

- 4. Addresses the condition of the property and any improvements to the property.
- 5. Indicates which valuation approaches were used, and includes a reconciliation if more than one valuation approach was used.
- 6. Provides an opinion of the property's market value and an effective date for the opinion.
- 7. Indicates that a physical property visit of the interior of the property was performed.
- 8. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.
- 9. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations.

EFFECTIVE DATE NOTE: At 78 FR 78580, Dec. 26, 2013, appendix A was amended by revising paragraph (7), effective Jan. 18, 2014. For the convenience of the user, the revised text is set forth as follows:

APPENDIX A TO SUBPART G—HIGHER-PRICED MORTGAGE LOAN APPRAISAL SAFE HARBOR REVIEW

\* \* \* \* \*

- 7. Indicates that a physical property visit of the interior of the property was performed, as applicable.

\* \* \* \* \*

APPENDIX B TO SUBPART G—ILLUSTRATIVE WRITTEN SOURCE DOCUMENTS FOR HIGHER-PRICED MORTGAGE LOAN APPRAISAL RULES

A creditor acts with reasonable diligence under §34.203(d)(6)(i) if the creditor bases its determination on information contained in written source documents, such as:

- 1. A copy of the recorded deed from the seller.
- 2. A copy of a property tax bill.
- 3. A copy of any owner's title insurance policy obtained by the seller.
- 4. A copy of the RESPA settlement statement from the seller's acquisition (*i.e.*, the HUD-1 or any successor form).
- 5. A property sales history report or title report from a third-party reporting service.
- 6. Sales price data recorded in multiple listing services.
- 7. Tax assessment records or transfer tax records obtained from local governments.

- 8. A written appraisal performed in compliance with §34.203(c)(1) for the same transaction.
- 9. A copy of a title commitment report detailing the seller's ownership of the property, the date it was acquired, or the price at which the seller acquired the property.
- 10. A property abstract.

APPENDIX C TO SUBPART G—OCC INTERPRETATIONS

SECTION 34.202—DEFINITIONS APPLICABLE TO HIGHER-PRICED MORTGAGE LOANS

1. *Staff Interpretations.* Section 34.202 incorporates definitions from Regulation Z, 12 CFR part 1026. These OCC Interpretations of 12 CFR part 34, subpart G, incorporate the Official Staff Interpretations to the Bureau's Regulation Z associated with those definitions, at 12 CFR part 1026, Supplement I.

SECTION 34.203—APPRAISALS FOR HIGHER-PRICED MORTGAGE LOANS

34.203(a) *Definitions.*

34.203(a)(1) *Certified or licensed appraiser.*

1. *USPAP.* The Uniform Standards of Professional Appraisal Practice (USPAP) are established by the Appraisal Standards Board of the Appraisal Foundation (as defined in 12 U.S.C. 3350(9)). Under §34.203(a)(1), the relevant USPAP standards are those found in the edition of USPAP in effect at the time the appraiser signs the appraiser's certification.

2. *Appraiser's certification.* The appraiser's certification refers to the certification that must be signed by the appraiser for each appraisal assignment. This requirement is specified in USPAP Standards Rule 2-3.

3. *FIRREA title XI and implementing regulations.* The relevant regulations are those prescribed under section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (12 U.S.C. 3339), that relate to an appraiser's development and reporting of the appraisal in effect at the time the appraiser signs the appraiser's certification. Paragraph (3) of FIRREA section 1110 (12 U.S.C. 3339(3)), which relates to the review of appraisals, is not relevant for determining whether an appraiser is a certified or licensed appraiser under §34.203(a)(1).

34.203(b) *Exemptions.*

Paragraph 34.203(b)(2).

1. *Secured by new manufactured home.* A transaction secured by a new manufactured home, regardless of whether the transaction is also secured by the land on which it is sited, is not a "higher-priced mortgage loan" subject to the appraisal requirements of §34.203.

Paragraph 34.203(b)(3).

1. *Secured by a mobile home.* For purposes of the exemption in §34.203(b)(3), a mobile home

does not include a manufactured home, as defined in §34.203(a)(2).

*Paragraph 34.203(b)(4).*

1. *Construction-to-permanent loans.* Section 34.203 does not apply to a transaction to finance the initial construction of a dwelling. This exclusion applies to a construction-only loan as well as to the construction phase of a construction-to-permanent loan. Section 34.203 does apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor, unless the permanent financing is otherwise exempt from the requirements of §34.203. See §34.203(b). When a construction loan may be permanently financed by the same creditor, the general disclosure requirements for closed-end credit pursuant to Regulation Z (12 CFR 1026.17) provide that the creditor may give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. See 12 CFR 1026.17(c)(6)(ii) and the Official Staff Interpretations to the Bureau's Regulation Z, comment 17(c)(6)–2. Which disclosure option a creditor elects under §1026.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to §34.203. When the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under §34.203. When the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with 12 CFR 1026.35(a)(1) (incorporated into 12 CFR part 34, subpart G by §34.202) and appendix D to 12 CFR part 1026. The annual percentage rate must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under §34.203. If the transaction is determined to be a higher-priced mortgage loan not otherwise exempt under §34.203(b), only the permanent phase is subject to the requirements of §34.203.

*34.203(c) Appraisals required.*

*34.203(c)(1) In general.*

1. *Written appraisal—electronic transmission.* To satisfy the requirement that the appraisal be “written,” a creditor may obtain the appraisal in paper form or via electronic transmission.

*34.203(c)(2) Safe harbor.*

1. *Safe harbor.* A creditor that satisfies the safe harbor conditions in §34.203(c)(2)(i) through (iv) complies with the appraisal requirements of §34.203(c)(1). A creditor that does not satisfy the safe harbor conditions in

§34.203(c)(2)(i) through (iv) does not necessarily violate the appraisal requirements of §34.203(c)(1).

2. *Appraiser's certification.* For purposes of §34.203(c)(2), the appraiser's certification refers to the certification specified in item 9 of appendix A to this subpart. See also comment 34.203(a)(1)–2.

*Paragraph 34.203(c)(2)(iii).*

1. *Confirming elements in the appraisal.* To confirm that the elements in appendix A to this subpart are included in the written appraisal, a creditor need not look beyond the face of the written appraisal and the appraiser's certification.

*34.203(d) Additional appraisal for certain higher-priced mortgage loans.*

1. *Acquisition.* For purposes of §34.203(d), the terms “acquisition” and “acquire” refer to the acquisition of legal title to the property pursuant to applicable State law, including by purchase.

*34.203(d)(1) In general.*

1. *Appraisal from a previous transaction.* An appraisal that was previously obtained in connection with the seller's acquisition or the financing of the seller's acquisition of the property does not satisfy the requirements to obtain two written appraisals under §34.203(d)(1).

2. *90-day, 180-day calculation.* The time periods described in §34.203(d)(1)(i) and (ii) are calculated by counting the day after the date on which the seller acquired the property, up to and including the date of the consumer's agreement to acquire the property that secures the transaction. For example, assume that the creditor determines that date of the consumer's acquisition agreement is October 15, 2012, and that the seller acquired the property on April 17, 2012. The first day to be counted in the 180-day calculation would be April 18, 2012, and the last day would be October 15, 2012. In this case, the number of days from April 17 would be 181, so an additional appraisal is not required.

3. *Date seller acquired the property.* For purposes of §34.203(d)(1)(i) and (ii), the date on which the seller acquired the property is the date on which the seller became the legal owner of the property pursuant to applicable State law.

4. *Date of the consumer's agreement to acquire the property.* For the date of the consumer's agreement to acquire the property under §34.203(d)(1)(i) and (ii), the creditor should use the date on which the consumer and the seller signed the agreement provided to the creditor by the consumer. The date on which the consumer and the seller signed the agreement might not be the date on which the consumer became contractually obligated under State law to acquire the property. For purposes of §34.203(d)(1)(i) and (ii), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. If the dates

on which the consumer and the seller signed the agreement differ, the creditor should use the later of the two dates.

5. *Price at which the seller acquired the property.* The price at which the seller acquired the property refers to the amount paid by the seller to acquire the property. The price at which the seller acquired the property does not include the cost of financing the property.

6. *Price the consumer is obligated to pay to acquire the property.* The price the consumer is obligated to pay to acquire the property is the price indicated on the consumer's agreement with the seller to acquire the property. The price the consumer is obligated to pay to acquire the property from the seller does not include the cost of financing the property. For purposes of § 34.203(d)(1)(i) and (ii), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. *See also* comment 34.203(d)(1)–4.

34.203(d)(2) *Different certified or licensed appraisers.*

1. *Independent appraisers.* The requirements that a creditor obtain two separate appraisals under § 34.203(d)(1), and that each appraisal be conducted by a different licensed or certified appraiser under § 34.203(d)(2), indicate that the two appraisals must be conducted independently of each other. If the two certified or licensed appraisers are affiliated, such as by being employed by the same appraisal firm, then whether they have conducted the appraisal independently of each other must be determined based on the facts and circumstances of the particular case known to the creditor.

34.203(d)(3) *Relationship to general appraisal requirements.*

1. *Safe harbor.* When a creditor is required to obtain an additional appraisal under § 34.203(d)(1), the creditor must comply with the requirements of both § 34.203(c)(1) and § 34.203(d)(2) through (5) for that appraisal. The creditor complies with the requirements of § 34.203(c)(1) for the additional appraisal if the creditor meets the safe harbor conditions in § 34.203(c)(2) for that appraisal.

34.203(d)(4) *Required analysis in the additional appraisal.*

1. *Determining acquisition dates and prices used in the analysis of the additional appraisal.* For guidance on identifying the date on which the seller acquired the property, see comment 34.203(d)(1)–3. For guidance on identifying the date of the consumer's agreement to acquire the property, see comment 34.203(d)(1)–4. For guidance on identifying the price at which the seller acquired the property, see comment 34.203(d)(1)–5. For guidance on identifying the price the consumer is obligated to pay to acquire the property, see comment 34.203(d)(1)–6.

34.203(d)(5) *No charge for additional appraisal.*

1. *Fees and mark-ups.* The creditor is prohibited from charging the consumer for the performance of one of the two appraisals required under § 34.203(d)(1), including by imposing a fee specifically for that appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.

34.203(d)(6) *Creditor's determination of prior sale date and price.*

34.203(d)(6)(i) *In general.*

1. *Estimated sales price.* If a written source document describes the seller's acquisition price in a manner that indicates that the price described is an estimated or assumed amount and not the actual price, the creditor should look at an alternative document to satisfy the reasonable diligence standard in determining the price at which the seller acquired the property.

2. *Reasonable diligence—oral statements insufficient.* Reliance on oral statements of interested parties, such as the consumer, seller, or mortgage broker, does not constitute reasonable diligence under § 34.203(d)(6)(i).

3. *Lack of information and conflicting information—two appraisals required.* If a creditor is unable to demonstrate that the requirement to obtain two appraisals under § 34.203(d)(1) does not apply, the creditor must obtain two written appraisals before extending a higher-priced mortgage loan subject to the requirements of § 34.203. *See also* comment 34.203(d)(6)(ii)–1. For example:

i. Assume a creditor orders and reviews the results of a title search, which shows that a prior sale occurred between 91 and 180 days ago, but not the price paid in that sale. Thus, based on the title search, the creditor would not be able to determine whether the price the consumer is obligated to pay under the consumer's acquisition agreement is more than 20 percent higher than the seller's acquisition price, pursuant to § 34.203(d)(1)(ii). Before extending a higher-priced mortgage loan subject to the appraisal requirements of § 34.203, the creditor must either: perform additional diligence to ascertain the seller's acquisition price and, based on this information, determine whether two written appraisals are required; or obtain two written appraisals in compliance with § 34.203(d)(6). *See also* comment 34.203(d)(6)(ii)–1.

ii. Assume a creditor reviews the results of a title search indicating that the last recorded purchase was more than 180 days before the consumer's agreement to acquire the property. Assume also that the creditor subsequently receives a written appraisal indicating that the seller acquired the property between 91 and 180 days before the consumer's agreement to acquire the property. In this case, unless one of these sources is clearly wrong on its face, the creditor would not be able to determine whether the seller acquired the property within 180 days of the date of the consumer's agreement to acquire

the property from the seller, pursuant to §34.203(d)(1)(ii). Before extending a higher-priced mortgage loan subject to the appraisal requirements of §34.203, the creditor must either: perform additional diligence to ascertain the seller's acquisition date and, based on this information, determine whether two written appraisals are required; or obtain two written appraisals in compliance with §34.203(d)(6). *See also* comment 34.203(d)(6)(ii)–1.

*34.203(d)(6)(ii) Inability to determine prior sales date or price—modified requirements for additional appraisal.*

1. *Required analysis.* In general, the additional appraisal required under §34.203(d)(1) should include an analysis of the factors listed in §34.203(d)(4)(i) through (iii). However, if, following reasonable diligence, a creditor cannot determine whether the conditions in §34.203(d)(1)(i) or (ii) are present due to a lack of information or conflicting information, the required additional appraisal must include the analyses required under §34.203(d)(4)(i) through (iii) only to the extent that the information necessary to perform the analyses is known. For example, assume that a creditor is able, following reasonable diligence, to determine that the date on which the seller acquired the property occurred between 91 and 180 days prior to the date of the consumer's agreement to acquire the property. However, the creditor is unable, following reasonable diligence, to determine the price at which the seller acquired the property. In this case, the creditor is required to obtain an additional written appraisal that includes an analysis under §34.203(d)(4)(ii) and (iii) of the changes in market conditions and any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property. However, the creditor is not required to obtain an additional written appraisal that includes analysis under §34.203(d)(4)(i) of the difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property.

*34.203(d)(7) Exemptions from the additional appraisal requirement.*

*Paragraph 34.203(d)(7)(iii).*

1. *Non-profit entity.* For purposes of §34.203(d)(7)(iii), a “non-profit entity” is a person with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (12 U.S.C. 501(c)(3)).

*Paragraph 34.203(d)(7)(viii).*

1. *Bureau table of rural counties* The Bureau publishes on its Web site a table of rural counties under 12 CFR 1026.35(b)(2)(iv)(A) for each calendar year by the end of that calendar year. *See* Official Staff Interpretations to the Bureau's Regulation Z, comment 35(b)(2)(iv)–1. A property securing an HPML

subject to §34.203 is in a rural county under §34.203(d)(7)(viii) if the county in which the property is located is on the table of rural counties most recently published by the Bureau. For example, for a transaction occurring in 2015, assume that the Bureau most recently published a table of rural counties at the end of 2014. The property securing the transaction would be located in a rural county for purposes of §34.203(d)(7)(viii) if the county is on the table of rural counties published by the Bureau at the end of 2014.

*34.203(e) Required disclosure.*

*34.203(e)(1) In general.*

1. *Multiple applicants.* When two or more consumers apply for a loan subject to this section, the creditor is required to give the disclosure to only one of the consumers.

2. *Appraisal independence requirements not affected.* Nothing in the text of the consumer notice required by §34.203(e)(1) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards relating to independence in the conduct of appraisals or restrictions on the use of borrower-ordered appraisals by creditors.

*34.203(f) Copy of appraisals.*

*34.203(f)(1) In general.*

1. *Multiple applicants.* When two or more consumers apply for a loan subject to this section, the creditor is required to give the copy of each required appraisal to only one of the consumers.

*34.203(f)(2) Timing.*

1. *“Provide.”* For purposes of the requirement to provide a copy of the appraisal within a specified time under §34.203(f)(2), “provide” means “deliver.” Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant (which, in the case of electronic receipt, must be based upon consent that complies with the E-Sign Act), whichever is earlier.

2. *“Receipt” of the appraisal.* For appraisals prepared by the creditor's internal appraisal staff, the date of “receipt” is the date on which the appraisal is completed.

3. *No waiver.* Regulation B, 12 CFR 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to §34.203. A consumer of a higher-priced mortgage loan subject to §34.302 may not waive the timing requirement to receive a copy of the appraisal under §34.203(f)(1).

*34.203(f)(4) No charge for copy of appraisal.*

1. *Fees and mark-ups.* The creditor is prohibited from charging the consumer for any copy of an appraisal required to be provided under §34.203(f)(1), including by imposing a fee specifically for a required copy of an appraisal or by marking up the interest rate or

any other fees payable by the consumer in connection with the higher-priced mortgage loan.

≤APPENDIX B—ILLUSTRATIVE WRITTEN SOURCE DOCUMENTS FOR HIGHER-PRICED MORTGAGE LOAN APPRAISAL RULES

1. *Title commitment report.* The “title commitment report” is a document from a title insurance company describing the property interest and status of its title, parties with interests in the title and the nature of their claims, issues with the title that must be resolved prior to closing of the transaction between the parties to the transfer, amount and disposition of the premiums, and endorsements on the title policy. This document is issued by the title insurance company prior to the company’s issuance of an actual title insurance policy to the property’s transferee and/or creditor financing the transaction. In different jurisdictions, this instrument may be referred to by different terms, such as a title commitment, title binder, title opinion, or title report.

EFFECTIVE DATE NOTE: At 78 FR 78580, Dec. 26, 2013, appendix C was amended under the §34.203(b) entry, add paragraph 1 and add an entry for §34.203(b)(1); revise the §34.203(b)(2) entry; add paragraph 2 to the §34.203(b)(4) entry; add an entry for §34.203(b)(7); effective July 18, 2015, add an entry for §34.203(b)(8); and in the §34.203(f)(2) entry, remove paragraph 2, redesignate paragraph 3 as paragraph 2, and revise it, effective Jan. 18, 2014. For the convenience of the user, the added and revised text is set forth as follows:

APPENDIX C TO SUBPART G—OCC INTERPRETATIONS

\* \* \* \* \*

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.

1. 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).

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Paragraph 34.203(b)(4)

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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).

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Paragraph 34.203(b)(7)

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:

1. 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 avail-

able 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)

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).

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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 re-

quirement to receive a copy of the appraisal under §34.203(f)(2).

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**PART 35—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS**

Sec.

- 35.1 Purpose and scope of this part.
- 35.2 Definition of covered agreement.
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- 35.11 Other definitions and rules of construction used in this part.

AUTHORITY: 12 U.S.C. 1831y.

SOURCE: 66 FR 2084, Jan. 10, 2001, unless otherwise noted.

**§ 35.1 Purpose and scope of this part.**

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, or affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part.* The provisions of this part apply to national banks, subsidiaries of national banks, and nongovernmental entities or persons that enter into covered agreements with a national bank or a subsidiary of a national bank.

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*), part 25 of this chapter (Community Reinvestment Act and Interstate Deposit Production Regulations) or the OCC's interpretations or administration of that Act or regulation.

(d) *Examples.* (1) The examples in this part are not exclusive. Compliance