestion.

Several commenters supported conditioning the exemption and recommended that an alternative valuation to an appraisal with an interior inspection should be required so that consumers are better informed about their home value.

The Agencies believe that the condition discussed in the 2013 Supplemental Proposed Rule would not provide sufficient benefit to warrant the burden or cost it would

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[68] FDIC: 12 CFR part 323; FRB: 12 CFR part 208, subpart E and 12 CFR part 255, subpart G; NCUA: 12 CFR part 722; and OCC: 12 CFR part 34, subpart C, and 12 CFR part 164.

[69] A regulated institution is an institution regulated by a Federal financial institution regulatory agency, such as the FDIC, FRB, NCUA, or the OCC.

[70] The Interagency Appraisal and Evaluation Guidelines note that the Agencies' appraisal regulations do not contain a specific definition of the term "financial services institution." The term is intended to describe entities that provide services in connection with real estate lending transactions on an ongoing basis, including loan brokers.

[71] *See* OCC: 12 CFR 34. 45(b)(2) and 12 CFR 164.5(b)(2); Board: 12 CFR 225.65(b)(2); FDIC: 12 CFR 323.5(b)(2); NCUA: 12 CFR 722.5(b)(2).

introduce into the exemption. The vast majority of refinance transactions involve some type of valuation that, as of January 2014, creditors will have to provide to consumers. For example, for any refinance eligible for a Federal government program or to be sold to a GSE, the creditor would have to comply with any valuation requirements imposed under those programs. For loans not made under those programs but purchased or made by a Federally regulated financial institution, either an "evaluation" or an appraisal generally would be required.[72]

The Bureau's rules in Regulation B implementing Dodd-Frank Act amendments to the Equal Credit Opportunity Act[73] (ECOA) require all creditors to provide to credit applicants free copies of appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling.[74] The copies must be provided to the applicant promptly upon completion or three business days before consummation. *See id*. Regulation B defines "valuation" broadly to mean "any estimate of the value of a dwelling developed in connection with an application for credit."[75] § 1002.14(b)(3).

As stated in the 2013 Supplemental Proposed Rule, the Agencies recognize that obtaining estimates of value and providing copies of written valuations to consumers

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

[73] 15 U.S.C. 1691 *et seq.*

[74] *See* 12 CFR 1002.14(a)(1), effective January 18, 2014; 78 FR 7216 (Jan. 31, 2013) (2013 ECOA Valuations Final Rule).

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

might not always be required by Federal law or investors. For example, certain non-depositories and depositories are not subject to the appraisal and evaluation requirements that apply to Federally regulated financial institutions under FIRREA title XI. However, the Agencies did not receive data or information suggesting that a significant number of refinances would be subject to no valuation requirements. The Agencies believe that the volume of refinances that might be exempt from the HPML appraisal rules and subject to no other valuation requirements of either the government or investors will be very small and that the benefits of conditioning the exemption for these refinances will not outweigh complexity and burden to affected creditors and their consumers seeking streamlined refinances.

Again, the criteria for an exempt refinance adopted in the final rule are designed to limit the new risk that would result in a refinance, including risk resulting from significant additional equity being taken out of the home. Where no material credit risk is taken on in a refinance transactions, including risk resulting from a material reduction in home equity, the Agencies believe that valuation requirements are appropriately left to be determined by the parties involved in the transaction and any other applicable laws and regulations.

In sum, the Agencies believe that the exemption is appropriately narrow in scope to capture the types of refinancings that Congress has generally expressed an intent to facilitate. *See, e.g.*, TILA sections 129C(a)(5) and (6), 15 U.S.C. 1639c(a)(5) and (6).[76] The Agencies believe that this exemption promotes the safety and soundness of creditors and is in the public interest.

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

35(c)(2)(viii)

In section 35(c)(2)(viii), effective January 18, 2014, the Agencies are adopting a temporary exemption for all transactions secured in whole or in part by a manufactured home, until July 18, 2015. This temporary exemption of 18 months is intended to give creditors sufficient time to make any changes needed to comply with the HPML rules that will apply to manufactured home loans as a result of the final rules that will apply to applications received on or after July 18, 2015. The Agencies understand that creditors may need to make adjustments to their compliance systems for some of the new rules. These changes may involve new technical configurations and training, as well as modified or new contracts with any third-party service providers that the creditor may enlist to perform valuation services and related functions. Thus, the Agencies believe that this temporary exemption promotes the safety and soundness of creditors and is in the public interest.

Rules Effective July 18, 2015

For applications received on or after July 18, 2015, new rules will apply to loans secured by manufactured homes, as follows:

(1) The temporary exemption for loans secured by existing manufactured homes and land will expire; those loans will be subject to the HPML appraisal rules in § 1026.35(c)(3) through (6).

(2) A modified exemption for loans secured by a new manufactured home and land will take effect; those loans will be subject to all of the HPML appraisal requirements except the requirement that the appraisal include a physical visit of the

interior of the property. *See* § 1026.35(c)(2)(viii)(A) and accompanying section-by-section analysis.

(3) An exemption for loans secured by either a new or existing manufactured home and not land will be subject to a condition that the creditor obtain and provide to the consumer one of three types of value-related information. *See* § 1026.35(c)(2)(viii)(B) and accompanying section-by-section analysis.

These new rules are discussed below.

Loans Secured by an Existing Manufactured Home and Land

Under the version of § 1026.35(c)(2)(viii) that goes into effect on July 18, 2015, loans secured by an existing manufactured home and land together will be subject to the HMPL appraisal requirements in § 1026.35(c)(3) through (6), consistent with the January 2013 Final Rule and the 2013 Supplemental Proposed Rule.

The Agencies' Proposal

In the 2013 Supplemental Proposed Rule, the Agencies did not propose to exempt from the HPML appraisal rules transactions that are secured by both an existing manufactured home and land. The Agencies did not believe that an exemption for these transactions would be in the public interest and promote the safety and soundness of creditors. The Agencies noted that Federal government and GSE manufactured home loan programs generally require conformity with USPAP real property appraisal standards for transactions secured by both a manufactured home and land.[77] The

[77] *See*, *e.g.*, HUD: 24 CFR 203.5(e); HUD Handbook 4150.2, Valuations for Analysis for Home Mortgage Insurance for Single Family One- to Four-Unit Dwellings, chapter 8.4 and App. D; USDA: 7 CFR 3550.62(a) and 3550.73; USDA Direct Single Family Housing Loans and Grants Field Office Handbook (USDA Handbook), chapters 5.16 and, 9.18; VA: VA Lenders Handbook, VA Pamphlet 26-7 (VA Handbook), chapters 7.11, 11.3, and 11.4; Fannie Mae: Fannie Mae Single Family 2013 Selling Guide B5-

Agencies expressed the view that the Federal government agency and GSE requirements may reflect that conducting an appraisal in conformity with USPAP standards are feasible for existing manufactured homes together with land.

The Agencies noted that this view was affirmed by participants in informal outreach with experience in the area of manufactured home loan appraisals, who indicated that USPAP-compliant real property appraisals with an interior inspection are feasible and performed with regularity in these types of transactions. The Agencies also noted, however, that some commenters on the 2012 Proposed Rule recommended that the Agencies exempt these types of "land/home" transactions.[78]

Public Comments

In the 2013 Supplemental Proposed Rule, the Agencies sought comment on whether an exemption from the HPML appraisal requirements for transactions secured by an existing manufactured home and land would be in the public interest and promote the safety and soundness of creditors. The Agencies also sought comment on, among other issues, whether an exemption for these loans should be conditioned on the creditor providing the consumer with some other type of valuation information.

The Agencies received 14 comment letters on this issue from two national appraisal trade associations, a consumer advocate group, three affordable housing organizations, a policy and research organization, a national association for owners of manufactured homes, a credit union, a community bank, a national trade association for community banks, a State manufactured housing trade association, and two manufactured

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2.2-04, Manufactured Housing Appraisal Requirements (04/01/2009); Freddie Mac: Freddie Mac Single Family Seller/Servicer Guide, H33: Manufactured Homes / H33.6: Appraisal requirements (02/10/12).

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

housing nonbank lenders. In addition, a national manufactured housing industry trade association referred to and endorsed the comments of two manufactured housing lenders.

The credit union, community bank, consumer advocate group, affordable housing organizations, national association of owners of manufactured homes, and appraisal trade associations all supported the proposal to retain the coverage of HPMLs secured by an existing manufactured home and land, consistent with the January 2013 Final Rule.

The community bank stated that existing manufactured homes typically depreciate more than comparable site-built homes and should receive an interior and exterior inspection. This commenter asserted that an interior inspection is important for obtaining a proper valuation and that providing an exemption from the interior inspection requirement would not be appropriate. This commenter added that consumers and creditors deserve a safe and accurate transaction.

The appraisal trade associations acknowledged that appraisal assignments for transactions secured by existing manufactured homes and land can involve greater complexity than assignments for site-built homes. These commenters indicated, however, that in recent years they have undertaken over 150 training sessions to train over 5500 appraisal industry professionals on performing appraisals for transactions secured by a manufactured home and land.

The consumer advocate group, two affordable housing organizations, a policy and research organization, and national association of owners of manufactured homes indicated that any issues with appraiser availability were due to a lack of valuation standards in this segment of the housing market. They maintained that requiring

appraisals for these transactions would ensure demand, thus fostering greater appraiser capacity.

On the other hand, the community bank trade association, State manufactured housing trade association, and two manufactured housing nonbank lenders opposed the proposal to cover loans secured by an existing manufactured home and land and recommended exemption these transactions from the HPML appraisal rules.

The community bank trade association stated that appraisals increase costs to manufactured home borrowers who often have low incomes. In the view of this commenter, credit risk on portfolio lending and underwriting standards for secondary market transactions provide sufficient incentives for creditors to select appropriate alternative valuation methods, which include a variety of methods other than an appraisal in conformity with USPAP and FIRREA based upon a physical inspection of the interior of the property as required by the HPML appraisal rules. In addition, according to this commenter, some community banks report that appraisers can be readily engaged for manufactured housing transactions in general; for others, however, appraisers are reportedly difficult to find or appraisals are more costly or take longer than in-house non-appraisal valuations. The State manufactured housing trade association also referred to difficulties with obtaining appraisals for these loans. This commenter expressed the view that creditors should be subject only to an appraisal requirement when participating in a government or GSE program that imposes such a requirement.

One of the nonbank lenders stated that these transactions should be exempt due to a lack of sufficient appraisers and a lack of sufficient data on comparable sales ("comparables") of manufactured homes, particularly in rural areas. This commenter

also raised concerns about costs, noting that appraisals with interior inspections could, in this lender's experience, raise loan cost by 68 to 81 basis points. In addition, the lender noted that in the 6 percent of its 2012 manufactured home transactions secured by land and home that were subject to a similar HUD appraisal requirement, the collateral did not appraise at or above the sales price in 30 percent of transactions. In the view of this lender, these outcomes were due in significant part to an inappropriate emphasis in the HUD program on the use of manufactured homes as comparables. The other nonbank lender stated that an appraisal for transactions secured by an existing manufactured home and land would be unreliable and a misuse of consumer funds. This commenter also noted that it already complies with appraisal disclosure requirements in Regulation B.[79] Finally, as noted above, a national trade association for manufactured housing endorsed the comments of these manufactured home lenders.

The Final Rule

Consistent with the 2013 Supplemental Proposed Rule, the final rule that goes into effect July 18, 2015, does not exempt loans secured by an existing manufactured home and land from the HPML appraisal requirements in § 1026.35(c)(3) through (6).[80] Covering transactions secured by an existing home and land is consistent with the requirements of the GSEs and Federal government agencies for these types of loans.

In addition, the Agencies received information from manufactured home lender representatives who indicated that obtaining appraisals in conformity with USPAP that

[79] *See* 12 CFR 1002.14.

[80] The requirement for a second appraisal in "flipped" transactions is not anticipated to be triggered in most existing manufactured home transactions, if any. *See* § 1026.35(c)(4). The Agencies are not aware, based on research, public comments, and outreach, that manufactured home properties are improved and re-sold quickly by investors.

include interior inspections for loans secured by an existing manufactured home and land is not uncommon among manufactured home creditors. Some lender commenters on the 2013 Supplemental Proposed Rule supported applying the HPML appraisal rules to these transactions as consistent with prudent lending practices.

Moreover, the Agencies obtained comments on the 2013 Supplemental Proposed Rule from consumer advocates, affordable housing organizations, and other stakeholders, but had not had the benefit of comments from these stakeholders on the 2012 Proposed Rule. As discussed above, consumer and affordable housing advocates strongly supported applying the HPML appraisal requirements to transactions secured by an existing manufactured home and land. They argued, among other things, that consumers would thereby obtain information about the value of their homes that would account more thoroughly for the value added to a home by the land on which the existing home is or will be placed. Similar comments were submitted by a national real estate trade organization, a policy and research organization, and a national association of owners of manufactured homes.[81]

Appraiser organizations that submitted written comments and appraisers consulted by the Agencies in informal outreach also strongly recommended that the HPML appraisal rules be adopted for transactions secured by existing manufactured homes and land. They indicated that the appraisal methods for appraising existing manufactured homes and land are the same as for site-built homes and land. Their comments suggested that appraisals with interior inspections for these homes are

[81] In commenting on the 2012 Proposed Rule, the national real estate trade associated similarly expressed the view that exempting transactions secured by both a manufactured home and land may not be appropriate. *See* 78 FR 48548, 48554, n. 16 (Aug. 8, 2013).

common and that prudent lending practice and consumer protection are best served by obtaining appraisals for transactions secured by an existing manufactured home and land together, including a physical inspection of the interior of the home.

As noted, one manufactured home lender commenter expressed concerns about applying the HPML appraisal rules to loans secured by existing manufactured homes and land when the home has been moved from its previous site to a dealer's lot. Transactions secured by an existing home that has been moved to a dealer's lot and land can still be appraised in conformity with USPAP, which does not require that the home first be sited before an appraiser performs the appraisal. The Agencies understand that the home could be inspected on the dealer's lot, for example, or once the home is re-sited. The Agencies also note that several commenters asserted that existing manufactured homes are rarely moved. For these reasons, the Agencies believe that an appraisal with an interior inspection that values the home and land together is still warranted for these properties.

Based on these comments and related outreach, the Agencies do not believe that exempting loans secured by a manufactured home and land from the HPML appraisal requirements would be in the public interest or promote the safety and soundness of creditors. The Agencies believe that covering these loans will help ensure that consumers are aware of information related to the value of their manufactured home before consummating an HPML (that is not a qualified mortgage). The Agencies also believe that covering these loans will facilitate the development of greater consistency between the rules and practices applicable to transactions secured by site-built homes and manufactured homes. The Agencies believe that this consistency of rules and practices will contribute to integrating manufactured home lending more fully into the broader

mortgage market over time, which could have long-term benefits for consumers and lenders.

The Agencies believe that most lenders of manufactured home loans obtain appraisals in conformity with USPAP and FIRREA for loans secured by existing manufactured homes and land. However, the Agencies understand that not all manufactured home lenders may do so, or do so consistently, and are mindful that smaller lenders in particular may need more time to comply. Therefore, the final rule gives the industry 18 months before compliance with the HPML appraisal requirements is mandatory for these transactions.

35(c)(2)(viii)(A)

Loans Secured by a New Manufactured Home and Land

Section 1026.35(c)(2)(viii)(A), effective July 18, 2015, provides a partial exemption from the HPML appraisal requirements of § 1026.35(c)(3) through (c)(6) for transactions secured by both a new manufactured home and land. Specifically, loans for which the creditor receives the application on or after July 18, 2015, will be exempt from the requirement that the appraisal include a physical visit of the interior of the manufactured home, found in § 1026.35(c)(3)(i). All other HPML appraisal requirements in § 1026.35(c)(3) through (c)(6) will apply.

The Agencies' Proposal

In the January 2013 Final Rule, the Agencies adopted an exemption from the HPML appraisal requirements for loans secured by a "new manufactured home." *See* 78 FR 10368, 10379-10380, 10433, 10438, 10444 (Feb. 13, 2013). In the 2013 Supplemental Proposed Rule, the Agencies stated that, after issuing the January 2013

Final Rule, the Agencies obtained additional information on valuation methods for manufactured homes. Based on this information, the Agencies requested comment and information concerning whether to require USPAP-compliant appraisals with interior property inspections conducted by a state-licensed or -certified appraiser for HPMLs secured by both a new manufactured home and land. The Agencies also sought comment on whether some other valuation method should be required as a condition of the exemption for these transactions from the general HPML appraisal requirements in § 1026.35(c)(3) through (c)(6).

In particular, the Agencies noted that appraisers and State appraiser boards consulted in outreach efforts confirmed that real property appraisals in conformity with USPAP are possible and conducted with at least some regularity in transactions secured by a new manufactured home and land. The Agencies expressed their understanding that these appraisals value the site and the home together based upon comparable transactions that have been exposed to the open market (as would be done with a site-built home or any other existing home).[82] The Agencies further noted that these appraisals could document additional value based on factors such as the home's location, and in some cases could identify visible discrepancies between the manufacturer's specifications and the actual home once it is sited.

In the 2013 Supplemental Proposed Rule, the Agencies also observed that USPAP-compliant real property appraisals are regularly conducted for all transactions

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

under Federal government agency and GSE manufactured home loan programs.[83] FHA Title II program standards, for example, which apply to transactions secured by a manufactured home and land titled together as real property, require an appraisal in conformity with USPAP.[84]

The Agencies noted further that in informal outreach, a representative of manufactured home appraisers and a manufactured home CDFI representative stated that they conduct appraisals for loans secured by a new manufactured home and land before the home is sited based on plans and specifications for the new home.[85] An interior property inspection occurs once the home is sited (although the CDFI representative indicated that it did not always use a state-certified or -licensed appraiser for the final inspection). These outreach participants suggested that, in their experience, qualified certified- or -licensed appraisers and appropriate comparables are not unduly difficult to find to perform these appraisals, even in rural areas.[86]

The Agencies noted that manufactured home lenders commenting on the 2012 Proposed Rule and during informal outreach raised concerns that comparables of other

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

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

[85] For a summary of more recent informal outreach conducted by the Agencies, see http://www.federalreserve.gov/newsevents/rr-commpublic/industry-meetings-20131001.pdf.

[86] For FHA-insured loans secured by real property – a manufactured home and lot together – HUD requires creditors to use a FHA Title II Roster appraiser that can certify to prior experience appraising manufactured homes as real property. *See* HUD, Title I Letter 481 (Aug. 14, 2009) ("HUD TI-481"), Appendices 8–9, C, and 10–5, issued pursuant to authority granted to HUD under section 2(b)(10) of the National Housing Act, 12 U.S.C. 1703(b)(10).

manufactured homes can be particularly difficult to find. The Agencies expressed their understanding that a lack of appropriate comparables can be a barrier to obtaining a manufactured home appraisal, especially in certain loan programs that require appraisals of manufactured homes to use a certain number of manufactured home comparables and have other restrictions on the comparables that may be used.[87]

The Agencies noted, however, that USPAP does not require that manufactured home comparables be used. USPAP allows the appraiser to use site-built or other types of home construction as comparables with adjustments where necessary.[88] The Agencies also stated that a current version of an Appraisal Institute seminar on manufactured housing appraisals confirmed that when necessary, USPAP appraisals can use non-manufactured homes as comparables, making adjustments where needed.[89]

At the same time, the Agencies sought information about the potential impact on the industry and consumers of requiring real property appraisals in conformity with USPAP that include interior inspections in transactions secured by a new manufactured home and land (where these types of appraisals are not already required). In this regard, the Agencies noted that several manufactured home lenders commented on the 2012 Proposed Rule and shared in informal outreach that they typically do not conduct an

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

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

[89] *See* Appraisal Institute, "Appraising Manufactured Housing – Seminar Handbook," Doc. PS009SH-F (2008) at Part 8, 8-110, available at http://www.appraisalinstitute.org/education/seminar_descrb/Default.aspx?sem_nbr=OL-671&key_type=OOS.

appraisal with an interior inspection of a new manufactured home, but use other methods, such as relying on the manufacturer's invoice as a baseline for the value of the new home and conducting a separate appraisal of the land in conformity with USPAP.[90] Thus, the Agencies observed that requiring a USPAP-compliant appraisal with an interior inspection could require systems changes for some manufactured home lenders. In addition, the Agencies also noted the possibility that, if the appraisals required under the 2013 January Final Rule were more expensive than existing methods, imposing the HPML appraisal requirements would lead to additional costs that could be passed on in whole or in part to consumers.

Accordingly, the Agencies requested data on the extent to which an appraisal in conformity with USPAP with an interior property inspection would be of comparable cost to, or more or less expensive than, a separate USPAP-compliant appraisal of a lot added together with an invoice price for the home unit. The Agencies also requested comment on the potential burdens on creditors and consumers and any potential reduction in access to credit that might result from imposing requirements for an appraisal in conformity with USPAP that includes an interior property inspection on all manufactured home creditors of HPMLs secured by both a new manufactured home and land. In this regard, the Agencies asked commenters to bear in mind that any of these transactions that are qualified mortgages are exempt from the HPML appraisal requirements under the separate exemption for qualified mortgages. *See* § 1026.35(c)(2)(i). Finally, the Agencies requested comment on whether and the extent to which consumers in these

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

transactions typically receive information about the value of their land and home and, if so, what information is received.

Public Comments

Eighteen commenters responded to the Agencies' questions about the exemption for transactions secured by both a new manufactured home and land. These commenters comprised four national appraiser trade associations, a State credit union trade association, a credit union, a national manufactured housing industry trade association, a national association for owners of manufactured homes, two manufactured housing lenders, a consumer advocate group, three affordable housing organizations, a policy and research organization, a State manufactured housing industry trade association, a real estate trade association, and a mortgage banking trade association.

Commenters had varying opinions on whether the exemption for transactions secured by both a new manufactured home and land was appropriate. Four national appraiser trade associations, a credit union, a national association for owners of manufactured homes, a consumer advocate group, three affordable housing organizations, a policy and research organization, and a real estate trade association opposed the exemption. Two of the national appraiser trade associations asserted that the exemption for transactions secured by new manufactured homes and land did not meet the statutory exemption criteria of being in the public interest and promoting the safety and soundness of creditors.[91] These commenters also believed that the January 2013 Final Rule and the 2013 Supplemental Proposed Rule lacked public policy consistency because loans secured by a manufactured home and land would be treated differently based on whether

[91] *See* TILA section 129H(b)(4)(B), 15 U.S.C. 1639h(b)(4)(B).

the home is existing or new, even though both are real estate-secured transactions. A real estate trade association and two national appraiser trade associations noted that the exemption was inconsistent with the manufactured housing appraisal requirements of HUD, VA, and GSE manufactured housing loan programs.

A credit union commenter expressed the view that an appraisal with an interior inspection in conformity with USPAP and FIRREA is the only method of valuation that properly accounts for all valuation factors, including the property's location and discrepancies between the manufacturer's specifications and the home itself. Similarly, two national appraiser trade associations argued that this type of appraisal was necessary because the price of a manufactured home may not necessarily reflect its value, due to factors such as the quality of installation and construction of the home. Two national appraiser trade associations, a manufactured housing lender, and a real estate trade association stated that an appraisal in conformity with USPAP of a lot combined with an invoice price for the home unit (as opposed to valuing the home and land as a single item of real property) was an incorrect form of valuation that would not provide a credible indication of the value of the home and land combined.

Several commenters emphasized that performing appraisals in conformity with USPAP and FIRREA for these transactions is feasible. An affordable housing commenter argued that, for new manufactured homes that are not yet sited, appraisers can follow standards in USPAP for appraising site-built homes that are not yet constructed. Under these existing USPAP standards, an appraisal is based on a site inspection and the

plans and specifications of the home.[92] When the construction is complete, an appraiser or qualified inspector can confirm whether the finished home meets the same specifications.

According to national appraiser trade associations, appraisals in conformity with USPAP are regularly performed for transactions secured by a new manufactured home and land. These commenters stated that professional appraisers for manufactured homes are widely available, that appropriate comparables can be readily found, and that USPAP protocols (including interior inspections) are appropriate for valuing manufactured housing and land. Two affordable housing organizations, a consumer advocate group, a policy and research organization, and a national association of owners of manufactured homes believed that the same appraisal requirements should apply to transactions secured by a new manufactured home as apply to transactions secured by site-built homes. They believed, however, that appraisers should have more flexibility in manufactured home transactions to use site-built homes as comparables than some Federal government agency and GSE programs currently allow.

Two affordable housing organizations, a consumer advocate group, a policy and research organization, and a national association for owners of manufactured homes believed that transactions secured by a new manufactured home should be subject to the rule if the homeowner owns the land on which the home is sited, even if the home is not subject to a security interest. Another affordable housing organization recommended that

[92] *See* Appraisal Standards Bd., Appraisal Fdn., Standards Rule 1-2(e) and Advisory Opinion 17, "Appraisals of Real Property with Proposed Improvements," at U-17, U-18, and A-37, *available at http://www.uspap.org*.

new manufactured homes should be subject to the rule, whether affixed to owned land or on land with a long term lease.

In contrast, six commenters – a national mortgage banking association, a State credit union association, two manufactured housing lenders, a national manufactured housing trade association, and a State manufactured housing trade association – supported the exemption for transactions secured by both a new manufactured home and land. Some of these commenters asserted that an exemption was necessary because a physical interior inspection was infeasible. In this regard, the manufactured housing lender stated that a new manufactured home typically will not be delivered and installed until after a loan closes. The commenter noted that, as with construction loans, which are provided an exemption from the HPML appraisal rules (§ 1026.35(c)(2)(iv)), on-site interior inspections of new manufactured homes that will secure loans are not feasible because they are still being manufactured, delivered, or installed when appraisals would need to be ordered. Similarly, a State manufactured housing industry trade association stated that a manufactured home's production does not begin before the determination is made to provide credit to a consumer, so a physical inspection prior to closing would be impossible.[93]

A national manufactured housing industry trade association also questioned the value of an interior inspection of new manufactured homes, stating that each manufactured home is built to the specifications of the retailer and is manufactured in a controlled manufacturing process in accordance with HUD standards, which ensures the

[93] As noted under "Public Comments," however, a representative of a manufactured home loan lender consulted in informal outreach by the Agencies indicated that the lender does not close loans secured by a new manufactured home and land until the home is sited.

application of consistent, quality standards.[94] According to this commenter, the manufacturer certifies to the retailer the authenticity and accuracy of the wholesale cost of the home at the point of manufacture.

Some commenters noted that even though appraisals in conformity with USPAP are required by some Federal government agencies and GSE manufactured housing loan programs, they are not performed frequently. One manufactured housing lender stated that traditional appraisals typically are performed only for certain FHA loans that represent a small fraction of overall land/home manufactured housing loans.[95] A State manufactured housing industry trade association offered similar comments. The State manufactured housing industry trade association commenter also asserted that GSE-like appraisal requirements were not appropriate for these transactions, because most new manufactured home loans are held in portfolio and creditors will set valuation standards appropriate for their own loans.

Commenters also challenged the accuracy of appraisals performed in conformity with USPAP and FIRREA for transactions secured by both a new manufactured home and land. A manufactured housing lender stated that, even for FHA-insured land/home loans, traditional appraisals are prone to yielding appraised values that are lower than the sales price of the home. A national manufactured housing industry trade association stated that traditional appraisals produce appraised values lower than the sales price for

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[94] *See* 24 CFR part 3280.

[95] FHA reported providing insurance under its Title I program for 655 manufactured home loans in Fiscal Year (FY) 2012, 986 in FY 2011, and 1,776 in FY 2010. *See* HUD, *FHA Annual Management Report, Fiscal Year 2012* (Nov. 15, 2013) at 17. FHA also reported providing insurance under its Title II program for 20,479 manufactured home loans in FY 2012, 21,378 in FY 2011, and 30,751 in FY 2010. *See id.* According to 2012 HMDA data, 19,614 FHA-insured manufactured home loans (under both Titles I and II) were reported out of a total of 123,628 reported manufactured home loans; thus, FHA-insured loans represented 15.9 percent of HMDA-reported manufactured home loans. *See* www.ffiec.gov/hmda.

more than 20 percent of transactions that are secured by manufactured homes and land. One manufactured housing lender stated that for its loans for which appraisals are ordered, appraisals resulted in appraised values lower than the sales price around 30 percent of the time. Similarly, the State manufactured housing industry trade association stated that, based on information from its members, the rate of appraisals with appraised values lower than the sales price is approximately 30 percent.

Commenters also cited problems with obtaining comparables as contributing to the difficulty with obtaining accurate appraisals. Manufactured housing lenders, a national manufactured housing industry trade association, and a State manufactured housing industry trade association stated that manufactured home comparables, especially in rural areas, tend to be unavailable or inadequate. One lender noted that, in practice, HUD will permit site-built comparables for the Title II FHA loan insurance program in the absence of appropriate manufacturer home comparables, but only on a limited basis. A manufactured housing lender also asserted that relying upon site-built homes as comparables can lead to inflated values.

A national manufactured housing industry trade association and a State manufactured housing industry trade association asserted that no reliable database of previous sales which appraisers can use to develop an accurate, reliable value for manufactured homes exists. The State manufactured housing industry trade association believed that actual sales data must serve as the foundation for any valuation system. The commenter believed that creating such a database would involve both time and expense, and that such a database should not be created by private industry or based upon the

voluntary submission of sales price data. This commenter expressed the view that such a database should be created by State governments.

Several commenters believed that issues with appraisers are the cause of manufactured housing appraisals resulting in values lower than the sales price. A manufactured housing lender believed that significant appraiser bias exists against manufactured housing, which results in lower value estimates. Another manufactured housing lender stated that most state-licensed or -certified appraisers have no training or experience in appraising manufactured homes.

Commenters also cited concerns about the cost of requiring appraisals for these transactions. A national manufactured housing industry trade association and two manufactured housing lenders raised related concerns that appraisal costs would make these transactions less affordable for consumers and that an appraisal is expensive relative to the cost of a manufacture home. The national manufactured housing industry trade association expressed the view that these costs could result in reduced manufactured housing lending.

The Agencies specifically requested comment on the potential burdens on creditors and consumers and any potential reduction in access to credit that might result from imposing requirement for an appraisal in conformity with USPAP and FIRREA with an interior property inspection on all creditors of loans secured by both a new manufactured home and land. Two national appraiser trade associations believed that concerns about appraisal costs could be mitigated because professional appraisers can provide a range of services other than an interior inspection but still in conformity with USPAP. These commenters argued that the cost of a professional appraisal is relatively

small compared to the value provided to borrowers and to loan underwriting safety and soundness. A consumer advocate group, two affordable housing organizations, a national association of owners of manufactured homes, and a policy and research organization believed that the costs of an appraisal with an interior inspection would be no higher than the costs of appraisals for site-built homes subject to the rule.

No commenters offered data on the cost of the method of using the manufacturer's invoice for the home and conducting a separate appraisal of the land. However, a national manufactured housing industry trade association asserted that this method costs consumers less than the type of appraisal that the HPML appraisal rules require. Informal outreach by the Agencies with a manufactured housing lender after the 2013 Supplemental Proposed Rule suggested that the interior inspection was the element of the HPML appraisal requirements that added the most cost. Another manufactured housing lender believed that the land-only appraisal would still be expensive for consumers. A national association of owners of manufactured homes, a consumer advocate group, a policy and research organization, and two affordable housing organizations stated that they did not have cost information in order to respond to the question posed by the Agencies.

In addition, the Agencies requested comment on whether consumers currently receive information about the value of their land and manufactured home. A consumer advocate group, two affordable housing organizations, a policy and research organization, and a national association of owners of manufactured homes asserted that consumers do not currently receive valuation information. Two manufactured housing lenders stated that, when appraisals are performed, lenders are required to provide the

ECOA notice informing consumers that a copy of the appraisal may be obtained from the lender upon request.[96] One of the manufactured housing lenders indicated that it routinely issues a copy of the appraisal to its customers. The other lender stated that, after receiving the ECOA notice, very few consumers request the appraisal information.

Finally, the Agencies requested comment on alternative methods that may be appropriate for valuing new manufactured homes and land, which the Agencies could require as a condition of an exemption from the general HPML appraisal rules in § 1026.35(c)(3) through (c)(6). A real estate trade association, two national appraiser trade associations, a consumer advocate group, a policy and research organization, two affordable housing organizations, and a national association of owners of manufactured homes believed that a discussion of conditioning the exemption was unnecessary because they believed that there should be no exemption for these transactions.

All other commenters on this issue – a national mortgage banking association, a State credit union association, two nonbank manufactured home lenders, a State manufactured housing industry trade association, and a national manufactured housing industry trade association – opposed adding conditions to the exemption. The manufactured housing lenders stated that they were unaware of a reliable, uniform valuation method by which to provide information to a consumer in new or existing manufactured housing transactions. The mortgage banking trade association believed that providing an alternative valuation would confuse consumers, and a State credit union

[96] *See* ECOA section 701(e), 15 U.S.C. 1691(e). These provisions were amended by section 1474 of the Dodd-Frank Act, implemented by the Bureau's 2013 ECOA Valuations Rule, 12 CFR § 1002.14, and effective January 18, 2014.

trade association believed that a condition would increase the cost for consumers to obtain credit.

The Final Rule

The Agencies are adopting a modified exemption for transactions secured by a new manufactured home and land. Under the final rule, creditors for these transactions will be subject to all of the HPML appraisal requirements except for the requirement that the appraisal include a physical visit of the interior of the manufactured home. *See* § 1026.35(c)(3)(i). As discussed below, the Agencies believe that this exemption from the requirement for a physical visit of the interior of the property is in the public interest and promotes the safety and soundness of creditors. Comment 35(c)(2)(viii)(A)-1 clarifies that a creditor of a loan secured by a new manufactured home and land could comply with § 1026.35(c)(3)(i) by obtaining an appraisal conducted by a state-certified or -licensed appraiser based on plans and specifications for the new manufactured home and an inspection of the land on which the property will be sited, as well as any other information necessary for the appraiser to complete the appraisal assignment in conformity with USPAP and FIRREA. Compliance with the HPML appraisal rules for these transactions is not mandatory until July 18, 2015.

As discussed in the 2013 Supplemental Proposed Rule, the Agencies conducted additional research and outreach after issuing the January 2013 Final Rule to determine how to treat loans secured by existing manufactured homes under the HPML appraisal rules. In this process, the Agencies obtained information about manufactured home lending valuation practices that prompted the Agencies to review the exemption in the

January 2013 Final Rule for transactions secured by a new manufactured home, whether or not the transaction is secured by land.

Through research, written comments, and informal outreach, the Agencies obtained the views of a wider range of stakeholders, including consumer advocates, affordable housing organizations, a policy and research organization, and a national association of owners of manufactured homes (summarized earlier "Public Comments").[97] In addition, the Agencies consulted with additional manufactured home lenders, one of which indicated that the lender obtains appraisals in conformity with USPAP for these transactions.[98] Based on this information, the Agencies understand that a pivotal factor in valuing manufactured homes is whether the transaction is secured by land. Accordingly, the Agencies are adopting a final rule that applies different rules to loans secured by a new manufactured home and land (§ 1026.35(c)(2)(viii)(A)) and loans secured by a new manufactured home without land (§ 1026.35(c)(2)(viii)(B)).

The Agencies understand that manufactured home lenders regularly value a new manufactured home and land by relying on the manufacturer's (wholesale) invoice for the home unit (marked up by a certain percentage to account for siting costs, dealer profit, and related expenses associated with the transactions) and having a separate appraisal performed on the land. The two values are then added together to obtain a maximum loan amount, which may not be the amount of credit ultimately extended. The Agencies

[97] The Agencies did not receive comments from these types of organizations on the 2012 Proposed Rule, which the Agencies believe may be due to the large volume of mortgage rules that were issued for public comment at that time. A large real estate trade association expressed similar views in commenting on both the 2012 Proposed Rule and 2013 Supplemental Proposed Rule.

[98] For a summary of more recent informal outreach conducted by the Agencies, see http://www.federalreserve.gov/newsevents/rr-commpublic/industry-meetings-20131001.pdf.

understand that transactions secured by a new manufactured home and land can be consummated before the new home is sited or, in some cases, even built.

For these reasons, the Agencies recognize that applying the HPML appraisal rules to transactions secured by a new manufactured home and land will represent a change in practices for many manufactured home lenders. In part to mitigate unnecessary burden, the Agencies are exempting these transactions from the requirements that the appraisal include a physical inspection of the interior of the new manufactured home. In addition, the Agencies understand that an interior inspection of the property is a central obstacle to complying with the HPML appraisal rules in transactions secured by a new manufactured home and land, since production of the home might not be completed or started before the loan is consummated. Further, the Agencies believe that an interior inspection on a new manufactured home may not be warranted because the home would not have been subject to wear and tear and production and installation inspections new manufactured homes occur as part of a separate regulatory framework administered by HUD.[99]

Under the final rule, as of July 18, 2015, a creditor could, for example, obtain an appraisal based on the appraiser's review of plans and specifications of the new home and an inspection of the site. *See* comment 35(c)(2)(viii)(A)-1. Neither USPAP nor FIRREA requires an interior inspection, but the Agencies believe that all other aspects of the HPML appraisal rules could and should be complied with. USPAP and FIRREA also do not require an appraiser to use particular types of comparables in valuing manufactured homes, so appraisers will have flexibility in selecting either manufactured home comparables or site-built comparables as the appraiser deems appropriate or as the

[99] *See* 24 CFR parts 3282 and 3286.

creditor, secondary market participant, or relevant government agency requires. The Agencies are also aware that public comments and outreach included varying views on the availability of appropriate comparables and appraisers with the relevant competency to conduct USPAP land/home appraisals for transactions secured by a new manufactured home and land, with some generally asserting that appropriate comparables and competent appraisers are readily available, while other expressed concerns that at least in some markets they are not. However, the Agencies believe that giving creditors 18 months before compliance becomes mandatory can provide time for creditors and other stakeholders to determine how to address concerns in these areas.

The Agencies believe that applying the HPML appraisal rules to transactions secured by new manufactured homes and land is important for several reasons. First, as with transactions secured by an existing manufactured home and land, covering transactions secured by a new home and land is consistent with the requirements of the GSEs and Federal government agencies for these types of loans. Again, Congress designated HPML transactions that are not qualified mortgages to be "higher-risk" than other transactions; therefore, the Agencies believe it prudent and in keeping with congressional concern to be consistent with other Federal standards for these loans.

Second, appraiser representatives and regulators have made it clear in public comments on this rulemaking and independent publications that separate assessments of the unit value and land added together do not constitute an acceptable appraisal.[100] For loans deemed "higher-risk" by Congress, the Agencies have reservations about a

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

valuation practice that diverges from practices deemed appropriate and most likely to result in a valid outcome.

Third, all commenters on the 2013 Supplemental Proposed Rule that did not represent the manufactured home lending industry, as well as a few manufactured home lenders, opposed a full exemption for loans secured by a new manufactured home and land. These comments strongly suggest that the exemption would not be in the public interest, as required by the statute. Commenters opposing a full exemption generally held the view that appraisals in conformity with USPAP and FIRREA for these homes are feasible and that prudent lending practice and consumer protection are best served by obtaining appraisals for transactions secured by a new manufactured home and land together. They believed that appraisals with interior inspections would allow consumers to obtain better information about the value of their homes than methods that combine an appraised value of a site and a marked-up invoice price of a manufactured home. As noted under "Public Comments," some manufactured home lenders indicated that they already conduct appraisals in conformity with USPAP for transactions secured by a new manufactured home and land.

The Agencies decline, however, to adopt suggestions from some of these commenters that the general appraisal requirements should cover a broader range of transactions. Regarding the suggestion that the general appraisal requirements should cover transactions secured by a manufactured home and a leasehold interest, the Agencies are aware that State laws may vary regarding rights attendant to leasehold interests and that different lease terms might have different values; both are factors that would be beyond the scope of the final rule to provide guidance. GSE and Federal

agency manufactured housing programs require the securing property to be real estate; whether a manufactured home and lease-hold meets that standard varies by State law and the Agencies believe that uniformity across states for the HPML appraisal rules would best facilitate compliance. At the same time, the Agencies recognize that lease terms and stability of tenancy can affect value, and believe that these factors would be appropriate to take into account as part of valuations for appraising transactions secured by a home and not land. The final rule permits but does not require consideration of these factors.[101] *See* § 1026.35(c)(2)(viii)(B)(*3*) and accompanying section-by-section analysis.

The Agencies are also not following the suggestion that the appraisal requirement be applied to transactions secured by a home whenever the borrower owns the land, even if the transaction is not secured by the land. The Agencies are concerned that accounting for differing ownership structures of the land would complicate the rule and could be difficult for creditors and appraisers to assess. The Agencies also have questions about whether appraisals of the land and home together, even if the land is not securing the transaction, will consistently lead to the desired result – market value of the collateral securing the loan. Some lenders indicated that when a loan goes into foreclosure, the property may be repossessed and taken back into dealer inventory; thus, it would seem important for a lender to know the value of the structure by itself. Again, the Agencies recognize that the location of the home can have a significant impact on its value, and believe that the location-related factors would be appropriate to take into account as part of valuations for transactions secured by a home and not land. The final rule permits but

[101] A national provider of a manufactured home cost guide indicated in comments that its guide includes a land-lease community adjustment guideline that can be used if a manufactured home is located in a land-lease community.

does not require consideration of these factors. *See* § 1026.35(c)(2)(viii)(B)(*3*) and accompanying section-by-section analysis.

Fourth, most commenters, including leading manufactured housing lending industry representatives, expressed support for developing and even requiring appropriate valuations for manufactured home transactions. In light of additional stakeholder views received since issuance of the January 2013 Final Rule and additional research, the Agencies believe that applying the HPML appraisal rules to transactions secured by new manufactured homes and land, as well as transactions secured by existing manufactured homes and land, creates needed incentives for the continued training of state-certified and -licensed appraisers in valuing manufactured homes and the development of appraisal methods tailored to value collateral in manufactured home lending transactions, including appropriate use of comparables. This will in turn support improved accuracy and reliability of appraisals for these transactions.

Regarding concerns expressed by commenters about a lack of comparable sales data, the Agencies understand that in many cases comparable sales data is reported to and available in Multiple Listing Services (MLS) regarding sales of manufactured homes and land classified as real property. The Agencies recognize that a more robust tracking of manufactured home sales information would be beneficial and may take time, and encourages efforts in this regard. The delayed effective date is intended to allow more time to move forward in this process.

Finally, the Agencies believe that treating manufactured home loans secured by both the home and land in the same way as loans secured by site-built homes and land will foster the development of greater consistency between the rules and practices

applicable to transactions secured by site-built homes and manufactured homes. The Agencies believe that this consistency of rules and practices will contribute to integrating manufactured home lending more fully into the broader mortgage market over time, which could have long-term benefits for consumers and lenders.

For these reasons, on balance, the Agencies have concluded that an exemption from the HPML appraisal requirement for a physical visit of the interior of the home as part of the appraisal will promote the safety and soundness of creditors and be in the public interest.

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

Loans Secured by a Manufactured Home and Not Land

The Agencies' Proposal

As noted, in the January 2013 Final Rule, the Agencies adopted an exemption from the HPML appraisal requirements for loans secured by a "new manufactured home." *See* 78 FR 10368, 10379-10380, 10433, 10438, 10444 (Feb. 13, 2013). The January 2013 Final Rule did not address loans secured by "existing" (used) manufactured homes, which therefore would be subject to the appraisal requirements unless the Agencies adopted an exemption.

As discussed in the 2013 Supplemental Proposed Rule, additional research and outreach on valuation practices for loans secured by an existing manufactured home and not land indicated that current valuation practices for these transactions generally do not involve using a state-certified or -licensed appraiser to perform a real property appraisal in conformity with USPAP and FIRREA with an interior property inspection, as required under TILA section 129H and the January 2013 Final Rule. In addition, lender

commenters on the 2012 Proposed Rule had raised concerns about the availability of data on comparable sales that may be used by appraisers for loans secured by an existing manufactured home and not land. They indicated that data from used manufactured home sales not involving land (usually titled as personal property) are not currently recorded in MLS of most states, so an appraiser's ability to obtain information on comparable manufactured homes without land is more limited than in real estate transactions. A provider of manufactured home valuation services confirmed in outreach with the Agencies in 2013 that manufactured home sales information is generally not available through standard real estate data sources.[102] The Agencies also understood that, in many states, appraisers are not currently required to be licensed or certified in order to perform personal property appraisals.

Accordingly, the 2013 Supplemental Proposed Rule would have exempted transactions secured by existing manufactured homes and not land in proposed § 1026.35(c)(2)(ii)(B).[103] The Agencies noted that an exemption would promote the public interest in affordable housing by ensuring transactions were not subject to a requirement not suited to this particular collateral type at this time, and would promote safety and soundness by allowing creditors to rely on currently prevalent valuation methods to ensure profitability and diversity to mitigate risk. The Agencies requested comment on this proposed exemption.

In addition, however, the Agencies' 2013 Supplemental Proposed Rule sought comment on any risks that could be created by an unconditional exemption for

[102] The Agencies also are not aware of site-built or similar comparables for home-only collateral.
[103] In addition, proposed comment 35(c)(2)(ii)(B)-1 would have clarified that an HPML secured by a manufactured home and not land would not be subject to the appraisal requirements of § 1026.35(c), regardless of whether the home is titled as realty by operation of state law.

transactions secured by a manufactured home, whether new *or* existing, and not land. After the January 2013 Final Rule was issued, consumer advocates and other stakeholders expressed concerns that some transactions in the lending channel for manufactured home-only (chattel) transactions (both of new and existing manufactured homes) can result in consumers owing more than the manufactured home is worth. For this type of loan, stakeholders such as consumer and affordable housing advocates asserted that networks of manufacturers, broker/dealers, and lenders are common, and that these parties can coordinate sales prices and loan terms to increase manufacturer, dealer, and lender profits, even where this leads to loan amounts that exceed the collateral value.

Consumer advocates and others raised concerns that, where the original loan amount exceeds the collateral value and the consumer is unaware of this fact, the consumer is often unprepared for difficulties that can arise when seeking to refinance or sell the home at a later date. They also noted that chattel manufactured home loan transactions tend to have much higher rates than conventional mortgage loans. Some stakeholders suggested that giving the consumer third-party information about the unit value could be helpful in educating the consumer, particularly as to the risk that the loan amount might exceed the collateral value, and might prompt the consumer to ask important questions about the transaction.

Accordingly, the 2013 Supplemental Proposed Rule posed a number of questions seeking comment on conditioning the exemptions for manufactured home-only transactions on providing the consumer with an estimate of the value of the manufactured

home no later than three business days before consummation. The 2013 Supplemental Proposed Rule discussed several types of estimates.

First, based on input from lenders and manufactured home valuation providers, the Agencies understood that in new home-only transactions, many creditors determine the maximum amount that they will lend by using the manufacturer's invoice, or wholesale unit price, marked up by a certain percentage to reflect, for example, dealer profit and siting costs. As discussed in the 2012 Proposed Rule, informal outreach participants indicated that this practice— similar to that sometimes used for automobiles—is longstanding in new manufactured home transactions.[104] Lenders asserted that these methods save costs for consumers and creditors and has been found to be reasonably effective and accurate for purposes of ensuring a safe and sound loan.

Second, outreach to manufactured home lenders indicated that in transactions secured by an existing manufactured home and not land, lenders typically obtain replacement cost estimates derived from nationally published cost services, taking into account factors such as the age of the unit (to derive depreciated values) and regional location of the home.[105]

Third, the Agencies understood that additional methods exist for conducting personal property appraisals of manufactured homes. For example, HUD has adopted property valuation standards for HUD-insured loans secured by an existing manufactured home and not land. These standards call for use of a certified independent fee appraiser

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

[105] One option identified in the 2013 Supplemental Proposed Rule (78 FR 48548, 48554 n. 12 (Aug. 8, 2013) was the National Automobile Dealers Association (NADA) Manufactured Housing Cost Guide. *See* NADAguides.com Value Report, available at *www.nadaguides.com/Manufactured-Homes/images/forms/MHOnlineSample.pdf*.

to conduct a valuation of the home using data on comparable manufactured homes in similar condition and in the same geographic area.[106]

Public Comments

The Agencies received 28 comment letters on transactions secured by manufactured homes and not land from four national appraisal trade associations, a provider of a manufactured housing cost guide, a consumer advocate group, three affordable housing organizations, a national association of owners of manufactured homes, a policy and research organization, a credit union, seven State or regional credit union associations, a national credit union association, a community bank, a national trade association for community banks, a State banking trade association, a national mortgage banking trade association, a national trade association for manufactured housing, a State manufactured housing trade association, and two manufactured housing nonbank lenders.

Many of the comments received pertained to transactions secured by either an existing or new manufactured home, but the comment summary below is generally divided into two parts, one regarding comments on loans secured by a new manufactured home (but not land) and one regarding comments on loans secured by an existing manufactured home (but not land). First, however, some generally applicable comments are reviewed below.

General Comments

A consumer advocate group, two affordable housing organizations, a national association of owners of manufactured homes, and a policy and research organization

[106] *See* HUD TI-481, Appendices 8–9, C, and 10–5.

indicated that the Agencies should adopt a rule that would ensure that consumers have information about their home value before entering into an HPML secured by an existing manufactured loan without land.

Providers of valuations and their trade associations also generally supported providing copies of valuation information to consumers in these transactions. Two appraiser trade associations stated that consumers have a "fundamental right" to understand the market value of the property collateralizing covered loans. A provider of a manufactured home cost guide stated that consumers unequivocally would benefit from knowing the cost estimate value of their home.

Industry support for providing this information to consumers was more limited. A State credit union association stated that in an HPML secured by an existing manufactured home and not land, the consumer should receive a copy of a valuation, which this commenter believed would be a valuable tool for the consumer. A State manufactured housing trade association stated that, if a reliable repository of data on comparable sales were developed, it would support providing the consumer a copy of a valuation based upon such data.

More broadly, manufactured home lending industry commenters questioned the need for valuation regulations on new manufactured home transactions on several grounds. A State manufactured housing trade association noted that most manufactured housing lenders are portfolio lenders who have incentives to adopt appropriate underwriting standards and not to over-finance the loan. This commenter asserted that the widespread practice of using actual cost information from the manufacturer's invoice to determine maximum loan amount prevents over-financing. Finally, the commenter

stated that over-financing has not been substantiated as a problem in manufactured home lending. Thus, the commenter suggested that the Agencies take more time to study the issue of manufactured home valuations before proposing a final rule in this area.

Similarly, a national community banking trade association stated that a portfolio lender's assumption of credit risk is an incentive to choose appropriate valuation methods. Further, two State credit union associations stated that existing valuation methods suffice for ensuring reasonably safe and sound loans. Another State credit union association noted that creditors have alternatives to the USPAP interior-inspection appraisal, such as an exterior inspection or drive-by, or an analysis of sales of comparable homes.

One manufactured home lender suggested that consumers purchasing manufactured homes do not need appraisals because manufactured homes are sold like automobiles, in that they are sold from a retailer's display center. Therefore, the commenter suggests that instead of providing consumers with appraisals, consumers should be encouraged to engage independently in comparative shopping when selecting a home as well as when shopping for a loan. Another manufactured home lender stated that consumers do not need information beyond the sales contract, which breaks down certain costs. This commenter stated that information about the value of the home is not relevant to these consumers because they do not buy manufactured homes for investment. A manufactured home lender also stated that it does not offer loans based on the collateral value but instead on the consumer's ability to repay.

A national manufactured housing trade association stated that inspections by HUD-certified inspectors conducted on all new manufactured homes provide lenders and

consumers a strong guarantee of the quality of a manufactured home.[107] Moreover, this commenter asserted that the HUD inspection process, coupled with the verification that lenders receive from manufactured home retailers and builders on all new manufactured homes,[108] dispenses with the need for an appraisal and interior inspection.

Two national appraiser associations generally asserted that the importance of valuation information to the consumer and lenders far outweighs the costs and burdens of providing this information. However, one manufactured home lender suggested that the cost of performing third-party appraisals would be unnecessary for the consumer, especially given this commenter's concerns about their reliability in home-only transactions. In addition, the commenter suggested that these costs would be a particular hardship on consumers who purchase manufactured home because they tend to have lower incomes and lower credit scores than consumers of site-built homes; thus, they are purchasing a manufactured home because it is the most affordable and viable option available to them to own their own home. Finally, the commenter suggested the burden on manufactured home creditors of valuation requirements is likely to result in a reduction in lending. Similarly, a national manufactured housing trade association commenter suggested that existing valuation methods are adequate and cost consumers substantially less than traditional property appraisals.

A manufactured home lender expressed concerns in particular about requiring creditors to provide a third-party cost service unit value to the consumer for either new or existing manufactured homes. According to this commenter, the technology and

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[107] *See generally*, 24 CFR parts 3280, 3282, and 3286.

[108] This commenter may have been referring to requirements such as those in HUD manufactured housing regulations that require a manufacturer to certify to the manufactured home dealer or distributer that the home conforms to all applicable Federal construction and safety standards. *See* 24 CFR 3282.205.

personnel required to program and develop a system to compare the home's year, manufacturer, and model name with the appropriate year, manufacturer, and model name from a specific price guide would be considerable. Further, this commenter asserted, this type of requirement would add to all lenders' overhead costs, which would increase the cost of credit (*i.e.*, be passed on to the consumer). This lender predicted that such a task would deter other established creditors, including banks and credit unions, from offering financing secured by a manufactured home.

Location. A question with equal applicability to transactions secured by either a new or existing manufactured home was a request for comment on the impact the location of a new manufactured home can have on its value and whether cost services are available that account adequately for differences in location. Commenters who responded generally agreed that the location of a manufactured home can have a significant impact on its value. Two national appraiser association commenters suggested that the location of a manufactured home can have a significant influence on its value and that they know of no cost services that adequately account for price differences in locations.

A consumer advocacy group, two affordable housing organizations, a national manufactured homeowner association, and a policy and research organization suggested that manufactured homes are very rarely moved because moving a manufactured home is expensive and likely to damage the unit. As a result, a location-based value is more relevant to resale value. These commenters further suggested that attributes of the home's location that affect the home's value are tangible and visible, but that there are other attributes of a manufactured home's location that affect the home's value that are

not typically captured in existing valuation models. Examples of such characteristics provided were lease terms or State laws that: (1) stabilize rent; (2) ensure that the home may remain where it is sited; (3) ensure that the homeowner is able to sell the home to a new owner without having to move it; and (4) protect the lender's interest in the home if the homeowner defaults on the loan.

One manufactured home lender suggested that similar factors, such as proximity to retail shopping, the quality of the neighborhood public and private schools, the condition and upkeep of neighboring properties, and other factors that affect the value of site-built homes will also affect the value of manufactured homes. However, the commenter suggested that due to historical biases against manufactured homes in urban areas and most neighborhoods – expressed through zoning restrictions, prohibitions, and restrictive covenants – most manufactured homes are located in rural communities. A manufactured home lender also indicated that, in fact, it is not uncommon for manufactured homes may be moved from a sited location back to a dealer's lot, particularly when they have been foreclosed upon and are in rural areas.

Further study. Several commenters suggested that more time may be needed to develop reliable alternatives to a USPAP- and FIRREA-compliant appraisal based upon a physical inspection of the interior of the home. Two manufactured housing lenders, while generally opposed to conditioning the exemption, suggested the Agencies that postpone any decision on these issues for several months of further evaluation. A State manufactured housing trade association indicated that it would only support a condition if a mandatory repository of data on comparable sales were developed and sufficient time

passed for this repository to populate.[109] This commenter also expressed concerns that very few, if any, loans secured by manufactured homes would be exempt from the HPML appraisal rules as qualified mortgages. *See* § 1026.35(c)(2)(i). This commenter suggested that the large number of loans potentially covered by conditions on any exemption for manufactured home transactions that would involve alternative valuations warranted further study of these options by the Agencies.

Similarly, a consumer advocate group, two affordable housing groups, a national association of owners of manufactured homes, and a policy and research organization, while generally supporting conditions, suggested that the Agencies convene a working group of stakeholders to review and develop valuation standards. These commenters observed that this approach would help to integrate the manufactured housing sector into the larger housing market. In their view, valuation rules would create demand, which would improve capacity for providing valuations and also generate more financing options for manufactured home consumers.

Comments on Loans Secured by a New Manufactured Home (but not Land)

The Agencies solicited comment on whether it would be appropriate and beneficial to consumers to condition the exemption from the HPML appraisal requirements on the creditor providing the consumer with various types of third-party information about the manufactured home's cost, which third-party estimates should be used for these estimates, and when creditors should be required to provide the information. The Agencies received several comments on these questions.

[109] This commenter noted, however, that the private sector was not in a position to develop such a repository due to cost and anti-trust concerns. Further, if such a repository were developed, this commenter expected challenges in finding data on comparable sales in rural areas would remain.

Representatives of appraisal providers, a credit union, a community bank, a consumer advocacy group, three affordable housing groups, a national association of owners of manufactured homes, and one policy and research organization generally suggested that consumers would benefit. On the other hand, a manufactured home lender, two manufactured housing trade associations, a State credit union association, a mortgage company, a national community bank trade association, and a national mortgage banking trade association generally suggested that consumers would not benefit and a condition should not be adopted.

Manufacturer's invoice. Regarding the utility of providing the consumer with a copy of the manufacturer's invoice, a consumer advocacy group, two affordable housing groups, a national manufactured homeowner association, and a policy and research organization stated that in the near term consumers would benefit from receiving the manufacturer's invoice because this is what manufactured home lenders rely on in transactions involving new manufactured homes. They asserted that a consumer who is given the invoice is better able to evaluate the accuracy of the description of the home's features. Given concerns about truth and accuracy in invoices in capturing all dealer payments, though, these commenters suggested that these transactions ultimately should be subject to the HPML appraisal rules on the same basis as site-built homes. In their view, higher valuation standards would improve appraiser capacity and, they argued, decrease incentives to steer consumers to loans with weaker standards.

Regarding the credibility of manufacturer's invoices, the Agencies received conflicting information. One affordable housing organization differentiated between a dealer's invoice and a manufacturer's invoice, indicating that incentives and rebates

might be omitted from the dealer's invoice but not from the manufacturer's invoice so the manufacturer's invoice would be more reliable for the consumer. A consumer advocacy group, two affordable housing organizations, a national association of owners of manufactured homes, and a policy and research organization, however, commented that the manufacturer's invoice may not have accurate information about the actual cost paid by the dealer because it might not reflect incentives, rebates, and in-kind services agreed upon by the dealer and manufacturer. However, as noted, they believed that the representation of home features on the invoice would be useful to consumers.

A national manufactured housing trade association stated that the manufacturer certifies to the retailer the authenticity and accuracy of the wholesale cost of the manufactured home at the point of manufacture. A manufactured housing lender further suggested that the manufacturer's invoice is the only realistic option upon which to base a home's value because it takes into account the upgrades and other features pertinent to the home. This commenter suggested that the invoice amount also offers a "conservative" figure in terms of valuation and loan-to-value considerations. However, the commenter noted that a consumer's total sales price will include certain other third-party charges related to the move and set-up of the manufactured home, dealer mark-ups and occasionally local government fees required to be paid by the dealer.

Third-party cost service estimates. Regarding the utility of providing a third-party unit estimate from an independent cost service, a credit union commenter stated that a third-party unit estimate would give consumers a valuable guideline to prevent predatory practices. Similarly, a community bank commenter stated that this information could help alleviate the potential for dealer price markups over manufacturer's suggested

retail price. A national provider of a manufactured home cost service stated in its comment letter that its cost guide information could "absolutely" be useful to consumers, but cautioned that providing consumers with multiple different indications of value could make the process more confusing to consumers. The provider further stated that its cost guide can be used to provide a "guideline" that is a "reasonable approximation" for a new manufactured home value using the "new or like new" condition for the current-year model. The cost guide provider indicated that its value estimates consider the home's manufacturer, model, size, year, and region. In its cost guide, adjustments are also possible for State location, the general condition of the home, as well as for value added by additional features.

An affordable housing organization stated that creditors should be required to obtain cost estimates from an independent appraiser based upon nationally-published cost information. This commenter stated that consumers will be better informed with more information.

On the other hand, several industry and industry trade association commenters suggested that providing copies of third-party estimates would be of no benefit to consumers or would cause consumer confusion. One manufactured home lender asserted that cost guides consider pieces of property in the abstract and fail to account for the cost of permits, site preparation, and delivering the home to the purchaser's site. Moreover, this commenter suggested cost guides are typically used by lenders only to determine a value for pre-owned manufactured homes. A State manufactured housing association also noted that the third-party cost guides are not used in practice for new manufactured

home transactions, a view confirmed by a manufactured home lender during informal outreach.

Independent valuations. Regarding third-party valuations for new home-only transactions generally, a number of industry, consumer group, and other commenters stated that in their view there does not exist today a reliable national third party database for comparable sales for new manufactured homes. However, two national appraiser association commenters stated that they strongly support requiring an independent third-party valuation by a credentialed third party appraiser with education, training, and experience, or a valuation through the National Appraisal System (NAS), which would be consistent with the requirements of government programs.[110]

Information for the consumer. The Agencies also solicited comment on whether the consumer in an HPML transaction to be secured by a new manufactured home and not land typically receives unit cost information, and what cost information from a reliable independent third-party source might be reasonably available to creditors and useful to a consumer. Several commenters responded to this and a related question; all generally suggested that, other than the retail purchase and sale agreement between the manufactured home purchaser and the retailer, no third-party information is currently provided to consumers about the value of their new manufactured home. One manufactured home lender noted that the retail purchase agreement will list the retail price of the manufactured home and itemize and include in the total cost all other costs and charges associated with the transactions and installation of the home and extras. Another manufactured home lender added that it is not the industry custom to disclose the

[110] *See* HUD TI-481, Appendices 8-9, C, and 10-5. The Agencies understand that the NAS is an appraisal method involving both the comparable sales and the cost approach.

wholesale amount to a consumer. Rather, the commenter suggested, the Agencies should not require disclosures of cost information for consumers and deviate from widely accepted practice in other areas of retail sales, including automobiles or site-built homes.

Most of the commenters who responded on the information availability issue suggested that there was currently no readily-accessible, publicly-available information that consumers could use to determine whether their loan amount exceeds the collateral value in a new manufactured home chattel transaction. Two national appraiser associations asserted that, under the statute, consumers have a fundamental right to know the value of the home that collateralizes debt they incur. However, a provider of a manufactured home cost guide suggested that consumers could access manufactured home value information on its web site representing the depreciated replacement cost of a home.

Regarding the best timing for a creditor to provide a unit value estimate to a consumer, two national appraiser associations suggested that the information should be delivered to the prospective borrower as early in the loan underwriting process as possible. A consumer advocacy group, two affordable housing organizations, a national association of owners of manufactured homes, and a policy and research organization suggested that a copy of the manufacturer's invoice should be provided to consumers after the execution of the buyer's order but prior to the consummation of the transaction. Finally, one community bank suggested that third-party cost guide information should be provided to the consumer at least three days prior to consummation because the data is readily available through the database.

Comments on Loans Secured by an Existing Manufactured Home (but not Land)

Commenters generally supported an exemption from the HPML appraisal rules under § 1026.35(c)(3) through (6) for transactions secured by an existing manufactured home and not land. However, a number of commenters favored conditioning the exemption on the creditor obtaining and providing valuation information to the consumer. Several commenters also stated that any exemption should be temporary. The most common reasons cited by commenters for supporting the exemption were a lack of qualified and available appraisers; a lack of data on comparable sales; and concerns over the cost of appraisals.

Regarding the availability of appraisers, a State manufactured housing trade association cited a scarcity of state-certified and -licensed appraisers to support chattel lending in general, which this commenter stated is particularly pronounced in rural areas where the homes are predominantly located. This commenter also believed valuation professionals lacked sufficient experience with USPAP personal property appraisal standards to comply with them in existing manufactured home-only transactions. Similarly, a manufactured home lender stated that most state-certified or -licensed appraisers are not trained or experienced in manufactured home appraisals and that in many rural areas, no qualified appraisers are available.[111]

In addition, a national community bank trade association indicated that, while some community banks can readily engage appraisers for manufactured home transactions, other banks do find it difficult to identify appraisers. A consumer advocate group, two affordable housing organizations, a national association of owners of manufactured homes, and a policy and research organization stated, however, that any

[111] This commenter's observations were also endorsed by another manufactured home lender and a national manufactured housing trade association.

appraiser capacity issues are driven by a lack of valuation standards for the manufactured housing segment. As a result, allowing the rule to take effect after a temporary period would lead to demand for appraisers, creating an incentive for appraisers to obtain the requisite skills.

A number of commenters expressed concern that the limited availability of data on comparable sales for transactions secured by an existing manufactured home and not land posed a significant barrier to obtaining reliable third-party appraisals for these transactions. A manufactured home lender stated that sales of existing manufactured homes on leased land are not reported to MLS and that data on comparable sales outside of California is generally lacking. The commenter noted, though, that one private company does aggregate comparable sales data from different sources around the country, which is usually used for transactions in land-lease communities. The national manufactured housing trade association added that state-certified or -licensed appraisers do not capture data on sales of existing manufactured homes, whether from retail dealers or communities. In addition, this commenter suggested that data may be distorted by foreclosures in rural areas leading to relocation of homes to dealer inventory. The State manufactured housing trade association commenter stated that the lack of a reliable nationwide database of comparable sales should be remedied and indicated that the one statewide database (in California) only receives data on a voluntary basis.[112]

Further, several industry commenters cited concerns over the cost of appraisals. A national community bank trade association and a State credit union association

[112] This commenter suggested that a national mandatory-reporting database would need to be sponsored by the government, as cost and possible anti-trust issues make it unlikely the private sector would create such a database.

generally believed that that a USPAP-complaint appraisal with an interior inspection would be costly for low-income borrowers purchasing existing manufactured homes. Another State credit union association and a national credit union association supported the exemption because manufactured home values are generally lower than the values of other types of home. A state-level bank trade association also stated that appraisals would be costly for these transactions.

Third-party cost service estimates. A number of commenters also believed that existing market incentives and valuation methods were sufficient for this type of transaction. For example, national and State manufactured housing trade associations noted that lenders frequently use the value indicated by a national manufactured home cost guide to determine the maximum amount of credit they would extend for transactions secured by existing homes and not land. One manufactured home lender stated that it uses the guide to calculate a "theoretical" value, which is imperfect given the lack of reliable information about the condition of the home. Another nonbank lender stated that while it uses this guide to determine approximate wholesale value on trade-ins and as a general guide to the potential sale price for repossessions, it does not use the guide in transactions to finance the purchase or refinance of an existing manufactured home and not land.[113] A consumer advocate group, two affordable housing organizations, a national association of owners of manufactured homes, and a policy and research organization further confirmed the widespread use of third-party cost service depreciation schedules in this segment of the market.

[113] This nonbank lender also stated that industry lenders do not typically obtain a "valuation" in manufactured home transactions.

Regarding the accuracy of third-party cost service estimates for existing manufactured homes, a national provider of a manufactured home cost guide stated that its values are derived by applying depreciation factors to the cost estimate of the home, and are designed to represent "retail worth" assuming average condition and certain components. Adjustments can be made for actual condition, inventoried components, and local site value (for homes located in land-lease communities).[114] The commenter stated that the local site value adjustment is representative of a national average of the contributing value for land-lease communities with certain attributes. After accounting for this adjustment, the value can be up to 33 percent higher or 11 percent lower than the value of the structure only (on average, the location adjustment adds 13 percent). While acknowledging that only appraisers are qualified to analyze a property's sited location, this commenter claimed that its location adjustment was more cost effective than an appraisal based upon a physical inspection, without sacrificing accuracy. When it compared its location-adjusted values with estimates from a sample of over 1,000 personal property appraisals of manufactured homes over a wide range of ages, it found that the median difference between its estimates and the appraised value was less than five percent.

Views of other commenters on the accuracy of third-party cost guide estimate were more mixed. A manufactured home lender stated that cost guides are used as a guideline by lenders rather than as an estimate of resale value. Another manufactured

[114] According to the association, the association develops its guide by collecting data from industry manufacturers to create a guideline based on actual original costs, current regional market activity (which are used to make regional adjustments), and depreciation factors. The association stated that the depreciation cost approach used by its guide is a component of the cost approach used by certified or licensed appraisers, and is approved for use with Fannie Mae Form 1004C, Freddie Mac Form 70B, and the VA.

home lender stated that the cost guide does not include transaction costs, including setup fees, which can lead to unreliable estimates for consumers.

A consumer advocate group, two affordable housing organizations, a national association of owners of manufactured homes, and a policy and research organization believed that estimates based upon these cost guides fail to value correctly important factors related to the location of the home, such as the security of land tenure, risk of rent increases, and community attributes, among others. These commenters also noted that the cost guide assumes the property value has depreciated and that available adjustments based upon the property condition are not required; as a result, maintenance, repairs, and upgrades could be left out of the value and the property could be under-valued. Further, these commenters expressed concern that widespread use of a depreciated value could drive rather than reflect manufactured home values. However, another affordable housing organization believed that, despite concerns expressed by some about the utility of a third-party estimate based upon a nationally-published cost service, consumers will be better informed with this information.

A State manufactured housing trade association expressed concerns that depreciated values available through a cost service can be understated. While this commenter noted that adjustments can be made, the commenter asserted that questions remain as to who should make the adjustments and whether they will be made in a uniform, valid, and reliable manner.

One manufactured home lender believed that the use of physical inspections to provide a basis for making adjustments to depreciated unit cost estimates was not widespread. This commenter also pointed out that some transactions are consummated

before the existing manufactured home is placed on the new site making it infeasible for the lender to arrange for pre-closing inspections of the home at its new site in these situations.

Independent valuations. Some commenters also indicated that valuation methods based upon sales comparison approaches are sometimes used in transactions secured by an existing manufactured home and not land. A consumer advocate group, two affordable housing organizations, a national association of owners of manufactured homes, and a policy and research organization stated that comparable sales typically are selected based upon characteristics such as type of sale, size, style, and location of the home.

A State manufactured housing trade association noted that a private company can provide comparable sales reports for some transactions. A manufactured home lender indicated that this service also included a physical inspection, and is used for transactions secured by homes in land-lease communities in particular when a cost guide estimate does not match the sales price.

A national manufactured housing trade association stated that, for FHA Title I program loans, a physical inspection is conducted to adjust for site additions and the physical condition of the home. A State manufactured housing association asserted that the NAS is rarely used because only a small number of originations are currently done under the Title I FHA program for which NAS appraisals are specifically approved.[115]

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[115] FHA reported providing insurance under its Title I program for 655 manufactured home loans in Fiscal Year (FY) 2012, 986 in FY 2011, and 1,776 in FY 2010. *See* HUD, *FHA Annual Management Report, Fiscal Year 2012* (Nov. 15, 2013) at 17. FHA also reported providing insurance under its Title II program for 20,479 manufactured home loans in FY 2012, 21,378 in FY 2011, and 30,751 in FY 2010. *See id.* According to 2012 HMDA data, 19,614 FHA-insured manufactured home loans were reported out of a total

This commenter and a manufactured home lender stated suggested that the small number of FHA Title I program loans is due in part to eligibility requirements, including appraisal requirements.

The consumer advocate group, two affordable housing organizations, a national association of owners of manufactured homes, and a policy and research group stated that the FHA Title I appraisal system is overly focused on one characteristic of the home (that it is a manufactured home) and excludes use of other types of comparables that may be more suitable. A manufactured home lender noted that HUD-approved valuation methods based upon comparable sales tend to yield values below the sales price, which this commenter attributed to an over-emphasis on use of manufactured homes as comparables.[116] Another manufactured home lender claimed that this occurrence in HUD-approved appraisals is evidence that they undervalue manufactured homes. A manufactured home lender expressed concerns about the cost of NAS appraisals under the FHA Title I program. This lender stated that, if a condition is imposed, lenders should have more than one option for the type of valuation that would satisfy the condition.

A national association for community banking also referred to all of the above types of valuations as options for valuating these transactions, in addition to an evaluation by a bank employee. This commenter stated that some bank employees conduct interior or exterior inspections.

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of 123,628 reported manufactured home loans, for a FHA-insured share of 15.9 percent. *See* www.ffiec.gov/hmda.

[116] These commenters did not identify, however, what other types of comparables, apart from manufactured homes that are not sited on land owned by the consumers, could be used as comparables in these transactions.

An affordable housing organization believed that creditors should be required to obtain a replacement cost estimate from a trained, independent appraiser using a nationally-published cost service. Two national appraiser trade associations stated that, in light of the importance of the location to the value of the home, the Agencies should require an independent third-party valuation by a credentialed appraiser with education, training, and experience,[117] or a valuation that complies with the appraisal system specified under the FHA Title I program for insuring loans secured by existing manufactured homes and not land. A community bank stated that interior and exterior inspections should be conducted, due to higher depreciation of manufactured homes compared to site-built homes.

The Final Rule

Under § 1026.35(c)(2)(viii)(B), which goes into effect on July 18, 2015, the Agencies are adopting a conditional exemption for transactions secured by existing manufactured homes and not land. The Agencies believe that exempting transactions secured by existing manufactured homes and not land is in the public interest and promotes the safety and soundness of creditors, provided that such exemption is conditioned on the consumer receiving certain information as provided in detail below. The Agencies also are adopting a condition on the exemption for transactions secured by new manufactured homes and not land adopted in the January 2013 Final Rule. Under the condition, for applications received by the creditor on or after July 18, 2015, an

[117] This commenter suggested the individual would not necessarily have to be a state-certified or -licensed real estate appraiser. Nonetheless, a national manufactured home cost service provider also noted that the number of individuals certified to use the FHA Title I personal property appraisal system is down, from over 1,000 in previous decades to less than 100 today. HUD also allows creditors to rely on real estate appraisers from its Title II roster to complete these appraisals. *See* HUD TI-481, Appendices 8-9, C, and 10-5.

HPML that is not a qualified mortgage and is secured by either a new or existing manufactured home without land will be exempt from the general HPML appraisal rules in § 1026.35(c)(3) through (c)(6) if the creditor provides the consumer with a copy of any one of three specified types of information no later than three days prior to consummation of the transaction. The three types of information that can satisfy the condition are: (1) the manufacturer's invoice for the manufactured home, where the date of manufacture is within 18 months of the creditor's receipt of the consumer's application; (2) a cost estimate of the value of the manufactured home from an independent cost service; or (3) a valuation, as defined in § 1026.42(b)(3), of the manufactured home by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes.

The Agencies also are adopting and re-numbering proposed comment 35(c)(2)(ii)(B)-1, which clarifies that the exemption does not depend on whether the home is titled as realty by operation of State law. The heading for the comment is revised to remove the word "solely," to reflect that this provision applies to transactions that are secured by a manufactured home and other collateral that is not land, such as a leasehold interest. The comment is re-numbered as comment 35(c)(2)(viii)(B)-1. *See also* section-by-section analysis of § 1026.35(c)(2)(viii)(A) (further discussing transactions secured by a manufactured home and a leasehold interest).

The Agencies are not adopting proposed comment 35(c)(2)(ii)(A)-1, which would have provided that an HPML secured by a new manufactured home is not subject to the appraisal requirements of § 1026.35(c), regardless of whether the transactions is also secured by the land on which it is sited. The unconditional exemption for transactions

secured by a new manufactured home, with or without land, will go into effect on January 18, 2014, but will end starting with applications received by the creditor on or after July 18, 2015. At that time, the exempt status of transactions secured by new manufactured homes will depend on whether the transaction also is secured by land. Other comments adopted in the final rule relate to the information that a creditor can provide to satisfy the condition and are discussed in the section-by-section analysis below.

Discussion

The Agencies believe that the exemption in § 1026.35(c)(2)(viii)(B) for loans secured by manufactured homes and not land promotes the safety and soundness of creditors in part because the exemption makes it possible for creditors to continue making these loans, which may be an important part of a given creditor's operations; the Agencies understand that for chattel transactions, compliance with all of the general HPML appraisal requirements of § 1026.35(c)(3) through (6) may be infeasible. The condition on the exemption in § 1026.35(c)(2)(viii)(B) is necessary to ensure that the exemption is also in the public interest, because the condition will ensure that consumers receive information pertaining to the value of their manufactured home. The Agencies further believe that by allowing creditors a menu of options for compliance, the condition will provide appropriate flexibility to the creditor to select which materials it deems most cost-effective. The Agencies also believe that having this information before consummation of the loan can be useful to the consumer, and is consistent with the timing of the general HPML appraisal requirement that the creditor must give the

consumer a copy of the appraisal three days before consummation.[118] *See* § 1026.35(c)(6)(ii).

TILA Section 129H ensures that, before consummation of a "higher-risk mortgage," creditors obtain a valuation of the home and provide a copy to the consumer. 15 U.S.C. 1639h. The statute focuses on transactions with a higher risk profile (*i.e.*, those with higher interest rates and which are not qualified mortgages). For these riskier transactions, the statute sets standards that are intended to reduce the risk of inflated valuations of the "dwelling," and grants consumers a right to know the appraised value of the "dwelling" before entering into these transactions.[119] A manufactured home is a "dwelling" under regulations implementing TILA.[120] Indeed, transactions secured by manufactured homes and not land comprise a substantial proportion of the overall annual housing transactions that are HPMLs and not qualified mortgages.[121] The Agencies therefore believe that Congress intended for TILA Section 129H to provide protection against inflated valuations and transparency to borrowers in this housing segment.

Nonetheless, based upon outreach and comments on the 2012 Proposed Rule and further outreach and comments on the 2013 Supplemental Proposed Rule, the Agencies

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[118] Having this information three days before consummation also will allow borrowers the opportunity to discuss it with a HUD-certified housing counselor whose participation in the transaction prior to consummation is mandated for loans under the Bureau's 2013 HOEPA Final Rule, to be codified at 12 CFR 1026.34(a)(5). The role of the HUD-certified housing counselor specifically includes helping borrowers "avoid inflated appraisals." *See* HUD Housing Counseling Program Handbook 7610.1 (May 2010), Ch. 1-2.

[119] U.S. House of Reps., Comm. on Fin. Servs., *Report on H.R. 1728, Mortgage Reform and Anti-Predatory Lending Act*, No. 111-94 (May 4, 2009) (House Report), at p. 56 (noting that when faulty valuation methods lead to overvaluation, individuals "may later encounter difficulty in refinancing or selling a home because the true value of the property used as collateral is less than the original mortgage.").

[120] 12 CFR 1026.2(19).

[121] The Bureau's Section 1022 analysis estimates that around 20,000 but potentially more of these transactions occur annually. Potential for a higher number of affected loans results from variables that determine whether a loan is a qualified mortgage that require access to information that is not available for these loans, such as the debt-to-income ratio.

believe that the precise form of valuation specified in the statute – an appraisal by a state-certified or -licensed appraiser in conformity with USPAP and FIRREA, based upon a physical inspection of the interior of the home – is infeasible for this housing segment at this time. A steady supply of state-certified or -licensed appraisers to service thousands of these transactions annually starting on January 18, 2014, does not yet exist.

Even if more state-certified or -licensed appraisers were able to perform appraisals for transactions secured by a manufactured home and not land in the future, the Agencies recognize that sources of data on comparable sales for transactions secured by a manufactured home and not land may not be as robust as sources of data on sales of transactions secured by a home and land.[122] As a result, the Agencies believe that, absent an exemption, creditors could be unable to comply with the HPML appraisal requirements in a substantial number of transactions secured by a manufactured home and not land. Thus, the Agencies have concluded that an exemption from a requirement to perform appraisals in conformity with USPAP and FIRREA for these transactions would promote the safety and soundness of creditors and be in the public interest by allowing the transactions to occur without requiring use of a valuation method that is infeasible in a large number of cases.

At the same time, the risk of inflated valuations in these transactions can contribute to increased default risk,[123] which runs counter to both the safety and soundness of creditors and the public interest. The Agencies are concerned, based on

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[122] Whereas appraisals of a land/home transaction are not always limited to the use of manufactured housing transactions as comparables, in transactions secured only by the home, the universe of comparables is generally limited to manufactured homes.

[123] *See* Enterprise Duty to Serve Underserved Markets, Proposed Rule, 75 FR 32099, 32014 (June 7, 2010) (FHFA finding that "[i]nterest rates charged for chattel loans are typically higher than those for real estate-secured loans" and that "[d]elinquencies and defaults on chattel loans typically exceed rates on mortgage loans.").

research, outreach, and comments received, that these transactions can be prone to inflated valuations and associated risks of under-collateralization, leading to loans where the consumer has little, no, or even negative equity in the home.[124] The Agencies believe that an unconditional exemption for these transactions at a minimum would not adequately account for the risks of under-collateralization.

The effect of an inflated valuation on consumers and their risk of default can be even more pronounced in these transactions. Chattel lending generally carries higher interest rates, which could result in a significant number of HOEPA loans.[125] Further, several industry commenters indicated that manufactured home loans would be less likely to be qualified mortgages than other types of mortgages because their points and fees would typically exceed thresholds set by the Bureau's 2013 ATR Final Rule. *See* § 1026.43(e)(3). At the same time, consumers borrowing these loans are disproportionately in the LMI segment.[126] Higher loan amounts resulting from inflated valuations, combined with the comparatively high interest rates on these loans, can

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[124] *See, e.g.*, Consumers Union Southwest Regional Office, "Manufactured Housing Appreciation: Stereotypes and Data" (Aug. 2003), p. 4 (asserting that depreciation is but one factor leading to "underwater" homes and that "many industry practices [] lead to very high loan-to-value ratios. Fees, points and overpriced, unneeded add-ons (such as vacations, cash rebates and single-premium credit life) raise the loan balance without adding value to the home. This can contribute to a deficiency balance by removing equity and placing the loan underwater."). *See also id.* at 14 ("One contributing factor to an initial drop [in the value of a manufactured home] can be inflated retailer mark-ups embedded in the price of a home.").

[125] *See, e.g.*, Bureau's 2013 HOEPA Final Rule, 78 FR 6856, 6876 (Jan. 31, 2013) (noting that Congress set a higher APR threshold for HOEPA coverage of loans secured by manufactured homes titled as personal property – 8.5 percentage points – and that under this test, industry commenters estimated that between 32 and 48 percent of recent originations would be covered).

[126] *See, e.g.*, Howard Baker and Robin LeBaron, Fair Mortgage Collaborative, Toward a Sustainable and Responsible Expansion of Affordable Mortgages for Manufactured Homes (March 2013) at 9 ("In 2009, the median household income of households in manufactured homes was under $30,000 – well below the national average of $49,777. More than one-fifth (22 percent) of manufactured housing residents have incomes at or below the Federal poverty level."). This report is available at http://cfed.org/assets/pdfs/IM_HOME_Loan_Data_Collection_Project_Report.pdf.

generate payments that pose significant burdens on LMI consumers and can put them at greater risk of default.

Outreach and comments from the 2012 Proposed Rule and 2013 Supplemental Proposed Rule have not shown that existing industry practices or standards necessarily would be sufficient to control the risk of inflated valuations in these transactions, or ensure that consumers are informed of the home value in these transactions. To compound the concern, most of these transactions are not subject to valuation standards imposed by Federal law or regulation or Federal agency or GSE programs. The FHA Title I Manufactured Housing Loan Insurance Program is the only program at the Federal level that covers these transactions; no other Federal agency or GSE has programs for loans secured by a manufactured home and not land. The FHA Title I program includes valuation requirements and loan amount caps to mitigate against the risk of inflated valuations, but currently most transactions secured by a manufactured home and not land are not insured by that program. Some of these transactions are originated by Federally regulated financial institutions subject to FIRREA's appraisal and evaluation requirements, but the FIRREA regulations and related Interagency Appraisal and Evaluation Guidelines apply only to real estate transactions.[127] Under current State laws, the collateral in transactions secured by a manufactured home and not land is not typically classified as real property.

In addition, all creditors are subject to Regulation Z's interim final valuation independence rule (Valuation Independence Rule) for consumer credit secured by chattel,

[127] 75 CFR 77450, 77456 n.12 (Dec. 10, 2010) (noting that scope is for Federally-related transactions, which are real-estate related under 12 USC 3339 and 12 USC 3350(4)).

but the valuation service providers are not, due to a limitation in the current rule.[128] The Valuation Independence Rule applies to creditors and "settlement service" providers of covered transactions.[129] Under the rule, "settlement service" is defined under RESPA and implementing regulations (Regulation X).[130] Under RESPA and Regulation X, a "settlement service" is limited to services for "Federally related mortgage loans," which include only loans secured by real property.[131] Thus, valuation service providers for transactions secured by personal property, such as many transactions secured by a manufactured home and not land, are not covered under Regulation Z's Valuation Independence Rule.

Further, commenters indicated that consumers in transactions secured by manufactured homes and not land do not currently receive information about the value of their homes. Participants in informal outreach and research conducted by the Agencies similarly indicated that consumers for these loans are not familiar with independent information about home values and may be subject to high-pressure sales tactics that tend to limit consumer's consideration of their choices and pursuit of independent information.

Finally, while consumers might receive valuations in some of these transactions under the Bureau's 2013 ECOA Valuations Final Rule,[132] creditors might not always obtain a valuation subject to disclosure to the consumer under that rule. For example, in new manufactured home transactions without land, outreach and comments indicated that creditors often rely primarily upon the manufacturer's invoice when determining the

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[128] Bureau: 12 CFR § 1026.42; Board 12 CFR § 226.42.
[129] Bureau: 12 CFR § 1026.42(b)(1) and (2); Board 12 CFR § 226.42(b)(1) and (2).
[130] *See id.*; *see also* 12 U.S.C. 2602(3) and 24 CFR 1024.2.
[131] 12 CFR 1024.2.
[132] *See* 12 CFR 1002.14.

maximum loan amount. The manufacturer's invoice is not subject to disclosure under the 2013 ECOA Valuations Final Rule.[133] In addition, the maximum loan amount is not necessarily a valuation subject to disclosure under ECOA, and could well exceed caps defined under HUD regulations that serve to prevent over-financing, under-collateralization, and underwater loans.[134] Accordingly, even if that amount were disclosed to consumers under the 2013 ECOA Valuations Rule, it would not necessarily impart meaningful, independent information to the consumer about the value of the home.

The Agencies therefore are adopting a condition on the exemption to ensure that valuation information from an independent source is obtained and is transparent to the consumer. The condition requires the creditor to obtain and provide to the consumer, no later than three days before consummation, certain information related to the value of the manufactured home securing the covered HPML.[135]

The Agencies have identified three types of materials, any one of which can be provided, as further discussed below.

Providing a copy of a manufacturer's invoice used by a creditor for a transaction secured by a new manufactured home. Under § 1026.35(c)(2)(ii)(B)(*1*), a creditor on a loan secured by a new manufactured home and not land may be exempt from the HPML appraisal rules if the creditor gives the consumer a copy of the manufacturer's invoice,

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[133] *See* 12 CFR 1002.14, comment 14(b)(3)-3.iv.
[134] *See* 24 CFR 201.10(b)(1).
[135] "Consummation" would have the same meaning as in § 1026.35(c)(6)(ii), requiring that a copy of any appraisal obtained under § 1026.35(c)(6)(i) be given to the consumer no later than three business days prior to consummation of the covered HPML – namely, as defined elsewhere in Regulation Z at 12 CFR § 1026.2(a)(13) and accompanying Official Staff Commentary. Under those provisions, "consummation" means "the time that a consumer becomes contractually obligated on a credit transaction," which is determined by state law. § 1026.2(a)(13) and comment 2(a)(13)-1.

which is defined consistent with HUD manufactured home program regulations. *See* § 1026.35(c)(1)(iv) and accompanying section-by-section analysis.

Outreach and comments consistently indicated that in these transactions, creditors use the invoice as the primary source for calculating a maximum loan amount. For that reason, several commenters generally supported providing a copy of the invoice to consumers as a means of informing them of pertinent valuation information. A national manufactured housing trade association also asserted that it is standard practice for manufacturers to certify the authenticity and accuracy of the wholesale cost of the home at the point of manufacture.

The Agencies are adopting a limitation on the option to provide the manufacturer's invoice: the invoice may be provided to satisfy the condition only if the date of manufacture of the home was within 18 months of the creditor's receipt of the consumer's application for credit. This limitation is generally consistent with FHA Title I regulations, which incorporate the practice of using manufacturers' invoices as a reference point for determining safe and sound loan amounts for insuring transactions secured by new manufactured homes. Specifically, FHA Title I rules limit the use of this practice to homes manufactured within 18 months of purchase by the consumer.[136] The Agencies believe that this limitation will help prevent the use of invoices that are too dated to reflect reliably the current value of the manufactured home.

Creditors commonly obtain and rely on the manufacturer's invoice and consumer advocates, affordable housing organizations, and others, however, have

[136] 24 CFR 201.21(b)(2)(i) (defining a "new manufactured home" for which a manufacturer's invoice may be used as "one that is purchased by the borrower within 18 months after the date of manufacture and has not been previously occupied." *See also* HUD TI-481, Appendix 2.

asserted that consumers should have access to information that creditors use. If creditors have the invoice, providing a consumer with a copy imposes little burden.

The Agencies note that some commenters were concerned that the manufacturer's invoice contains sensitive wholesale pricing information and that the wholesale invoice from the manufacturer will not match the retail price paid by the consumer. The Agencies recognize that the retail price will include a markup for various costs. Commenters and industry participants in outreach indicated that in transactions secured by new manufactured homes, the maximum loan amount typically is determined by applying a percentage markup to the manufacturer's invoice. Outreach indicated that this markup can vary among creditors, in some cases significantly. The Agencies are not aware of any regulatory standards governing the extent of this markup other than limitations in the FHA Title I program, which only covers a small subset of these loans currently. The FHA Title I limitations do not permit a markup on the manufacturer's invoice of more than 130 percent when calculating the maximum insurable loan amount, and HUD has other detailed standards for determining what other charges can be factored into the maximum loan amount.[137] Most manufactured housing transactions are not subject to these restrictions, leaving the markup to be determined by the creditor's tolerance for risk, and thus subject to risk of inflated valuation.

The Agencies believe that providing the manufacturer's invoice to consumers will give them an opportunity to have a better understanding of the factors contributing to the loan amount and its relationship to the value of the home.[138] In transactions secured by a

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[137] *See* 24 CFR 201.10((b)(1).

[138] *See, e.g.*, Consumers Union Southwest Regional Office, "Manufactured Housing Appreciation: Stereotypes and Data" (Apr. 2003) at 14, available at http://consumersunion.org/pdf/mh/Appreciation.pdf

home and land under GSE and Federal agency programs, the appraiser is required to receive a copy of this invoice and must disclose in the appraisal report how it was considered.[139]

Under the final rule, creditors also may choose to communicate the nature or extent of this markup to consumers when providing the manufacturer's invoice. In this case, the manufacturer's invoice will provide an opportunity for questions from consumers to assess whether the markup leads the collateral to be over-valued. As noted above, HUD-certified counselors, required for HOEPA transactions and available for others, also can assist consumers in answering any questions. The Agencies have sought to accommodate remaining concerns over providing the manufacturer's invoice by providing other compliance options that could be used in new manufactured home transactions (including that the loan might qualify for another exemption under § 1026.35(c)(2)).[140]

Providing a cost estimate from an independent cost service provider. Section 1026.35(c)(2)(ii)(B)(*2*) gives the creditor the option of providing a cost estimate from an independent third-party cost service provider. Comment 35(c)(2)(ii)(B)(*2*)-1 clarifies that a cost service provider from which the creditor obtains a manufactured home unit cost

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("One contributing factor to an initial drop can be inflated retailer mark-ups embedded in the price of a home. Consumers who pay too much for any home will find it harder to sell it later for a higher price. Retailer markups can be a quarter of the base price of the home. Consumers should question what value they get from this middleman, and take steps to minimize costs that don't add value to the home. Buying direct from the last owner in a used transaction may reduce this overhead, as can buying direct from manufacturers when possible.").

[139] Fannie Mae Single-Family Selling Guide, B5-2.2-04 (4/1/09); Freddie Mac Single-Family Seller/Servicer Guide, H33.6 (2/10/12). *See also* 24 CFR 201.10(b)(1) (HUD regulations requiring that the loan amount be determined with reference to the invoice).

[140] *See, e.g.*, § 1026.35(c)(2)(i); *see also* 78 FR 59890, 59901 (Sept. 30, 2013) (HUD proposing that manufactured home loans insured under Title I would be qualified mortgages under HUD regulations, even if their points and fees exceed the cap under the Bureau's qualified mortgage definition, § 1026.43(c)(3)).

estimate under § 1026.35(c)(2)(ii)(B)(*2*) is independent if that party is not affiliated with the creditor in the transaction, such as by common corporate ownership, and receives no direct or indirect financial benefits based on whether the transaction is consummated.

As noted above, the Agencies recognize that creditors may choose not to provide a copy of the manufacturer's invoice for new manufactured home transactions. In addition, appraisers or valuation providers may be unavailable for some transactions. Thus, including this additional option is important to ensure that the consumer can receive a unit cost estimate of the value of the home from an independent source. Commenters and outreach indicated that this type of estimate is the predominant method used for transactions secured by an existing manufactured home and not land. Based upon comments from a national cost service provider confirming that its cost guide reports values for the current model year, the Agencies also believe this type of cost service also could be used for many new manufactured home transactions. The Agencies learned from one cost service that an adjustment for "new or like new" is available through its cost guide, and that this guide is updated multiple times per year.

The information provided by an independent cost service provider can provide a useful outside check against inflated valuations. At the same time, the check will not prohibit transactions above the value reflected in the cost service. Rather, the check will make sure that if transactions occur above those values, creditors and consumers have the opportunity to know that fact and evaluate the transaction accordingly.

Interior inspections and adjustments. The Agencies are not requiring physical inspections of the interior or condition or location adjustments to the cost service values. In this way, the condition ensures that the creditor can readily identify the information to

be provided to the consumer (based upon the make and model and year of the manufactured home unit) from an independent source, without being asked to interject subjective or discretionary considerations.

Interior inspections by an appraiser for new manufactured homes may often be of limited value, given the associated expense. For transactions secured by new manufactured homes, as indicated by industry commenters, HUD and State inspectors conduct inspections to ensure the proper construction and installation of the home.[141] Some commenters asserted that an interior inspection could confirm the existence of extras or options that were promised. The Agencies believe, however, that consumers themselves can confirm that they received extras or options ordered. Regarding adjustments, the Agencies understand that cost services may offer adjustments of standard estimates to reflect that the unit is in "new or like new" condition.

For existing manufactured homes, information about the condition of the interior can be an important factor affecting the valuation. Due to concerns with burden, complexity, and reliability of such adjustments, though, the Agencies are not mandating that adjustments be made. At the same time, the rule does not prohibit creditors from making this adjustment to the unit-cost estimate of an existing manufactured home.

Accordingly, comment 35(c)(2)(viii)(B)(*2*)-2 clarifies that the requirement that the cost estimate be from an independent cost service provider does not prohibit a creditor from providing a cost estimate that reflects adjustments to factors such as special features, condition or location. The comment explains, however, that the requirement that the estimate be obtained from an independent cost service provider means that any

[141] *See generally*, 24 CFR parts 3280, 3282, and 3286.

adjustments to the estimate must be based on adjustment factors available as part of the independent cost service used, with associated values that are determined by the independent cost service.

For both new and existing manufactured homes, the location can enhance or, in some cases, reduce the value of the home. A consumer advocate group, affordable housing organizations, and others emphasized that cost service data does not adequately account for the contribution of location to the value of the home. The manufactured home can be resold as a trade-in or repossessed, however, in which case its value-in-place is not what is relevant to the consumer. Further, as noted above, location adjustments can introduce greater subjectivity into the information provided. Therefore, the rule does not mandate that a location adjustment be made. Providing the unit value will enable consumers to compare the cost estimate from the published cost service to the line item charge in the sales contract for the base unit.

Finally, some commenters expressed concerns over accuracy or undervaluation in the unit cost estimates published by third-party cost services. These commenters did not provide data to support their views, however. In addition, while some comments noted that the unit cost estimate is not the same as an estimate of the retail market value, the Agencies recognize that this type of estimate nonetheless is widely used by creditors currently as a guideline for the value of an existing manufactured home. In some cases, it therefore may represent the best available, most cost-effective estimate of the value of the home. Further, the Agencies are structuring the exemption condition so that the creditor has the discretion to choose which of the specified types of valuation materials it finds most suitable for informing the consumer of the estimated value of the home. Thus, if a

creditor believes an independent cost service generally undervalues manufactured homes, the creditor can provide other forms of valuation information as described below, as well as its own accompanying explanatory information.

Providing a valuation by a trained manufactured home valuation provider. Section 1026.35(c)(2)(ii)(B)(*3*) allows a creditor to provide an appraisal conducted by a person who has no direct or indirect interest, financial or otherwise, in the property for which the valuation is performed and has training or experience in valuing manufactured homes. "Valuation" is defined as in § 1026.42(b)(3) of the Bureau's Valuation Independence Rule, which defines "valuation" to mean "an estimate of the value of the consumer's principal dwelling in written or electronic form, other than one produced solely by an automated model or system."[142]

Comment 35(c)(2)(ii)(B)(*3*)-1 provides that the manufactured home valuation provider would have a direct or indirect interest in the property if, for example, the person had any ownership or reasonably foreseeable ownership interest in the manufactured home. To illustrate, the comment states that a person who seeks a loan to purchase the manufactured home to be valued has a reasonably foreseeable ownership interest in the property.

Comment 35(c)(2)(ii)(B)(*3*)-2 clarifies that the valuation provider would have a direct or indirect interest in the transaction if, for example, the manufactured home valuation provider or an affiliate of that person also served as a loan officer of the creditor or otherwise arranges the credit transaction, or is the retail dealer of the manufactured home. The comment further states that a person also has a prohibited

[142] *See* 12 CFR 226.42(b)(3) for the definition of "valuation" in the Board's substantially similar version of the valuation independence rule.

interest in the transaction if the person is compensated or otherwise receives financial or other benefits based on whether the transaction is consummated.

Comments 35(c)(2)(ii)(B)(*3*)-1 and -2 are generally based on comments 42(d)(1)(i)-1 and -2 of Regulation Z's Valuation Independence Rule.[143] As discussed previously, the Valuation Independence Rule applies to all creditors of transactions secured by a consumer's principal dwelling, but applies to "settlement service" providers only for transactions secured by real property.[144] However, the Agencies believe it prudent to apply the principles of Regulation Z's Valuation Independence Rule to valuations that may be used in lieu of complying with the general HPML appraisal requirements for transactions secured by manufactured homes and not land, which might not be titled as real property.

Comment 35(c)(2)(viii)(B)(*3*)-3 clarifies that "training" referenced in § 1026.35(c)(2)(viii)(B)(*3*) includes, for example, successfully completing a course in valuing manufactured homes offered by a State or national appraiser association or receiving job training from an employer in the business of valuing manufactured homes.

Comment 35(c)(2)(viii)(B)(*3*)-4 provides an example of a manufactured home valuation that would satisfy the requirements of the condition in § 1026.35(c)(2)(viii)(B)(*3*). Specifically, the comment states that a valuation in compliance with § 1026.35(c)(2)(viii)(B)(*3*) would include, for example, an appraisal of the manufactured home in accordance with the appraisal requirements for a manufactured home classified as personal property under the Title I Manufactured Home Loan

[143] Bureau: 12 CFR § 1026.42; Board: 12 CFR 226.42.
[144] Bureau: § 1026.42(b)(1) and (2); Board § 226.42(b)(1) and (2).

Insurance Program of HUD (administered by FHA), pursuant to section 2(b)(10) of the National Housing Act, 12 U.S.C. 1703(b)(10).

The Agencies included this comment in recognition that one of the more well-developed standards for the valuation of manufactured homes and not land is found in the FHA Title I program.[145] When an existing manufactured home is classified as personal property, FHA Title I requires creditors to, among other things: (1) use an appraiser certified to use the NAS or, if the lender is unable to locate an NAS-certified appraiser, an appraiser from the FHA Title II mortgage program who certifies having experience appraising manufactured homes;[146] (2) obtain an appraisal performed on the home site where possible and that reflects the retail value of comparable manufactured homes in similar condition and in the same geographic area; and (3) review the appraisal to verify, among other things, that the correct cost service unit value was used and proper condition adjustment was made.[147]

As noted in the 2013 Supplemental Proposed Rule, the Agencies are aware that fewer than 100 individuals are currently certified to use this system, although many more have been certified in the past and may have incentives to obtain the certification in the future. This factor provides further support for the Agencies' decision to allow creditors multiple options to comply with the condition.

Consumer and affordable housing advocate commenters supported the long-term goal of applying an appraisal standard to transactions secured by a manufactured home

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[145] *See* HUD TI-481, Appendix 2-1, D (General Program Requirements – Eligible Homes).

[146] When the home is classified as real property, the appraisal must be completed by a real estate appraiser on the FHA Title II roster who can certify prior experience appraising manufactured homes as real property. The Agencies believe it is useful to incorporate the general standard, in case states adopt model laws treating manufactured homes as real property even when they are not affixed to land and the land does not provide security for a loan. *See* HUD TI-481, Appendices 8-9, C, and 10-5.

[147] *See* HUD TI-481, Appendices 8-9, C, and 10-5.

and not land. At the same time, manufacturer housing industry commenters generally supported a long-term effort to further refine and develop valuation methods for manufactured homes. The Agencies believe that adopting a condition that furthers these goals is in the public interest. To allow flexibility for these and other valuation methods to evolve, the Agencies seek to avoid prescriptive, detailed requirements on the valuation method. Rather, the Agencies seek generally to define who is eligible to perform the valuation, and leave the method to that person's judgment and expertise as appropriate for the scope of work required. As noted above, two national appraisal trade associations noted that state-certified or -licensed appraisers are not the only persons who could value manufactured homes. For example, some commenters identified an existing product prepared by a company who hires individuals trained in the valuation of manufactured homes. The company generates a report that estimates the value of a given manufactured home using local data on comparable sales.

Accordingly, under this alternative, the creditor must provide the consumer with a valuation prepared by one or more individuals who do not have a direct or indirect financial interest in the property or the transaction, and who have training in the valuation of manufactured homes. The Agencies are adopting comments to provide further guidance on how creditors can satisfy these criteria. Finally, it may follow from the exercise of independent judgment and application of this training that the individual will conduct a physical inspection of the interior, or assess the condition or value of the location of the home. But as noted, at this time, the Agencies are not specifying these steps as necessary elements of a valuation that satisfies the condition.

Several industry commenters indicated that HUD appraisal requirements in transactions secured by manufactured homes have led to higher frequency of appraisals where the value of the home is below the purchase price. At least one commenter indicated this occurred in Title I transactions secured by existing manufactured homes. Some commenters and outreach participants attributed high numbers of appraised values that are lower than the purchase price to an over-emphasis on the use of manufactured homes as comparables in FHA and other manufactured home credit programs. They suggested, for example, that manufactured homes comparables in the geographic area might be much older than the home being appraised. The Agencies are concerned, however, that other factors can contribute to higher rates of appraised values lower than the purchase price, such as inflated purchase prices and corresponding loan amounts.

The Agencies believe that, on balance, appraising manufactured homes in transactions that are not also secured by land can be an effective way to account for the many factors that contribute to the value of the home, including home condition, location, re-sale conditions, and lease terms, among others.

Other Issues

Delay in issuing rules on manufactured home loans. As discussed under "Public Comments," commenters on behalf of consumers and industry generally expressed support in principle for ensuring that consumers receive valuation information in exempt transactions. Industry commenters raised a number of concerns over the utility to consumers of information generated through current valuation practices, however. Several consumer and affordable housing groups expressed a similar concern over the quality of current valuation methods (citing, for example, concerns over the reliability of

a cost estimate of the unit from a third-party source). They nonetheless stated that creditors should still be required to provide a copy of the collateral valuation information that is used by the creditor (*i.e.*, manufacturer's invoice in new manufactured home transactions). These commenters also suggested that the Agencies engage in further study of manufactured housing valuation issues before adopting further conditions.

The Agencies note, however, that manufactured housing valuation practices and issues have been the subject of significant requests for comment and outreach in two separate proposals, and have generated detailed comment from representatives of industry, consumer advocates, and appraisers alike. The Agencies believe that the current public record sufficiently supports adopting conditions in this final rule. While the Agencies are allowing additional 18 months for conditions to be implemented, deferring their adoption pending further study would not promote safety and soundness and be in the public interest. Thousands of consumers would be without the protections during any further study. It also is unclear that further study, beyond the two years of study already undertaken, would generate material improvements to the approach taken here.

Steering. Some consumer group and affordable housing commenters also expressed concern that consumers might be steered into higher-rate chattel transactions with fewer consumer protections if the final rule provided an unconditional exemption for transactions secured by a manufactured home and not land. For example, consumers could be steered away from an HPML transaction secured by both the home and land to avoid the HPML appraisal requirements (*see* § 1026.35(c)(2)(viii), effective July 18, 2015). Creditors might also structure what otherwise would be a packaged land/home

transactions into two transactions – one secured solely by the home and one by land. The Agencies believe that some of these concerns are mitigated by other laws and regulations. Such practices might be subject to scrutiny under consumer protection laws at the State and Federal level. For example, regulations may apply that generally prohibit a loan originator from steering a consumer to a transaction based on the fact that the originator will receive greater compensation (which could result from an over-valuation of the home, leading to a higher loan amount).[148] The Agencies believe that some of the concerns about steering may be mitigated by conditioning the exemption for manufactured home-only transactions on the creditor having to provide alternative valuation information to the consumer.

Effective date. The Agencies recognize creditors will need time to make necessary adjustments to their compliance systems to be able to comply with the condition. For example, creditors will need to adjust their systems to identify transactions that would need to rely on the exemption (*e.g.*, HPMLs that are not eligible for exemptions for loans that satisfy the criteria of a qualified mortgage, transactions in an amount of $25,000 or less, or other exemption types (*see* § 1026.35(c)(2)),[149] to determine which types of valuation materials to obtain for these transactions, and to develop a mechanism for providing these to the consumer no later than three days prior to consummation. Creditors also will need to ensure that they have access to the valuation materials they choose to use. To ensure adequate time to implement these and any other

[148] *See, e.g.*, § 1026.36(e)(1) (prohibiting steering consumers to earn greater compensation). The Agencies will monitor application of the rule in this regard.

[149] Transactions secured by a manufactured home would not typically be eligible for the exemption for initial construction loans, 12 CFR 1026.35(c)(2)(iv), because that exemption is designed for temporary initial financing that is replaced with permanent financing when the construction phase is complete. *See* comment 35(c)(2)(iv)-1.

necessary steps, and that these transactions remain available to consumers in the interim period, the Agencies are delaying implementation of the condition for 18 months after the effective date of the HPML Appraisals Rules, until July 18, 2015.

Sunset. Finally, the Agencies are not adopting an expiration date for the conditional exemption for transactions secured by a manufactured home and not land. Some commenters suggested that a "sunset" date would provide an incentive for the appraiser and manufactured home lending industries to improve capacity and methods for conducting appraisals that would comply with USPAP and FIRREA. However, it is unclear that a sunset date would promote this outcome. At the same time, a sunset date would create risk for this important source of affordable housing if capacity and methods are not developed by that date. The Agencies believe that a better way to promote improved capacity and methods is to allow the condition to be satisfied through the use of existing methods. This is therefore another reason why the Agencies are allowing the third option for satisfying the condition – appraisals performed by independent and trained individuals.

35(c)(6) Copy of Appraisals

35(c)(6)(ii) Timing

In the January 2013 Final Rule, § 1026.35(c)(6)(ii) requires that a creditor provide a copy of any appraisal obtained in compliance with the HPML appraisal rules to the consumer "no later than three business days prior to consummation of the loan." Comment 35(c)(6)(ii)-2 provides that, for appraisals prepared by the creditor's internal appraisal staff, the date that a consumer receives a copy of an appraisal as required under § 1026.35(c)(6) is the date on which the appraisal is completed. In the 2013

Supplemental Proposed Rule, the Agencies proposed to delete this comment as unnecessary, because the relevant timing requirement is based on when the creditor provides the appraisal, not when the consumer receives it. *See* § 1026.35(c)(6)(i).

Public Comments

A State credit union association commenter requested that the Agencies allow flexibility in providing a copy of the appraisal three days before closing because it is difficult to obtain an appraisal in time to do so, requiring closing to be rescheduled, which can be difficult. The commenter requested that consumers be permitted to waive the requirement if it is in their best interest to do so.

The Final Rule

The Agencies are adopting the proposal to delete comment 35(c)(6)(ii)-2 without change, and re-numbering comment 35(c)(6)(ii)-3 as 35(c)(6)(ii)-2. The Agencies are not adding a waiver option to the timing requirement for providing a copy of the appraisal to the consumer. Re-numbered comment 35(c)(6)(ii)-2 clarifies that the ECOA provision allowing a consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to HPMLs subject to § 1026.35(c).[150] The comment further clarifies that a consumer of an HPML subject to § 1026.35(c) may not waive the timing requirement to receive a copy of the appraisal under § 1026.35(c)(6)(i).

The Agencies believe that allowing the consumer to waive the timing requirement for providing a copy of the appraisal would be inconsistent with the statute. ECOA expressly provides that the consumer may waive the three day timing requirement for the

[150] ECOA section 701(e)(2), 15 U.S.C. 1691(e)(2), implemented in the 2013 ECOA Valuations Final Rule, Regulation B § 1002.14(a)(1), effective January 18, 2014.

creditor to provide a copy of the appraisal to the consumer under ECOA.[151] By contrast, Congress did not amend TILA to include a parallel waiver provision regarding the same requirement in the context of appraisals for HPMLs. *See* TILA section 129H(c), 15 U.S.C. 1639h(c). The Agencies interpret TILA's lack of a waiver provision to indicate that Congress did not intend to allow consumers of loans covered by the HPML appraisal rules to waive the timing requirement.

VI. Bureau's Dodd-Frank Act Section 1022(b)(2) Analysis[152]

In developing this supplemental rule, the Bureau has considered potential benefits, costs, and impacts to consumers and covered persons.[153] In addition, the Bureau has consulted, or offered to consult with HUD and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by those agencies. The Bureau also held discussions with or solicited feedback from the USDA, RHS, and VA regarding the potential impacts of this supplemental rule on their loan programs.

In this supplemental final rule, the Agencies are exempting the following three additional classes of higher-priced mortgage loans (HPMLs) from the January 2013 Final Rule: (1) HPMLs whose proceeds are used exclusively to satisfy (*i.e.*, refinance) an existing first lien loan and to pay for closing costs, provided that the credit risk holder is the same on both loans (or that the same government agency insures or guarantees both

[151] ECOA section 701(e)(2), 15 U.S.C. 1691(e)(2), implemented in 12 CFR 1002.14(a)(1), effective January 18, 2014..

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

[153] 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.

loans) and the new loan does not have negative amortization, interest-only, or balloon features; (2) HPMLs that have a principal amount of $25,000 or less (indexed to inflation); and (3) certain HPMLs secured by manufactured homes.

As revised in this final rule, the manufactured home exemption covers all HPMLs secured by manufactured homes for which an application is received before July 18, 2015. Thereafter, (1) for transactions secured by a new manufactured home and land, creditors will only be exempt only from the requirement that the appraiser conduct a physical visit of the interior; and (2) for transactions secured by a manufactured home and not land, the exemption applies only if certain alternative valuation information is provided to the consumer no later than three days before consummation.

The Agencies are also broadening the exemption for qualified mortgages adopted in the January 2013 Final Rule beyond the Bureau's qualified mortgage definition in 12 CFR 1026.43(e) to include any transaction that meets the criteria of a qualified mortgage established by agencies with authority to do so under TILA section 129c – the Bureau, HUD, VA, USDA, and RHS. *See* 15 USC 1693c. As revised, this exemption will include transactions that are qualified mortgages as defined under any final rule that the Bureau, HUD, VA, USDA, or RHS has adopted or will adopt under authority at TILA section 129c. *See* 15 USC 1693c. In addition, transactions that meet criteria for a qualified mortgage established under rules prescribed by the Bureau, HUD, VA, USDA, or RHS are eligible for the exemption even if they are not "covered transactions" under the Bureau's ability-to-repay rules (and thus not technically defined as "qualified

mortgages" under each of the respective rules).[154] For further discussion, see the section-by-section analysis of § 1026.35(c)(2)(i).

A. Potential Benefits and Costs to Consumers and Covered Persons

This analysis considers the benefits, costs, and impacts of the key provisions of the supplemental rule relative to the baseline provided by existing law, including the January 2013 Final Rule and the Bureau's previously issued ATR Rules.[155] The Bureau considered comments received on issues related to this analysis. These comments are addressed below and in the section-by-section analyses.

1. Economic Overview

This rulemaking consists of the adoption of an expanded qualified mortgage exemption and five separate provisions regarding HPMLs that do not qualify for the qualified mortgage status (non-QM). The January 2013 Final Rule demarcated which of those non-QM loans are subject to requirement for an appraisal in conformity with USPAP and FIRREA with an interior property visit (the full appraisal) and related notice and additional appraisal requirements for loans used to purchase certain flipped properties. The overall impact of these five provisions is limited to specific segments of the mortgage market, with arguably the largest impact on transactions secured by a used manufactured home and not land (provision (3) below). The five provisions for non-QM HPMLs are:

[154] Only transactions that are actually insured, guaranteed, or administered under programs of HUD, VA, USDA, or RHS could be eligible for the exemption under § 1026.35(c)(2)(i) by being defined as or meeting the criteria of a qualified mortgage under rules of those agencies; the authority of those agencies to determine the features of a qualified mortgage does not extend to loans that they do not insure, guarantee, or administer. *See* TILA section 129c(b)(3)(B)(ii), 15 U.S.C. 1639c(b)(3)(B)(ii).

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

1. Certain refinances, commonly referred to as "streamlined," are now exempt from the January 2013 Final Rule;

2. Smaller dollar loans (up to $25,000, indexed to inflation) are now exempt from the January 2013 Final Rule;

3. Used manufactured housing transactions that are not secured by land (chattel) are now exempt from the January 2013 Final Rule and, for applications received on or after July 18, 2015, subject to a condition that the creditor must give the consumer alternative valuation information;[156]

4. New manufactured housing transactions that are not secured by land (chattel) remain exempt from the January 2013 Final Rule; however, for applications received on or after July 18, 2015, this exemption will be subject to a condition that the creditor must give the consumer alternative valuation information; and

5. New manufactured housing transactions secured by land (new land/home) remain exempt until July 18, 2015; for applications received on or after July 18, 2015, these transactions will be exempted only from the physical interior visit part of the January 2013 Final Rule.

In adopting each of these provisions, the Agencies considered mandating that consumers receive information about the value of their house at the time of the loan. The Bureau discusses the general benefits and costs of this type of mandatory information provision, and then applies this discussion to each of the provisions.

[156] Used manufactured housing transactions that are secured by land remain covered by the January 2013 Final Rule, starting with applications received on or after July 18, 2015. All loans secured in whole or in part by manufactured home are exempt if the application is received before July 18, 2015.

Consumers benefit from knowing the value of the home on which they are planning to take out a loan. Consumers are able to make decisions that will better fit their situation if they have a more precise estimate of what their home is worth. For example, a consumer might decide, given a home's value, that he or she should not take out the loan or should consider purchasing a different home whose value in relation to the loan amount is lower; that they should sell instead of refinancing; that they should postpone a particular home improvement and not overinvest in a home that might be worth less than they thought. Affording consumers a better opportunity to get this decision right is particularly valuable in home loans because these transaction sizes are significant relative to income; the large size of the transaction relative to income may be especially significant in non-QM HPMLs, which are more costly and may pose greater repayment risk than other mortgage loans.

No valuation method will give the consumer perfect information about the home's value. Thus, a consumer might receive a valuation that overestimates the value and leads to a purchase that should not have been made; similarly, a valuation that underestimates the value might lead to no purchase when one should have been made. However, the Bureau believes that imparting unbiased valuation information to the consumer is better than the consumer receiving no information, and that consumer benefits increase with more precise information, whether it's moving from no information to a manufacturer's invoice, an AVM or similar estimate, a full appraisal, or some other type of valuation prepared by an independent trained person.

The cost of providing any additional information on the home value is directly imposed on the creditor – the creditor has to perform what is necessary to obtain the

home valuation information and provide it to the consumer. However, since this is mostly a marginal cost and most of the mortgage markets are relatively competitive, this cost is likely to be almost fully passed through to the consumer.[157] The fixed costs, which are unlikely to be passed through to the consumer in a relatively competitive market, include developing training materials and providing training. However, the Bureau believes that the marginal training and training development costs for the provisions of this supplemental final rule are non-significant. Creditors will have already developed and provided training in preparation for complying with the various requirements of the January 2013 Final Rule, which goes into effect on January 18, 2014; this supplemental final rule is considerably less complex, establishing exemptions from those requirements.

In the world of informed consumers exhibiting fully rational economic behavior, mandatory information provisions might be unnecessary – consumers would have decided for themselves whether they need this information enough to pay for it. However, the Bureau believes that this is not the best assumption, especially for a market with many product characteristics, intertemporal investment decisions, and projections into the distant future. Moreover, even under that assumption, creditors might have some specialized knowledge making them able to obtain better information than the consumer could access on their own.[158]

A range of possibilities for a home value information requirement exists in the non-QM HPML mortgage market. This range has, at one end of the spectrum, no

[157] See, for example, E. Glen Weyl and Michael Fabinger, "Pass-Through as an Economic Tool: Principles of Incidence under Imperfect Competition," Journal of Political Economy, Vol. 121, No. 3 (Feb. 24, 2013).
[158] For example, consumers generally cannot access the manufacturer's invoice for a manufactured house.

information provision requirement, and a full appraisal on the other. Generally, the more precise the information is, the more expensive the method is. In particular, the Bureau believes that a full appraisal costs $350 on average as discussed in the Section 1022 analysis in the January 2013 Final Rule.[159] Not providing any information is, of course, free to the creditor. An intermediate solution like an automated valuation estimate (an AVM estimate) would result in a cost of under $20, as estimated in the 2013 Supplemental Proposed Rule;[160] however, an AVM estimate is arguably less precise than a USPAP appraisal, especially in rural areas. Providing a consumer with a copy of a manufacturer's invoice (one of the few conditions that a creditor might satisfy for a non-QM HPML to be exempted from a full appraisal on chattel manufactured housing) is estimated to cost less than $5. Moreover, the Bureau's January 2013 ECOA Valuations Rule already requires the creditor to give the consumer a copy of valuations performed for the transaction; the Bureau estimates that full appraisals that are performed 95% of the time for purchases, 90% for refinances, and 5% for other loans generally in the mortgage market based upon outreach.[161]

2. Data Used

For all the estimates , both above and below, the data sources used are described in the 2013 Supplemental Proposed Rule (described in the next paragraph below). Several commenters stated that for the completeness of analysis, the Bureau should also examine the impact of the points and fees criterion for a qualified mortgage under the

[159] 78 FR 10368, 10420 (Feb. 13, 2013).
[160] 78 FR 48548, 48568 n.91 (Aug. 13, 2013).
[161] 78 FR 10368, 10419 (Feb. 13, 2013).

Bureau's 2013 ATR Final Rule on the number of HPMLs that are non-QMs.[162] The Bureau does not possess any data and is not aware of any existing data to address this point directly. However, the effect of points and fees is described further below. The Bureau did not receive comments raising additional issues regarding the data and the methodology by which projections were originated.

The Bureau has relied on a variety of data sources to analyze the potential benefits, costs and impacts of the rule.[163] However, in some instances, the requisite data are not available or are quite limited. Data with which to quantify the benefits of the rule are particularly limited. As a result, portions of this analysis rely in part on general economic principles to provide a qualitative discussion of the benefits, costs, and impacts of the rule.

The primary source of data used in this analysis is data collected under HMDA. The empirical analysis generally uses 2011 data, including from the 4th quarter 2011 bank and thrift Call Reports[164] and 4th quarter 2011 credit union call reports from the

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[162] *See generally* 12 CFR 1026.43(e)-(f) (provisions identifying types of mortgages that are qualified mortgages under Bureau rules).

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

[164] 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/.

NCUA. De-identified data from the National Mortgage Licensing System (NMLS) Mortgage Call Reports (MCR)[165] for the 4th quarter of 2011 also were used to identify financial institutions and their characteristics.

In addition, in analyzing alternatives for the exemption for certain refinances, the Bureau did consider data provided by FHFA and FHA regarding valuation practices under their streamlined refinance programs (and in particular regarding the frequency with which appraisals or automated valuations are conducted).

3. Smaller Dollar Loans

Estimate of the Number of Covered Loans

The Bureau estimates the number of transactions potentially eligible for the smaller dollar exemption as follows: HMDA data for 2011 indicates there were approximately 25,000 HPMLs at or below $25,000 that were not insured or guaranteed by government agencies or purchased by the GSEs (so, not qualified mortgages on that basis). Of these, the Bureau estimates that 4,800 were HPMLs with DTI ratios above 43 percent (so they would not meet the more general definition of a qualified mortgage at 12 CFR 1026.43(e)(2)). Accordingly, the Bureau estimates that approximately 4,800

[165] The NMLS is a national registry of non-depository financial institutions including mortgage loan originators. Portions of the registration information are public. The Mortgage Call Report data are reported at the institution level and include information on the number and dollar amount of loans originated, and the number and dollar amount of loans brokered. The Bureau noted in its summer 2012 mortgage proposals that it sought to obtain additional data to supplement its consideration of the rulemakings, including additional data from the NMLS and the NMLS Mortgage Call Report, loan file extracts from various lenders, and data from the pilot phases of the National Mortgage Database. Each of these data sources was not necessarily relevant to each of the rulemakings. The Bureau used the additional data from NMLS and NMLS Mortgage Call Report data to better corroborate its estimate the contours of the non-depository segment of the mortgage market. The Bureau has received loan file extracts from three lenders, but at this point, the data from one lender is not usable and the data from the other two is not sufficiently standardized nor representative to inform consideration of the Final Rule or this supplemental proposal. Additionally, the Bureau has thus far not yet received data from the National Mortgage Database pilot phases.

covered loans are originated annually in an amount up to $25,000.[166] Of these estimated 4,800 covered loans, the Bureau estimates that the types most affected by this exemption, in that they would be unlikely to include appraisals if the exemption applies, would be home improvement loans, subordinate lien transactions not for home improvement purposes, and transactions secured by manufactured homes. Absent an exemption, the HPML appraisal rules could lead to significant changes in valuation methods used for these types of loans. For example, current practice includes appraisals for only an estimated five percent of subordinate lien transactions as explained in the January 2013 Final Rule.[167]

Covered Persons

Creditors originating smaller dollar HPMLs that are non-QMs would experience some reduced burden as a result of the exemption for HPMLs of $25,000 or less. As a result of the exemption, these loans will not be subject to the estimated per-loan costs described in the January 2013 Final Rule.[168] For these transactions, creditors do not need to spend time or resources on complying with the requirements in the HPML appraisal rules: checking for applicability of the second appraisal requirement on a flipped property (in a purchase transaction) and paying for that appraisal when the requirement applies, obtaining and reviewing the appraisals conducted for conformity to this rule, providing a copy of the required disclosure, and providing copies of these appraisals to applicants. Creditors therefore may find it relatively easier to originate HPMLs that are

[166] As discussed above, the Bureau does not believe that a significant number of smaller dollar HPMLs would exceed the points and fees threshold in the 2013 ATR Final Rule. The Bureau requested data on this issue in the supplemental proposal. None of the commenters on the smaller dollar exemption provided this data. If a significant number of smaller dollar HPMLs did exceed that threshold, then the number of loans eligible for the exemption would increase.
[167] *See* 78 FR 10368, 10419 (Feb. 13, 2013).
[168] *See* Section 1022(b) analysis, 78 FR at 10418-21.

eligible for this exemption. As noted above, the overall impact of this exemption on creditors is likely minimal for most creditors given that in 2011 only 4,800 loans were potentially eligible for the exemption.

Consumers

For consumers who seek to borrow smaller dollar loans, such as home improvement loans and other subordinate lien transactions, and who are not able to obtain a qualified mortgage, the exemption for smaller dollar HPMLs (at or less than $25,000) would provide some benefits. Industry practice prior to implementation of the January 2013 Final Rule suggests that appraisals are not otherwise frequently done for home improvement and subordinate lien transactions.[169] Thus, by not requiring an appraisal, the cost of which typically would be passed on to consumers, the exemption could facilitate access to smaller dollar HPMLs that are not otherwise exempt from the HPML appraisal rules. Otherwise, requiring an appraisal for these loans could create incentives that may not benefit consumers. These incentives can be more significant for smaller dollar loans, given that the cost of the appraisal relative to the amount of the loan is higher for smaller dollar loans. For example, some consumers could try to avoid the cost of an appraisal by either not entering into a smaller dollar HPML (unless it is otherwise exempt from the rules, such as a QM) or pursuing an alternative source of credit that is not subject to the rules, such as an open-end home equity line of credit or using other forms of credit that are not dwelling-secured such as a credit card. Finally, as a result of the exemption, consumers are likely to save around $350 per loan; if the appraisal

[169] 78 FR at 10419.

requirement applied to these loans, the Bureau would have expected creditors to pass the cost of the appraisal on to consumers.

Regarding costs to consumers, under the exemption, consumers entering into smaller dollar HPMLs (that are not otherwise exempt) would lose the benefits of the Final Rule. As discussed in the Bureau's analysis under Section 1022 in the January 2013 Final Rule, in general, consumers who are borrowing HPMLs could benefit from an appraisal. For smaller dollar HPMLs that are not purchase transactions, the general benefits elsewhere may be relatively less valuable to the consumer in some cases, given the lower size of the loan and also the likelihood that the consumer already would have had an appraisal in the original purchase transaction.

Nonetheless, having an appraisal could provide a particularly significant benefit to those consumers who are informed by the appraisal that they have significantly less equity in their home than they realize. A smaller dollar mortgage could push these consumers even further toward or into negative equity, without the consumer realizing it. This effect is even more pronounced for consumers whose homes have lower value. All else equal, a $25,000 loan will pose greater risk to a consumer whose home is worth $20,000, than to a consumer whose house is worth $200,000. According to a periodic government survey, as of 2011 more than 2.75 million homes were worth less than $20,000, including a greater proportion of homes whose owners were below the poverty level or elderly.[170] In addition, according to a recent study, as of the end of 2012, 10.4

[170] See 2011 American Housing Survey, "Value, Purchase Price, and Source of Down Payment – Owner Occupied Units (NATIONAL)," C-13-OO, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C13OO&prodType=table. In addition, in seven metropolitan statistical areas, as of the end 2012 the median home value was less than $100,000. See National Association of Realtors® Median Sales Price of Existing

million properties with a residential mortgage were in "negative equity" and an additional 11.3 million had less than 20 percent equity.[171] In addition, some recent studies suggest that subordinate liens can increase the risk of default, as they reduce the amount of equity in the home.[172] Moreover, based upon HMDA data, more than half of subordinate liens originated in 2011 were at or below $25,000. Therefore, smaller dollar loans of $25,000 or less could still pose significant risks to consumers who own these lower-value homes or other homes that are highly leveraged, consuming most or all of any remaining equity.

4. Transactions Secured by Used Manufactured Homes and not Land

Estimate of the Number of Covered Loans

To assess the impact of the rule's provisions concerning manufactured housing, it is necessary to estimate the volume of transactions potentially affected, by collateral type. The Bureau's analysis of 2011 HMDA data, matched with the historic loan performance (HLP) data from the FHFA, indicates that roughly eight percent of all manufactured home purchases were covered loans: HPMLs that were non-QMs because the DTI ratio exceeded 43 percent and the loan was not insured, guaranteed, or purchased by a federal

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Single-Family Homes for Metropolitan Statistical Areas Q4 2012, *available at* http://www.realtor.org/sites/default/files/reports/2013/embargoes/hai-metro-2-11-asdlp/metro-home-prices-q4-2012-single-family-2013-02-11.pdf.

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

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

government agency or GSE.[173] Because HMDA data does not differentiate between transactions with each of the relevant collateral types, including new versus used, the Bureau is applying this ratio to each of the transaction types to derive the estimated number of covered loans below. Manufactured home loans of $25,000 or less also would be exempt under the smaller dollar exemption discussed above. However, the estimates of affected manufactured home transactions discussed in this Section 1022 analysis do not exclude smaller dollar loans and therefore may be slightly overstated.

Census data also reports an estimated 369,000 move-ins to owner-occupied manufactured homes in 2011.[174] Census data reports shipment of approximately 51,000 new manufactured homes in 2011, with approximately 17 percent titled as real estate.[175] Therefore, the Bureau estimates that approximately 318,000 existing manufactured homes were purchased in 2011. The Bureau conservatively assumes that all of these purchases were financed. Further, based upon a review of nearly two decades of Census data on shipments of new manufactured homes, the Bureau estimates that approximately one third of the existing manufactured homes are titled as real property. Therefore, the Bureau, for the purposes of this 1022 analysis, conservatively estimates that approximately 105,000 purchases of existing manufactured homes also involved the acquisition of land which provided security for the purchase loan,[176] while approximately 213,000 purchases were secured only by the existing manufactured home (chattel loans).

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[174] The Census report refers to these homes as "manufactured/mobile homes", but the Census definitions note that all of these homes are "HUD Code homes", which is the fundamental characteristic of what are currently referred to as manufactured homes.
[175] See Cost & Size Comparisons: New Manufactured Homes, *available at* http://www.census.gov/construction/mhs/pdf/sitebuiltvsmh.pdf.
[176] According to data provided by HUD for the fiscal year 2011, approximately 5,900 existing manufactured homes were purchased together with land under the FHA Title II program.

Applying the same eight percent factor for other purchases discussed above, of these, approximately 17,000 were chattel HPMLs that were non-QMs, and approximately 8,400 were land- and home-secured HPMLs that were non-QMs.[177]

The Bureau's analysis of 2011 HMDA data, matched with the HLP data from the FHFA, indicates that, approximately, for every four covered purchase manufactured housing loans, there is one manufactured housing refinance or home improvement loan (that is, out of every five manufactured housing loans, four are purchases). The Bureau believes that both refinance and home improvement loans in manufactured housing are exempt due to other exemptions in this rule. Therefore, the Bureau believes that there are approximately 13,600 covered used chattel manufactured housing loans.[178]

Several commenters noted that the proportion of non-QM loans will be higher in manufactured housing than what was estimated by the Bureau, particularly due to points and fees exceeding the qualified mortgage limit. These commenters did not provide supporting data or address non-QM proportions by collateral type. Nonetheless, if the proportion of non-QM loans secured by existing manufactured homes and not land is indeed higher, then the estimates of costs and benefits of this final rule might increase somewhat (while remaining constant on a per-loan basis). Moreover, while the commenters identified the points and fees cap for qualified mortgages in the Bureau's ATR Rules as the main reason for these loans not to qualify for qualified mortgage status, the Bureau believes that creditors will adjust many transactions, for example by shifting points and fees into the interest rate, so that these transactions are QMs.

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[177] As with new homes, this estimate would increase to the extent that any other manufactured home purchase HPMLs would not be qualified mortgages solely because they exceed caps on points and fees in the Bureau's 2013 ATR Rules.

[178] For further analysis of these assumptions, see the Bureau's RFA analysis at part VII.

Moreover, HUD recently issued a proposed rulemaking to effectively exempt Title I manufactured housing from the qualified mortgage points and fees requirement. If this provision of HUD's proposal is finalized substantially as proposed, the Bureau believes that some creditors will start originating more Title I mortgage loans that will also have the qualified mortgage status. Furthermore, the Bureau conservatively assumes that every manufactured home move-in reported in the Census (or in the American Housing Survey) had a mortgage loan associated with the move-in. Finally, given the analysis of HMDA data, the Bureau believes that the two creditors specialized in manufactured home lending that commented on the supplemental proposal are outliers on several dimensions relevant to the proportion of covered loans, and thus are not necessarily representative of the whole manufactured home market and that their claims regarding non-QM loan volume might overestimate the proportion of manufactured housing loans that are non-QMs for the overall market.

Covered Persons

Creditors originating covered transactions secured by existing manufactured homes but not land will experience some reduced burden as a result of the exemption. In particular, these loans are not subject to the estimated per-loan costs for an appraisal in conformity with USPAP described in the January 2013 Final Rule.[179] For these transactions, creditors also would not need to spend time or resources on complying with the requirements in the HPML appraisal rules: checking for applicability of the second appraisal requirement on a flipped property (in a purchase transaction) and paying for that appraisal when the requirement applies, obtaining and reviewing the appraisals

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

conducted for conformity to this rule, and providing disclosures and appraisal report copies to applicants.

Appraisals in conformity with USPAP may currently be conducted for transactions secured by existing manufactured homes but not land much less frequently than in connection with HPMLs overall. For example, the Bureau believes that USPAP is a set of standards typically followed by appraisers who are state-certified or licensed, and that state laws generally do not require certifications or licenses to appraise personal property. Therefore, even though USPAP includes standards for the appraisal of personal property, it is unclear that these standards are applied when individuals who are not state-licensed or state-certified value manufactured homes. Indeed, the Bureau believes that currently, in some transactions, lenders may simply prepare their own estimates of the value of the home without engaging a licensed or certified appraiser. Thus, most, of the covered transactions might have been impossible to make. The impact of the hypothetical case in which creditors are not able to comply with a provision of this rule that has not yet taken effect is impossible to estimate with any reasonable degree of confidence. As a result, for purposes of analyzing the benefits of the exemption, the Bureau cannot evaluate the burden reduced as a result of the exemption.

The Bureau believes that whatever method of satisfying conditions for the exemption the creditors choose, the cost is likely to be relatively low, and all the manufactured housing creditors would incur it, likely resulting in the majority of this cost passed on to the consumers. The Bureau believes that many creditors will opt to use an independent cost service to qualify for the exemption. The prevalent option currently on the market is the NADAguides. This guide contains an estimate of a manufactured

home's cost of replacement value based on the exact make, model, and the year that the manufactured home was built. Since many creditors use this guide or a competitor's guide already in these transactions, and that estimate is a valuation under the ECOA Valuations Rule and would have had to be provided to the consumer in either case, this additional requirement is not an extra cost on either the creditors or the consumers.[180]

Consumers

The exemption likely results in creditors being able to consummate these transactions while staying in compliance, and thus the benefit of the exemption to consumers is primarily that they will continue to have access to these loans.

Consumers will now receive one of the available options including, and most likely (since it is likely the most cost-effective option for used homes), a third-party cost estimate. As noted above, most creditors use an existing cost service to produce an estimate that already would be provided to the consumer under the ECOA Valuations Rule. This will provide consumers with some information about the value of their manufactured home, and will allow them to decide whether they should indeed purchase this home. If the consumers deem the value too low, they might decide to look at other models of manufactured homes, choose a non-manufactured home instead, or decide to exit the housing market, most likely by renting. The Bureau believes that creditors will pass through most of their costs onto consumers. The Bureau is unaware of any estimates

[180] The Agencies received a comment that implementing a process to ensure compliance with the new provisions regarding chattel manufactured homes will take at least 1,600 hours of labor time. The Bureau disagrees. As discussed above, the requirements can be satisfied not only by obtaining an independent valuation, but also by copying a manufacturer's invoice for new chattel, or following a guide, like the one provided by NADA, for new or used chattel. Following the guide involves looking up the model, make, and the year that the home was built in, akin to Yellow Pages or, more appropriately, Kelley's Bluebook. The Bureau believes that most loan officers should be able to perform that task in, at most, minutes given either a hardcopy of the guide or an electronic version. If a creditor chooses to invest additional labor to tailor its output to consumers to go beyond the limited conditions in this rule, that is not a cost of this rule.

of the cost of a third-party cost evaluation for a used chattel manufactured home, but believes that it is significantly less than $350 required for a full appraisal for a non-manufactured home. For example, the cost of using the third-party cost service may be more akin to the cost of using an automated valuation model, which, as discussed in this Section 1022 analysis, may be approximately $20.[181]

5. *Transactions Secured by New Manufactured Homes and not Land*

Estimate of the Number of Covered Loans

As noted above, approximately 51,000 new manufactured homes were shipped according to recent annual Census data. For this analysis, the Bureau conservatively assumes that all of these homes were used as principal dwellings for consumers and that all of these purchases were financed. In addition, the Bureau believes that the proportion of homes titled as real estate is a reasonable estimate of the number of new manufactured home purchase transactions that are secured in part by land.[182] The Bureau therefore, for this 1022 analysis, conservatively estimates that based upon 2011 data approximately 42,400 new manufactured home sales were financed by chattel loans (which can include homes located on leased land such as in trailer parks and other land-lease communities) and 8,600 transactions were secured by new manufactured homes and land. Applying a factor of approximately eight percent, the Bureau estimates that, of these, almost 3,400

[181] *See also* 78 CFR 48548, 48573, n.123 (Aug. 13, 2013) ("The Bureau has received information in outreach indicating that annual subscriptions to the NADA Guide may cost between $100 and $200 for an unlimited number of value reports … The average cost per-loan would therefore depending on the covered person's total level of lending activity.").

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

were chattel HPMLs that were non-QMs, and almost 700 were land and home-secured HPMLs that were non-QMs.[183]

Covered Persons

The Bureau believes that the vast majority of creditors receive a copy of the manufacturer's invoice as a matter of standard business practice, and thus they could simply provide consumers a copy. Consistent with the January 2013 ECOA Valuations Rule,[184] the Bureau estimates that this will cost creditors around $5 per loan, including training costs. A few commenters have suggested that releasing invoices would upset industry's pricing model. The Bureau does not possess any data and is not aware of any studies to help it evaluate this claim. Moreover, in some industries, such as the car market, a high volume of transactions occur and firms profit even though some consumers are able to discover the invoice value of the product. Moreover, the rule allows the creditor to choose to avoid disclosing the invoice and thereby avoid any issues a creditor believes disclosure of the invoice could entail; in lieu of the invoice, the rule allows covered persons to provide a valuation from an independent person or based on an independent cost service, as described above.

Consumers

Consumers will benefit from this rule by receiving at least some kind of valuation information. The Bureau believes that while consumers getting a mortgage loan on a non-manufactured home would generally receive a valuation based on the ECOA

[183] See the discussion in the beginning of this section on data used and comments received. If the Bureau's estimate is off, for example by a factor as great as three, the estimate would increase from 4,100 to slightly more than 12,000 loans per year (indicating that close to a quarter of the transactions would be non-QM HPMLs after the rule is implemented and that a significant proportion of the manufactured home transactions are not reported to HMDA despite these transactions covered by HMDA).
[184] 78 FR 7216, 7244 (Jan. 31, 2013).

Valuations Rule, this is not the case for new manufactured homes since the manufacturer's invoice is exempt from the ECOA requirements. Thus, this provision arguably has a particularly large effect per transaction affected: consumers go from not knowing anything about the value of their home to at least having some information. This is particularly valuable considering that these are likely to be LMI consumers who would be particularly vulnerable and adversely affected by entering into a transaction that might leave them underwater from the very first day, as discussed in more detail in the section-by-section analysis. The Agencies further discuss this provision in the section-by-section analysis.

6. Transactions Secured by New Manufactured Homes and Land

The Bureau believes that there were approximately 700 new land/home HPML non-QM transactions. One commenter noted that few if any of the transactions outside of those programs include appraisals currently. While the Bureau does not have data on this point, even if few transactions outside of these programs did have appraisals currently, the number of new appraisals that would result from the modified exemption still is quite low.

Covered Persons

This rule will result in approximately a $350 dollar cost increase (the average price of a full appraisal) per transaction, which is likely to be passed through to the consumer. While the rule exempts these appraisals from the requirement of the interior inspections, various commenters suggested that full appraisals (including interior

inspections) of manufactured houses cost more than $350. Thus, it is possible that the actual cost per appraisal is slightly higher or slightly lower.[185]

Consumers

Consumers will receive the benefits of the appraisal discussed elsewhere, and will not be vulnerable to weaker valuation practices when their transactions are occurring outside of GSE or federal agency programs. However, consumers will pay any cost of the required appraisal to the extent that creditors pass it through. The Bureau believes that many of the consumers using non-QM HPMLs to purchase a new manufactured home and land currently do not receive any valuation before buying it, magnifying the potential benefit for consumers.

Finally, the Agencies do not believe that a requirement of a full appraisal (*i.e.*, with a physical inspection of the interior) on new manufactured housing secured by land is appropriate given the fact that many of these houses are not physically on land when the loan is consummated and other inspections occur under HUD and other safety standards. Aside from that, these transactions are not systematically different from construction of site-built homes, and thus should be treated the same to the extent possible.

[185] Some commenters claimed that requiring appraisals for manufactured housing, in particular in land/home transactions, is problematic, in part because they asserted that the appraised value comes in lower than the sale price in a high proportion of FHA manufactured home program transactions. Some comments suggested that the appraisals were not valid in part because they relied upon too many manufactured homes as comparables or the opposite – they relied too heavily on site-built homes as comparables with adjustments which are too subjective. The commenters' views, however, were presented only in theoretical form and did not include data to support the contents. In the context of an individual transaction, if the lender views the appraisal to be inaccurate and can demonstrate that fact, appraisal review and dispute processes exist, and lenders can get a second appraisal or opinion as well. On the other hand, if a portfolio lender accepts an appraisal that indicates insufficient collateral value and does not proceed with the transactions, the fact that the creditor voluntarily decided not to originate the loan based on the appraisal is a benefit to the creditor, and likely to the consumer as well. In addition, FHA appraisal requirements indicate that this agency considers these appraisals sufficiently valid to use, and thus not everyone views these appraisals as problematic.

Again, the Bureau believes that there were approximately 700 new land/home HPML non-QM transactions. This will result in approximately a $350 dollar cost increase (the average price of a full appraisal) that is likely to be passed through to the consumer. This cost might be lower because the rule exempts these appraisals from the requirement of the interior exemptions; however, some commenters suggested that full manufactured home appraisals (which would typically include an interior inspection) might sometimes cost more than appraisals of site-built homes. Thus, it is possible that the actual cost per appraisal is slightly higher or slightly lower.

7. *Streamlined Refinances*

Estimate of the Number of Covered Loans

The Bureau anticipates that the refinance provision overwhelmingly affects private streamline refinances until 2021 because qualified mortgages are separately exempt from this rule and, under the Bureau's 2013 ATR Final Rule, GSE and federal government agency refinances are generally deemed qualified mortgages until 2021.[186] In addition, as discussed in the section-by-section analysis above, only refinances in which the holder of the credit risk on the existing obligation and the refinancing remain the same would be eligible, and the loan cannot have interest-only, negative amortization, or balloon features.

The Bureau estimates that at most 12,000 private no cash-out refinance transactions were originated in 2011. The Bureau believes that some of these were refinances of existing loans where the credit risk holder changed and thus would not be eligible for the exemption, and that a small number of these refinances had interest-only,

[186] *See* 12 CFR 1026.43(e)(4).

negative amortization, or balloon features and also would not be eligible for the exemption. The Bureau believes that for about 90% of refinance transactions, the creditor would have provided an appraisal to the consumer; starting in January 2014, the ECOA Valuations Rule will require creditors to do so. Thus, this exemption is likely to affect under 1,000 loans a year (10% of 12,000).

Covered Persons

Any creditors originating covered refinances that meet the criteria of the exemption can choose to make use of the exemption, which reduces burden. In particular, these loans will not be subject to the estimated per-loan costs described in the January 2013 Final Rule.[187] For these transactions, the creditor is not required to spend time providing a notice, obtaining an appraisal, reviewing the appraisals conducted for conformity to this rule, and providing copies of those appraisals to applicants.

Consumers

Regarding benefits, consumers whose HPML streamlined refinance are newly exempt will save an average of $350 per loan. In addition, streamlined refinance transactions may close more quickly without an appraisal, reducing the time in which a consumer may be in a worse loan, which can result in further cost savings to the consumer. For example, if the consumer can close a refinance transaction two weeks earlier because a full appraisal is not performed, and the refinance loan has a lower interest rate, that will provide the consumer with an additional two weeks of payments at the reduced interest rate of the refinance loan.

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

As discussed above and in the Bureau's analysis under Section 1022 in the January 2013 Final Rule, in general, consumers who are borrowing HPMLs that are covered loans benefit from having an appraisal. The cost to consumers of the proposed exemption therefore is the loss of these potential benefits for the number of covered loans that would be newly-exempted by the proposed exemption and which would not have otherwise included an appraisal. As noted above, the Bureau estimates this would be very few transactions.

8. *Significant Alternatives*

The Agencies discussed various conditions on exemptions for smaller dollar loans and streamline refinances. Placing conditions on these exemptions – for example, requiring that an automated valuation be obtained and provided to the consumer – would provide many of the same benefits to consumer as a full appraisal. However, the Bureau believes that the benefits of an appraisal would likely be lower for these two particular types of transactions than for other types of transactions that will not be exempt from the January 2013 Final Rule.

The cost of these conditions would be directly levied on the creditors; however, the Bureau believes that it would be almost fully passed on to consumers. The Bureau did not view the cost of these alternatives to be significant. The Agencies determined, however, not to adopt this alternative. A significant factor was that streamline refinances and smaller dollar loans were viewed as classes of transactions that were significantly lower risk and therefore not necessitating alternative valuation conditions in this rule.

The Agencies also discussed a provision mandating the creditors to provide chattel manufactured home valuations with adjustments for condition (used chattel) and

location (used or new chattel). The Agencies decided that this provision would introduce additional implementation burden and subjectivity with respect to the compliance processes, and that practices with regard to these adjustments had not sufficiently evolved to codify a uniform set of standards in regulations. From the perspective of potential benefits of this provision, creditors can still provide whatever adjustments are specified in the cost service guide.

The Agencies discussed raising the loan amount requirement for the smaller dollar exemption to $50,000. However, the Agencies decided that the range of $25,000 to $50,000 captures too great a proportion of the remaining non-QM subordinate lien HPMLs. The Bureau also noted that such an increase would wholly exempt many manufactured home purchases that deserve the protection provided by the new provisions in this rule. The Agencies also believe that at these higher loan amounts the cost of the appraisal provides less of an incentive to switch to another kind of financing, for example an open-credit loan.

B. Potential Specific Impacts of the Supplemental Final Rule

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

The rule includes only exemptions and provisions that have limited impact on a small amount of loans. Thus, the Bureau does not believe that any reduction in access to credit will result. If anything, the Bureau believes that the exemption for used chattel manufactured housing will make many loans possible to originate while complying with the January 2013 Final Rule, thus improving access to credit.

Manufactured housing industry commenters suggested that access to credit in chattel loans, including new chattel loans, would be reduced if valuation information must be provided to the consumer. These comments may be read as potentially suggesting that: (1) consumers, if informed of the estimated value of the home by currently available means, might elect not to proceed with the transaction, or (2) creditors, if required to provide such information to the consumers, also might not proceed with the transaction, particularly where the loan amount exceeds the estimated value of the home.

If these comments are based upon the assumption that valuation information provided will be inaccurate or misleading, commenters did not provide data in support of this point with respect to any of the three valuation information options specified in the condition to the exemption for chattel manufactured home loans. In this regard, the Bureau notes that a leading independent cost service provided data in its comments indicating the accuracy of its method compared to personal property appraisals. Otherwise, the Bureau does not consider access to credit to be reduced where consumers voluntarily choose not to continue with a transaction after receiving valuation information; in this case, the information has benefited the consumer by enabling the consumer to make better informed credit choices. Similarly, access to credit is not necessarily compromised if the creditor chooses not to continue with the transaction, particularly if the loan amount exceeds the estimated value of the home. In purchase transactions, the Bureau believes that consumers typically have the option of purchasing other manufactured and non-manufactured homes that would not have the consumer starting off in their mortgage by effectively being underwater.

2. *Impact of the Rule on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets*

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

Otherwise, the Bureau does not believe that the impact of the supplemental rule would be substantially different for the DIs and credit unions with total assets below $10 billion than for larger DIs and credit unions. The Bureau has not identified data indicating that small depository institutions or small credit unions disproportionately engage in lending secured by manufactured homes. Finally, the Bureau has not identified data indicating that these institutions engage in covered streamlined refinances that would be exempted by the exemption for certain refinances at a greater rate than would other financial institutions.

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

The Bureau understands that a significantly greater proportion of homes in rural areas are existing manufactured homes than in non-rural areas.[188] Therefore, any impacts

[188] Census data from 2011 indicates that approximately 45 percent of owner-occupied manufactured homes are located outside of metropolitan statistical areas, compared with 21 percent of owner-occupied single-family homes. *See* U.S. Census Bureau, 2011 American Housing Survey, General Housing Data – Owner-

of the exemption for transactions secured by these homes (but not land) would proportionally accrue more often to rural consumers. With respect to streamlined refinances, the Bureau does not believe that streamlined refinances are more or less common in rural areas. Accordingly, the Bureau currently believes that the exemption for streamlined refinances would generate a similar benefit for consumers in rural areas as for consumers in non-rural areas. Finally, setting aside the increased incidence of manufactured housing loans in rural areas, the Bureau does not believe that the difference in the number of smaller dollar loans originated for consumers in rural areas and non-rural areas is significant.

VII. Regulatory Flexibility Act

OCC

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 603 of the RFA is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks, savings institutions and other depository credit intermediaries with assets less than or equal to $500 million[189] and trust companies with total assets of $35.5 million or less) and publishes its certification and a short, explanatory statement in the

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Occupied Units (National), *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2011_C01OO&prodType=table. *See also* Housing Assistance Council Rural Housing Research Note, "Improving HMDA: A Need to Better Understand Rural Mortgage Markets," (Oct. 2010), *available at* http://www.ruralhome.org/storage/documents/notehmdasm.pdf. Industry comments on the 2012 Interagency Appraisals Proposed Rule noted that manufactured homes sited on land owned by the buyer are predominantly located in rural areas; one commenter estimated that 60 percent of manufactured homes are located in rural areas.

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

Federal Register along with its final rule.

As described previously in this preamble, section 1471 of the Dodd-Frank Act establishes a new TILA section 129H, which sets forth appraisal requirements applicable to HPMLs. The statute expressly excludes from these appraisal requirements coverage of "qualified mortgages as defined by section 129C." In addition, the Agencies may jointly exempt a class of loans from the requirements of the statute if the Agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.

The Agencies issued the January 2013 Final Rule on January 18, 2013, which will be effective on January 18, 2014. Pursuant to the general exemption authority in the statute, the January 2013 Final Rule excluded the following consumer credit transactions from the definition of HPML: transactions secured by new manufactured homes; transactions secured by a mobile homes, boats, or trailers; transactions to finance the initial construction of a dwelling; temporary or "bridge" loans with a term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months; and reverse mortgage loans. The Agencies are issuing this supplemental final rule to include additional exemptions from the higher risk mortgage loan appraisal requirements of section 129H of TILA: certain "streamlined" refinancings and extensions of credit of $25,000 or less, indexed every year for inflation. In addition, this supplemental final rule amends and adds exemptions for transactions secured by manufactured homes.

The OCC currently supervises 1,797 banks (1,179 commercial banks, 61 trust companies, 509 federal savings associations, and 48 branches or agencies of foreign

banks). We estimate that less than 1,309 of the banks supervised by the OCC are currently originating one- to four- family residential mortgage loans that could be HPMLs. Approximately 1,291 of OCC-supervised banks are small entities based on the Small Business Administration's (SBA's) definition of small entities for RFA purposes. Of these, the OCC estimates that 867 banks originate mortgages and therefore may be impacted by this final rule.

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

Therefore, the OCC believes the supplemental final rule will not have a significant economic impact on a substantial number of small entities. The OCC certifies that the supplemental final rule will not have a significant economic impact on a substantial number of small entities.

OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), requires the OCC to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any

one year (adjusted annually for inflation). The OCC has determined that this supplemental final rule will not result in expenditures by state, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement.

Board

The RFA (5 U.S.C. 601 et seq.) requires an agency either to provide a final regulatory flexibility analysis (FRFA) with a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities. This supplemental final rule applies to certain banks, other depository institutions, and non-bank entities that extend HPMLs to consumers.[190] The SBA establishes size standards that define which entities are small businesses for purposes of the RFA.[191] The size standard to be considered a small business is: $500 million or less in assets for banks and other depository institutions; and $35.5 million or less in annual revenues for the majority of nonbank entities that are likely to be subject to the regulations. Based on its analysis, and for the reasons stated below, the Board believes that the supplemental final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a FRFA.

A. Reasons for the Final Rule

This supplemental final rule relates to the January 2013 Final Rule issued by the Agencies on January 18, 2013, which goes into effect on January 18, 2014. *See* 78 FR

[190] The Board notes that for purposes of its analysis, the Board considered all creditors to which the supplemental final rule applies. The Board's Regulation Z at 12 CFR 226.43 applies to a subset of these creditors. *See* 12 CFR 226.43(g).

[191] U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at http://www.sba.gov/sites/default/files/files/size_table_07222013.pdf.

10368 (Feb. 13, 2013). The January 2013 Final Rule implements a provision added to TILA by the Dodd-Frank Act requiring appraisals for "higher-risk mortgages." For certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the January 2013 Final Rule requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. The definition of higher-risk mortgage in new TILA section 129H expressly excludes qualified mortgages, as defined in TILA section 129C, as well as reverse mortgage loans that are qualified mortgages as defined in TILA section 129C.

The Agencies are now finalizing two additional exemptions to the 2013 Final Rule appraisal requirements and adopting certain provisions for manufactured homes. As described in the SUPPLEMENTARY INFORMATION, the supplemental final rule exempts "streamlined" refinancings and transactions of $25,000 or less. The supplemental final rule also exempts loans secured by manufactured homes from the January 2013 Final Rule's appraisal requirements for 18 months, until July 18, 2015. Subsequent to that date:

- A loan secured by a new manufactured home and land must comply with the January 2013 Final Rule's appraisal requirements except for the requirement to conduct a physical visit to the interior of the property;
- A loan secured by an existing (used) manufactured home and land will be subject to all of the January 2013 Final Rule's appraisal requirements; and

- A loan secured by manufactured homes (new or used) and not land will be exempt from the January 2013 Final Rule's appraisal requirements if the consumer is provided with a specified alternative cost estimate or valuation.

B. Statement of Objectives and Legal Basis

The Board believes that the additional exemptions and amendments established by the supplemental final rule are appropriate to carry out the purposes of the statute, as discussed above in the SUPPLEMENTARY INFORMATION. The legal basis for the proposed rule is TILA section 129H(b)(4). 15 U.S.C. 1639h(b)(4). TILA section 129H(b)(4)(A), added by the Dodd-Frank Act, authorizes the Agencies jointly to prescribe regulations implementing section 129H. 15 U.S.C. 1639h(b)(4)(A). In addition, TILA section 129H(b)(4)(B) grants the Agencies the authority jointly to exempt, by rule, a class of loans from the requirements of TILA section 129H(a) or section 129H(b) if the Agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors. 15 U.S.C. 1639h(b)(4)(B).

C. Description of Small Entities to Which the Regulation Applies

The January 2013 Final Rule applies to creditors that make HPMLs subject to 12 CFR 1026.35(c). In the Board's regulatory flexibility analysis for the January 2013 Final Rule, the Board relied primarily on data provided by the Bureau to estimate the number of small entities that would be subject to the requirements of the rule.[192] According to the data provided by the Bureau in connection with promulgation of the supplemental final rule, approximately 5,913 commercial banks and savings institutions, 3,784 credit unions, and 2,672 non-depository institutions are considered small entities and extend mortgages,

[192] *See* the Bureau's regulatory flexibility analysis in the 2013 Final Rule (78 FR 10368, 10424 (Feb. 13, 2013)).

and therefore are potentially subject to the January 2013 Final Rule and the supplemental final rule.

Data currently available to the Board are not sufficient to estimate how many small entities that extend mortgages will be subject to 12 CFR 226.43, given the range of exemptions provided in the January 2013 Final Rule and the supplemental final rule, including the exemption for loans that satisfy the criteria of a qualified mortgage. Further, the number of these small entities that will make HPMLs subject to the supplemental final rule's exemptions is unknown.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The supplemental final rule does not impose any significant new recordkeeping, reporting, or compliance requirements on small entities. The supplemental final rule reduces the number of transactions that are subject to the requirements of the January 2013 Final Rule. As noted above, the January 2013 Final Rule generally applies to creditors that make HPMLs subject to 12 CFR 1026.35(c), which are generally mortgages with an APR that exceeds the APOR by a specified percentage, subject to certain exemptions. The supplemental final rule exempts two additional classes of HPMLs from the January 2013 Final Rule: certain streamlined refinance HPMLs whose proceeds are used exclusively to satisfy an existing first lien loan and to pay for closing costs, and new HPMLs that have a principal amount of $25,000 or less (indexed to inflation). In addition, the supplemental final rule exempts until July 2015 HPMLs secured by manufactured homes. Accordingly, the supplemental final rule decreases the burden on creditors by reducing the number of loan transactions that are subject to the January 2013 Final Rule. For applications submitted on or after July 18, 2015, burden increases

slightly for transactions secured by new manufactured homes and land because such transactions will be required to comply with the January 2013 Final Rule's appraisal requirements except for the requirement to conduct a physical visit to the interior of the property. In addition, burden also increases with respect to transactions secured by a new manufactured home and not land. These transactions will be exempt from the January 2013 Final Rule's appraisal requirements only if the borrower is provided with a specified alternative cost estimate or valuation to the borrower.

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

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

G. Discussion of Significant Alternatives

The Board is not aware of any significant alternatives that would further minimize the economic impact of the supplemental final rule on small entities. With respect to transactions secured by "streamlined" refinances or smaller-dollar HPMLs, the supplemental final rule exempts these transactions from the January 2013 Final Rule and therefore reduces economic burden for small entities. With respect to loans secured by new manufactured homes and land, the Board recognizes that the supplemental final rule imposes new burden by requiring such transactions to comply with the January 2013 Final Rule's appraisal requirements except for the requirement to conduct a physical visit to the interior of the property. With respect to loans secured by new manufactured homes and not land, the Board also recognizes that the supplemental final rule imposes new burden by requiring that such transactions are exempt from the January 2013 Final Rule only if the borrower is provided with a specified alternative cost estimate or valuation.

Although maintaining the January 2013 Final Rule exemption for new manufactured homes would lower the economic impact on small entities, the Board does not believe doing so is appropriate in carrying out the purposes of the statute.

FDIC

The RFA generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities.[193] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the SBA to include banking organizations with total assets of $500 million or less) and publishes its certification and a short, explanatory statement in the Federal Register together with the rule.

As of June 30, 2013, there were about 3,673 small FDIC-supervised institutions, which include 3,363 state nonmember banks and 310 state-chartered savings banks. The FDIC analyzed the 2011 HMDA[194] dataset to determine how many loans by all FDIC-supervised institutions might qualify as HPMLs under section 129H of the TILA as added by section 1471 of the Dodd-Frank Act. This analysis reflects that only 70 FDIC-supervised institutions originated at least 100 HPMLs, with only four institutions originating more than 500 HPMLs. Further, the FDIC-supervised institutions that met

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

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

the definition of a small entity originated on average less than 11 HPMLs of $250,000[195] or less each in 2011.

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

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

[195] HPML transactions over $250,000 were excluded from this analysis as 12 CFR Part 323 of the FDIC Rules and Regulations requires an appraisal for real estate loans over $250,000 unless another exemption applies.

The supplemental final rule amends one existing exemption and establishes additional exemptions to the appraisal requirements in the January 2013 Final Rule. The supplemental final rule exempts:

- **"Streamlined" refinancings**. A "streamlined" refinancing results if the holder of the successor credit risk also held the risk of the original credit obligation. The supplemental final rule does not exempt refinancing transactions involving cash out, negative amortization, interest only payments or balloon payments.
- **"Smaller Dollar" Residential Loans**. A "smaller dollar" residential loan is an extension of credit of $25,000 or less, with the amount indexed annually for inflation, secured by the borrower's principal dwelling.
- **Manufactured Home Loans**. Loans secured by manufactured homes are exempt from the appraisal requirements for 18 months, until July 18, 2015. Subsequent to that date:
    - A loan secured by a new manufactured home and land must comply with the appraisal requirements except for the requirement to conduct a physical visit to the interior of the property;
    - A loan secured by an existing (used) manufactured home and land will be subject to all appraisal requirements; and
    - A loan secured by a manufactured home (new or used) and not land will be exempt from the appraisal requirements if the buyer is provided with a specified alternative cost estimate or valuation.

The supplemental final rule amends the exemption for a loan secured by a new manufactured home in the January 2013 Final Rule by requiring an appraisal without a

physical visit to the interior of the property for loans secured by a new manufactured home and land after July 18, 2015. This amendment will increase burden as such loans will no longer be exempt from all of the appraisal requirements. While data is not available to estimate the number of such transactions, the previously cited HMDA data reflects that FDIC-supervised institutions that met the definition of a small entity each engaged in a relatively small number of HPML transactions in 2011. In addition, the supplemental final rule exempts additional transactions, including certain "streamlined" refinancings, "smaller dollar" residential loans, and some manufactured home loans, from the appraisal requirements of the January 2013 Final Rule, resulting in reduced regulatory burden to FDIC-supervised institutions that would have otherwise been required to obtain an appraisal and comply with the requirements for such HPML transactions.

It is the opinion of the FDIC that the supplemental final rule will not have a significant economic impact on a substantial number of small entities that it regulates in light of the following facts: 1) the supplemental final rule reduces regulatory burden on small institutions by exempting certain transactions from the appraisal requirements of the January 2013 Final Rule; and 2) the FDIC previously certified that the January 2013 Final Rule would not have a significant economic impact on a substantial number of small entities. Accordingly, the FDIC certifies that the supplemental final rule would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

NCUA

The RFA generally requires that, in connection with a final rule, an agency prepare and make available for public comment a FRFA that describes the impact of the

final rule on small entities.[196] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the Federal Register together with the rule. NCUA defines small entities as small federally insured credit unions (FICU) having less than 50 million dollars in assets.[197]

In 2012, there were approximately 4,600 small FICUs. The NCUA analyzed the 2012 HMDA[198] dataset to determine how many loans by all FICUs might qualify as HPMLs under section 129H of the TILA as added by section 1471 of the Dodd-Frank Act. This analysis reflects that 918 FICUs originated HPMLs, with only 24 institutions originating more than 100 HPMLs. Further, the FICUs that met the definition of a small entity originated on average less than 2 HPMLs in 2012.

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

- The creditor must obtain a written appraisal; the appraisal must be performed by a certified or licensed appraiser; and the appraiser must conduct a physical property visit of the interior of the property.

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[196] *See* 5 U.S.C. 601 *et seq*.
[197] NCUA Interpretative Ruling and Policy Statement (IRPS) 87-2, 52 FR 35231 (Sept. 18, 1987); *as amended by* IRPS 03-2, 68 FR 31951 (May 29, 2003); *and* IRPS 13-1, 78 FR 4032, 4037 (Jan. 18, 2013).
[198] The NCUA based its analysis on the HMDA data, as it provided a proxy for the characteristics of HPMLs. While the NCUA recognizes that fewer higher-price loans were generated in 2011, a more historical review is not possible because the average offer price (a key data element for this review) was not added until the fourth quarter of 2009. The NCUA also recognizes that the HMDA data provides information relative to mortgage lending in metropolitan statistical areas, but not in rural areas.

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

The supplemental final rule amends one existing exemption and establishes additional exemptions to the appraisal requirements in the January 2013 Final Rule. The supplemental final rule exempts:

- *"Streamlined" refinancings*. A "streamlined" refinancing if the holder of the successor credit risk also held the risk of the original credit obligation. The supplemental final rule does not exempt refinancing transactions involving cash out, negative amortization, interest only payments or balloon payments.
- *Extensions of credit of $25,000 or less*. Extension of credit of $25,000 or less, with the amount indexed annually for inflation, secured by the borrower's principal dwelling.
- *Manufactured Home Loans*. Loans secured by a manufactured home are exempt from the appraisal requirements for 18 months, until July 18, 2015. Subsequent to that date:

- A loan secured by a new manufactured home and land must comply with the appraisal requirements except for the requirement to conduct a physical visit to the interior of the property;
- A loan secured by an existing (used) manufactured home and land will be subject to all appraisal requirements; and
- A loan secured by a manufactured home (new or used) and not land will be exempt from the appraisal requirements if the consumer is provided with a specified alternative cost estimate or valuation.

The supplemental final rule amends the exemption for loans secured by a new manufactured home in the January 2013 Final Rule by requiring an appraisal without a physical visit to the interior of the property for loans secured by a new manufactured home and land after July 18, 2015. This amendment will increase burden as such loans will no longer be exempt from all of the appraisal requirements. While data is not available to estimate the number of such transactions, the previously cited HMDA data reflects that FICUs that met the definition of a small entity each engaged in a relatively small number of HPML transactions in 2011. In addition, the supplemental final rule exempts additional transactions, including certain "streamlined" refinancings, "smaller dollar" residential loans, and some manufactured home loans, from the appraisal requirements of the January 2013 Final Rule, resulting in reduced regulatory burden to FICUs that would have otherwise been required to obtain an appraisal and comply with the requirements for such HPML transactions.

It is the opinion of the NCUA that the supplemental final rule will not have a significant economic impact on a substantial number of small entities that it regulates in

light of the following facts: 1) the supplemental final rule reduces regulatory burden on small institutions by exempting certain transactions from the appraisal requirements of the January 2013 Final Rule; and 2) the NCUA previously certified that the January 2013 Final Rule would not have a significant economic impact on a substantial number of small entities. Accordingly, the NCUA certifies that the supplemental final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This supplemental final rule applies to FICUs and will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this supplemental final rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996[199] (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.[200] NCUA does not believe this final rule is a "major rule" within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget (OMB) for its determination.

Bureau

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a FRFA of any rule subject to notice-and-comment rulemaking requirements.[201] These analyses must "describe the impact of the proposed rule on small entities."[202] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[203] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[204]

An IRFA was not required for the proposal, and a FRFA is not required for the supplemental final rule, because it will not have a significant economic impact on a

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[199] Pub. L. 104–121, 110 Stat. 857 (1996).
[200] 5 U.S.C. 551.
[201] 5 U.S.C. 601 *et. seq.*
[202] *Id.* at 603(a). For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. *Id.* at 601(6). A "small business" is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. *Id.* at 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." *Id.* at 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. *Id.* at 601(5).
[203] *Id.* at 605(b).
[204] *Id.* at 609.

substantial number of small entities.

The analysis below evaluates the potential economic impact of the supplemental final rule on small entities as defined by the RFA. The analysis generally examines the regulatory impact of the provisions of the supplemental final rule against the baseline of the January 2013 Final Rule the Agencies issued on January 18, 2013.

No comments received were relevant specifically to smaller entities. The Agencies discuss more general comments in the section-by-section analyses and the Bureau discusses some of the more specific comments relating to benefits and costs of these provisions in its Section 1022(b) analysis.

A. Number and Classes of Affected Entities

The supplemental final rule applies to all creditors that extend closed-end credit secured by a consumer's principal dwelling. All small entities that extend these loans are potentially subject to at least some aspects of the supplemental final rule. This supplemental final rule may impact small businesses, small nonprofit organizations, and small government jurisdictions. A "small business" is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[205] Under such standards, depository institutions with $500 million or less in assets are considered small; other financial businesses are considered small if such entities have average annual receipts (*i.e.*, annual revenues) that do not exceed $35.5 million. Thus, commercial banks, savings institutions, and credit unions with $500 million or less in assets are small businesses, while other creditors extending credit secured by real property or a dwelling are small businesses if average

[205] 5 U.S.C. 601(3). The current SBA size standards are located on the SBA's web site at http://www.sba.gov/content/table-small-business-size-standards.

annual receipts do not exceed $35.5 million.

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

The following table provides the Bureau's estimate of the number and types of entities to which the supplemental final rule would apply:[206]

Table 1. Counts of Creditors by Type.

Estimated number of affected entities and small entities by NAICS code and engagement in closed-end mortgage transactions

Category	NAICS	Small Entity Threshold	Entities Engaged in Closed-end Mortgage Transactions [b]	Small Entities Engaged in Closed-end Mortgage Transactions
Commercial banks & savings institutions	522110, 522120	$500,000,000 assets	7230 [a]	5913 [a]
Credit unions [c]	522130	$500,000,000 assets	4178 [a]	3784 [a]
Real Estate credit[d,e]	522310, 522292	$35,500,000 revenues	2787	2672 [a]
Total			14,195	12,369
Source: 2011 HMDA, Dec. 31, 2011 Bank and Thrift Call Reports, Dec. 31, 2011 NCUA Call Reports, Dec. 31, 2011 NMLSR Mortgage Call Reports.				
[a] For HMDA reporters, loan counts from HMDA 2011. For institutions that are not HMDA reporters, loan counts projected based on Call Report data fields and counts for HMDA reporters.				
[b] Entities are characterized as originating loans if they make one or more loans.				
[c] Does not include cooperatives operating in Puerto Rico. The Bureau has limited data				

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

about these institutions or their mortgage activity.
[d] NMLSR Mortgage Call Report for 2011. All MCR reporters that originate at least one loan or that have positive loan amounts are considered to be engaged in real estate credit (instead of purely mortgage brokers). For institutions with missing revenue values, the probability that the institution was a small entity is estimated based on the count and amount of originations and the count and amount of brokered loans.
[a] Data do not distinguish nonprofit from for-profit organizations, but Real Estate Credit presumptively includes nonprofit organizations.

B. Impact of Exemptions

The provisions of the supplemental final rule all provide or modify exemptions from the HPML appraisal requirements. Measured against the baseline of the burdens imposed by the January 2013 Final Rule the Agencies issued on January 18, 2013, the Bureau believes that these provisions impose either no or insignificant additional burdens on small entities. The Bureau believes that most of these provisions would reduce the burdens associated with implementation costs, additional valuation costs, and compliance costs stemming from the HPML appraisal requirements. The Bureau also notes that creditors voluntarily choose whether to avail themselves of the exemptions.

As discussed in the Bureau's Section 1022(b) analysis, the five provisions[207] for non-QM HPMLs are in this rule are:

1. Certain refinances, commonly referred to as "streamlined" are now exempt from the January 2013 Final Rule;
2. Smaller dollar loans (under $25,000) are now exempt from the January 2013 Final Rule;
3. Used manufactured housing transactions that are not secured by land (chattel) are now exempt from the January 2013 Final Rule and, for applications

[207] The Bureau believes that other provisions would have a *de minimis* impact on small entities.

received on or after July 18, 2015, subject to some conditions to provide an alternative valuation;[208]

4. New manufactured housing transactions that are not secured by land (chattel) remain exempt from the January 2013 Final Rule; however, for applications received on or after July 18, 2015, these transactions are now subject to conditions; and

5. New manufactured housing transactions secured by land (new land/home) for which an application is received on or after July 18, 2015, now are subject to the January 2013 Final Rule; however, these transactions remain exempted from the physical interior visit part of the requirement.

1. Exemption for "Streamlined" Refinancing Programs

The supplemental final rule provides an exemption for any transaction that is a refinancing satisfying certain conditions.

This provision removes the burden to small entities extending any HPMLs covered by the final rule under "streamlined" refinance programs of providing a consumer notice and obtaining, reviewing, and disclosing to consumers USPAP- and FIRREA-compliant appraisals.

The regulatory burden reduction might be lower since a creditor would have to determine whether the refinancing loan is of the type that meets the exemption requirements. However, the Bureau believes that little if any additional time would be needed to make these determinations, as they depend upon basic information relating to the transaction that is typically already known to the creditor. Small entities will be able

[208] Used manufactured housing transactions that are secured by land remain covered by the January 2013 Final Rule. However, all loans are exempt if the application is received before July 18, 2015.

to choose whether to avail themselves of this exemption.

2. Exemption for Smaller Dollar Loans

The supplemental final rule exempts from the final rule loans equal to or less than $25,000, adjusted annually for inflation. This provision removes burden imposed by the final rule on small entities extending any HPMLs covered by the final rule up to $25,000. In any event, small entities will be able to choose whether to avail themselves of this exemption.

3. Exemption Subject to Alternative Valuation for Used Manufactured Housing Transactions Not Secured by Land (Used Chattel)

The supplemental final rule exempts from the HPML appraisal requirements a transaction secured by an existing manufactured home and not land. This provision removes certain burdens imposed by the January 2013 Final Rule on small entities extending HPMLs covered by the January 2013 Final Rule when they are secured solely by existing manufactured homes. The burdens removed would be those of providing a consumer notice, determining the applicability of the second appraisal requirement in purchase transactions, and obtaining, reviewing, and disclosing to consumers USPAP- and FIRREA-compliant appraisals. To be eligible for this burden-reducing exemption, the creditor is required to obtain an estimate of the value of the home, with the types of estimates allowed described in detail in the section-by-section analysis. For example, creditors can use an independent cost service to qualify for the exemption.

Taking the January 2013 Final Rule as the baseline, as discussed in the section-by-section and the Bureau's Section 1022(b) analyses, this exemption might provide significant burden relief since, the Bureau believes that USPAP is a set of standards

typically followed by appraisers who are state-certified or licensed, and that state laws generally do not require certifications or licenses to appraise personal property. Thus, many of these transactions might not have been made, but for this exemption. Finally, taking advantage of this exemption is voluntary for creditors, thus it imposes no additional burden.

4. Narrowed Exemption for Transactions Secured by New Chattel Manufactured Homes

As discussed in the Bureau's Section 1022(b) analysis and in the section-by-section analysis, the final rule requires the creditor to provide the consumer with one of several types of an alternative valuation of the new manufactured home in transactions that are secured by a new manufactured home but not land. This condition does not significantly increase the burden of the rule relative to the January 2013 Final Rule. The Bureau believes that the cost of obtaining an estimate of the value of the new manufactured home using a third-party cost source, for example, would be significantly less than the cost of obtaining a USPAP-complaint appraisal.

As noted in the Bureau's Section 1022(b) analysis, the Bureau believes that there might be as many as 3,400 such transactions. As shown in the table above, the Bureau believes that there were 12,369 small creditors in 2011. Thus, over 85 percent of small creditors face at most one such transaction per year. As noted in the 2013 January Final Rule, the Bureau believes that a USPAP appraisal costs on average $350. Even if we suppose that an alternative valuation would cost as must as a USPAP appraisal, that results in a burden of $350 for that creditor, an insignificant burden. Note that the Bureau believes that the cost imposed per transaction is considerably lower, arguably under $5 for some third-party cost sources. Moreover, HMDA data implies that over 85 percent of

small creditors will not be subject to any transactions like that. Even if the Bureau misestimated the number of affected transactions by a factor of 10, the costs imposed on 85 percent of small creditors are still like to be well under $100 per creditor.[209]

5. Narrowed Exemption for Transactions Secured by New Manufactured Homes and Land

The Agencies finalized a provision that requires an appraisal for transactions secured by new manufactured homes and land, while exempting these appraisals from interior inspection. As noted in the Bureau's Section 1022(b) analysis, the Bureau believes that approximately 700 transactions are going to be affected. Thus, over 90 percent of small creditors are not going to be affected by this provision. Even if the Bureau misestimated the number of transactions affected by a factor of 10, over 85 percent of small creditors would be subject to at most one such transaction per year, resulting in a burden of around $350 per creditor, a negligible fraction of a creditor's revenue. This impact could be even lower, given that, as noted in the section-by-section analysis, these transactions already are subject to a full appraisal requirement when carried out under GSE or federal agency programs.

C. Conclusion

Each element of this supplemental final rule would reduce economic burden for small entities or impose a minor burden on a small amount of creditors (well less than $500 per creditor for 85 percent of small creditors even if the Bureau misestimated the

[209] All mortgage lenders can participate in the manufactured housing market segment (which includes chattel transactions and transactions secured by a manufactured home and land; the handful of manufactured housing specialty lenders engaged in chattel lending are still not significant in number by themselves. Further, even if the chattel exemption conditions were significant to their revenue, that is not a substantial number for RFA purposes.

number of covered manufactured home transactions by a factor of 10). The exemption for HPMLs secured by existing manufactured homes and not land would lessen any economic impact resulting from the HPML appraisal requirements. The exemption for "streamlined" refinance HPMLs also would lessen any economic impact on small entities extending credit pursuant to those programs, particularly those relating to the refinancing of existing loans held on portfolio. The exemption for smaller-dollar HPMLs similarly would lessen burden on small entities extending credit in the form of HPMLs up to the threshold amount. The narrowed exemptions for transactions secured by new manufactured homes, both land and chattel, would barely affect over 85 percent of creditors (at most one such transaction per year).

These impacts that would have been generated by the January 2013 Final Rule are reduced to the extent the transactions are not already exempt from the January 2013 Final Rule as qualified mortgages. While all of these exemptions may entail additional recordkeeping costs, the Bureau believes that these costs are minimal and outweighed by the cost reductions resulting from the proposal. Small entities for which such cost reductions are outweighed by additional record keeping costs may choose not to utilize the proposed exemptions.

Certification

Accordingly, the undersigned certifies that the supplemental final rule will not have a significant economic impact on a substantial number of small entities.

FHFA

The supplemental final rule applies only to institutions in the primary mortgage market that originate mortgage loans. FHFA's regulated entities—Fannie Mae, Freddie

Mac, and the Federal Home Loan Banks—operate in the secondary mortgage markets. In addition, these entities do not come within the meaning of small entities as defined in the RFA. *See* 5 U.S.C. 601(6)).

VIII. Paperwork Reduction Act

OCC, Board, FDIC, NCUA, and Bureau

Certain provisions of the January 2013 Final Rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq*.). *See* 78 FR 10368, 10429 (Feb. 13, 2013). Under the PRA, and notwithstanding any other provision of law, the Agencies may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The information collection requirements contained in this final rule to amend the January 2013 Final Rule have been submitted to OMB for review and approval by the Bureau, FDIC, NCUA, and OCC under section 3506 of the PRA and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Bureau, FDIC, NCUA, and OCC submitted these information collection requirements to OMB at the proposed rule stage, as well. OMB filed comments instructing the agencies to examine public comment in response to the NPRM and describe in the supporting statement of its collection any public comments received regarding the collection, as well as why it did or did not incorporate the commenter's recommendation. No comments were received concerning the proposed information collection requirements. The Board reviewed these final rules under the authority delegated to the Board by OMB.

Title of Information Collection: HPML Appraisals.

Frequency of Response: Event generated.

Affected Public: Businesses or other for-profit and not-for-profit organizations.[210]

Bureau: Insured depository institutions with more than $10 billion in assets, their depository institution affiliates, and certain non-depository mortgage institutions.[211]

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

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

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

NCUA: Federally-insured credit unions.

Abstract:

The collection of information requirements in the January 2013 Final Rule are found in paragraphs (c)(3)(i), (c)(3)(ii), (c)(4), (c)(5), and (c)(6) of 12 CFR 1026.35.[212] This information is required to protect consumers and promote the safety and soundness of creditors making HPMLs subject to 12 CFR 1026.35(c). This information is used by creditors to evaluate real estate collateral securing HPMLs subject to 12 CFR 1026.35(c) and by consumers entering these transactions. The collections of information are mandatory for creditors making HPMLs subject to 12 CFR 1026.35(c).

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

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

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

The January 2013 Final Rule requires that, within three business days of application, a creditor provide a disclosure that informs consumers of the purpose of the appraisal, that the creditor will provide the consumer a copy of any appraisal, and that the consumer may choose to have a separate appraisal conducted at the expense of the consumer (Initial Appraisal Disclosure). *See* 12 CFR 1026.35(c)(5). If a loan is a HPML subject to 12 CFR 1026.35(c), then the creditor is required to obtain a written appraisal prepared by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction (Written Appraisal), and provide a copy of the Written Appraisal to the consumer. *See* 12 CFR 1026.35(c)(3)(i) and (c)(6). To qualify for the safe harbor provided under the January 2013 Final Rule, a creditor is required to review the Written Appraisal as specified in the text of the rule and Appendix N. *See* 12 CFR 1026.35(c)(3)(ii).

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

acquire the property; and (3) any improvements made to the property between the date the seller acquired the property and the date on which the consumer agreed to acquire the property. *See* 12 CFR 1026.35(c)(4)(iv). A creditor is also required to provide a copy of the Additional Written Appraisal to the consumer. 12 CFR 1026.35(c)(6).

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

Calculation of Estimated Burden

January 2013 Final Rule

As explained in the January 2013 Final Rule, for the Initial Appraisal Disclosure, the creditor is required to provide a short, written disclosure within three business days of application. Because this disclosure is supplied by the federal government for purposes of disclosure to the public, this is not classified as an information collection pursuant to 5 CFR 1320(c)(2), and the Agencies have assigned it no burden for purposes of this PRA analysis.

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

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

Final Rule

The Agencies use the estimated burden from the PRA section of the January 2013 Final Rule as the baseline for analyzing the impact the three exemptions in the final rule.

The estimated number of appraisals per respondent for the FDIC, Board, OCC, and NCUA respondents has been updated to account for the exemption for qualified mortgages adopted in the January 2013 Final Rule, which had not been accounted for in the table published at that time, as discussed in the PRA section of the Final Rule. *See* 78 FR 10368, 10430-31 (February 13, 2013). In addition, the impact of the final rule has been considered as follows:

First, the Agencies find that, currently, only a very small minority of refinances involve cash out beyond the levels permitted for the exemption for certain refinance loans. *See* § 1026.35(c)(2)(vii). Going forward, the Agencies believe that virtually all refinance loans will be either qualified mortgages or qualify for this exemption. The Agencies therefore assume that the exemption for certain refinances in this supplemental final rule affects all of the refinance loans analyzed under Section 1022(b)(2) of the January 2013 Final Rule.[213] In that analysis, the Bureau estimated that a total of 3,800 new Written Appraisals would occur as a result of the January 2013 Final Rule (including home purchase, home equity, and refinance loans). In the Supplemental Proposal, the Bureau estimated that refinances would account for approximately 1,200 of these 3,800

[213] *See* 78 FR 10368, 10419 (Feb. 13, 2013). As discussed in the Section 1022(b)(2) analysis in this rule, the Bureau believes that there were at most private 12,000 no cash-out refinance transactions in 2011, and that some number of these were refinances of existing loans where the credit risk holder changed and thus would not be eligible for the exemption, and that a small number of these refinances had interest-only, negative amortization, or balloon features and also would not be eligible for the exemption. Moreover, the Bureau believes that about 90 percent of refinance transactions would have an appraisal provided to consumers because the creditor chose to have an appraisal and provided a copy due to the ECOA Valuations Rule. Thus, this exemption is likely to affect under 1,000 loans a year. The Agencies do not possess reliable, representative data on how many refinances will qualify for this exemption. However, to the extent refinances previously would not have been eligible for exemptions to this rule, the Agencies believe that going forward most such refinances will be restructured as qualified mortgages or otherwise to satisfy the criteria of this exemption for certain refinances. The Agencies used the same assumption for the supplemental proposal and did not receive any comments indicating otherwise. Accordingly, the Table below reflects this assumption. If this assumption did not hold and these refinances were not restructured, the Agencies believe that based on the 2011 data the final rules will cause at most a minor number of new appraisals – for approximately 1,200 loans.

new Written Appraisals that would occur as a result of the January 2013 Final Rule.[214] Thus, the exemption for certain refinances in this supplemental final rule would eliminate approximately 32 percent of the new Written Appraisals that were estimated to occur as a result of the January 2013 Final Rule.

Second, based on the HMDA 2011 data, the Agencies find that 12 percent of all HPMLs are under $25,000. The Agencies believe that this implies that there will be, proportionately, 12 percent fewer appraisals based on the exemption for smaller dollar loans.

Third, the Agencies find that many of the transactions secured by manufactured homes involve either refinances (all of which are conservatively assumed to be covered by the exemption for certain refinances), or smaller dollar loans (which cover many types of manufactured housing transactions).[215] While covered HPMLs above smaller dollar levels that are secured by existing manufactured homes and not land may be newly-exempted, these transactions will need alternative valuations under the final rule. In addition, such loans secured by new manufactured homes and not land also will need

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[214] As stated in the Bureau's Section 1022 analysis in the January 2013 Final Rule 1022, there were 12,000 refinances affected by the January 2013 Final Rule, and out of those the Bureau estimated that 10 percent did not have a full appraisal performed in the absence of the January 2013 Final Rule, resulting in 10 percent*12,000=1,200 of refinances that would be estimated to obtain an appraisal as a result of the January 2013 Final Rule (and which would not be obtained as a result of this supplemental final rule).

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

alternative valuations. Further, such loans secured by new manufactured homes and land will need an appraisal. In the January 2013 Final Rule, the Agencies did not reduce the paperwork burden estimates to account for the exemption for new manufactured homes adopted at that time. The Agencies therefore conservatively make no adjustment to the data in the first panel of Table 3 in the January 2013 Final Rule as a result of that exemption.[216]

The numbers above affect only the first panel in Table 3 of the PRA section of the January 2013 Final Rule. Refinances are not subject to the requirement to obtain an Additional Written Appraisal under the January 2013 Final Rule, and it is assumed that none of the smaller dollar loans or the loans secured by manufactured homes and not land were used to purchase homes being resold within 180 days with the requisite price increases to trigger that requirement (and thus the exemptions for those loans will not reduce any burden associated with that requirement). Accordingly, only the first panel in

[216] The Bureau assumes that manufactured housing loans secured solely by a manufactured home and not land are reflected in the data provided by the institutions to the datasets that are used by the Bureau (Call Reports for Banks and Thrifts, Call Reports for Credit Unions, and NMLS's Mortgage Call Reports), and thus are reflected in the Bureau's loan projections utilized for the table below.
The Agencies conservatively included all non-QM HPML MH loans reported in HMDA and projected based on the Call Reports data in its paperwork burden calculations for the January 2013 Final Rule. The Agencies did not possess sufficient information at the time to estimate the proportion of non-QM HPML MH affected by the January 2013 Final Rule. No new data is used in this rule, and the Agencies still do not possess sufficient information to estimate the proportion of non-QM HPML MH affected by this Supplemental final rule. Thus, the Agencies continue to conservatively assume that all non-QM HPML MH loans reported in HMDA and projected based on the Call Reports data are subject to the full appraisal requirement, resulting in no change in the Table of paperwork burden below.

Note that, while the Agencies assume that all non-QM HPML MH loans are affected, and thus the paperwork burden reported might be an overestimate, the Agencies are possibly underestimating the burden to the extent that there exists systematic underreporting or non-reporting of MH loans to HMDA by creditors who are subject to reporting. In its Section 1022(b) and RFA analyses, the Bureau stress-tested this possibility and very conservatively, in terms of calculating the magnitude of loans affected by provisions of this Supplemental final rule, assumed that this underreporting is occurring on a massive scale. For the purposes of the PRA analysis, the Agencies assume that there is no underreporting. Also, note that if the Bureau underestimated the proportion of non-QM loans among MH lending, the paperwork burden is also underestimated. See the Bureau's Section 1022(b) analysis above for a discussion of data used and comments received.

Table 3 from the January 2013 Final Rule is being updated and the estimates in the second and third panels remain the same. The updated table is reproduced below. The one-time costs are not affected.

The following table summarizes the resulting burden estimates.

Estimated PRA Burden

Table 2. Summary of PRA Burden Hours for Information Collections in HPML Appraisals Final Rule Once Exemptions in the Supplemental Proposal are Adopted[217]

	Estimated Number of Respondents	Estimated Number of Appraisals Per Respondent[218]	Estimated Burden Hours Per Appraisal	Estimated Total Annual Burden Hours
	[a]	[b]	[c]	[d] = (a*b*c)
Review and Provide a Copy of Written Appraisal				
Bureau [219],[220],[221],[222]				
Depository Inst. > $10 B in total assets + Depository Inst. Affiliates	132	3.73	0.25	123
Non-Depository Inst. and Credit Unions	2,853	0.23	0.25	82[223]
FDIC	2,571	0.14	0.25	93
Board [224]	418	0.18	0.25	19

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

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

[219] The information collection requirements (ICs) contained in the Bureau's Regulation Z are generally approved by OMB under OMB No. 3170-0015. The Bureau divided certain proposals to amend the Bureau's Regulation Z into separate Information Collection Requests in OMB's system (accessible at www.reginfo.gov) to ease the public's ability to view and understand the individual proposals. The ICs in the January 2013 Final Rule (and this final rule) will be incorporated with the Bureau's existing collection associated with Truth in Lending Act (Regulation Z) 12 CFR 1026 (OMB No. 3170-0026). In the future, the Bureau plans to reintegrate the ICs in this final rule back into OMB No. 3170-0015; therefore, OMB No. 3170-0015 should continue to be used when referencing the ICs contained in this final rule.

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

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

[222] The Bureau calculates its burden by including both HMDA reporting creditors and the HMDA non-reporting creditors, based on the 2011 data, and allocating burden as discussed in the second footnote in this PRA section. The other Agencies only report the burden for HMDA reporting creditors, based on the 2011 counts.

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

OCC	1,399	0.16	0.25	55
NCUA	2,437	0.07	0.25	44
				416
Total	9,810			
Investigate and Verify Requirement for Additional Written Appraisal				
Bureau				
Depository Inst. > $10 B in total assets + Depository Inst. Affiliates	132	20.05	0.25	662
Non-Depository Inst. and Credit Unions	2,853	1.22	0.25	435
FDIC	2,571	0.78	0.25	502
Board	418	0.97	0.25	102
OCC	1,399	0.85	0.25	299
NCUA	2,437	0.38	0.25	232
Total	9,810			2,232
Review and Provide a Copy of Additional Written Appraisal				
Bureau				
Depository Inst. > $10 B in total assets + Depository Inst. Affiliates	132	0.64	0.25	21
Non-Depository Inst. and Credit Unions	2,853	0.04	0.25	14
FDIC	2,571	0.02	0.25	15
Board	418	0.03	0.25	3
OCC	1,399	0.02	0.25	8
NCUA	2,437	0.01	0.25	5
Total	9,810			66

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

Finally, as explained in the PRA section of the January 2013 Final Rule, respondents must also review the instructions and legal guidance associated with the Final Rule and train loan officers regarding the requirements of the Final Rule. The Agencies continue to estimate that these one-time costs are as follows: Bureau: 36,383 hours; FDIC: 10,284 hours; Board 3,344 hours; OCC: 19,586 hours; NCUA: 7,311 hours.[225]

[224] The ICs in the January 2013 Final Rule will be incorporated with the Board's Reporting, Recordkeeping, and Disclosure Requirements associated with Regulation Z (Truth in Lending), 12 CFR part 226 (OMB No. 7100-0199). The burden estimates provided in this final rule pertain only to the ICs associated with the Final Rule.

[225] As discussed in the PRA section of the January 2013 Final Rule, estimated one-time burden continues to be calculated assuming a fixed burden per institution to review the regulations and fixed burden per estimated loan officer in training costs. As a result of the different size and mortgage activities across

The Agencies have a continuing interest in the public opinion of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to the OMB desk officer for the Agencies by mail to U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C., 20503, or by the internet to oira_submission@omb.eop.gov, with copies to the Agencies at the addresses listed in the **ADDRESSES** section of this **SUPPLEMENTARY INFORMATION**.

FHFA

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

IX. Section 302 of the Riegle Community Development and Regulatory Improvement Act

Section 1400 of the Dodd Frank Act requires that the rule issued to implement Section 1471 take effect not later than 12 months after the date of issuance of the Final Rule. The January 2013 Final Rule was issued on January 18, 2013 and will become effective on January 18, 2014. This supplemental final rule is issued on December 10, 2013 and will be effective on January 18, 2014, except that modifications to the exemptions for loans secured by manufactured homes will be effective on July 18, 2015.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 ("RCDRIA") requires that, subject to certain exceptions, regulations issued

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institutions, the average per-institution one-time burdens vary across the Agencies. *See* 78 FR 10368, 10432 (Feb. 13, 2013).

by the federal banking agencies that impose additional reporting, disclosure, or other requirements on insured depository institutions, take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. This effective date requirement does not apply if the issuing agency finds for good cause that the regulation should become effective before such time. 12 USC 4802.

With respect to the provisions that are effective on January 18, 2014, the OCC, Board, and FDIC find that section 302 of the RCDRIA does not apply because these provisions do not impose additional reporting, disclosure, or other requirements on insured depository institutions.

With respect to the provisions that are effective July 18, 2015, the OCC, Board, and FDIC recognize that section 302 of the RCDRIA applies because these modifications to the exemption for loans secured by manufactured housing impose some additional disclosure requirements. The July 18, 2015 effective date will provide depository institutions engaged in manufactured housing lending the opportunity to develop appropriate policies and implement systems to ensure compliance with the new requirements. Although this date is not the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, the OCC, Board, and FDIC note that insured depository institutions wishing to comply at the beginning of a calendar quarter prior to the effective date retain the flexibility to do so.

List of Subjects

12 CFR Part 34

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

12 CFR Part 226

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

12 CFR Part 1026

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

Department of the Treasury

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR part 34 as amended on February 13, 2013 at 78 FR 10368, effective on January 18, 2014, as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

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

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

Subpart G—Appraisals for Higher-Priced Mortgage Loans

2. Section 34.202 is amended by adding a new paragraph (a) and redesignating current paragraphs (a) through (c) as paragraphs (b) through (d), respectively.

§ 34.202 Definitions applicable to higher-priced mortgage loans.

(a) Consummation has the same meaning as in 12 CFR 1026.2(a)(13).

* * * * *

3. Section 34.203 is amended by:

a. Revising paragraphs (a)(2) through (a)(7), (b) introductory text, and (b)(1) and (b)(2),

b. Adding paragraphs (b)(7) and (b)(8); and

c. Paragraphs (a)(3), (a)(5) and (a)(7) have been reprinted for reader reference.

The additions and revisions read as follows:

§ 34.203 Appraisals for higher priced mortgage loans.

(a) Definitions. For purposes of this section:

* * * * * * *

(2) *Credit risk* means the financial risk that a consumer will default on a loan.

(3) *Manufactured home* has the same meaning as in 24 CFR 3280.2.

(4) *Manufacturer's invoice* means a document issued by a manufacturer and provided with a manufactured home to a retail dealer that separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options (large appliances, built-in items and equipment), plus actual itemized charges for freight from the factory to the dealer's lot or the homesite (including any rental of wheels and axles) and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category.

(5) *National Registry* means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(6) *New manufactured home* means a manufactured home that has not been previously occupied.

(7) *State agency* means a "State appraiser certifying and licensing agency" recognized in accordance with section 1118(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347(b)) and any implementing regulations.

(b) *Exemptions.* Unless otherwise specified, the requirements in paragraph (c) through (f) of this section do not apply to the following types of transactions:

(1) A loan that satisfies the criteria of a qualified mortgage as defined pursuant to 15 U.S.C. 1639c.

(2) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in the OCC official interpretations to this paragraph (b)(2).

* * * * *

(7) An extension of credit that is a refinancing secured by a first lien, with refinancing defined as in 12 CFR 1026.20(a) (except that the creditor need not be the original creditor or a holder or servicer of the original obligation), provided that the refinancing meets the following criteria:

(i) Either –

(A) The credit risk of the refinancing is retained by the person that held the credit risk of the existing obligation and there is no commitment, at consummation, to transfer the credit risk to another person; or

(B) The refinancing is insured or guaranteed by the same Federal government agency that insured or guaranteed the existing obligation;

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

(A) Cause the principal balance to increase;

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

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

(iii) The proceeds from the refinancing are used solely to satisfy the existing obligation and to pay amounts attributed solely to the costs of the refinancing; and

(8) A transaction secured in whole or in part by a manufactured home.

3a. Effective July 18, 2015, § 34.203(b)(8) is revised to read as follows:

(8) A transaction secured by:

(i) A new manufactured home and land, but the exemption shall only apply to the requirement in subparagraph (c)(1) of this section that the appraiser conduct a physical visit of the interior of the new manufactured home; or

(ii) A manufactured home and not land, for which the creditor obtains one of the following and provides a copy to the consumer no later than three business days prior to consummation of the transaction—

(A) For a new manufactured home, the manufacturer's invoice for the manufactured home securing the transaction, provided that the date of manufacture is no

earlier than 18 months prior to the creditor's receipt of the consumer's application for credit;

(B) A cost estimate of the value of the manufactured home securing the transaction obtained from an independent cost service provider; or

(C) A valuation, as defined in 12 CFR 1026.42(b)(3), of the manufactured home performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes.

* * * * *

4. Revise paragraph 7 in Appendix A to Subpart G to read as follows. The introductory text is reprinted for reader reference:

Appendix A to Subpart G— Higher-Priced Mortgage Loan Appraisal Safe Harbor Review

To qualify for the safe harbor provided in § 34.203(c)(3), a creditor must confirm that the written appraisal:

* * * * *

7. Indicates that a physical property visit of the interior of the property was performed, as applicable.

* * * * *

Appendix C to Subpart G—OCC Interpretations

5. In Appendix C to Subpart G:

a. Add §§ 34.203(b) and 34.203(b)(1);

c. Revise § 34.203(b)(2);

d. Add paragraph 2 to § 34.203(b)(4);

e. Add § 34.203(b)(7).

f. Effective July 18, 2015, add paragraph 34.203(b)(8); and

g. In § 34.203(f)(2), remove paragraph 2 and redesignate paragraph 3 as paragraph 2.

The additions and revisions read as follows:

Section 34.203—Appraisals for Higher-Priced Mortgage Loans

* * * * *

34.203(b) Exemptions

1. *Compliance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).* Section 34.203(b) provides exemptions solely from the requirements of §§ 34.203(c) through (f). Institutions subject to the requirements of FIRREA and its implementing regulations that make a loan qualifying for an exemption under § 34.203(b) must still comply with appraisal and evaluation requirements under FIRREA and its implementing regulations.

34.203(b)(1) Exemptions.

Paragraph 34.203(b)(1)

1. *Qualified mortgage criteria.* Under § 34.203(b)(1), a loan is exempt from the appraisal requirements of § 34.203 if either:

i. The loan is—(1) subject to the ability-to-repay requirements of the Consumer Financial Protection Bureau (Bureau) in 12 CFR 1026.43 as a "covered transaction" (defined in 12 CFR 1026.43(b)(1)) and (2) a qualified mortgage pursuant to the Bureau's rules or, for loans insured, guaranteed, or administered by the U.S. Department of

Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS), a qualified mortgage pursuant to applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's definition of a qualified mortgage applies to those loans); or

ii. The loan is—(1) not subject to the Bureau's ability-to-repay requirements in 12 CFR 1026.43 as a "covered transaction" (defined in 12 CFR 1026.43(b)(1)), but (2) meets the criteria for a qualified mortgage in the Bureau's rules or, for loans insured, guaranteed, or administered by HUD, VA, USDA, or RHS, meets the criteria for a qualified mortgage in the applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). To explain further, loans enumerated in 12 CFR 1026.43(a) are not "covered transactions" under the Bureau's ability-to-repay requirements in 12 CFR 1026.43, and thus cannot be qualified mortgages (entitled to a rebuttable presumption or safe harbor of compliance with the ability-to-repay requirements of 12 CFR 1026.43, *see, e.g.*, 12 CFR 1026.43(e)(1)). These include an extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5, or pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008. *See* 12 CFR 1026.43(a)(3)(iv) and (vi). They also include extensions of credit made by a creditor identified in 12 CFR 1026.43(a)(3)(v). However, these loans are eligible for the exemption in § 34.203(b)(1) if they meet the Bureau's qualified mortgage criteria in 12 CFR 1026.43(e)(2), (4), (5), or (6) or 12 CFR 1026.43(f) (including limits on when loans

must be consummated) or, for loans that are insured, guaranteed, or administered by HUD, VA, USDA, or RHS, in applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). For example, assume that HUD has prescribed rules to define loans insured under its programs that are qualified mortgages and those rules are in effect. Assume further that a creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h), originates a loan insured by the Federal Housing Administration, which is a part of HUD. The loan is not a "covered transaction" and thus is not a qualified mortgage. *See* 12 CFR 1026.43(a)(3)(v)(A) and (b)(1). Nonetheless, the transaction is eligible for an exemption from the appraisal requirements of § 34.203(b)(1) if it meets the qualified mortgage criteria in HUD's rules. Nothing in § 34.203(b)(1) alters the definition of a qualified mortgage under regulations of the Bureau, HUD, VA, USDA, or RHS.

Paragraph 34.203(b)(2)

1. *Threshold amount*. For purposes of § 34.203(b)(2), the threshold amount in effect during a particular one-year period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Every year, this comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the percentage increase in the CPI-W would result in a $950 increase in the

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

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

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

3. *Qualifying for exemption – subsequent changes*. A transaction does not meet the condition for an exemption under § 34.203(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 34.203(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 34.203 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 34.203 applies. *See* § 34.203(b) and § 34.203(d)(7).

* * * * *

Paragraph 34.203(b)(4)

* * * * *

2. *Financing initial construction.* The exemption for construction loans in § 34.203(b)(4) applies to temporary financing of the construction of a dwelling that will

be replaced by permanent financing once construction is complete. The exemption does not apply, for example, to loans to finance the purchase of manufactured homes that have not been or are in the process of being built when the financing obtained by the consumer at that time is permanent. *See* § 34.203(b)(8).

* * * * *

Paragraph 34.203(b)(7)(i)(A)

1. *Same credit risk holder*. The requirement that the holder of the credit risk on the existing obligation and the refinancing be the same applies to situations in which an entity bears the financial responsibility for the default of a loan by either holding the loan in its portfolio or guaranteeing payments of principal and any interest to investors in a mortgage-backed security in which the loan is pooled. *See* § 34.203(a)(2) (defining "credit risk"). For example, a credit risk holder could be a bank that bears the credit risk on the existing obligation by holding the loan in the bank's portfolio. Another example of a credit risk holder would be a government-sponsored enterprise that bears the risk of default on a loan by guaranteeing the payment of principal and any interest on a loan to investors in a mortgage-backed security. The holder of credit risk under § 34.203(b)(7)(i)(A) does not mean individual investors in a mortgage-backed security or providers of private mortgage insurance.

2. *Same credit risk holder – illustrations.*

Illustrations of the credit risk holder of the existing obligation continuing to be the credit risk holder of the refinancing include, but are not limited to, the following:

i. The existing obligation is held in the portfolio of a bank, thus the bank holds the credit risk. The bank arranges to refinance the loan and also will hold the refinancing

in its portfolio. If the refinancing otherwise meets the requirements for an exemption under § 34.203(b)(7), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In this case, the exemption would apply regardless of whether the bank arranged to refinance the loan directly or indirectly, such as through the servicer or subservicer on the existing obligation.

ii. The existing obligation is held in the portfolio of a government-sponsored enterprise (GSE), thus the GSE holds the credit risk. The existing obligation is then refinanced by the servicer of the loan and immediately transferred to the GSE. The GSE pools the refinancing in a mortgage-backed security guaranteed by the GSE, thus the GSE holds the credit risk on the refinance loan. If the refinance transaction otherwise meets the requirements for an exemption under § 34.203(b)(7), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In this case, the exemption would apply regardless of whether the existing obligation was refinanced by the servicer or subservicer on the existing obligation (acting as a "creditor" under 12 CFR 1026.2(a)(17)) or by a different creditor.

3. *Forward commitments.* A creditor may make a mortgage loan that will be sold or otherwise transferred pursuant to an agreement that has been entered into at or before the time the transaction is consummated. Such an agreement is sometimes known as a "forward commitment." A refinance loan does not satisfy the requirement of § 34.203(b)(7)(i)(A) if the loan will be acquired pursuant to a forward commitment, such

that the credit risk on the refinance loan will transfer to a person who did not hold the credit risk on the existing obligation.

Paragraph 34.203(b)(7)(ii)

1. *Regular periodic payments.* Under § 34.203(b)(7)(ii), the regular periodic payments on the refinance loan must not: result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (*see* 12 CFR 1026.43, and the Official Staff Interpretations to the Bureau's Regulation Z, comment 43(e)(2)(i)-2); or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term "substantially equal," *see* 12 CFR 1026.43, the Official Staff Interpretations to the Bureau's Regulation Z, comment 43(c)(5)(i)-4. In addition, a single-payment transaction is not a refinancing meeting the requirements of § 34.203(b)(7) because it does not require "regular periodic payments."

Paragraph 34.203(b)(7)(iii)

1. *Permissible use of proceeds.* The exemption for a refinancing under § 34.203(b)(7) is available only if the proceeds from the refinancing are used exclusively for the existing obligation and amounts attributed solely to the costs of the refinancing. The existing obligation includes the unpaid principal balance of the existing first lien loan, any earned unpaid finance charges, and any other lawful charges related to the existing loan. For guidance on the meaning of refinancing costs, *see* 12 CFR 1026.23,

the Official Staff Interpretations to the Bureau's Regulations Z, comment 23(f)-4. If the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under § 34.203(b)(7) from the appraisal requirements in § 34.203.

For applications received on or after July 18, 2015:

Paragraph 34.203(b)(8)(i)

1. *Secured by new manufactured home and land – physical visit of the interior.* A transaction secured by a new manufactured home and land is subject to the requirements of § 34.203(c) through (f) except for the requirement in § 34.203(c)(1) that the appraiser conduct a physical inspection of the interior of the property. Thus, for example, a creditor of a loan secured by a new manufactured home and land could comply with § 34.203(c)(1) by obtaining an appraisal conducted by a state-certified or -licensed appraiser based on plans and specifications for the new manufactured home and an inspection of the land on which the property will be sited, as well as any other information necessary for the appraiser to complete the appraisal assignment in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements of FIRREA and any implementing regulations.

Paragraph 34.203(b)(8)(ii)

1. *Secured by a manufactured home and not land.* Section 34.203(b)(8)(ii) applies to a higher-priced mortgage loan secured by a manufactured home and not land, regardless of whether the home is titled as realty by operation of state law.

Paragraph 34.203(b)(8)(ii)(B)

1. *Independent*. A cost service provider from which the creditor obtains a manufactured home unit cost estimate under § 34.203(b)(8)(ii)(B) is "independent" if that person is not affiliated with the creditor in the transaction, such as by common corporate ownership, and receives no direct or indirect financial benefits based on whether the transaction is consummated.

2. *Adjustments*. The requirement that the cost estimate be from an independent cost service provider does not prohibit a creditor from providing a cost estimate that reflects adjustments to account for factors such as special features, condition or location. However, the requirement that the estimate be obtained from an independent cost service provider means that any adjustments to the estimate must be based on adjustment factors available as part of the independent cost service used, with associated values that are determined by the independent cost service.

Paragraph 34.203(b)(8)(ii)(C)

1. *Interest in the property*. A person has a direct or indirect in the property if, for example, the person has any ownership or reasonably foreseeable ownership interest in the manufactured home. To illustrate, a person who seeks a loan to purchase the manufactured home to be valued has a reasonably foreseeable ownership interest in the property.

2. *Interest in the transaction.* A person has a direct or indirect interest in the transaction if, for example, the person or an affiliate of that person also serves as a loan officer of the creditor or otherwise arranges the credit transaction, or is the retail dealer of the manufactured home. A person also has a prohibited interest in the transaction if the

person is compensated or otherwise receives financial or other benefits based on whether the transaction is consummated.

3. *Training in valuing manufactured homes.* Training in valuing manufactured homes includes, for example, successfully completing a course in valuing manufactured homes offered by a state or national appraiser association or receiving job training from an employer in the business of valuing manufactured homes.

4. *Manufactured home valuation – example.* A valuation in compliance with § 34.203(b)(8)(ii)(C) would include, for example, an appraisal of the manufactured home in accordance with the appraisal requirements for a manufactured home classified as personal property under the Title I Manufactured Home Loan Insurance Program of the U.S. Department of Housing and Urban Development, pursuant to section 2(b)(10) of the National Housing Act, 12 U.S.C. 1703(b)(10).

* * * * *

Paragraph 34.203(f)(2) * * *

* * * * *

2. *No waiver.* Regulation B, 12 CFR 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to § 34.203. A consumer of a higher-priced mortgage loan subject to § 34.203 may not waive the timing requirement to receive a copy of the appraisal under § 34.203(f)(2).

* * * * *

Board of Governors of the Federal Reserve System

Authority and Issuance

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

PART 226—TRUTH IN LENDING ACT (REGULATION Z)

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

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

7. Section 226.43 is amended by revising paragraphs (a) and (b) as follows:

§ 226.43—Appraisals for higher-priced mortgage loans

(a) *Definitions*. For purposes of this section:

* * * * *

(2) *Consummation* has the same meaning as in 12 CFR 1026.2(a)(13).

(3) *Creditor* has the same meaning as in 12 CFR 1026.2(a)(17).

(4) *Credit risk* means the financial risk that a consumer will default on a loan.

(5) *Higher-priced mortgage loan* has the same meaning as in 12 CFR 1026.35(a)(1).

(6) *Manufactured home* has the same meaning as in 24 CFR 3280.2.

(7) *Manufacturer's invoice* means a document issued by a manufacturer and provided with a manufactured home to a retail dealer that separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options (large appliances, built-in items and equipment), plus actual itemized charges for freight from the factory to the dealer's lot or the homesite (including any rental of wheels and axles) and for any sales taxes to be paid by the dealer. The invoice

may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category.

(8) *National Registry* means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(9) *New manufactured home* means a manufactured home that has not been previously occupied.

(10) *State agency* means a "State appraiser certifying and licensing agency" recognized in accordance with section 1118(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347(b)) and any implementing regulations.

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

(1) A loan that satisfies the criteria of a qualified mortgage as defined pursuant to 15 U.S.C. 1639c;

(2) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in the official staff commentary to this paragraph (b)(2);

* * * * *

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

* * * * *

(7) An extension of credit that is a refinancing secured by a first lien, with refinancing defined as in 12 CFR 1026.20(a) (except that the creditor need not be the original creditor or a holder or servicer of the original obligation), provided that the refinancing meets the following criteria:

(i) Either –

(A) The credit risk of the refinancing is retained by the person that held the credit risk of the existing obligation and there is no commitment, at consummation, to transfer the credit risk to another person; or

(B) The refinancing is insured or guaranteed by the same Federal government agency that insured or guaranteed the existing obligation;

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

(A) Cause the principal balance to increase;

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

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

(iii) The proceeds from the refinancing are used only to satisfy the existing obligation and to pay amounts attributed solely to the costs of the refinancing; and

(8) A transaction secured in whole or in part by a manufactured home.

7a. Effective July 18, 2015, § 226.43(b)(8) is revised to read as follows:

(8) A transaction secured by:

(i) A new manufactured home and land, but the exemption shall only apply to the requirement in paragraph (c)(1) of this section that the appraiser conduct a physical visit of the interior of the new manufactured home; or

(ii) A manufactured home and not land, for which the creditor obtains one of the following and provides a copy to the consumer no later than three business days prior to consummation of the transaction—

(A) For a new manufactured home, the manufacturer's invoice for the manufactured home securing the transaction, provided that the date of manufacture is no earlier than 18 months prior to the creditor's receipt of the consumer's application for credit;

(B) A cost estimate of the value of the manufactured home securing the transaction obtained from an independent cost service provider; or

(C) A valuation, as defined in 12 CFR 1026.42(b)(3), of the manufactured home performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes.

* * * * *

8. Appendix N to part 226 is amended to read as follows. The introductory text is reprinted for reader reference:

APPENDIX N TO PART 226— HIGHER-PRICED MORTGAGE LOAN APPRAISAL SAFE HARBOR REVIEW

To qualify for the safe harbor provided in § 226.43(c)(2), a creditor must confirm that the written appraisal:

* * * * *

7. Indicates that a physical property visit of the interior of the property was performed, as applicable.

* * * * *

9. In Supplement I to part 226, under *Section 226.43—Appraisals for Higher-Priced Mortgage Loans:*

a. New *Paragraph 43(b)* is added.

b. New *Paragraph 43(b)(1)* is added.

c. *Paragraph 43(b)(2)* is replaced.

d. Under *Paragraph 43(b)(4)*, new paragraph 2 is added.

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

f. Effective July 18, 2015, new *Paragraph 43(b)(8)* is added.

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

The additions and revisions read as follows:

SUPPLEMENT I TO PART 226—OFFICIAL INTERPRETATIONS

* * * * *

Section 226.43—Appraisals for Higher-Priced Mortgage Loans

* * * * *

43(b) Exemptions

1. *Compliance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).* Section 226.43(b) provides exemptions solely from the requirements of § 226.43(c) through (f). Institutions subject to the requirements of FIRREA and its implementing regulations that make a loan qualifying for an exemption

under § 226.43(b) must still comply with appraisal and evaluation requirements under FIRREA and its implementing regulations.

Paragraph 43(b)(1)

1. *Qualified mortgage criteria.* Under § 226.43(b)(1), a loan is exempt from the appraisal requirements of § 226.43 if either:

i. The loan is—(1) subject to the ability-to-repay requirements of the Bureau of Consumer Financial Protection (Bureau) in 12 CFR 1026.43 as a "covered transaction" (defined in 12 CFR 1026.43(b)(1)) and (2) a qualified mortgage pursuant to the Bureau's rules or, for loans insured, guaranteed, or administered by the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS), a qualified mortgage pursuant to applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's definition of a qualified mortgage applies to those loans); or

ii. The loan is—(1) not subject to the Bureau's ability-to-repay requirements in 12 CFR 1026.43 as a "covered transaction" (defined in 12 CFR 1026.43(b)(1)), but (2) meets the criteria for a qualified mortgage in the Bureau's rules or, for loans insured, guaranteed, or administered by HUD, VA, USDA, or RHS, meets the criteria for a qualified mortgage in the applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). To explain further, loans enumerated in 12 CFR 1026.43(a) are not "covered transactions" under the Bureau's ability-to-repay requirements in 12 CFR 1026.43, and thus cannot be qualified mortgages (entitled to a rebuttable

presumption or safe harbor of compliance with the ability-to-repay requirements of 12 CFR 1026.43, *see*, *e.g.*, 12 CFR 1026.43(e)(1)). These include an extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5, or pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008. *See* 12 CFR 1026.43(a)(3)(iv) and (vi). They also include extensions of credit made by a creditor identified in 12 CFR 1026.43(a)(3)(v). However, these loans are eligible for the exemption in § 226.43(b)(1) if they meet the Bureau's qualified mortgage criteria in § 1026.43(e)(2), (4), (5), or (6) or § 1026.43(f) (including limits on when loans must be consummated) or, for loans that are insured, guaranteed, or administered by HUD, VA, USDA, or RHS, in applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). For example, assume that HUD has prescribed rules to define loans insured under its programs that are qualified mortgages and those rules are in effect. Assume further that a creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h), originates a loan insured by the Federal Housing Administration, which is a part of HUD. The loan is not a "covered transaction" and thus is not a qualified mortgage. *See* 12 CFR 1026.43(a)(3)(v)(A) and (b)(1). Nonetheless, the transaction is eligible for an exemption from the appraisal requirements of § 226.43 if it meets the qualified mortgage criteria in HUD's rules. Nothing in § 226.43(b)(1) alters the definition of a qualified mortgage under regulations of the Bureau, HUD, VA, USDA, or RHS.

* * * * *

Paragraph 43(b)(2)

1. *Threshold amount*. For purposes of § 226.43(b)(2), the threshold amount in effect during a particular one-year period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Every year, this comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the percentage increase in the CPI-W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the percentage increase in the CPI-W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

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

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

3. *Qualifying for exemption – subsequent changes*. A transaction does not meet the condition for an exemption under § 226.43(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.43(b)(2) exemption at consummation in year one is

refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 226.43 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 226.43 applies. *See* § 226.43(b) and § 226.43(d)(7).

* * * * *

Paragraph 43(b)(4)

* * * * *

2. *Financing initial construction.* The exemption for construction loans in § 226.43(b)(4) applies to temporary financing of the construction of a dwelling that will be replaced by permanent financing once construction is complete. The exemption does not apply, for example, to loans to finance the purchase of manufactured homes that have not been or are in the process of being built when the financing obtained by the consumer at that time is permanent. *See* § 226.43(b)(8).

Paragraph 43(b)(7)(i)(A)

1. *Same credit risk holder*. The requirement that the holder of the credit risk on the existing obligation and the refinancing be the same applies to situations in which an entity bears the financial responsibility for the default of a loan by either holding the loan in its portfolio or guaranteeing payments of principal and any interest to investors in a mortgage-backed security in which the loan is pooled. *See* § 226.43(a)(4) (defining "credit risk"). For example, a credit risk holder could be a bank that bears the credit risk on the existing obligation by holding the loan in the bank's portfolio. Another example of a credit risk holder would be a government-sponsored enterprise that bears the risk of

default on a loan by guaranteeing the payment of principal and any interest on a loan to investors in a mortgage-backed security. The holder of credit risk under § 226.43(b)(7)(i)(A) does not mean individual investors in a mortgage-backed security or providers of private mortgage insurance.

2. *Same credit risk holder – illustrations.*

Illustrations of the credit risk holder of the existing obligation continuing to be the credit risk holder of the refinancing include, but are not limited to, the following:

i. The existing obligation is held in the portfolio of a bank, thus the bank holds the credit risk. The bank arranges to refinance the loan and also will hold the refinancing in its portfolio. If the refinancing otherwise meets the requirements for an exemption under § 226.43(b)(7), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In this case, the exemption would apply regardless of whether the bank arranged to refinance the loan directly or indirectly, such as through the servicer or subservicer on the existing obligation.

ii. The existing obligation is held in the portfolio of a government-sponsored enterprise (GSE), thus the GSE holds the credit risk. The existing obligation is then refinanced by the servicer of the loan and immediately transferred to the GSE. The GSE pools the refinancing in a mortgage-backed security guaranteed by the GSE, thus the GSE holds the credit risk on the refinance loan. If the refinance transaction otherwise meets the requirements for an exemption under § 226.43(b)(7), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In this case, the exemption would apply

regardless of whether the existing obligation was refinanced by the servicer or subservicer on the existing obligation (acting as a "creditor" under § 1026.2(a)(17)) or by a different creditor.

3. *Forward commitments.* A creditor may make a mortgage loan that will be sold or otherwise transferred pursuant to an agreement that has been entered into at or before the time the transaction is consummated. Such an agreement is sometimes known as a "forward commitment." A refinance loan does not satisfy the requirement of § 226.43(b)(7)(i)(A) if the loan will be acquired pursuant to a forward commitment, such that the credit risk on the refinance loan will transfer to a person who did not hold the credit risk on the existing obligation.

Paragraph 43(b)(7)(ii)

1. *Regular periodic payments.* Under § 226.43(b)(7)(ii), the regular periodic payments on the refinance loan must not: result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (*see* 12 CFR 1026.43 and the Official Staff Interpretations to the Bureau's Regulation Z, comment 43(e)(2)(i)-2); or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term "substantially equal," see 12 CFR 1026.43 and the Official Staff Interpretations to the Bureau's Regulation Z, comment 43(c)(5)(i)-4. In addition, a

single-payment transaction is not a refinancing meeting the requirements of § 226.43(b)(7) because it does not require "regular periodic payments."

Paragraph 43(b)(7)(iii)

1. *Permissible use of proceeds.* The exemption for a refinancing under § 226.43(b)(7) is available only if the proceeds from the refinancing are used exclusively for the existing obligation and amounts attributed solely to the costs of the refinancing. The existing obligation includes the unpaid principal balance of the existing first lien loan, any earned unpaid finance charges, and any other lawful charges related to the existing loan. For guidance on the meaning of refinancing costs, see 12 CFR 1026.23, the Official Staff Interpretations to the Bureau's Regulations Z, comment 23(f)-4. If the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under § 226.43(b)(7) from the appraisal requirements in § 226.43.

For applications received on or after July 18, 2015:

Paragraph 43(b)(8)(i)

1. *Secured by new manufactured home and land – physical visit of the interior.* A transaction secured by a new manufactured home and land is subject to the requirements of § 226.43(c) through (f) except for the requirement in § 226.43(c)(1) that the appraiser conduct a physical inspection of the interior of the property. Thus, for example, a creditor of a loan secured by a new manufactured home and land could comply with § 226.43(c)(1) by obtaining an appraisal conducted by a state-certified or -licensed appraiser based on plans and specifications for the new manufactured home and an

inspection of the land on which the property will be sited, as well as any other information necessary for the appraiser to complete the appraisal assignment in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements of FIRREA and any implementing regulations.

Paragraph 43(b)(8)(ii)

1. *Secured by a manufactured home and not land.* Section 226.43(b)(8)(ii) applies to a higher-priced mortgage loan secured by a manufactured home and not land, regardless of whether the home is titled as realty by operation of State law.

Paragraph 43(b)(8)(ii)(B)

1. *Independent*. A cost service provider from which the creditor obtains a manufactured home unit cost estimate under § 226.43(b)(8)(ii)(B) is "independent" if that person is not affiliated with the creditor in the transaction, such as by common corporate ownership, and receives no direct or indirect financial benefits based on whether the transaction is consummated.

2. *Adjustments*. The requirement that the cost estimate be from an independent cost service provider does not prohibit a creditor from providing a cost estimate that reflects adjustments to account for factors such as special features, condition or location. However, the requirement that the estimate be obtained from an independent cost service provider means that any adjustments to the estimate must be based on adjustment factors available as part of the independent cost service used, with associated values that are determined by the independent cost service.

Paragraph 43(b)(8)(ii)(C)

1. *Interest in the property*. A person has a direct or indirect in the property if, for example, the person has any ownership or reasonably foreseeable ownership interest in the manufactured home. To illustrate, a person who seeks a loan to purchase the manufactured home to be valued has a reasonably foreseeable ownership interest in the property.

2. *Interest in the transaction.* A person has a direct or indirect interest in the transaction if, for example, the person or an affiliate of that person also serves as a loan officer of the creditor or otherwise arranges the credit transaction, or is the retail dealer of the manufactured home. A person also has a prohibited interest in the transaction if the person is compensated or otherwise receives financial or other benefits based on whether the transaction is consummated.

3. *Training in valuing manufactured homes.* Training in valuing manufactured homes includes, for example, successfully completing a course in valuing manufactured homes offered by a State or national appraiser association or receiving job training from an employer in the business of valuing manufactured homes.

4. *Manufactured home valuation – example.* A valuation in compliance with § 226.43(b)(8)(ii)(C) would include, for example, an appraisal of the manufactured home in accordance with the appraisal requirements for a manufactured home classified as personal property under the Title I Manufactured Home Loan Insurance Program of the U.S. Department of Housing and Urban Development, pursuant to section 2(b)(10) of the National Housing Act, 12 U.S.C. 1703(b)(10).

* * * * *

43(f)(2) Timing

* * * * *

2. *No waiver*. Regulation B, 12 CFR 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to § 226.43. A consumer of a higher-priced mortgage loan subject to § 226.43 may not waive the timing requirement to receive a copy of the appraisal under § 226.43(f)(2).

* * * * *

Bureau of Consumer Financial Protection

Authority and Issuance

For the reasons stated above, the Bureau amends Regulation Z, 12 CFR part 1026, as follows:

PART 1026—TRUTH IN LENDING ACT (REGULATION Z)

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

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

Subpart E – Special Rules for Certain Home Mortgage Transactions

11. Section 1026.35 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 1026.35—Requirements for higher-priced mortgage loans

* * * * *

(c) *Appraisals*—(1) Definitions. For purposes of this section:

* * * * *

(ii) *Credit risk* means the financial risk that a consumer will default on a loan.

(iii) *Manufactured home* has the same meaning as in 24 CFR 3280.2.

(iv) *Manufacturer's invoice* means a document issued by a manufacturer and provided with a manufactured home to a retail dealer that separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options (large appliances, built-in items and equipment), plus actual itemized charges for freight from the factory to the dealer's lot or the homesite (including any rental of wheels and axles) and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category.

(v) *National Registry* means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(vi) *New manufactured home* means a manufactured home that has not been previously occupied.

(vii) *State agency* means a "State appraiser certifying and licensing agency" recognized in accordance with section 1118(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347(b)) and any implementing regulations.

(2) *Exemptions.* Unless otherwise specified, the requirements in paragraph (c)(3) through (6) of this section do not apply to the following types of transactions:

(i) A loan that satisfies the criteria of a qualified mortgage as defined pursuant to 15 U.S.C. 1639c;

(ii) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in the official staff commentary to this paragraph (c)(2)(ii);

* * * * *

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

* * * * *

(vii) An extension of credit that is a refinancing secured by a first lien, with refinancing defined as in § 1026.20(a) (except that the creditor need not be the original creditor or a holder or servicer of the original obligation), provided that the refinancing meets the following criteria:

(A) Either –

(*1*) The credit risk of the refinancing is retained by the person that held the credit risk of the existing obligation and there is no commitment, at consummation, to transfer the credit risk to another person; or

(*2*) The refinancing is insured or guaranteed by the same Federal government agency that insured or guaranteed the existing obligation;

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

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

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

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

(C) The proceeds from the refinancing are used solely to satisfy the existing obligation and amounts attributed solely to the costs of the refinancing; and

(viii) A transaction secured in whole or in part by a manufactured home.

11a. Effective July 18, 2015, § 1026.35(c)(2)(viii) is revised to read as follows:

(viii) A transaction secured by:

(A) A new manufactured home and land, but the exemption shall only apply to the requirement in paragraph (c)(3)(i) of this section that the appraiser conduct a physical visit of the interior of the new manufactured home; or

(B) A manufactured home and not land, for which the creditor obtains one of the following and provides a copy to the consumer no later than three business days prior to consummation of the transaction—

(*1*) For a new manufactured home, the manufacturer's invoice for the manufactured home securing the transaction, provided that the date of manufacture is no earlier than 18 months prior to the creditor's receipt of the consumer's application for credit;

(*2*) A cost estimate of the value of the manufactured home securing the transaction obtained from an independent cost service provider; or

(*3*) A valuation, as defined in § 1026.42(b)(3), of the manufactured home performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes.

* * * * *

12. Appendix N to part 1026, paragraph 7 is revised to read as follows. The introductory text is reprinted for reader reference:

APPENDIX N TO PART 1026— HIGHER-PRICED MORTGAGE LOAN APPRAISAL SAFE HARBOR REVIEW

To qualify for the safe harbor provided in § 1026.35(c)(3)(ii), a creditor must confirm that the written appraisal:

* * * * *

7. Indicates that a physical property visit of the interior of the property was performed, as applicable.

* * * * *

13. In Supplement I to part 1026, under *Section 1026.35 – Requirements for Higher Priced Mortgages Loans*:

A. Paragraph 35(c)(2) is amended by adding paragraph 1.

B. Paragraph 35(c)(2)(i) is added.

C. Paragraph 35(c)(2)(ii) is revised.

D. Paragraph 35(c)(2)(iv) is revised by adding paragraph 2.

E. Paragraph 35(c)(2)(vii)(A)(*1*) is added.

F. Paragraphs 35(c)(2)(vii)(B)-(C) are added.

G. Effective July 18, 2015, paragraphs 35(c)(2)(viii)(A)-(B) are added.

H. Effective July 18, 2015, paragraph 35(c)(2)(viii)(B)(*2*) is added.

I. Effective July 18, 2015, paragraph 35(c)(2)(viii)(C)(*3*) is added.

J. Under paragraph 35(c)(6)(ii), paragraph 2 is deleted and paragraph 3 is renumbered as paragraph 2.

The revisions and additions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

SUBPART E – SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

Paragraph 35(c)(2) Exemptions

1. *Compliance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).* Section 1026.35(c)(2) provides exemptions solely from the requirements of section 1026.35(c)(3) through (6). Institutions subject to the requirements of FIRREA and its implementing regulations that make a loan qualifying for an exemption under section 1026.35(c)(2) must still comply with appraisal and evaluation requirements under FIRREA and its implementing regulations.

Paragraph 35(c)(2)(i)

1. *Qualified mortgage criteria.* Under § 1026.35(c)(2)(i), a loan is exempt from the appraisal requirements of § 1026.35(c) if either:

i. The loan is—(1) subject to the Bureau's ability-to-repay requirements in § 1026.43 as a "covered transaction" (defined in § 1026.43(b)(1)) and (2) a qualified mortgage pursuant to the Bureau's rules or, for loans insured, guaranteed, or administered by the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS), a qualified mortgage pursuant to applicable rules prescribed by those

agencies (but only once such rules are in effect; otherwise, the Bureau's definition of a qualified mortgage applies to those loans); or

ii. The loan is—(1) not subject to the Bureau's ability-to-repay requirements in § 1026.43 as a "covered transaction" (defined in § 1026.43(b)(1)), but (2) meets the criteria for a qualified mortgage in the Bureau's rules or, for loans insured, guaranteed, or administered by HUD, VA, USDA, or RHS, meets the criteria for a qualified mortgage in the applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). To explain further, loans enumerated in § 1026.43(a) are not "covered transactions" under the Bureau's ability-to-repay requirements in § 1026.43, and thus cannot be qualified mortgages (entitled to a rebuttable presumption or safe harbor of compliance with the ability-to-repay requirements of § 1026.43, *see, e.g.*, § 1026.43(e)(1)). These include an extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5, or pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008. *See* § 1026.43(a)(3)(iv) and (vi). They also include extensions of credit made by a creditor identified in § 1026.43(a)(3)(v). However, these loans are eligible for the exemption in § 1026.35(c)(2)(i) if they meet the Bureau's qualified mortgage criteria in § 1026.43(e)(2), (4), (5), or (6) or § 1026.43(f) (including limits on when loans must be consummated) or, for loans that are insured, guaranteed, or administered by HUD, VA, USDA, or RHS, in applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). For example, assume that HUD has prescribed rules to define loans insured

under its programs that are qualified mortgages and those rules are in effect. Assume further that a creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h), originates a loan insured by the Federal Housing Administration, which is a part of HUD. The loan is not a "covered transaction" and thus is not a qualified mortgage. *See* § 1026.43(a)(3)(v)(A) and (b)(1). Nonetheless, the transaction is eligible for an exemption from the appraisal requirements of § 1026.35(c) if it meets the qualified mortgage criteria in HUD's rules. Nothing in § 1026.35(c)(2)(i) alters the definition of a qualified mortgage under regulations of the Bureau, HUD, VA, USDA, or RHS.

* * * * *

Paragraph 35(c)(2)(ii)

1. *Threshold amount*. For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular one-year period is the amount stated below for that period. The threshold amount is adjusted effective January 1 of every year by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Every year, this comment will be amended to provide the threshold amount for the upcoming one-year period after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the percentage increase in the CPI-W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the percentage increase in the CPI-W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

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

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

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

* * * * *

Paragraph 35(c)(2)(iv)

* * * * *

2. *Financing initial construction.* The exemption for construction loans in § 1026.35(c)(2)(iv) applies to temporary financing of the construction of a dwelling that will be replaced by permanent financing once construction is complete. The exemption does not apply, for example, to loans to finance the purchase of manufactured homes that

have not been or are in the process of being built when the financing obtained by the consumer at that time is permanent. *See* § 1026.35(c)(2)(viii).

Paragraph 35(c)(2)(vii)(A)(*1*)

1. *Same credit risk holder*. The requirement that the holder of the credit risk on the existing obligation and the refinancing be the same applies to situations in which an entity bears the financial responsibility for the default of a loan by either holding the loan in its portfolio or guaranteeing payments of principal and any interest to investors in a mortgage-backed security in which the loan is pooled. *See* § 1026.35(c)(1)(ii) (defining "credit risk"). For example, a credit risk holder could be a bank that bears the credit risk on the existing obligation by holding the loan in the bank's portfolio. Another example of a credit risk holder would be a government-sponsored enterprise that bears the risk of default on a loan by guaranteeing the payment of principal and any interest on a loan to investors in a mortgage-backed security. The holder of credit risk under § 1026.35(c)(2)(vii)(A)(*1*) does not mean individual investors in a mortgage-backed security or providers of private mortgage insurance.

2. *Same credit risk holder – illustrations.*

Illustrations of the credit risk holder of the existing obligation continuing to be the credit risk holder of the refinancing include, but are not limited to, the following:

i. The existing obligation is held in the portfolio of a bank, thus the bank holds the credit risk. The bank arranges to refinance the loan and also will hold the refinancing in its portfolio. If the refinancing otherwise meets the requirements for an exemption under § 1026.35(c)(2)(vii), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In

this case, the exemption would apply regardless of whether the bank arranged to refinance the loan directly or indirectly, such as through the servicer or subservicer on the existing obligation.

ii. The existing obligation is held in the portfolio of a government-sponsored enterprise (GSE), thus the GSE holds the credit risk. The existing obligation is then refinanced by the servicer of the loan and immediately transferred to the GSE. The GSE pools the refinancing in a mortgage-backed security guaranteed by the GSE, thus the GSE holds the credit risk on the refinance loan. If the refinance transaction otherwise meets the requirements for an exemption under § 1026.35(c)(2)(vii), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In this case, the exemption would apply regardless of whether the existing obligation was refinanced by the servicer or subservicer on the existing obligation (acting as a "creditor" under § 1026.2(a)(17)) or by a different creditor.

3. *Forward commitments.* A creditor may make a mortgage loan that will be sold or otherwise transferred pursuant to an agreement that has been entered into at or before the time the transaction is consummated. Such an agreement is sometimes known as a "forward commitment." A refinance loan does not satisfy the requirement of § 1026.35(c)(2)(vii)(A)(*1*) if the loan will be acquired pursuant to a forward commitment, such that the credit risk on the refinance loan will transfer to a person who did not hold the credit risk on the existing obligation.

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

1. *Regular periodic payments.* Under § 1026.35(c)(2)(vii)(B), the regular periodic payments on the refinance loan must not: result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (*see* comment 43(e)(2)(i)-2); or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term "substantially equal," see comment 43(c)(5)(i)-4. In addition, a single-payment transaction is not a refinancing meeting the requirements of § 1026.35(c)(2)(vii) because it does not require "regular periodic payments."

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

1. *Permissible use of proceeds.* The exemption for a refinancing under § 1026.35(c)(2)(vii) is available only if the proceeds from the refinancing are used exclusively for the existing obligation and amounts attributed solely to the costs of the refinancing. The existing obligation includes the unpaid principal balance of the existing first lien loan, any earned unpaid finance charges, and any other lawful charges related to the existing loan. For guidance on the meaning of refinancing costs, see comment 23(f)-4. If the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under § 1026.35(c)(2)(vii) from the appraisal requirements in § 1026.35(c).

For applications received on or after July 18, 2015:

Paragraph 35(c)(2)(viii)(A)

1. *Secured by new manufactured home and land – physical visit of the interior.* A transaction secured by a new manufactured home and land is subject to the requirements of § 1026.35(c)(3) through (6) except for the requirement in § 1026.35(c)(3)(i) that the appraiser conduct a physical inspection of the interior of the property. Thus, for example, a creditor of a loan secured by a new manufactured home and land could comply with § 1026.35(c)(3)(i) by obtaining an appraisal conducted by a state-certified or -licensed appraiser based on plans and specifications for the new manufactured home and an inspection of the land on which the property will be sited, as well as any other information necessary for the appraiser to complete the appraisal assignment in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements of FIRREA and any implementing regulations.

Paragraph 35(c)(2)(viii)(B)

1. *Secured by a manufactured home and not land.* Section 1026.35(c)(2)(viii)(B) applies to a higher-priced mortgage loan secured by a manufactured home and not land, regardless of whether the home is titled as realty by operation of state law.

Paragraph 35(c)(2)(viii)(B)(*2*)

1. *Independent*. A cost service provider from which the creditor obtains a manufactured home unit cost estimate under § 1026.35(c)(2)(viii)(B)(*2*) is "independent" if that person is not affiliated with the creditor in the transaction, such as by common corporate ownership, and receives no direct or indirect financial benefits based on whether the transaction is consummated.

2. *Adjustments*. The requirement that the cost estimate be from an independent cost service provider does not prohibit a creditor from providing a cost estimate that reflects adjustments to account for factors such as special features, condition or location. However, the requirement that the estimate be obtained from an independent cost service provider means that any adjustments to the estimate must be based on adjustment factors available as part of the independent cost service used, with associated values that are determined by the independent cost service.

Paragraph 35(c)(2)(viii)(C)(*3*)

1. *Interest in the property*. A person has a direct or indirect in the property if, for example, the person has any ownership or reasonably foreseeable ownership interest in the manufactured home. To illustrate, a person who seeks a loan to purchase the manufactured home to be valued has a reasonably foreseeable ownership interest in the property.

2. *Interest in the transaction.* A person has a direct or indirect interest in the transaction if, for example, the person or an affiliate of that person also serves as a loan officer of the creditor or otherwise arranges the credit transaction, or is the retail dealer of the manufactured home. A person also has a prohibited interest in the transaction if the person is compensated or otherwise receives financial or other benefits based on whether the transaction is consummated.

3. *Training in valuing manufactured homes.* Training in valuing manufactured homes includes, for example, successfully completing a course in valuing manufactured homes offered by a state or national appraiser association or receiving job training from an employer in the business of valuing manufactured homes.

4. *Manufactured home valuation – example.* A valuation in compliance with § 1026.35(c)(2)(viii)(B)(*3*) would include, for example, an appraisal of the manufactured home in accordance with the appraisal requirements for a manufactured home classified as personal property under the Title I Manufactured Home Loan Insurance Program of the U.S. Department of Housing and Urban Development, pursuant to section 2(b)(10) of the National Housing Act, 12 U.S.C. 1703(b)(10).

* * * * *

Paragraph 35(c)(6)(ii) * * *

* * * * *

2. *No waiver.* Regulation B, 12 CFR 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to § 1026.35(c). A consumer of a higher-priced mortgage loan subject to § 1026.35(c) may not waive the timing requirement to receive a copy of the appraisal under § 1026.35(c)(6)(i).

* * * * *

Dated: December 10, 2013

Thomas J. Curry (signed)
Thomas J. Curry
Comptroller of the Currency

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

By order of the Board of Governors of the Federal Reserve System, December 11, 2013.

Robert DeV. Frierson (signed)

Robert deV. Frierson,
Secretary of the Board.

Dated: December 10, 2013.

Richard Cordray (signed)

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

In consultation with:

By the National Credit Union Administration Board on December 10, 2013.

Gerard Poliquin (signed)
Gerard Poliquin
Secretary of the Board

Dated at Washington, D.C., this 10th day of December, 2013.
By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman (signed)

Robert E. Feldman,
Executive Secretary.

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

Dated: December 9, 2013.

Edward J. DeMarco (signed)

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