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Bureau of Consumer Financial Protection

12 CFR Part 1002
Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B); Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1002

[Docket No. CFPB–2012–0032]

RIN 3170–AA26

Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretations.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending Regulation B, which implements the Equal Credit Opportunity Act (ECOA), and the Bureau's official interpretations of the regulation, which interpret and clarify the requirements of Regulation B. The final rule revises Regulation B to implement an ECOA amendment concerning appraisals and other valuations that was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). In general, the revisions to Regulation B require creditors to provide to applicants free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling, and require creditors to notify applicants in writing that copies of appraisals will be provided to them promptly.

DATES: This final rule is effective January 18, 2014.

FOR FURTHER INFORMATION CONTACT: Owen Bonheimer, Counsel, or William W. Matchneer, Senior Counsel, Office of Regulations, at (202) 435–7000.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

Congress amended ECOA section 701(e) to require creditors to provide applicants with a copy of appraisals and other written valuations developed in connection with certain mortgage transactions as a matter of course, rather than only providing copies of appraisals upon applicants' request as previously required. For the reasons discussed below, the Bureau is now adopting amendments to Regulation B in final form, generally as proposed. The final rule amends § 1002.14 of Regulation B to provide for the following in connection with applications for credit to be secured by a first lien on a dwelling:

- Require creditors to notify applicants within three business days of receiving an application of their right to receive a copy of appraisals developed.
- Require creditors to provide applicants a copy of each appraisal and other written valuation promptly upon its completion or three business days before consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier.
- Permit applicants to waive the timing requirement for providing these copies. However, applicants who waive the timing requirement must be given a copy of all appraisals and other written valuations at or prior to consummation or account opening, or, if the transaction is not consummated or the account is not opened, no later than 30 days after the creditor determines the transaction will not be consummated or the account will not be opened.
- Prohibit creditors from charging for the copy of appraisals and other written valuations, but permit creditors to charge applicants reasonable fees for the cost of the appraisals or other written valuations unless applicable law provides otherwise.

As discussed further in part VI, this final rule becomes effective on January 18, 2014. Accordingly, the final rule applies to mortgage transactions to be secured by a first lien on a dwelling for which the creditor receives an application on or after January 18, 2014.

II. Background

A. ECOA and Regulation B

ECOA [1] makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, or age (provided the applicant has the capacity to contract), or because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. ECOA applies to consumer credit as well as to business and commercial credit except as provided in Regulation B, § 1002.3(a)–(d).

Prior to its amendment by the Dodd-Frank Act, section 701(e) of ECOA required creditors to provide credit applicants, upon written request, with copies of appraisal reports used in connection with their applications for a loan secured by residential real property. This provision was added to ECOA in 1991 as part of the Federal Deposit Insurance Corporation Improvement Act (FDICIA).[2] The Senate report on FDICIA suggests that one purpose of ECOA section 701(e) was to make it easier for loan applicants to determine whether a loan was denied due to a discriminatory appraisal.[3]

Section 1474 of the Dodd-Frank Act replaces the existing section 701(e) with a new provision that imposed several new requirements concerning appraisals as well as other valuations, as described below. The Act also transferred general rulemaking authority for ECOA from the Board of Governors of the Federal Reserve System (Board) to the Bureau on July 21, 2011.[4] Pursuant to the Dodd-Frank Act and ECOA, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation B, 12 CFR part 1002, implementing ECOA (except with respect to persons excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act). 76 FR 79442 (Dec. 21, 2011). This interim final rule did not impose any new substantive obligations but did make technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. The Bureau's Regulation B took effect on December 30, 2011.

B. Dodd-Frank Act Amendments Concerning Appraisals and Other Valuations

Congress enacted the Dodd-Frank Act after a cycle of unprecedented expansion and contraction in the mortgage market sparked the most severe U.S. recession since the Great Depression.[5] The Dodd-Frank Act created the Bureau and consolidated various rulemaking and supervisory authorities in this new agency, including the authority to implement ECOA.[6] At the same time, Congress imposed new statutory requirements governing mortgage practices with the intent to restrict the practices that

[1] 15 U.S.C. 1691 *et seq.*

[2] Public Law 102–242, 105 Stat. 2236 (1991).

[3] For additional legislative history on the appraisal provision as originally added by the FDICIA, see S. Rept.167, 102nd Cong. (1991); S. Rept. 461, 101st Cong. (1990); 137 Cong. Rec. S2519 (daily ed. Feb. 28, 1991); 136 Cong. Rec. S14592, 14598–99 (daily ed. Oct. 5, 1990).

[4] Public Law 111–203, 124 Stat. 1376 (2010). The transfer of authority is further discussed in Part IV below.

[5] For more discussion of the mortgage market, the financial crisis, and mortgage origination generally, see the Bureau's 2012 TILA–RESPA Proposal, 77 FR 51116 (Aug. 23, 2012), *available at http://www.consumerfinance.gov/regulations/*.

[6] Sections 1011 and 1021 of title X of the Dodd-Frank Act, the ''Consumer Financial Protection Act,'' Public Law 111–203, sections 1001–1100H, codified at 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481–5603.

contributed to the crisis and to provide additional protections to consumers.

Sections 1471 through 1474 of the Dodd-Frank Act established a number of new requirements for appraisal and other valuation activities, including requirements relating to appraisal independence, appraisals for higher-risk mortgages, regulation of appraisal management companies, automated valuation models (AVMs), and providing copies of appraisals and other written valuations.[7] Many of the Dodd-Frank Act appraisal provisions are required to be implemented through joint rulemakings involving the Bureau and other Federal agencies. The amendment to ECOA section 701(e), however, does not require a joint rulemaking. As discussed below, the amendments to section 701(e) overlap with the disclosure and appraisal copy requirements of a Dodd-Frank Act amendment to the Truth in Lending Act (TILA) applicable to higher-risk mortgages. That Dodd-Frank Act amendment to TILA, which adds TILA section 129H, is required to be implemented through joint rulemaking. *See* TILA section 129H(b)(4)(A); 15 U.S.C. 1639h(b)(4)(A).

ECOA Requirements Relating to Appraisals and Other Valuations

Section 1474 of the Dodd-Frank Act[8] amended ECOA section 701(e) to require that creditors provide copies of all appraisals and other written valuations to loan applicants, in credit transactions to be secured by a first lien on a dwelling, at no additional cost and without requiring applicants to request such copies affirmatively. Amended ECOA section 701(e) generally provides that:

- A creditor shall furnish to an applicant a copy of any and all appraisals and other written valuations developed in connection with the applicant's application for a loan that is or would be secured by a first lien on a dwelling. The copy must be provided promptly upon completion, and in no case later than three days prior to closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn. However, the applicant may waive the timing requirement that copies of such appraisals or other valuations be provided three days prior to closing, except where otherwise required by law.
- The creditor shall provide a copy of each appraisal or other written valuation at no additional cost to the applicant, though the creditor may impose a reasonable fee on the applicant to reimburse the creditor for the cost of the appraisal.
- At the time of application, the creditor shall notify applicants in writing of the right to receive a copy of each appraisal and other written valuation under ECOA section 701(e).

Amended ECOA section 701(e)(6) defines the term ''valuation'' as including ''any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.''

Higher-Risk Mortgage Appraisal Requirements

On August 15, 2012, the Bureau—along with the Board, the Federal Deposit Insurance Corporation (FDIC), the Federal Housing Finance Agency (FHFA), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC)—jointly issued for public comment a proposal to implement new section 129H of TILA relating to appraisals for higher-risk mortgages (2012 Interagency Appraisals Proposal). The proposal was published in the **Federal Register** on September 5, 2012. *See* 77 FR 54722 (Sept. 5, 2012). TILA section 129H includes certain requirements that are similar to ECOA section 701(e). Under Section 129H(d), creditors must provide applicants, at least three days prior to closing, a copy of any appraisal prepared in connection with a higher-risk mortgage. 15 U.S.C. 1639h(c). Creditors also must provide applicants, at the time of the initial mortgage application, a statement that any appraisal prepared for the mortgage is for the creditor's sole use and that the consumer may choose to have a separate appraisal conducted at his or her own expense. *Id.* 1639h(d). Section 1471 of the Dodd-Frank Act defines the term ''higher-risk mortgage'' generally as a residential mortgage loan, other than a reverse mortgage, that is secured by a principal dwelling with an annual percentage rate (APR) that exceeds the average prime offer rate for a comparable transaction by specified percentages. *Id.* 1639h(f). To finalize the 2012 Interagency Appraisals Proposal described above, the inter-agency group is issuing a final rule under section 129H of TILA (2103 Interagency Appraisals Final Rule).

III. Summary of the Rulemaking Process

A. Pre-Proposal Testing and Outreach

The Bureau has conducted consumer testing relating to implementation of ECOA section 701(e) requirements in conjunction with its 2012 TILA–RESPA Proposal.[9] A more detailed discussion of the Bureau's overall testing and form design can be found in the report *Know Before You Owe: Evolution of the Integrated TILA–RESPA Disclosures,* which is available on the Bureau's Web site.[10]

In January 2011, the Bureau contracted with a communication, design, consumer testing, and research firm, Kleimann Communication Group, Inc. (Kleimann), which specializes in consumer financial disclosures. The Bureau and Kleimann developed a plan to conduct qualitative usability testing, consisting of one-on-one cognitive interviews, over several iterations of prototype integrated disclosure forms. Between January and May 2011, the Bureau and Kleimann worked collaboratively on developing a qualitative testing plan, and several prototype integrated forms for the disclosure to be provided in connection with a consumer's application (*i.e.,* a form integrating the RESPA good faith estimate and the early TILA disclosure).[11] The qualitative testing plan developed by the Bureau and Kleimann was unique with respect to qualitative testing performed by other

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

[8] Public Law 111–203, sec. 1474, 124 Stat. 1376 (2010).

[9] *See* 77 FR 51116 at 51313–14, 51427 (Aug. 23, 2012). On July 9, 2012, the Bureau issued for public comment a proposed rule and forms combining the TILA mortgage loan disclosures with the Real Estate Settlement Procedures Act (RESPA) Good Faith Estimate (GFE) and settlement statement required pursuant to Dodd-Frank Act section 1032(f) as well as sections 4(a) of RESPA and 105(b) of TILA, as amended by Dodd-Frank Act sections 1098 and 1100A, respectively (2012 TILA–RESPA Proposal). 12 U.S.C. 2603(a); 15 U.S.C. 1604(b).

[10] Kleimann Comm. Gp., Inc., *Know Before You Owe: Evolution of the Integrated TILA–RESPA Disclosures* (July 9, 2012), *available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf.*

[11] This discussion is limited to testing of the disclosure to be provided in connection with a consumer's application, which is the portion of the testing relevant to the appraisal-related disclosure required under § 1002.14(a)(2). As discussed in the supplementary information to the 2012 RESPA-TILA Proposal, the Bureau and Kleimann also tested prototype designs for the integrated disclosure forms to be provided in connection with the closing of the mortgage loan and real estate transaction. *See* the Bureau's 2012 TILA-RESPA Proposal, *available at http://www.consumerfinance.gov/regulations/.*

federal agencies in that the Bureau planned to conduct qualitative testing with industry participants as well as consumers. Each round of qualitative testing included at least two industry participants, including lenders from several different types of depository (including credit unions) and nondepository institutions, mortgage brokers, and closing agents.

In addition, the Bureau launched an initiative to obtain public feedback on each round of prototype disclosures at the same time as it conducted the qualitative testing of the prototypes, which it titled ''Know Before You Owe.'' [12] This initiative consisted of publishing and obtaining feedback on the prototype designs through an interactive tool on the Bureau's Web site or through posting the prototypes to the Bureau's blog on its Web site and providing an opportunity for the public to email feedback directly to the Bureau. From May to October 2011, Kleimann and the Bureau conducted a series of five rounds of qualitative testing on revised iterations of integrated disclosure prototype forms. This testing was conducted in five different cities across different U.S. Census regions and divisions: Baltimore, Maryland; Los Angeles, California; Chicago, Illinois; Springfield, Massachusetts; and Albuquerque, New Mexico. After each round, Kleimann analyzed and reported to the Bureau on the results of the testing. Based on these results and feedback received from the Bureau's Know Before You Owe public outreach project, the Bureau revised the prototype disclosure forms for the next round of testing.

As part of the larger Know Before You Owe public outreach project, the Bureau tested two versions of the new appraisal-related disclosures required by both TILA section 129H and ECOA section 701(e).[13] The Bureau believed that it was important to test the TILA and ECOA appraisal-related disclosures together, in an integrated manner, to determine how to provide these overlapping but separate disclosures in a manner that would minimize consumer confusion and improve consumer comprehension. Testing of the first version showed that consumers tended to find the TILA and ECOA disclosures confusing when they were given together using the specific language set forth in the respective statutes.[14] Consumer comprehension improved when the Bureau developed a slightly longer plain language version that was designed to incorporate the elements of both statutes. Based on the results of that testing, the Bureau developed the following appraisal disclosure language: ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.'' The Bureau included this language in the prototype form used in the final rounds of the testing process.

In addition, as part of the rulemaking process for this rule, as described in the proposal, 77 FR 53090, at 50400 n.39, 50402 n.48 (Aug. 21, 2012), the Bureau considered information obtained during pre-proposal outreach to industry regarding its practices in providing copies of written appraisals to applicants. This outreach was carried out in the context of the development of the 2012 Interagency Appraisals Proposal and involved a large bank, a trade group of smaller depository institutions, and an independent mortgage bank (IMB).

B. The Bureau's 2012 ECOA Proposal on Providing Copies of Appraisals and Other Written Valuations

The Bureau issued for public comment its proposal to amend Regulation B to implement the Dodd-Frank Act amendment to ECOA section 701(e) on August 15, 2012. The proposal was published in the **Federal Register** on August 21, 2012. 77 FR 50390 (Aug. 21, 2012). The Bureau proposed to amend Regulation B, § 1002.14(a)(1), to set forth a general requirement that creditors provide applicants for credit to be secured by a first lien on a dwelling with copies of all appraisals and other written valuations developed in connection with their applications. The Bureau further proposed timing requirements for providing such copies and standards governing any waiver of the timing requirements. The Bureau proposed to amend § 1002.14(a)(2) to require that a creditor provide a written disclosure of the applicant's right to receive a copy of such appraisals and other written valuations. As proposed, § 1002.14(a)(3) would have prohibited creditors from charging the applicants for providing a copy of appraisals and other written valuations, but would have permitted creditors to require applicants to pay a reasonable fee to reimburse the creditor for the cost of appraisals and other written valuations. The Bureau proposed in § 1002.14(a)(4) to clarify that the requirements of § 1002.14(a)(1) would apply regardless of whether credit is extended or denied, or if the application is incomplete or withdrawn. The Bureau proposed in § 1002.14(a)(5) to allow the copies of appraisals and other written valuations required by § 1002.14(a)(1) to be provided in electronic form. As is discussed in more detail below, proposed § 1002.14(b) would have defined certain terms used in § 1002.14(a).

C. Overview of Comments Received

The Bureau received 68 comments on the 2012 ECOA Proposal, primarily from creditors and their representatives. Most of the industry commenters generally supported the core elements of the proposal, while providing suggestions for exemptions, clarifications, or changes to particular elements of the proposal. Comment letters also were submitted by a group advocating for the use of plain language, and on behalf of appraisers, government-sponsored enterprises (GSEs), and real estate agents, as well as an affordable housing advocacy group. The affordable housing advocacy group commenter generally supported the proposal and suggested changes to strengthen consumer protections. The plain language group commenter suggested changes to make the rule easier to understand. Most of the remaining commenters generally supported the rule but suggested clarifications and changes to particular elements of the proposal. The comments are discussed in more detail in the section-by-section analysis below.

D. Other Rulemakings

In addition to this final rule and the 2013 Interagency Appraisals Final Rule described above, the Bureau currently is adopting several other final rules and issuing one proposal, all relating to mortgage credit to implement requirements of title XIV of the Dodd-Frank Act. Each of the final rules follows a proposal issued in 2011 by the Board or in 2012 by the Bureau. Collectively, these proposed and final rules are referred to as the Title XIV Rulemakings.

- *Ability to Repay:* The Bureau is finalizing a rule, following a May 2011 proposal issued by the Board (Board's 2011 ATR Proposal),[15] to implement provisions of the Dodd-Frank Act (1) requiring creditors to determine that a consumer has a reasonable ability to repay covered mortgage loans and

[12] *See http://www.consumerfinance.gov/knowbeforeyouowe.*

[13] Kleimann Comm. Gp., Inc., *Know Before You Owe: Evolution of the Integrated TILA–RESPA Disclosures* 254–256 (July 9, 2012), *available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf.*

[14] *Id.*

[15] 76 FR 27390 (May 11, 2011).

establishing standards for compliance, such as by making a ''qualified mortgage,'' and (2) establishing certain limitations on prepayment penalties, pursuant to TILA section 129C as established by Dodd-Frank Act sections 1411, 1412, and 1414. 15 U.S.C. 1639c. The Bureau's final rule is referred to as the 2013 ATR Final Rule. Simultaneously with the 2013 ATR Final Rule, the Bureau is issuing a proposal to amend the final rule implementing the ability-to-repay requirements, including by the addition of exemptions for certain nonprofit creditors and certain homeownership stabilization programs and a definition of a ''qualified mortgage'' for certain loans made and held in portfolio by small creditors (2013 ATR Concurrent Proposal). The Bureau expects to act on the 2013 ATR Concurrent Proposal on an expedited basis, so that any exceptions or adjustments to the 2013 ATR Final Rule can take effect simultaneously with that rule.

• *Escrows:* The Bureau is finalizing a rule, following a March 2011 proposal issued by the Board (Board's 2011 Escrows Proposal),[16] to implement certain provisions of the Dodd-Frank Act expanding on existing rules that require escrow accounts to be established for higher-priced mortgage loans and creating an exemption for certain loans held by creditors operating predominantly in rural or underserved areas, pursuant to TILA section 129D as established by Dodd-Frank Act section 1461. 15 U.S.C. 1639d. The Bureau's final rule is referred to as the 2013 Escrows Final Rule.

• *HOEPA:* Following its July 2012 proposal (2012 HOEPA Proposal),[17] the Bureau is issuing a final rule to implement Dodd-Frank Act requirements expanding protections for ''high-cost mortgages'' under the Homeownership and Equity Protection Act (HOEPA), pursuant to TILA sections 103(bb) and 129, as amended by Dodd-Frank Act sections 1431 through 1433. 15 U.S.C. 1602(bb) and 1639. The Bureau also is finalizing rules to implement certain title XIV requirements concerning homeownership counseling, including a requirement that lenders provide lists of homeownership counselors to applicants for federally-related mortgage loans, pursuant to RESPA section 5(c), as amended by Dodd-Frank Act section 1450. 12 U.S.C. 2604(c). The Bureau's final rule is referred to as the 2013 HOEPA Final Rule.

• *Servicing:* Following its August 2012 proposals (2012 RESPA Servicing Proposal and 2012 TILA Servicing Proposal),[18] the Bureau is adopting final rules to implement Dodd-Frank Act requirements regarding force-placed insurance, error resolution, information requests, and payment crediting, as well as requirements for mortgage loan periodic statements and adjustable-rate mortgage reset disclosures, pursuant to section 6 of RESPA and sections 128, 128A, 129F, and 129G of TILA, as amended or established by Dodd-Frank Act sections 1418, 1420, 1463, and 1464. 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g. The Bureau also is finalizing rules on early intervention for troubled and delinquent borrowers, and loss mitigation procedures, pursuant to the Bureau's authority under section 6 of RESPA, as amended by Dodd-Frank Act section 1463, to establish obligations for mortgage servicers that it finds to be appropriate to carry out the consumer protection purposes of RESPA, and its authority under section 19(a) of RESPA to prescribe rules necessary to achieve the purposes of RESPA. The Bureau's final rule under RESPA with respect to mortgage servicing also establishes requirements for general servicing standards policies and procedures and continuity of contact pursuant to its authority under section 19(a) of RESPA. The Bureau's final rules are referred to as the 2013 RESPA Servicing Final Rule and the 2013 TILA Servicing Final Rule, respectively.

• *Loan Originator Compensation:* Following its August 2012 proposal (2012 Loan Originator Proposal),[19] the Bureau is issuing a final rule to implement provisions of the Dodd-Frank Act requiring certain creditors and loan originators to meet certain duties of care, including qualification requirements; requiring the establishment of certain compliance procedures by depository institutions; prohibiting loan originators, creditors, and the affiliates of both from receiving compensation in various forms (including based on the terms of the transaction) and from sources other than the consumer, with specified exceptions; and establishing restrictions on mandatory arbitration and financing of single-premium credit insurance, pursuant to TILA sections 129B and 129C as established by Dodd-Frank Act sections 1402, 1403, and 1414(a). 15 U.S.C. 1639b, 1639c. The Bureau's final rule is referred to as the 2013 Loan Originator Final Rule.

The Bureau is not at this time finalizing proposals concerning various disclosure requirements that were added by title XIV of the Dodd-Frank Act, integration of mortgage disclosures under TILA and RESPA, or a simpler, more inclusive definition of the finance charge for purposes of disclosures for closed-end mortgage transactions under Regulation Z. The Bureau expects to finalize these proposals and to consider whether to adjust regulatory thresholds under the Title XIV Rulemakings in connection with any change in the calculation of the finance charge later in 2013, after it has completed quantitative testing, and any additional qualitative testing deemed appropriate, of the forms that it proposed in July 2012 to combine TILA mortgage disclosures with the good faith estimate (RESPA GFE) and settlement statement (RESPA settlement statement) required under RESPA, pursuant to Dodd-Frank Act section 1032(f) and sections 4(a) of RESPA and 105(b) of TILA, as amended by Dodd-Frank Act sections 1098 and 1100A, respectively (2012 TILA–RESPA Proposal).[20] Accordingly, the Bureau already has issued a final rule delaying implementation of various affected title XIV disclosure provisions.[21] The Bureau's approach to coordinating the implementation of the Title XIV Rulemakings is discussed below.

Coordinated Implementation of Title XIV Rulemakings

As noted in all of its foregoing proposals, the Bureau regards each of the Title XIV Rulemakings as affecting aspects of the mortgage industry and its regulations. Accordingly, as noted in its proposals, the Bureau is coordinating carefully the Title XIV Rulemakings, particularly with respect to their effective dates. The Dodd-Frank Act requirements to be implemented by the Title XIV Rulemakings generally will take effect on January 21, 2013, unless final rules implementing those requirements are issued on or before that date and provide for a different effective date. *See* Dodd-Frank Act section 1400(c), 15 U.S.C. 1601 note. In addition, some of the Title XIV Rulemakings are to take effect no later than one year after they are issued. *Id.*

The comments on the appropriate implementation date for this final rule are discussed in detail below in part VI of this notice. In general, however, consumer advocates requested that the Bureau put the protections in the Title

[16] 76 FR 11598 (Mar. 2, 2011).

[17] 77 FR 49090 (Aug. 15,2012).

[18] 77 FR 57200 (Sept. 17, 2012) (RESPA); 77 FR 57318 (Sept. 17, 2012) (TILA).

[19] 77 FR 55272 (Sept. 7, 2012).

[20] 77 FR 51116 (Aug. 23, 2012).

[21] 77 FR 70105 (Nov. 23, 2012).

XIV Rulemakings into effect as soon as practicable. In contrast, the Bureau received some industry comments indicating that implementing so many new requirements at the same time would create a significant cumulative burden for creditors. In addition, many commenters also acknowledged the advantages of implementing multiple revisions to the regulations in a coordinated fashion.[22] Thus, a tension exists between coordinating the adoption of the Title XIV Rulemakings and facilitating industry's implementation of such a large set of new requirements. Some have suggested that the Bureau resolve this tension by adopting a sequenced implementation, while others have requested that the Bureau simply provide a longer implementation period for all of the final rules.

The Bureau recognizes that many of the new provisions will require creditors to make changes to automated systems and, further, that most administrators of large systems are reluctant to make too many changes to their systems at once. At the same time, however, the Bureau notes that the Dodd-Frank Act established virtually all of these changes to institutions' compliance responsibilities, and contemplated that they be implemented in a relatively short period of time. And, as already noted, the extent of interaction among many of the Title XIV Rulemakings necessitates that many of their provisions take effect together. Finally, notwithstanding commenters' expressed concerns for cumulative burden, the Bureau expects that creditors actually may realize some efficiencies from adapting their systems for compliance with multiple new, closely-related requirements at once, especially if given sufficient overall time to do so.

Accordingly, the Bureau is requiring that, as a general matter, creditors and other affected persons begin complying with the final rules on January 10, 2014. As noted above, section 1400(c) of the Dodd-Frank Act requires that some provisions of the Title XIV Rulemakings take effect no later than one year after the Bureau issues them. Accordingly, the Bureau is establishing January 10, 2014, one year after issuance of the Bureau's 2013 ATR, Escrows, and HOEPA Final Rules (*i.e.,* the earliest of the title XIV final rules), as the baseline effective date for most of the Title XIV Rulemakings. The Bureau believes that, on balance, this approach will facilitate the implementation of the rules' overlapping provisions, while also affording creditors sufficient time to implement the more complex or resource-intensive new requirements. As discussed in part VI below, however, the effective date of this final rule is January 18, 2014, to align with the effective date of the 2013 Interagency Appraisals Final Rule.

The Bureau has identified certain rulemakings or selected aspects thereof, however, that do not present significant implementation burdens for industry. Accordingly, the Bureau is setting earlier effective dates for those final rules or certain aspects thereof, as applicable. Those effective dates are set forth and explained in the **Federal Register** notices for those final rules.

IV. Legal Authority

The final rule was issued on January 18, 2013, in accordance with 12 CFR 1074.1. The Bureau issued this final rule pursuant to its authority under ECOA and the Dodd-Frank Act. On July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board.[23] The term ''consumer financial protection functions'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [24] ECOA is a Federal consumer financial law.[25] Accordingly, the Bureau has authority to issue regulations pursuant to ECOA.

Section 703(a) of ECOA authorizes the Bureau to prescribe regulations to carry out the purposes of ECOA. Section 703(a) further states that such regulations may contain—but are not limited to—such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions as, in the judgment of the Bureau, are necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance. 15 U.S.C. 1691b(a).

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof[.]'' 12 U.S.C. 5512(b)(1). ECOA and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)(1) to prescribe rules that carry out the purposes and objectives of ECOA and title X and prevent evasion of those laws.

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

V. Section-by-Section Analysis

Section 1002.14 Rules on Providing Copies of Appraisals and Other Written Valuations

Overview

Public comments generally. Many commenters offered general support for the proposed rule, with some

[22] Of the several final rules being adopted under the Title XIV Rulemakings, six entail amendments to Regulation Z, with the only exceptions being the 2013 RESPA Servicing Final Rule (Regulation X) and the 2013 ECOA Appraisals Final Rule (Regulation B); the 2013 HOEPA Final Rule also amends Regulation X, in addition to Regulation Z. The six Regulation Z final rules involve numerous instances of intersecting provisions, either by cross-references to each other's provisions or by adopting parallel provisions. Thus, adopting some of those amendments without also adopting certain other, closely-related provisions would create significant technical issues, *e.g.,* new provisions containing cross-references to other provisions that do not yet exist, which could undermine the ability of creditors and other parties subject to the rules to understand their obligations and implement appropriate systems changes in an integrated and efficient manner.

[23] Public Law 111–203, sec. 1061(b)(7), 124 Stat. 1376; 12 U.S.C. 5581(b)(7).

[24] 12 U.S.C. 5581(a)(1).

[25] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include ECOA).

comments, for example by a large trade association for real estate brokers and agents, offering strong support for its potential to educate and inform consumers about appraisals and other valuations and their role in the real estate transaction. Most of the industry commenters generally supported the proposal and provided numerous suggestions for clarifications or changes to particular elements of the proposal, which are discussed in the corresponding sections below. Some industry commenters including community banks and other lending institutions, however, opposed the proposal. These comments stated, for example, that the mortgage credit industry cannot keep up with the all the regulations being issued under the Dodd-Frank Act and that rules requiring creditors to provide copies of appraisals are already in place.

Discussion. As discussed above, the Dodd-Frank Act amendments to ECOA section 701(e) will take effect 18 months after the designated transfer date under the Dodd-Frank Act unless final rules implementing section 701(e) are issued on or before that date and provide for a different effective date. For that reason, the Bureau believes that, rather than adding burden to industry, this final regulation will relieve industry of uncertainty and potential liability risk that would likely result from ECOA section 701(e) taking effect without an implementing regulation. Furthermore, by issuing this final rule the Bureau is able to provide industry with additional time to develop new policies, train employees, and make system changes to implement the rule's requirements that would not be available if the statute takes effect in January 2013.

4(d) General Rules on Providing Disclosure in Electronic Form

As discussed in the section-by-section analysis relating to § 1002.14(a)(5), the Bureau is updating the cross-reference in § 1002.4(d) to § 1002.14, to reflect that the new disclosure requirement is cited as § 1002.14(a)(2), rather than § 1002.14(a)(2)(i). This change will ensure that electronic disclosure standards in Regulation B apply to the new notice required by § 1002.14(a)(2) to the same extent as they have applied to the existing notice required by § 1002.14(a)(2)(i) that the new notice will replace.

14(a) Providing Copies of Appraisals and Other Written Valuations

14(a)(1) In General

ECOA section 701(e)(1) requires a creditor to provide an applicant a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling. This requirement replaced the previous requirement in section 701(e) to provide copies of appraisal reports upon request of the applicant for a loan secured by a lien on a dwelling. Accordingly, the Bureau proposed to revise § 1002.14(a)(1) in two important ways: to specify the types of materials that must be provided to consumers (i.e., copies of appraisals and other written valuations developed in connection with the application), and to specify the types of transactions for which these copies must be provided (i.e., applications for credit to be secured by a first lien on a dwelling).

First, consistent with new ECOA section 701(e)(1), the Bureau proposed broadening the scope of the valuation materials for which copies must be provided to applicants under § 1002.14(a)(1) to include copies of ''all written appraisals and valuations developed.'' The Bureau further proposed new comment 14(a)(1)–3 to clarify that for purposes of § 1002.14, a ''written'' appraisal or other valuation would include, without limitation, an appraisal or valuation received or developed by the creditor in any of the following manners: in paper form (hard copy); electronically, such as by CD or email; or by any other similar media. In addition, the proposed comment would have clarified that creditors should look to § 1002.14(a)(5) regarding the provision of copies of appraisals and other written valuations to applicants via electronic means.

Second, the Dodd-Frank Act amendments to ECOA section 701(e) also narrowed the types of transactions that are covered to ''first lien'' transactions. Accordingly, the Bureau proposed revising § 1002.14(a)(1) to add the word ''first'' to narrow the scope of the final rule to cover only loans to be secured by a first lien on a dwelling.

The Bureau also proposed changes to the Regulation B commentary further clarifying the types of transactions subject to the requirement to deliver copies of appraisals and other written valuations. Prior to this final rule, comments 14(a)–1 and 2 had clarified that Regulation B appraisal delivery requirements applied to credit for business purposes and to renewals of credit secured by a dwelling. The Bureau proposed generally retaining these comments (renumbered as comments 14(a)(1)–1 and 2), with several conforming and technical changes. The Bureau proposed comment 14(a)(1)–1 to clarify that § 1002.14(a)(1) covers applications for credit to be secured by a first lien on a dwelling, as the term ''dwelling'' is defined in § 1002.14(b)(2), whether the credit is business credit (*see* § 1002.2(g)) or consumer credit (*see* § 1002.2(h)). The Bureau also proposed comment 14(a)(1)–2 to clarify that § 1002.14(a)(1) applies when an applicant requests the renewal of an existing extension of credit and the creditor develops a new appraisal or other written valuation. Consequently, the Bureau proposed that this comment clarify that § 1002.14(a) does not apply when a creditor uses the appraisals or other valuations that were previously developed in connection with the prior extension of credit in order to evaluate the renewal request.

Public comment. Many commenters provided suggestions on which types of documents would qualify as appraisals or other written valuations copies of which must be provided to applicants.

A significant number of industry commenters urged the Bureau to require creditors to provide only ''final'' versions of appraisals and other written valuations, to prevent uncertainty over whether creditors would be required to provide copies of drafts or preliminary versions of these documents. Commenters also suggested this clarification would help to reduce the volume of information that must be provided to and received by applicants, thereby reducing burden on creditors and preventing consumer confusion.

Several industry commenters asked the Bureau to clarify that ECOA only requires providing copies of appraisals or other written valuations that are actually performed. In addition, a few industry commenters suggested that the Bureau require providing copies of only those appraisals and other written valuations that are used or relied upon by the creditor in making the credit decision. This narrower focus was viewed as more in line with the purpose of ECOA. One commenter requested that creditors should not be required to provide a copy of an appraisal or other written valuation that is ''materially deficient,'' as it could confuse the consumer.

Some industry commenters expressed a general concern over liability risks raised by the proposed requirement to provide copies of appraisals and other written valuations. These commenters suggested that providing these copies to applicants could create liability risks for creditors and preparers. Some creditors and a creditor trade association expressed concern that applicants might view valuations that lenders conduct in-house, without commissioning an appraisal, as warranting the value of the

home. Two creditors and a creditor association in one state expressed concern over the potential for lender liability to carry over to investors under an assignee liability theory, which could reduce access to credit by reducing investor demand. Other industry commenters suggested that applicants might seek to hold an appraiser liable for the applicant's reliance upon the appraisal in entering into a transaction, particularly if the appraiser lists, or is required to list, the applicant as an ''intended user'' of the appraisal under the Uniform Standards of Professional Appraisal Practices (USPAP). Some of these commenters raised these concerns over potential liability as part of an overall concern with the potential burden of the regulation, and some urged the Bureau to include provisions in the final rule protecting creditors and preparers of appraisals and other valuations against liability.

A number of commenters also urged the Bureau to exclude certain types of transactions from the scope of the final rule. Several industry group commenters requested that the Bureau exempt loan modifications, loss mitigation, short sales, and deed-in-lieu transactions from the rule's requirements altogether. These commenters suggested that these transactions did not involve an ''application'' by the consumer for an ''extension of credit'' within the meaning of ECOA. They also argued that applying the rule to loss mitigation and other foreclosure alternatives would increase the costs of these transactions and decrease their availability to consumers. One industry commenter also suggested that the Bureau clarify that a loan modification did not fit within the type of transaction the rule would cover, because a modification does not lead to ''consummation'' of the loan.

In addition, an industry commenter requested clarification on whether the rule applies to an annual renewal clause under which a creditor makes a unilateral decision each year whether or not to renew a line of credit. Another industry trade association requested that the final rule exclude temporary loans, such as bridge or construction loans, which it argued are treated specially under other statutes such as RESPA and TILA. For construction loans, this commenter also asserted that applicants are more interested in receiving copies of valuations when the permanent financing begins, after the construction is complete and therefore factored into the valuation.

One commenter suggested that the rule should cover second liens to protect consumers in these transactions. This commenter asserted second lien transactions generally carry higher risk than first lien transactions, and therefore are even more worthy of the protections in the rule.

Discussion. The final rule adopts the language in § 1002.14(a)(1) discussed above as proposed, with a minor clarification. To clarify that an appraisal is intended to be classified as a type of ''valuation'' under the final rule, and to clarify that the rule applies to written valuations, the final rule uniformly adopts the phrases ''appraisals and other written valuations'' and ''appraisals or other written valuations.'' This usage also aligns with the use of the term ''valuation'' to include appraisals in recent amendments to Regulation Z, § 1026.42(b)(3), to implement section 129E of TILA. *See* 75 FR 66554, 66558 (Oct. 28, 2010) (adopting term ''valuation'').

To provide guidance on § 1002.14(a)(1), the final rule also adopts comments 14(a)(1)–1 through 3 as proposed, with an additional clarification in comment 14(a)(1)–1 relating to waiver (*see* discussion of waiver further below), and adopts an additional comment 14(a)(1)–7.[26]

The Bureau considered comments seeking clarification that the final rule does not require lenders to conduct appraisals or other written valuations. The Bureau does not believe, however, that this clarification is needed in the final rule or its commentary. On its face, section 701(e) of ECOA requires disclosure of copies of the appraisals and other written valuations that are developed in connection with an application. Neither ECOA section 701(e) nor the final rule requires that lenders must obtain appraisals or other written valuations.

The final rule also retains the language from the proposed rule—''developed in connection with an application for credit''—for determining which appraisals and other written valuations must be disclosed. Prior to the Dodd-Frank Act, ECOA section 701(e) referred to appraisals that were ''used'' in connection with the application. Had Congress intended to maintain that scope, it could have continued to use that term; instead, Congress referred to appraisals and other valuations that are ''developed'' in connection with the application, without necessarily requiring that they ultimately be ''used.'' The Bureau assumes this difference in terms reflects a deliberate wording choice by Congress, and the Bureau does not believe consumer protection will be enhanced by adjusting the statutory terminology. If an appraisal or other written valuation is ''developed in connection with'' an application, then the applicant may benefit from receiving a copy, even if the creditor does not to use the valuation. Some commenters expressed concern that applicants could mistakenly believe that such a valuation was ''used'' by the creditor. However, there is nothing in the final rule that prohibits creditors from providing information to applicants concerning whether a particular valuation was used.[27]

As noted above, some commenters stated a concern that providing copies of appraisals and other written valuations to applicants could result in liability issues for creditors and preparers of appraisals or other written valuations. Industry commenters noted questions or concerns over whether creditors would be deemed to have warranted home values contained in their internal valuations provided to applicants, and on whether consumers would assert legal claims based upon their reliance on appraisals in deciding whether to enter into transactions. The commenters do not appear to be raising concerns over liability under ECOA section 701(e) itself. On its face, section 701(e) concerns providing copies of certain materials and providing a disclosure. It does not specify the content of valuations or otherwise supply standards regarding what they should contain.[28] Moreover, ECOA has long required creditors to provide copies of appraisals upon request, and creditors routinely provide copies of appraisals for first lien loans including under GSE requirements. The commenters have not explained how requiring that copies of appraisals and other written valuations be provided as a matter of course increases creditors' exposure to liability under legal standards other than ECOA. In any event, as for legal standards other than those contained in ECOA, it is unclear what authority the Bureau would have to limit remedies arising from a creditor's providing copies of appraisals or other written valuations.[29]

[26] Other comments on § 1002.14(a)(1) relate to timing and waiver, and are discussed further below.

[27] Other industry commenters suggested that consumers would not benefit from receiving copies of valuations that were not used, and which may contain errors or even material deficiencies. The statute does not distinguish, however, between valuations that are used and those that are not used.

[28] Congress has spelled out the conduct that gives rise to liability under ECOA. 15 U.S.C. 1691e. Creditors that ''fail[] to comply with any requirement imposed under [ECOA] shall be liable to the aggrieved applicant.'' 15 U.S.C. 1691e(a).

[29] As to whether USPAP will require that appraisals list applicants as intended users of

With regard to the types of transactions that are covered by the final rule, the Bureau considered industry comments seeking clarification on whether loss mitigation activities, such as loan modifications, short sales, and deed-in-lieu transactions, are covered. These comments implicate provisions of ECOA and Regulation B that turn on whether there is an ''applicant'' or ''application'' for an ''extension of credit.'' [30] While some loan modifications can be subject to the provisions of Regulation B,[31] including the existing § 1002.14 disclosure-upon-request regime, there is variation between different types of loss mitigation programs; the particulars of the program at issue are important to understand in evaluating whether there is an application or applicant for an extension of credit within the meaning of Regulation B. Accordingly, the Bureau believes that questions on coverage of these types of transactions are best addressed with reference to the existing provisions of Regulation B.[32] To the extent a loss mitigation transaction is covered by Regulation B, the transaction is covered by the final rule, including its requirement of providing copies of appraisals and other written valuations. Consumers generally will benefit from receiving information about the value of their dwelling, both in the context of making a decision about the loss mitigation transaction and also in detecting potential discrimination, consistent with the purposes of ECOA. The Bureau believes these benefits outweigh the cost to the creditor of providing copies of documentation that the creditor already has received. For the reasons discussed in the Bureau's analysis under section 1022(b) below, the Bureau believes the per-loan cost of providing copies of these materials is modest, and they will often be provided in electronic form. The Bureau is therefore not exercising its exception authority to exempt loss mitigation transactions from § 1002.14 if those transactions would otherwise be covered by Regulation B.[33]

While the Bureau has considered the comment that the final rule should apply to second lien transactions because they are higher risk, it is not expanding the scope of the final rule to include second liens because such an expansion would be inconsistent with the plain meaning of section 701(e). The Bureau notes that the Dodd-Frank Act specifically limited the scope of ECOA section 701(e) to ''first liens,'' while applying the overlapping requirements under section 129H of TILA to certain subordinate lien loans that meet the definition of ''higher risk mortgage.'' The commenters have not presented data or other specific information warranting a departure from the plain language of ECOA section 701(e).

The final rule maintains comment 14(a)(1)–2, pertaining to credit renewals, with minor changes for consistency and clarity. Comment 14(a)(1)–2 clarifies that creditors must provide copies of appraisals or other written valuations prepared in connection with credit renewals requested by the applicant. Whether an applicant has requested a credit renewal, and when such an application is received for purposes of the timing requirements under § 1002.14(a)(2), depend on the facts and circumstances of an individual transaction. The remaining part of comment 14(a)(1)–2, clarifying that the rule does not apply to the use of an appraisal or other written valuation that was developed for a prior extension of credit, is adopted as proposed. Because the creditor in a prior transaction covered by the final rule would already have been required to provide a copy of an appraisal or other written valuation to the applicant, requiring the creditor in the subsequent transaction to provide another copy of that appraisal or other written valuation would be duplicative.[34] The Bureau is therefore finalizing comment 14(a)(1)–2 largely as proposed.

In response to industry comments, the Bureau has added new comment 14(a)(1)–7, which clarifies what copies must be provided in the event there are multiple versions of an appraisal or other written valuation. The comment clarifies that, if a creditor receives multiple versions of a particular appraisal or other written valuation, then the creditor is required to provide a copy of only the latest version received by the creditor. (*See also* the discussion of comment 14(a)(1)–4 below concerning application of the timing requirements in common situations where there are multiple versions of a particular appraisal or other written valuation.) The Bureau believes this comment is consistent with the language of ECOA section 701(e)(1) requiring copies of appraisals and other valuations to be provided promptly upon ''completion.'' The ''latest version received'' rule thus clarifies that when creditors have multiple versions of a particular appraisal or valuation, they are only required to provide the latest version. The Bureau believes that this guidance will help avoid placing unwarranted burden on creditors and overloading consumers with multiple drafts of a particular appraisal or other written valuation.

The Bureau notes, however, that the separate requirements of § 1002.14(a)(1) for the timing of providing copies to applicants will still apply. The application of the timing requirements to situations in which there are multiple versions of a particular valuation is further discussed below.

Comment 14(a)(1)–7 also clarifies that if a creditor provides a version of an appraisal or other written valuation that is later superseded, then the creditor still must provide the latest version. While the Bureau recognizes that this guidance could result in instances in which consumers receive multiple versions of a particular appraisal or other written valuation, it does not believe that this result can be avoided given the statutory requirements.

written appraisal reports, the Bureau believes this is a question that arises under USPAP and not ECOA; thus it is a matter for appraisers to determine pursuant to USPAP, and for the Appraisal Standards Board, which is charged with developing, interpreting, and amending USPAP.

[30] *See* 12 CFR 1002.2(e)–(f), (j) and (q).

[31] In the context of interpreting the requirement of Regulation B that there be a notice of an adverse action on an application, for example, the Federal Reserve Board Consumer Affairs Letter CA 09–13 (Dec. 4, 2009), noted that loan modifications can involve an ''application'' for an ''extension of credit'' within the meaning of Regulation B. *See* Consumer Affairs Letter CA 09–13, *Mortgage Loan Modification and Regulation B's Adverse Action Requirement* (2009), *available at http://www.federalreserve.gov/boarddocs/caletters/2009/0913/caltr0913.htm*. The Board determined that certain transactions under the U.S. Department of Treasury's Making Home Affordable Modification Program (HAMP) then in place did involve applications for extension of credit within the meaning of Regulation B. Guidance issued by the Board prior to the transfer of ECOA rulemaking authority to the Bureau will be applied by the Bureau absent further action. 76 FR at 43570 (July 21, 2011).

[32] Similarly, questions about the rule's coverage of temporary loans, such as bridge or construction loans, and renewals of credit, relate to the overall scope of Regulation B. The final rule is not intended to address whether these loans are subject to ECOA in the first place. If a temporary loan or a renewal is subject to ECOA, and an appraisal or other written valuation is developed for that loan, then the applicant has a right to receive a copy under the final rule. This approach is consistent with existing comment 14(a)(1)–2 concerning the application of § 1002.14 to renewals, which is maintained in the final rule.

[33] With respect to the comment suggesting that ''consummation'' is not necessarily occurring in the loan modification context, the Bureau is not persuaded that this is necessarily the case. The term ''consummation'' in Regulation Z is defined as the time the consumer becomes ''contractually obligated on the credit transaction.'' A loan modification can occur contractually, and take effect on a date certain.

[34] To the extent that an appraisal or other written valuation is developed in connection with an application received before January 18, 2014, it would not be subject to the final rule.

Comment 14(a)(1)–7 further clarifies that a copy of at least one version of each appraisal or other written valuation must be provided. The Bureau believes this comment is needed to ensure compliance with the statutory requirement that the applicant receive a copy of ''any and all'' appraisals or other written valuations ''developed'' in connection with an application. A rule requiring only ''final'' versions to be provided would not be consistent with the statutory requirement, because it would allow creditors to withhold a valuation that they determine is a draft or preliminary, even if they never receive a later version. The statute does not distinguish between valuations that are preliminary and those that are final or valuations that the creditor chooses to rely on and those it does not.

Additionally, the Bureau does not believe that such a rule would be consistent with the purposes of ECOA's requirement regarding furnishing copies of appraisals and other written valuations. The chief purpose of this provision is to promote transparency regarding the loan process to assist applicants in determining whether they may be the victims of discrimination. This purpose would be frustrated if creditors could subjectively determine which valuations to provide. Accordingly, comment 14(a)(1)–7 clarifies that when there is only one version of a particular appraisal or other written valuation, a copy must be provided to the applicant regardless of whether the creditor relied on it or viewed it as being preliminary.

Timing and Waiver

ECOA section 701(e)(1), requires that creditors provide copies of each appraisal or other written valuation promptly upon completion, but in no case later than three days prior to the closing of the loan. Accordingly, proposed § 1002.14(a)(1) stated that a creditor must provide a copy of each appraisal or other written valuation subject to § 1002.14(a)(1) promptly (generally within 30 days of receipt by the creditor), but not later than three business days prior to consummation of the transaction, whichever is first to occur.[35] The reference to providing the copy generally within a 30-day time frame was proposed to maintain consistency with the existing requirements of § 1002.14(a)(2)(ii).

ECOA section 701(e)(2) provides that an applicant may waive the three-day requirement provided in ECOA section 701(e)(1), except where otherwise required by law. Accordingly, proposed § 1002.14(a)(1) would have provided that, notwithstanding the other requirements in § 1002.14(a)(1), an applicant may waive the timing requirement in the proposal to receive a copy of an appraisal or other written valuation three business days prior to consummation and agree to receive the copy at or before consummation, except as otherwise prohibited by law. As discussed in the proposal, the Bureau did not propose that such waivers extend to the requirement that copies of appraisals and other written valuations be provided in the case of an application that is withdrawn, incomplete, or denied. The Bureau also proposed a new comment 14(a)(1)–4 that would clarify that waivers under § 1002.14(a)(1) are permitted if the applicant makes an affirmative oral or written statement (which can be made by any one applicant in the case of a multiple-applicant transaction) and if the creditor provides the copies of all appraisals and other written valuations at or before consummation.

Public comment. Some commenters addressed certain aspects of the timing requirement, including the waiver provision.[36] A few commenters suggested shortening the proposed general 30-day time limit, to ensure that consumers receive copies of the appraisals and other written valuations at an earlier point in the transaction when they are most useful (and can, for example, inform price negotiations). An organization advocating for affordable housing suggested a deadline of three days after the creditor's approval, while a real estate agent trade association suggested 10 days after receipt, and an appraisal group suggested 20 days after receipt.

A large lending institution opposed a *per se* time limit, such as 30 days, however. This commenter suggested that removing the reference to 30 days would ensure lenders can provide an integrated package that includes all appraisal and other valuation documents. Otherwise, an appraisal received earlier in the application process potentially would need to be disclosed before a valuation received later. Other industry commenters embraced the requirement to provide copies of the appraisals and other written valuations three business days before consummation, without expressing support for the 30-day limit in the timing requirement. One industry commenter suggested, however, that the 30-day limit should apply in the case of an incomplete application. Another industry commenter suggested the time period for providing copies should not begin until the application is ''complete'' within the meaning of Regulation B, § 1002.2(f).

One large lending institution requested that the Bureau exercise its exception authority to allow creditors to provide copies of non-substantive changes to appraisals and other written valuations, such as typographical errors, at consummation. This commenter believed that without this exception, the applicant could receive multiple versions of the same document, with only non-substantive differences. The commenter expressed concern that this result would distract consumers and interfere with their ability to analyze the information received.

Finally, one commenter suggested counting the day of consummation for purposes of the three-business-day requirement, and the day of receipt for purposes of the proposed general 30-day limit.

Commenters generally supported the proposed provision granting the borrower the right to waive the three-business-days-before closing requirement for providing copies of the appraisal or other written valuation so that the copies can be provided at or before closing; no comments opposed the proposal to allow for a waiver. Several commenters noted that a waiver right would be important to prevent delayed closings. A few comments requested that the final rule provide additional guidance on what constitutes a valid waiver. One creditor trade association suggested this guidance be provided in the form of a safe harbor, including explicit authorization for creditors to seek waivers. Two other creditor trade associations also sought confirmation that creditors could inform consumers of their ability to provide waivers. An appraisal industry commenter suggested, however, that before a creditor could seek a waiver, the creditor should provide a full explanation of the value of receiving the copies in a prompt manner, such as the value the copy may have in negotiations where the valuation estimate is below the originally agreed-upon price.[37] A creditor also requested guidance on

[35] For clarity and to be consistent with other similar regulatory requirements under TILA and RESPA, the Bureau proposed to use the term ''consummation'' in place of the statutory term ''closing'' and to clarify that the statutory term ''3 days'' means ''three business days.''

[36] One commenter also expressed concern that the term ''consummation'' is not plain English, and that a deadline based upon this term could be difficult to understand. This comment is discussed further below in the analysis of § 1002.14(b)(1).

[37] This commenter also questioned the logic of allowing one applicant in a multi-applicant transaction to waive the timing for all applicants.

whether the waiver can be provided within three days prior to consummation. This commenter cited instances where a delay in receipt of a final appraisal due to minor corrections resulted in a delayed closing because a waiver had not already been executed three or more days before closing.[38] A credit union commenter went further, arguing that consumers should be allowed to waive the timing requirement, regardless of whether the corrections are minor.

Discussion. For the reasons explained below, proposed § 1002.14(a)(1) and its accompanying commentary are being revised to clarify the timing and waiver provisions of the rule. The timing requirement in § 1002.14(a)(1) is revised to provide greater clarity. In addition, the final rule includes new comments 14(a)(1)–4 and 5 to clarify the timing requirement. The final rule adopts proposed comment 14(a)(1)–4 regarding waiver with clarifications and renumbers it as comment 14(a)(1)–6.

As proposed, § 1002.14(a)(1) would have required providing copies ''promptly (generally within 30 days of receipt by the creditor), but not later than three business days prior to consummation of the transaction, whichever is first to occur.'' Several commenters sought clarification and explanation of this proposed timing requirement, which had merged language from ECOA section 701(e) as amended and existing § 1002.14. For the reasons discussed below, the Bureau is revising this language to provide a simpler rule: The copy must be provided promptly upon completion of the appraisal or other written valuation, or three business days before consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier. The Bureau is including the reference to ''account opening'' to accommodate the application of § 1002.14(a)(1) to open-end credit transactions and for consistency with Regulation Z. Regulation Z does not use the term ''consummation'' for open-end credit secured by a dwelling. *See, e.g.,* § 1026.40 (referring to ''opening'' of home equity plans).

New comments 14(a)(1)–4 and 5 clarify that the ''promptly upon completion'' standard is applied based upon the facts and circumstances and provide illustrative examples of situations in which the timing requirement would or would not be met. Comment 14(a)(1)–4.v clarifies that in the absence of a waiver (*see* discussion below), the ''promptly upon completion'' requirement governs even if no consummation or account opening occurs.

Based upon industry comments noting that appraisals and other valuations may undergo review and revision, the Bureau believes that basing the ''promptly'' standard upon the date of receipt could interfere with creditors' review processes or lead to copies being provided to consumers before the review processes are complete. In addition, using the date of receipt as a point of reference could create confusion and uncertainty, as the Dodd-Frank Act amendment of section 701(e) refers to ''promptly upon completion.'' Therefore the final rule does not mandate using the date of receipt as the reference point for the timing requirement.[39]

The Bureau also is not finalizing the use of a fixed time period from the creditor's receipt of the appraisal as the general standard for determining whether copies are promptly provided to applicants. Upon further consideration, and in light of the public comments received, the Bureau believes that a time period of 30 days of receipt may not result in promptly providing copies to applicants in many instances. Congress' use of the term ''promptly upon completion'' evidences an intent that applicants should be provided with copies of valuations without delay. As some commenters noted, the earlier these copies are received in the loan process, the more helpful they are to consumers in analyzing the transaction. Applying a fixed 30-day timing requirement could result in applicants not receiving copies of valuations until late in the loan process, even when these valuations have been completed weeks earlier. Thus the final rule does not generally apply a fixed time of 30 days.[40]

However, as a large bank commenter noted, mandating a fixed time frame could reduce the chance that an integrated set of materials could be provided in a transaction involving several types of valuations. Similarly, mandating a fixed time frame of any kind could increase the chances that the creditor would need to make multiple deliveries of copies of appraisals or other valuations. For example, if a creditor receives a valuation from an AVM earlier in the application process, and the fixed time period were to elapse before the appraisal is complete, then the creditor would be required to send the copy of the AVM out before the copy of the appraisal.[41] This would increase burden on creditors, due to an increase in the number of transactions in which creditors would need to make multiple deliveries of copies to applicants.

In addition, the Bureau notes that a fixed time period is not specified in industry guidelines such as requirements used by the GSEs which purchase or guarantee a significant number of first lien mortgage transactions annually. The timing requirement for providing copies of appraisals in these recently-adopted GSE guidelines is based upon the Home Valuation Code of Conduct (HVCC). The HVCC—a standard that had been previously adopted by FHFA in 2008 shortly before Congress began to draft the Dodd-Frank Act—contained a timing standard that is similar to that ultimately included in ECOA section 701(e) as amended.[42]

For the reasons stated above, the commentary to the final rule clarifies that the meaning of the term ''promptly upon completion'' depends upon the

[38] While the commenter did not identify which existing standards may have caused such closing delays, the Bureau notes that this type of problem may arise under GSE Appraisal Independence Requirements discussed below.

[39] Similarly, the Dodd-Frank Act amendment of section 701(e)(1) also requires that the creditor provide applicants with copies of appraisals and other valuations promptly upon their completion, even if the application is incomplete, withdrawn, or denied. Therefore, the Bureau is not adopting the suggestion of one commenter to tie the timing of providing copies to the timing of the ''completed'' application under Regulation B.

[40] As noted above, a large creditor suggested if there are multiple valuations, some of which are prepared or finalized later in the origination process, a period longer than 30 days from receipt of the first valuation could be needed to provide an integrated package of valuation copies to consumers. While the Bureau appreciates that an integrated package that includes all of the appraisals or other written valuations developed in connection with the application may be helpful to applicants, the Bureau believes that this approach could result in some of the valuations in the integrated package not being provided promptly. Further, the Bureau does not believe that the benefit of this suggested approach would outweigh the value to the applicant of receiving the copies earlier in the transaction.

[41] The time period creditors will need to review appraisals also may change in the future, as rules may be adopted by Federal banking agencies under section 1473 of the Dodd-Frank Act, amending section 1110 of FIRREA to provide for review of appraisals for compliance with USPAP.

[42] Fannie Mae Selling Guide, *''Appraiser Independence Requirements,''* (Oct. 15, 2010), *available at https://www.fanniemae.com/content/fact_sheet/air.pdf* (Part III requires that ''the Borrower is provided a copy of any appraisal report concerning the Borrower's subject property promptly upon completion at no additional cost to the Borrower, and in any event no less than three days prior to the closing of the Mortgage.''); Freddie Mac, *Single Family Seller/Servicer Guide,* Exhibit 35, Appraiser Independence Requirements (Oct. 15, 2010) (same). These requirements were incorporated directly from Part II of the Home Valuation Code of Conduct (Dec. 23, 2008), adopted by Federal Housing Finance Agency, *available at http://www.fhfa.gov/webfiles/2302/HVCCFinalCODE122308.pdf.*

facts and circumstances, including when the creditor receives the appraisal or other written valuation, and when any review or revisions occur. New comment 14(a)(1)–4 also clarifies when ''completion'' occurs for these purposes. Completion occurs when the lender has ''reviewed and accepted the appraisal or other written valuation to include any changes or corrections required,'' or when the creditor receives the last version, whichever is later.[43]

This guidance is then illustrated by several examples in new comment 14(a)(1)–5 of situations in which the ''promptly upon completion'' standard would or would not be satisfied. While the ''promptly upon completion'' standard does not provide the same degree of certainty as a fixed time period, the Bureau believes that the statute specifically contemplates a standard that is flexible.

The Bureau's final rule implements the statutory requirement that copies of valuations be provided promptly upon completion, but not later than three days before consummation. As noted in the 2012 ECOA Appraisals Proposal, the Bureau is interpreting ''days'' as used in the statute to mean ''business days.'' The Bureau did not receive comments on this interpretation, and is adopting this standard as proposed.

To ensure applicants actually receive the mandated copies at least three business days prior to consummation or account opening (absent waiver), the final rule includes additional guidance in comment 14(a)(1)–4. Under this comment, ''provide''—which is a statutory term in ECOA section 701(e)(4)[44] that is similar to the term ''furnish'' in ECOA section 701(e)(1)—is interpreted to mean delivery to the applicant. The comment clarifies that delivery occurs three business days after mailing or delivering the copy to the last-known address of the applicant, or when evidence indicates the applicant actually received the copies, whichever is earlier. The Bureau believes this clarification is consistent with the plain meaning of the applicable terms ''furnish'' and ''provide'' in Dodd-Frank Act section 1474. In addition, this approach is generally consistent with the proposed approach to the three-business-day timing requirement in the 2012 TILA–RESPA Proposal.[45] This clarification also should prevent situations in which the creditor mails copies of appraisals or other written valuations to the applicant three business days before consummation or account opening, and the applicant does not receive these materials until after the consummation or account opening. This clarification thus should ensure that applicants have at least the minimum amount of time contemplated by section 701(e) to review these copies before the transaction is consummated or the account is opened.

While one commenter requested including the day of consummation in the three-business-day time period that is part of § 1002.14(a)(1), the final rule does not adopt this approach. Under this approach, if a closing were to occur at 9 a.m. on a Friday, copies of the appraisals and other written valuations could be disclosed at 11:59 p.m. on the preceding Wednesday via email. This would leave the consumer with effectively only one day to review the materials, which would be inconsistent with the three-day requirement in the statute.

The waiver provision in § 1002.14(a)(1) is revised to clarify that a waiver applies to both components of the general timing requirement, and not only to one aspect of it. As proposed, the waiver would have applied to only one component of the proposed timing requirement, the requirement that copies be provided three business days before closing. Read literally, the proposed waiver provision would not have applied to the other component of the timing requirement, the requirement that copies be provided ''promptly.'' As a result, as proposed, applicants would only have been permitted to partially waive the timing requirement.

Upon further consideration, the Bureau interprets section 701(e)(2) to permit consumers to provide a waiver of both components of the timing requirements. Otherwise, the effect of a waiver would be unclear, providing a disincentive for applicants and creditors to avail themselves of this provision, even where a waiver would be in the applicant's interest. Additionally, to the extent that the Bureau's final rule departs from the language of the statute in this regard, the Bureau relies on its authority under section 703(a) to make provisions and adjustments to effectuate the purposes of and facilitate or substantiate compliance with ECOA. The Bureau finds that this adjustment is warranted to ensure creditors' ability to obtain and applicants' ability to provide a valid waiver of the timing requirements of § 1002.14(a)(1).

The Bureau is finalizing the provision in proposed § 1002.14(a)(1) that waiver is permitted ''except where otherwise prohibited by law.'' No commenters specifically addressed this provision in the proposed rule, which is based upon the statutory language in ECOA section 701(e)(2). The Bureau continues to believe this limitation is important to clarify that other provisions of law may not permit waiver. For example, the 2013 Interagency Appraisals Final Rule under TILA section 129H does not provide for a waiver of the timing requirement for providing copies of written appraisals no later than three business days before consummation.

With respect to the form of the waiver, the Bureau is finalizing in renumbered comment 14(a)(1)–6 the provision in proposed comment 14(a)(1)–4 allowing for an affirmative oral or written statement.[46] A more prescriptive, rigid, or specific set of requirements as to the form of the waiver could unduly restrict the applicant's ability to exercise the waiver right. By allowing for an affirmative oral or written waiver, the final rule is designed to allow creditors to apply existing practices such as the standards for waiver of the appraisal copy requirement under the Appraisal Independence Requirements applied by certain GSEs.[47] If the waiver resulted in

[43] *See* Fannie Mae, *Appraiser Independence Requirements Frequently Asked Questions* (Nov. 2010), *available at https://www.fanniemae.com/content/faq/appraiser-independence-requirements-faqs.pdf* (question 46 stating that ''[t]he word 'completion' is meant to reflect when the lender has reviewed and accepted the appraisal to include any changes or corrections required.''); *see also* Freddie Mac, *Appraiser Independence Requirements Frequently Asked Questions, available at http://www.freddiemac.com/singlefamily/appraiser_independence_faq.html#52* (question 52 stating that ''[t]he terms 'promptly upon completion' and 'completed appraisal' refer to when the lender has reviewed and accepted the appraisal to include any changes or corrections required.'').

[44] ECOA section 701(e)(4) states, in pertinent part, ''[T]he creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.''

[45] *See* 77 FR 51116 at 51313–14, 51427 (Aug. 23, 2012) (proposed § 1026.19(f)(1)(iii) and commentary).

[46] Where there are multiple applicants, the final rule adopts the proposed approach of allowing one applicant to waive the timing requirement. This approach is consistent with the 2013 Interagency Appraisals Final Rule being adopted under section 129H of TILA. Comment 14(a)–1 is revised to clarify that the waiver must be provided by the primary applicant where one is readily apparent. This change is designed to ensure that in multiple applicant transactions, the individual providing the waiver generally is the same individual who would be receiving the documents.

[47] *See* Fannie Mae, *Appraiser Independence Requirements Frequently Asked Questions* (Nov. 2010) (question 45 stating that Fannie Mae ''does not specify what form the waiver must take or whether it be oral or written. In addition, [the Appraiser Independence Requirements standard] does not prohibit that a waiver, given in a timely manner, be recorded at some later point when the parties are available. … For example, a lender may obtain a waiver from a borrower through an email, phone call, or some other means, prior to the three-day period, and then have that waiver recorded in writing at the settlement table or at some other

an applicant not receiving an appraisal or other written valuation at all or until after consummation or account opening, a more prescriptive approach might be warranted. Under the final rule, however, even if the waiver is obtained, creditors are still required to provide the required copies at or before consummation or account opening.

With respect to when the waiver must be provided, § 1002.14(a)(1) is revised in the final rule. ECOA section 701(e) is silent on when the waiver must be provided. As noted above, several industry commenters asked the Bureau to provide more guidance on how waivers can occur. The Bureau believes that further clarity on when applicants can provide waivers is important. Under § 1002.14(a)(1) in the final rule, as further clarified in comment 14(a)(1)–6, waivers can be provided in either of two situations: generally before three business days of consummation or account opening,[48] or within three business days of consummation or account opening if certain conditions are met.

The Bureau believes that, in general, requests for waivers should not be presented to consumers less than three business days before consummation or account opening. Permitting such requests would, in the Bureau's view, present a risk that consumers would feel unduly pressured to provide waivers in order to avoid delays in closing and that creditors could use such waivers to cure previous violations of the rule's timing requirements. The Bureau is adopting in § 1002.14(a)(1) an exception to this general rule, however, governing treatment of waivers pertaining to copies of appraisals or other written valuations containing correction of clerical errors in previously-provided copies.

Section 1002.14(a)(1) and the associated comment 14(a)(1)–6.ii therefore clarifies that an applicant can provide a waiver within three business days of consummation or account opening in the following circumstance: the creditor receives a revised version of an appraisal or other written valuation that the applicant already received three business days before consummation or account opening. The option to provide a waiver in this situation would only apply, though, if each of the following criteria are met: (1) The revisions are solely to correct clerical errors in that appraisal or other written valuation; (2) the revisions have no impact on the estimated value; (3) the revisions have no impact on the calculation or methodology used to derive the estimate; and (4) the applicant receives the copy of the revised appraisal or other written valuation at or prior to consummation or account opening. The Bureau believes this approach strikes an appropriate balance by allowing consumers to exercise their waiver right to avoid delays in closing due to last-minute, purely clerical corrections in appraisals and other written valuations.[49]

Finally, the Bureau is adding language to § 1002.14(a)(1) to clarify the timing requirement in situations where the applicant has provided a waiver, but no consummation or account opening occurs. In that instance, the copy must be provided no later than 30 days after the creditor determines the transaction will not be consummated or the account will not be opened. In the absence of a statutory timeframe applicable to this situation, the Bureau is exercising its authority under ECOA section 703(a) to adopt a reasonable period for providing copies. The Bureau believes that providing a clear rule will reduce compliance burden and risks for creditors, while ensuring that consumers receive copies in a timely fashion. Additionally, the timeframe adopted uses familiar timeframes from longstanding timing requirements for providing copies of appraisals under existing § 1002.14(a)(2)(ii).[50]

Delivery of Copies of Appraisals and Other Written Valuations

Section 1474 of the Dodd-Frank Act amended ECOA section 701(e) to mandate that creditors provide copies of appraisals and other written valuations regardless of whether the consumer affirmatively requests such copies. Accordingly, the Bureau proposed to remove current § 1002.14(a)(1) and (2), which permitted creditors to choose between the ''routine delivery'' and ''delivery upon request'' methods of complying with the requirements of § 1002.14. Further, proposed comment 14(a)(1)–1 clarified that if there is more than one applicant, the disclosure about appraisals and the provision of copies of appraisals need only be given to one applicant, but they must be given to the primary applicant where one is readily apparent.

Public comments. An appraisal group commenter suggested that the rule should require providing copies to all applicants in a multi-applicant transaction, if consent has been given to provide the copies by electronic means. Another industry commenter requested clarification of whether delivery can be made to the same address for multiple applicants. Finally an industry commenter asked whether delivery can be made to the last-known address.

Discussion. With respect to whether copies of appraisals and other written valuations can be sent to the last known address, new comment 14(a)(1)–4 provides that copies of appraisals and other written valuations are deemed ''provided'' three days after they are mailed to the last known address of the applicant. *See also* comment 9–3 (adopting the ''last-known address'' standard for adverse action notices). The Bureau does not believe the other requested clarifications regarding this provision are necessary. The commentary makes clear that the creditor is required to deliver the materials only to one applicant in a multiple-applicant transaction.

The final rule also does not adopt the suggestion by an appraisal industry group commenter of requiring copies of appraisals and other written valuations to be sent to all applicants in a multiple-applicant transaction, if the copies are being sent by electronic means. Having different rules for different means of communication of the copies would introduce additional complexity, especially if not all of the applicants have consented to electronic disclosures. This could have the unintended effect of discouraging creditors from adopting electronic delivery methods. Even if all applicants have consented to delivery by electronic means, the approach suggested by the commenter does not override the general principle that providing copies to one applicant (such as the primary

time.''); *see also* Freddie Mac, *Appraiser Independence Requirements Frequently Asked Questions,* Questions 45–46.

[48] *See* Freddie Mac, *Appraiser Independence Requirements Frequently Asked Questions* (question 43 stating that ''[i]f the borrower waives the requirement the waiver must be obtained three days prior to the closing of the mortgage.''); *see also* Fannie Mae, *Appraiser Independence Requirements Frequently Asked Questions* (Nov. 2010) (question 45 stating that ''[s]ituations in which a borrower is unaware of his or her right to a copy of the appraisal prior to the three days and is then provided a waiver of that right at the closing table would not be compliant with the intent of [the Appraiser Independence Requirements]'').

[49] This approach also is supported by other mortgage regulations that allow for technical revisions of materials otherwise due to the consumer prior to consummation. *See, e.g.,* RESPA Regulation X, § 1024.8(c), providing an exception for the timing of a disclosure of a HUD–1 settlement statement which makes a technical correction; *see also* the Bureau's 2012 TILA–RESPA Proposal, proposed § 1026.19(f)(2)(iv), which would provide an exception for the timing of a disclosure due to clerical errors, and proposed comment 19(f)(2)(iv)–1 (clarifying that ''an error is clerical if it does not affect a numerical disclosure'').

[50] Tying this timing requirement to a different point in time, such as receipt of an appraisal or other written valuation, could result in creditors who have received waivers not being able to comply when more than 30 days elapse between receipt and a decision not to consummate the transaction or open the account.

applicant) in a multiple-applicant transaction is sufficient. Indeed, the suggestion of this one industry commenter was not reflected by other commenters, whether in industry or on behalf of consumers. The Bureau therefore believes that a uniform requirement, allowing copies to be provided to one applicant regardless of how they are provided, will best facilitate compliance.

14(a)(2) Disclosure

ECOA section 701(e)(5) requires that, at the time of application, the creditor ''notify an applicant in writing of the right to receive a copy of each written appraisal and valuation'' under section 701(e). Accordingly, the Bureau proposed in section 1002.14(a)(2) that, not later than the third business day after the creditor receives an application subject to § 1002.14(a)(1), a creditor shall provide an applicant with a written disclosure of the applicant's right to receive a copy of all appraisals and other written valuations developed in connection with such application.

Content

Title XIV of the Dodd-Frank Act added two new appraisal-related disclosure requirements for consumers. New section 701(e)(5) of ECOA, which is implemented in this final rule, provides as follows: ''At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.'' 15 U.S.C. 1691(e)(5). Similarly, section 129H(d) of TILA, as added by the Dodd-Frank Act, provides as follows: ''At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant.'' 15 U.S.C. 1639h(d). In the absence of regulatory action to harmonize the two provisions, creditors would be required to provide two appraisal-related disclosures to consumers for certain loans (*i.e.,* a TILA and an ECOA disclosure for higher-risk mortgage loans secured by a first lien on a consumer's principal dwelling) and just one for certain others (*i.e.,* an ECOA disclosure for first-lien, dwelling-secured loans that are not higher-risk mortgage loans, or a TILA disclosure for higher-risk mortgage loans secured by a subordinate lien).

Given that the ECOA and TILA disclosures were both created by the same legislation (the Dodd-Frank Act) to address overlapping subject matter (provision of copies of appraisals) in many of the same transactions (first liens secured by dwellings), the Bureau believes that Congress did not intend the disclosure requirements to be implemented in a disjointed manner that might cause consumer confusion and compliance burden for creditors. As explained in the proposal, the Bureau believes the combined disclosure will allow for additional text necessary to promote consumer comprehension, while also reducing compliance burden for industry by allowing for a single disclosure to satisfy both statutory requirements. Accordingly, the Bureau believes this approach serves the interests of consumers, the public, and creditors. On this basis, the Bureau proposed to exercise its authority under section 703(a) of ECOA and section 1405(b) of the Dodd-Frank Act to conform the two disclosure requirements. In connection with the proposed § 1002.14(a)(2) requirement of notifying applicants of their ''right to receive a copy of all written appraisals and valuations developed in connection with [their] application,'' the Bureau proposed revising the sample disclosure form C–9 for appraisals in Regulation B to include language to satisfy the new appraisal-related disclosure requirements of both ECOA and TILA.

As part of its larger Know Before You Owe public outreach project, which is described in more detail in Part III above, the Bureau tested several versions of the new appraisal-related disclosures, all of which combined the disclosures required by both ECOA section 701(e) and TILA section 129H. This testing included consumers and industry participants.[51] The Bureau believed that it was important to test both disclosures together in order to determine how best to provide disclosures required by ECOA section 701(e) and TILA section 129H in a manner that would minimize consumer confusion and improve consumer comprehension. Testing showed that consumers tended to find the combined TILA and ECOA disclosures confusing when they used specific language set forth in the statute. Consumer comprehension improved when the Bureau developed a slightly longer plain language disclosure that was designed to incorporate the elements of both statutes.[52] Based upon the results of that testing, the Bureau developed and tested the following sample disclosure language it proposed to include in Form C–9: ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.''

Public comment. Industry commenters generally supported development of sample disclosure language that meets the disclosure requirements of both ECOA section 701(e) and TILA section 129H. Commenters said this approach would increase consumer understanding and reduce creditor burden and cost, eliminating the need for multiple, partially duplicative disclosures. Several commenters requested that the sample disclosure include additional clarifying language.

First, some industry commenters suggested the sample disclosure include an explanation of creditor use of applicant-ordered appraisals. These comments suggested that applicants should either be told that creditors are prohibited from using such appraisals, or that borrowers should be notified that creditors are under no obligation to use the appraisals. One commenter also suggested that confusion on this issue could be avoided by simply removing language concerning the right of applicants to order their own appraisals. Comments by two national associations of creditors suggested the final rule provide guidance confirming that creditors could vary the text of the disclosure to exclude the sentence about applicant-ordered appraisals, as ECOA did not require this sentence.[53]

Second, several industry commenters urged the Bureau to include the word ''valuation'' in the sample consumer disclosure describing the materials the consumer may receive. Commenters generally believed this additional language would help consumers to understand that some of the information they receive may not be appraisals, and

[51] Kleimann Comm. Gp., Inc., *Know Before You Owe: Evolution of the Integrated TILA–RESPA Disclosures* 254–256 (July 9, 2012), available at *http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf.*

[52] *Id.* The discussion in the section-by-section analysis of this final rule is limited to the testing of the disclosure to be provided in connection with a consumer's application, which is the portion of the testing relevant to the appraisal-related disclosure required by § 1002.14(a)(2). As discussed in the supplementary information to the 2012 RESPA–TILA Proposal, the Bureau and Kleimann also tested prototype designs for the integrated disclosure forms to be provided in connection with the closing of the mortgage loan and real estate transaction. *See* the Bureau's 2012 TILA–RESPA Proposal, available at *http://consumerfinance.gov/regulations/.*

[53] An industry commenter also was concerned that applicants might think they could order their own appraisals directly from the creditor, because the creditor was providing the disclosure.

in some cases they might not receive an appraisal.

Other industry commenters offered other suggestions. These ranged from informing consumers that the time frame for ''promptly'' providing the copies would begin from when the creditor receives the appraisal or other valuation, to advising consumers that the creditor could charge for additional copies of appraisals or other valuations beyond the first copy provided.

Discussion. While the Bureau has considered the comments described above, the Bureau is adopting the sample disclosure language in form C–9 as proposed. The 2013 Interagency Appraisals Final Rule under TILA section 129H allows for an appraisal notice that is the same as the language in form C–9, thus preserving the option of using a single disclosure to satisfy both rules.

The Bureau is not modifying the sentence regarding applicant-ordered appraisals. The language informing applicants they can order their own additional appraisals is included in the sample disclosure in form C–9 so that this disclosure can also be used to satisfy the requirements of the 2013 Interagency Appraisals Final Rule under TILA section 129H, as discussed above, and more broadly to educate consumers (whether or not they are applying for a higher risk mortgage subject to TILA section 129H) on their right to order an additional appraisal for their own use. If this information were not included in the sample disclosure, then it could not be used to satisfy the requirements under TILA section 129H and its implementing regulation, the 2013 Interagency Appraisals Final Rule. Therefore the final rule maintains this portion of the sample disclosure in form C–9. To address industry comments suggesting borrowers might try to compel lenders to use applicant-ordered appraisals in an inappropriate manner, new comment 14(a)(2)–1 is being included in the final rule. This comment clarifies that the rule does not affect restrictions on creditor use of applicant-ordered appraisals by creditors. The Bureau does not believe, however, that the concise, tested language in the sample disclosure should be expanded to discuss these standards, which are complex and subject to varying interpretations. For example, industry commenters differed in their views on whether or how creditors may use these appraisals. Elaborating on this language in the sample disclosure to inform consumers that creditors cannot use or are not obligated to use the appraisals applicants may order, without a more detailed explanation of the standards governing the creditor conduct in the appraisal process, could discourage consumers from ordering their own appraisal as a means of disputing the appraisal ordered by the creditor, if they were to choose to do so.[54] Such information could detract from consumer comprehension of the disclosure, and in any event is not required by ECOA section 701(e).

On the issue of whether to include the word ''valuations'' in the text of the consumer disclosure, the Bureau is not persuaded that this additional language would improve consumer comprehension and understanding. Consumer testing of an earlier version of the sample disclosure language, conducted in connection with the Bureau's 2012 TILA–RESPA Proposal, indicated that consumers preferred a disclosure that did not include the word ''valuation'', as simpler and easier to understand. While ECOA section 701(e) calls for a disclosure that includes this word, as noted above, the Bureau is exercising its exception authority so that the disclosure under section 701(e) can be harmonized with TILA section 129H, which, among other differences, does not refer to ''valuations.'' Based upon consumer testing indicating the proposed text was easier to understand without the word ''valuation,'' and because allowing a single disclosure option for creditors that satisfies both regulations under ECOA section 701(e) and TILA section 129H reduces creditor burden and the volume of consumer disclosures, the Bureau believes this exception would facilitate compliance and consumer understanding. If the term ''valuations'' were included in the text of the consumer disclosure, the disclosure would not be the same as the disclosure for subordinate lien transactions (which are not subject to section 701(e)), detracting from the unified approach that industry commenters widely supported. Regardless, if a non-appraisal valuation is developed in connection with a creditor's credit decision, then a copy of that valuation must be provided under the final rule. The final rule does not regulate communications at the time the valuation copy is provided. Creditors may choose to include explanations of the non-appraisal valuation, if one is provided. The Bureau believes that allowing voluntary description by the creditor at the point of providing copies is preferable to mandating a more complex up-front disclosure that could generate consumer confusion. In summary, the Bureau believes that the unified disclosure benefits both consumers and creditors because it clearly communicates basic information required by both ECOA section 701(e) and TILA section 129H in one disclosure.

The Bureau notes, however, that proposed § 1002.14(a)(2) would have required notifying applicants of their right to receive not only an appraisal, but also a ''valuation.'' This may have led to some of the commenters' suggestions of including the term ''valuation'' in the sample disclosure. Accordingly, for the sake of clarity, and to confirm that sample disclosure C–9 (whose text does not refer to the word ''valuation'') would satisfy the disclosure requirement in § 1002.14(a)(2), the final rule modifies the disclosure requirement to delete the word ''valuation.''[55] This change is made based upon the same exercise of the exception authority used to develop form C–9, discussed above. The Bureau believes this change will prevent confusion as to what language is required to be included in the disclosure.[56]

The final rule also does not adopt other changes industry commenters suggested for the sample consumer disclosure, as consumer testing did not suggest these changes are necessary. For example, the Bureau does not believe it is necessary to modify the sample disclosure to inform consumers that applicants can be charged for additional copies beyond the first copy. The sample disclosure already only refers to the right to receive ''a copy'' without charge. Consumer testing did not indicate that consumers were concerned about what could happen if they wanted additional copies. The Bureau also does not believe that the sample disclosure should be revised to state when the time period for ''promptly'' providing the copies begins. The sample disclosure already states the creditor will promptly provide a copy of an appraisal the

[54] *See* 12 CFR 1026.42(c)(3) (describing permitted actions that do not conflict with appraisal independence standards in § 1026.42(a)–(b)). While one commenter suggested the sample disclosure could lead borrowers to believe, incorrectly, that they may order appraisals from the creditor, consumer testing did not suggest this confusion is likely. The Bureau therefore declines to alter the sample disclosure to instruct applicants on how they can order appraisals.

[55] The word ''valuation'' also is removed from the title of the sample disclosure, for consistency with the disclosure requirement and the disclosure text.

[56] In addition, because the sample disclosure is not a mandatory disclosure, creditors may voluntarily choose to refer to the term ''valuation'' in the disclosure unless prohibited by other regulations (for example, if the sample language is required to be included in the Loan Estimate under any final TILA–RESPA Integration rule, and that rule applies to the transaction).

creditor may order in the future. This language already implies that the creditor will first need to receive and if necessary review the original before it makes copies. Consumer testing indicated a strong preference for succinct, focused language in the appraisals disclosure, and did not suggest consumers wanted additional clarification on the precise nature of the timing requirement.

Finally, to clarify the extent to which the text in sample disclosure from C–9 can be modified by creditors, the Bureau is revising the commentary. If the 2012 TILA–RESPA Proposal is adopted as proposed, that rule would require including in the TILA–RESPA Loan Estimate the same language as this final rule adopts in the sample disclosure form C–9, without variation. On the other hand, the 2012 TILA–RESPA Proposal and the mandatory forms proposed therein would not apply to open-end credit or reverse mortgage transactions. Therefore the potential to modify the language in the sample disclosure may depend on the applicability of laws and regulations other than ECOA and this final rule. Comment Appendix C–1–ii therefore is revised to clarify that creditors may modify the model form C–9 unless otherwise provided by law.[57] This comment, as revised, addresses the commenter question of whether the sentence in form C–9 referring to applicant-ordered appraisals can be modified (or deleted); as the comment suggests, the sentence could not be changed if the sentence is required by another applicable regulation, such as the consumer disclosure requirement in the 2013 Interagency Appraisals Final Rule under TILA section 129H applicable to higher-risk mortgages. This change to the commentary also clarifies that this or any other modification would not be permitted in a transaction that is subject to the TILA–RESPA rule that the Bureau finalizes in the future, to the extent that final rule maintains the mandatory forms from the 2012 TILA–RESPA Proposal.

Timing of Disclosure

ECOA section 701(e)(5) requires creditors to notify applicants in writing, at the time of application, of the right to receive a copy of each appraisal and other written valuation. The Bureau interprets the phrase ''at the time of application'' to require creditors to provide the ECOA appraisal disclosure not later than three business days after receiving an application. The Bureau's proposed § 1002.14(a)(2) would have required creditors to notify applicants in writing, not later than the third business day after a creditor receives such application, of the right to receive a copy of all appraisals and other written valuations developed in connection with such application.

This approach to the timing of the notification is consistent with the disclosure requirements of TILA and RESPA. Currently, in transactions subject to TILA and RESPA, creditors are required to provide disclosures required under TILA and RESPA not later than the third business day after receiving a consumer's written application.[58] In its 2012 TILA–RESPA Proposal to integrate the other TILA and RESPA requirements, the Bureau has proposed that the ECOA appraisal disclosure be provided as part of the Loan Estimate disclosure to be delivered not later than the third business day after application.[59]

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

Public comments. Many commenters expressed support for the three-business-day time frame for the disclosure to be made, consistent with the current and proposed TILA–RESPA approach. Several commenters cited the ability to integrate the ECOA appraisal disclosure into the integrated TILA–RESPA Loan Estimate when adopted as a reason for supporting the timing requirement in the proposed rule. While one commenter suggested the disclosure could be better timed as part of the application process itself, other commenters said it would be burdensome for lenders to provide the disclosure at that time. One commenter also suggested the deadline for the disclosure be extended to 10 business days.

A large lending institution also requested clarification on when the disclosure must be given in business transactions in which the use of a dwelling as collateral is negotiated and added as a term of the credit agreement well after the initial application has been submitted. In this type of situation, the comment recommended that the final rule either clarify that the disclosure requirement applies only if the initial loan application contemplates the lender taking a first lien on a dwelling, or provide the creditor an opportunity to cure and provide the disclosure at some later point in the application process when it becomes apparent a dwelling will be used as collateral.

Discussion. Consistent with most of comments received on the timing of the disclosure, the final rule maintains the three-business day timing requirement for the reasons stated in the proposal. This time period allows lenders to align ECOA appraisal disclosures with TILA–RESPA early disclosures in transactions that are covered by TILA and RESPA. Earlier timing requirements would place additional burden on creditors, while later timing requirements could result in an unwarranted departure from the statutory time frame. To ensure consistency with the requirements of TILA and RESPA, including section 129H of TILA, the final rule also includes new conforming language in § 1002.14(a)(2) providing that the disclosure shall be mailed or delivered not later than the third business day after the creditor receives the consumer's application.[60]

The final rule includes an exception to this requirement, however. In the case of an application for credit that is not to be secured by a first lien on a dwelling at the time of application, if the creditor later determines the credit will be secured by a first lien on a dwelling, the creditor shall mail or deliver the notice required under § 1002.14(a)(2) in writing not later than the third business day after the creditor determines that the loan is to be secured

[57] This comment also is revised to refer to the ''appraisal or other written valuations'', consistent with the scope of the final rule.

[58] *See, e.g.,* 12 CFR 1026.19(a)(1)(i) providing in relevant part:

In a mortgage transaction subject to the Real Estate Settlement Procedures Act that is secured by the consumer's dwelling * * * the creditor shall make good-faith estimates of the disclosures required by section 1026.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

[59] 2012 TILA–RESPA Proposal, at proposed §§ 1026.19(e)(1)(iii) and 1026.37(m)(1), *available at http://www.consumerfinance.gov/regulations/.* Proposed § 1026.19(e)(1)(iii) provides as follows: ''*Timing.* The creditor shall deliver the disclosures required under paragraph (e)(1)(i) of this section not later than the third business day after the creditor receives the consumer's application.''

[60] In addition, if TILA disclosures are provided earlier than three days after application, such as for open-end credit under Regulation Z § 1026.40, the creditor also could provide the disclosure required under § 1002.14(a)(2) at that time, though the creditor would not be required to do so.

by a first lien on a dwelling. The Bureau believes this is a reasonable interpretation of the statute in the absence of a specific provision in ECOA section 701(e) on this point. ECOA section 701(e)(5) calls for a notice ''at the time of application,'' but does not address the timing of the notice when the creditor does not know at that time that the credit will be secured by a first lien on a dwelling. The Bureau is therefore exercising its authority under ECOA section 703(a) to provide a timeframe for notification in this situation to assist creditors in complying with rule and to ensure that applicants involved in these transactions receive the notice.

The Bureau also notes that it did not receive comments on its proposal to set the start of the three-day time period as the time when the creditor receives the ''application.'' The Bureau is finalizing the use of this term as proposed. Because Regulation B already defines the term ''application'' in § 1002.2(f) with reference to the creditor's ''procedures'' for receiving a request for credit, the Bureau believes this approach will permit creditors to setup their procedures to align the timing for the appraisal notice with other disclosure requirements.

14(a)(3) Reimbursement

ECOA section 701(e)(3) affirms that creditors may require applicants to pay reasonable fees to reimburse the creditor for the cost of the appraisal, except where otherwise required in law. Section 701(e)(4) provides, however, that creditors shall provide a ''free'' copy of each appraisal or other written valuation at no additional cost to the applicant. Accordingly, the Bureau proposed § 1002.14(a)(3) to implement section 701(e)(3) and (4), as added by the Dodd-Frank Act, and provide greater clarity. The Bureau stated in the preamble to its proposal that it interpreted these two provisions to permit creditors to charge applicants reasonable fees to reimburse the creditor for costs of the appraisal or other valuation itself, but not for photocopying, postage, or similar costs associated with providing one written copy to the applicant. Thus the Bureau proposed removing current comment 14(a)(2)(ii)–1, which permits creditors to charge photocopy and postage costs incurred in providing a copy to the applicant.

The Bureau also proposed that § 1002.14(a)(3) affirm that creditors may impose fees to reimburse the costs of appraisals or other valuations. ECOA section 701(e)(3) does not expressly refer to valuations, and thus does not expressly permit or prohibit creditors from charging reasonable fees to reimburse the cost of valuations. The Bureau stated that because ECOA section 701(e)(3) does expressly permit such fees for ''appraisals,'' legislative intent with respect to other types of ''valuations'' is unclear. The Bureau stated that it believed that there is both consumer and industry benefit to affirming that creditors may charge reasonable fees for reimbursement for all types of property valuations. Absent such clarification, the statutory language might be read as implicitly forbidding creditors from charging reimbursement fees for obtaining certain types of valuations, such as broker-price opinions or AVM reports, but not for others, such as appraisals. The Bureau stated that it did not believe that Congress intended such a result, which could create an incentive for creditors to favor full appraisals over less costly forms of valuation that may be appropriate in particular circumstances.[61] Such a result would impose additional costs on loan applicants. Accordingly, the Bureau proposed to interpret section 701(e)(3) of ECOA as permitting creditors to charge applicants a reasonable fee to reimburse the creditor for the cost of developing an appraisal or other valuation, except as otherwise provided by law. In proposing this interpretation, to the extent necessary, the Bureau proposed to rely on the authority provided in ECOA section 703(a) to provide adjustments and exceptions for any class of transactions.

The Bureau proposed that comment 14(a)(3)–2 clarify that § 1002.14(a)(3) would not prohibit the creditor from charging a fee reasonably designed to reimburse costs incurred in connection with obtaining appraisal and other valuations services, but would not permit increasing the fee for the appraisal or other valuation to cover costs of providing documentation under § 1002.14. As stated in the proposal, the Bureau believed that ECOA section 701(e)(3) and (4) did not call for more prescriptive rate regulation of valuation-related activities. By contrast, section 1472 of the Dodd-Frank Act created TILA section 129E, which specifically imposes a criterion for appraiser fees—that they be ''reasonable and customary'' in the market area where the property is located—and specified various sources for determining whether fees meet the standard. The Bureau therefore stated that it did not believe that Congress intended ECOA section 701, which focuses on the provision of copies of written valuation documents to loan applicants rather than the substantive performance of appraisal and other valuation services, to function in such a manner. Accordingly, the Bureau stated that it believed that section 701(e)(3) and (4) is simply designed to prevent direct or indirect ''upcharging'' related to the provision of documents that is the focus of this section of the statute.

To clarify the statutory language stating that creditors cannot seek reimbursement for the cost of the appraisal ''where otherwise required in law,'' the Bureau also proposed that comment 14(a)(3)–2 note that other laws may separately prohibit creditors from charging fees to reimburse the costs of appraisals, and are not overridden by section 701(e)(3). For instance, section 1471 of the Dodd-Frank Act requires creditors to obtain a second interior appraisal in connection with certain higher-risk mortgages, but prohibits creditors from charging applicants for the cost of the second appraisal. TILA section 129H(b)(2)(B), 15 U.S.C. 1639h(b)(2)(B).

The Bureau proposed comment 14(a)(3)–1 to provide examples of the specific types of charges that are prohibited under the regulation, such as photocopying fees and postage for mailing a copy of appraisals or other written valuations. In addition, comment 14(a)(3)–2 was proposed to clarify that § 1002.14(a)(3) does not prohibit creditors from imposing fees that are reasonably designed to reimburse the creditor for costs incurred in connection with obtaining actual appraisal or other valuation services, so long they are not increased to cover the costs of providing copies required under § 1002.14(a)(1).

Public comment. Several commenters addressed proposed § 1002.14(a)(3). These comments generally addressed the following two aspects of § 1002.14(a)(3): the proposed provision relating to reasonable fees charged to reimburse costs of appraisals and other valuations, and the provision prohibiting charges for the costs of providing copies of appraisals and other valuations to applicants.

[61] According to estimates for the average cost of an appraisal provided by the U.S. Government Accountability Office (GAO), consumers on average pay $300–450 for full interior appraisal. *See* U.S. Gov't Accountability Office, GAO–11–653, *Residential Appraisals: Opportunities to Enhance Oversight of an Evolving Industry,* at 22 (2011). Other forms of valuation, however, tend to cost less than appraisals. Broker Price Opinions typically cost $65–125; valuations derived from an AVM typically cost $5–25. *See id.,* at 17–18; *see also* U.S. Gov't Accountability Office, GAO–12–147, *Real Estate Appraisals: Appraisal Subcommittee Needs to Improve Monitoring Procedures,* at 39 (2012).

No commenters opposed the proposal to allow creditors to charge reasonable fees for appraisals and other valuations unless otherwise provided by law. One industry commenter requested that the rule explicitly allow the fee to cover costs charged by appraisal management companies (AMCs), which can be either a component of or supplemental to the cost of the appraisal. This commenter argued that Congress did not intend to prohibit AMC fees in the Dodd-Frank Act, as it specifically provided for their disclosure in the settlement statement pursuant to RESPA section 4(c). 12 U.S.C. 2603(c). Another industry commenter suggested that the final rule interpret ''reasonable fee'' to mean a fee that was disclosed and agreed to by the applicant. A different industry commenter requested additional clarification on what could not be charged under this provision.[62]

In addition, several industry commenters requested that the rule allow creditors to withhold copies of the appraisals and other valuations if the borrower did not pay the permitted fees to reimburse the cost of appraisals and other valuations. Some commenters noted this type of exception would be particularly important in transactions where the application is withdrawn, incomplete, or denied. One commenter also requested that disclosure required under section 14(a)(2) inform the consumer of the ability of the creditor to withhold these copies.

Industry commenters were generally supportive of the proposed prohibition on charges for providing copies of appraisals and other written valuations. While a large internet lender specifically agreed with the proposed prohibition, a few lending institutions objected to the proposed prohibition on the grounds that it would force them to absorb additional costs. Because proposed § 1002.14(a)(3) and comment 14(a)(3)–1 referred to a prohibition on charges for providing ''a copy,'' several industry commenters suggested this could be read as prohibiting charges for providing duplicate or additional copies. These commenters therefore requested that the final rule clarify that creditors could charge for subsequent copies of appraisals and other written valuations. A large industry trade association also noted a concern over whether the prohibition against charging for copies of appraisals and other written valuations would prohibit indirect recovery of these costs.

Discussion. Section 1002.14(a)(3) in the final rule and associated commentary are generally adopted as proposed, with some minor clarifications as discussed below.

As in the proposal, § 1002.14(a)(3) in the final rule clarifies that charges for valuations are not prohibited by section 701(e)(3) of ECOA. No commenters addressed this provision in the proposal. As noted in the proposal, in adopting this provision in the final rule, the Bureau relies to the extent necessary on its authority to make adjustments under section 703(a) of ECOA. Such an adjustment would facilitate compliance with ECOA and prevent circumvention, and also would effectuate the purposes of ECOA. Otherwise, ECOA section 701(e)(3) might be interpreted as distinguishing between one type of valuation (an ''appraisal'') whose cost may be reimbursed by applicants, and all other types of valuations whose cost may not be reimbursed by the applicant. Yet the definition of ''valuation'' in section 701(e)(6) of ECOA refers broadly to ''any estimate of the value of a dwelling,'' without distinguishing between these types of valuations. Under such an interpretation, the Bureau would need to provide guidance on how to distinguish between appraisal and non-appraisal valuations; without such guidance, creditors could deliberately or inadvertently mischaracterize non-appraisal valuations as appraisals to recover their cost, or creditors may avoid valuations altogether to avoid incurring unrecoverable costs. Additionally, as noted in the proposal, a distinction between the ability to recover costs for appraisals versus other types of valuations could discourage creditors from using less costly forms of valuations, especially in smaller dollar-amount transactions. For example, Federal banking regulations do not require federally-insured financial institutions to obtain an appraisal in low-risk real estate-related financial transactions in which the transaction value is $250,000 or less.[63] It is not the purpose of ECOA section 701(e) to encourage one type of valuation over another; its purpose is to inform the consumer of the basis for the credit decision. Thus the adjustment in § 1002.14(a)(3) will ensure the final rule adheres more closely to the purpose of ECOA as well.

At the same time, comment 14(a)(3)–2 in the final rule clarifies that in allowing reasonable fees to reimburse[64] the cost of appraisals and other valuations, § 1002.14(a)(3) is not intended to create a legal obligation of the applicant to pay these fees. As noted above, one commenter suggested a link between the concept of a ''reasonable fee,'' and whether the fee was disclosed and agreed to by the consumer. While the Bureau does not believe that the term ''reasonable fee'' could be equated in all cases with fees disclosed to and agreed by the applicant, the commenter highlights the relevance of the applicant's agreement to pay the fee. Whether the legal obligation to pay the fee exists is a matter arising under other laws, including without limitation contract law, however. Other laws also may limit the ability to recover these fees, as indicated by the phrase ''unless otherwise provided by law'' in § 1002.14(a)(3).[65]

In response to the comment seeking clarification that § 1002.14(a)(3) does not limit the recoverability of AMC charges, the Bureau recognizes that the Dodd-Frank Act did not intend to prohibit recovery of AMC fees. As the commenter noted, RESPA section 4(c) allows but does not require creditors to break out the AMC fees on the settlement statement from the fees paid directly to the appraiser. The commenter suggests that recoverability of AMC fees was left in doubt by the proposed comment 14(a)(3)–2, referring to fees ''reasonably designed'' to reimburse creditor costs incurred ''in connection with obtaining'' appraisal and other valuation services. To clarify, the Bureau is revising comment 14(a)(3)–2 so its language more closely tracks ECOA section 701(e) (which refers to ''reasonable fees'' to reimburse appraisal costs, rather than fees that are

[62] An appraisal industry commenter objected to certain language in the Bureau's preamble, including the statement that appraisals could involve ''needless cost'' in certain transactions where other valuations could be used, and to the statement that broker price opinions and automated valuation models are ''equally appropriate'' for some transactions.

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

[64] With respect to proposed § 1002.14(a)(3) more broadly, the comment suggesting the word ''reimbursement'' be used more consistently left unclear exactly how it would suggest the term be used.

[65] These other laws may include requirements applicable to estimates of loan fees provided at the time of application, limitations on changes to these fees in certain circumstances, prohibitions against charging for second appraisals in higher-risk-mortgage transactions involving ''flipping,'' and prohibitions against unfair, deceptive, and abusive acts and practices under applicable law. While one commenter requested additional clarification of what charges are prohibited by § 1002.14(a)(3), the Bureau believes that the phrase ''otherwise provided by law'' is intended to be open-ended, and calls for creditors to consider applicable laws when setting their fees. As noted in the proposal, the Bureau does not believe that ECOA section 701(e) calls for rate regulations.

''reasonably designed'' for this purpose) and to specifically indicate that section 14(a)(3) is not intended to prohibit recovery of AMC fees.

The final rule also adopts the prohibition in proposed § 1002.14(a)(3) against charging for providing a copy of an appraisal or other written valuation ''as required under the final rule.'' While industry commenters raised a question of whether creditors could charge for providing additional copies of the same appraisal or other written valuation, such as when the applicant requests them, the Bureau does not believe that the regulation is unclear on this point. The final rule, in § 1002.14(a)(1), requires only that the creditor provide ''a copy'' of each appraisal or other written valuation. The prohibition against charging for copies only applies to copies that are ''required under the final rule.'' Because the final rule does not require that creditors provide more than one copy, there is no suggestion in the final rule that creditors are prohibited from charging for duplicates or additional copies. If they do provide additional duplicate copies, it would not be pursuant to a requirement in the rule. The Bureau also does not believe the rule requires, as one commenter suggested, the tracking of mailing or copying costs and even their refund to the consumer to ensure they are not included in the interest rate previously set.[66]

To fully implement the prohibition in § 1002.14(a)(3) against charging for providing a copy of an appraisal or other written valuation, the Bureau also is amending the commentary to sample disclosure form C–9. Comment Appendix C–1–ii is revised to remove the suggestion that a creditor may add text to the disclosure notifying the applicant of the cost the applicant will be required to pay for a copy of the report.

The Bureau declines to add an exception in the final rule to the requirement to provide copies of appraisals and other written valuations where the applicant has not paid the fee for the appraisal or other written valuation. Section 1002.14(a)(2)(ii) of Regulation B currently calls for providing the copy after receipt of the request, the report, or reimbursement for the report, ''whichever is last to occur.'' As proposed, § 1002.14(a)(2) would no longer have based the timing of disclosure upon the receipt of payment. The Bureau believes this approach is consistent with the language of ECOA section 701(e) as amended. The statutory timing requirement concerning providing copies contains no reference to receipt of reimbursement for the valuation from the applicant. Moreover, ECOA section 701(e)(4) specifically states that ''notwithstanding'' the creditor's ability to charge a reasonable fee to reimburse the creditor's appraisal costs, the creditor ''shall provide'' the copy at no additional cost. The Bureau does not believe that conditioning the creditor's obligation to provide copies at no additional cost on the applicant's reimbursement of the costs of the appraisal or other written valuation would be consistent with legislative intent as expressed in ECOA section 701.

The Bureau understands the need for creditors to manage payment risks. The final rule does not affect the ability of creditors to request up-front payment from applicants before appraisals or other written valuations are ordered (which would protect creditors even if the application is withdrawn, incomplete, or denied), to collect payment at consummation or account opening, or to undertake other efforts to collect the fee if the transaction is not consummated or the account is not opened. The Bureau therefore declines to adopt this exception suggested by comments it received.

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

ECOA section 701(e)(1) requires providing copies of the appraisals or other written valuations ''whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.'' The Bureau therefore proposed in § 1002.14(a)(4) that the requirements of § 1002.14(a)(1) also apply whether credit is extended or denied or if the application is incomplete or withdrawn. Specifically, creditors would be required to provide copies of appraisals and other written valuations even in situations where an applicant provides only an incomplete application.

Public comments. Two national associations of creditors suggested that the Bureau use its adjustment authority under ECOA to eliminate the statutory requirement to provide copies of appraisals and other written valuations where an applicant withdraws from the application process before indicating an intent to proceed. These commenters argued that the valuation is not relevant to the withdrawing applicant, and providing a copy would impose an unnecessary cost.

Discussion. Dodd-Frank Act section 1474 amended ECOA section 701(e) to require providing copies of appraisals and other written valuations even in cases where the application is withdrawn. The statute did not distinguish between withdrawals that occur before or after declaring an intent to proceed with the transaction. While the commenter suggested the Bureau should exercise its exception authority in cases in which the application is withdrawn before the applicant expresses an intent to proceed, the Bureau is not persuaded there is a basis for doing so here. The ''intent to proceed'' standard governs whether fees can be charged to applicants under Regulation X, which implements RESPA, and not when applicants have a protected interest against discrimination under ECOA. The Bureau does not believe that the purpose of ECOA in preventing, detecting, and remedying discrimination would be served by providing such an exception. Under Regulation X, § 1024.7(a)(4), the intent to proceed comes after the applicant has received a good faith estimate (or a revised good faith estimate), which quotes loan terms to applicants and which could be based upon an appraisal or other written valuation. Indeed, in some cases the very reason that the consumer elects to withdraw the application may be the result of what the lender has said or done in response to the appraisal or other valuation, for example by changing the interest rate based on a lower-than-expected loan to value ratio. Therefore the text of § 1002.14(a)(4) is adopted as proposed.

14(a)(5) Copies in Electronic Form

The Bureau believes that it is appropriate to allow creditors to provide applicants with copies of appraisals and other written valuations in electronic form if the applicant consents to receiving the copies in such form. Accordingly, the Bureau proposed that § 1002.14(a)(5) permit copies of appraisals and other written valuations required by § 1002.14(a)(1) to be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).[67]

[66] As noted in comment 14(a)(3)–2, the prohibition against charging for copies is designed to prevent an increase of charges within a specific transaction based upon the copies that must be provided. Thus a creditor would be prohibited from imposing a line-item fee for providing copies, or from adjusting other line item fees based upon the copies that are provided (for example, increasing the points and fees in the closing statement above the amount specified in the loan estimate to account for costs of copies that are being provided).

[67] As noted in the proposal, § 1002.4(d)(2) of Regulation B currently provides that the disclosures

Continued

Public comments. Several industry commenters supported the option of consent-based electronic delivery. Two lenders suggested the E-Sign Act consent process is burdensome, and should not be required; one industry commenter suggested that the E-Sign Act consent process is important, however.

Discussion. The Bureau believes that application of the E-Sign Act to the electronic disclosure of copies of appraisals and other written valuations is appropriate, and the final rule maintains this condition. While one commenter noted that the appraisal is not a contract document, Section 101(a) of the E-Sign Act governing electronic signatures in contracts is not the provision at issue here. Rather, Section 101(c) of the E-Sign Act, 15 U.S.C. 7001(c), governs consent for provision of consumer disclosures by electronic means. The commenter therefore has not articulated a basis for treating copies of appraisals and other written valuations as falling outside the scope of Section 101(c). In any event, however, applying the E-Sign Act requirements to provision of copies of appraisals and other written valuations by electronic means would not force creditors to institute E-Sign Act compliance procedures. Creditors could simply choose not to provide the copies by electronic means.

The Bureau also notes that because the disclosure required by § 1002.14(a)(2) is a written disclosure required by Regulation B, § 1002.4(d)(2) will permit that disclosure to be provided electronically based upon a consent given in compliance with the E-Sign Act. There is no need to restate this point in a separate provision within § 1002.14. As discussed at the beginning of the section-by-section analysis above, the Bureau is revising the electronic disclosure provision in § 1002.4(d)(2), however, to ensure its exception can apply to the new notice required by § 1002.14(a)(2) of the final rule, which replaces the consumer notice required by existing § 1002.14(a)(2)(i). While this change was not proposed in the proposal, this revision is necessary to maintain the consistency of cross-references in Regulation B and its existing approach to electronic disclosure of the consumer notice required under § 1002.14. In particular, existing § 1002.4(d)(2) allows the creditor to provide written disclosures required by certain specified provisions of existing Regulation B, including existing § 1002.14(a)(2)(i), electronically without regard to consumer consent or provisions of the E-Sign Act, if the disclosure ''accompan[ies] an application accessed by the applicant in electronic form.'' The Bureau believes this cross-reference in § 1002.4(d)(2) to the notice requirement in § 1002.14(a)(2) should be maintained, for the same reasons the Board did not apply the E-Sign Act requirements to disclosures provided with the application.[68] In addition, creditors could choose to provide the notice as an accompanying disclosure with the application, which would, by definition, be provided within three business days of the application as required by this final rule.[69] Therefore, the cross-reference is being updated to reflect the citation to the disclosure provision in the final rule, § 1002.14(a)(2).

Removal of Exemption for Credit Unions

The Board's 1993 Final Rule on Providing Appraisal Reports (1993 Final Rule) provided in § 1002.14(b) that credit unions were exempt from the requirements in § 1002.14(a) to provide copies of appraisals upon request, if not provided routinely. *See* 58 FR 65657, 65660 (Dec. 16, 1993). In the 1993 Final Rule, the Board pointed to pre-existing NCUA regulations, and how they already required credit unions to provide copies of appraisals upon request.[70] The Board also cited the legislative history of the 1991 ECOA amendments, which indicated Congress was aware of these pre-existing regulations and thus did not intend to modify them.[71] Accordingly, the Board found it unnecessary to require under Regulation B what the NCUA already required under its own regulations.

Under today's version of the NCUA regulation, 12 CFR 701.31(c)(5), Federal credit unions are still required to make available to any requesting member/applicant a copy of the appraisal used in connection with that member's real estate-related loan application. However, as described above, the Dodd-Frank Act amendments to ECOA removed the prior provisions of section 701(e) and replaced them with requirements that were significantly broader in scope. Unlike the prior provisions of section 701(e), section 701(e) as amended requires creditors to provide copies of all valuations, and not only appraisals; section 701(e) also requires that creditors provide these copies automatically, rather than allowing them to be provided upon request. Thus amended section 701(e) guarantees that applicants will receive copies of valuations that are performed, including non-appraisal valuations, and regardless of whether applicants specifically request the copies. In addition, neither section 1474 of the Dodd-Frank Act nor its legislative history refers to an exception for credit unions subject to, and complying with, the provisions of the NCUA regulations relating to making appraisals available upon request. Accordingly, the Bureau proposed deleting the exemption for credit unions provided in § 1002.14(b).

Public comment. Most credit union commenters urged the Bureau to maintain the exemption for credit unions, suggesting, for example, that the existing rule (requiring disclosure on request) be maintained and that credit unions did not need to be covered by the new rule because they were not a cause of the financial crisis that the Dodd-Frank Act was intended to address. One of the commenters argued that the Bureau should maintain the

required to be provided in writing by Regulation B may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. While § 1002.4(d)(2) refers to written ''disclosures'', the E-Sign Act also applies more broadly to ''information relating to a transaction'' that is required to be made available in writing. 15 U.S.C. 7001(c)(1). Thus the proposal sought to clarify that the requirements of the E-Sign Act also would apply to providing copies of appraisals and other written valuations.

[68] The Bureau notes that the Board adopted this exception to the requirements of the E-Sign Act for certain disclosures required in Regulation B in amendments to provide guidance on electronic delivery of disclosures. For the same reasons that the Board cited, the Bureau believes that permitting the disclosure required in § 1002.14(a)(2) to be provided without regard to the consumer consent or other provisions of the E-Sign Act when the disclosure accompanies an application the consumer accesses electronically eliminates a ''a potential significant burden on electronic commerce without increasing the risk of harm to consumers.'' 72 FR 63445, 63448 (Nov. 9, 2007).

[69] This option would not necessarily be available for all transactions. For example, if the 2012 TILA–RESPA Proposal is finalized as proposed, the appraisal notice will be required to be included in the integrated TILA–RESPA Loan Estimate. The exception under § 1002.4(d)(2) would not be triggered by a Loan Estimate disclosed after the application, rather than accompanying the application.

[70] *See* 12 CFR 701.31(c)(5), which currently provides:

Each Federal credit union shall make available, to any requesting member/applicant, a copy of the appraisal used in connection with that member's real estate-related loan application. The appraisal shall be available for a period of 25 months after the applicant has received notice from the Federal credit union of the action taken by the Federal credit union on the real estate-related loan application.

[71] S. Rept. 167, 102nd Cong., at 90 (1991). The Senate Report stated as follows: ''Regulations by the National Credit Union Administration (NCUA) currently require credit unions to make appraisals available without regard to who has paid for the appraisal;[] test[sic] this legislation is not intended to modify those NCUA regulations. Neither is the legislation intended to affect the current custom of many lenders routinely to provide copies of appraisal reports.''

exemption in order to allow the NCUA to amend its regulations to conform to section 701(e) of ECOA. Some of these commenters suggested the proposed rule would be burdensome, particularly when viewed in combination with the other rules being implemented under the Dodd-Frank Act. One credit union stated, however, that it understood the Bureau's proposed rationale for removing the exemption in Regulation B. An appraisal industry commenter also stated that it supported removing the exemption.

Discussion. As noted in the proposal, Congress did not exclude credit unions from the requirements of ECOA section 701(e), and the legislative history of the Dodd-Frank Act did not suggest Congress intended to exclude credit unions, unlike when Congress adopted the previous version of section 701(e) in 1991. Moreover, even assuming credit unions may have had a lesser role in precipitating the financial crisis to which the Dodd-Frank Act responded, the purposes of ECOA include preventing and remedying unlawful discrimination in credit transactions. By including the requirement to provide copies of appraisals and other written valuations in ECOA, Congress made the judgment that enhanced transparency of appraisals and other written valuations would further these purposes. In addition, applicants to credit unions have an equal interest in the protection and remedies afforded by ECOA as applicants to other creditors. Failure to apply the rule to credit unions would result in applicants to these creditors not having the same guarantees of receiving copies of appraisals and other written valuations promptly (regardless of whether they request them), or of receiving copies of non-appraisal valuations at all. In addition, the Bureau is not persuaded by the comments that the final rule implementing section 701(e) would impose a significant additional burden on creditors, as credit union commenters did not establish that credit unions do not follow the general industry practice of providing copies of appraisals to applicants in first lien transactions.[72] The Bureau therefore is not persuaded that the standards for exercising its exception authority are met, whether under section 703(a) of ECOA to effectuate the purposes of, or foster compliance with, ECOA or under section 1405(b) of the Dodd-Frank Act to protect the interests of consumers and the public.[73] Accordingly, the final rule does not include an exemption for credit unions.

14(b) Definitions

As discussed below, the Bureau proposed to define three terms in § 1002.14(b). The Bureau also requested comment on whether there are additional terms that should be defined for purposes of this rule and how best to define those terms in a manner consistent with ECOA section 701(e).

14(b)(1) Consummation

As discussed above, for clarity and to be consistent with other similar regulatory requirements under TILA and RESPA, the Bureau proposed that § 1002.14(a)(1) use the term ''consummation'' in place of the statutory term ''closing.'' The Bureau proposed to define the term ''consummation'' in § 1002.14(b)(1) as the time that a consumer becomes contractually obligated on a credit transaction. This definition mirrors the definition of the term provided in § 1026.2(a)(13) of Regulation Z.

The Bureau also proposed two comments to clarify the meaning of the term ''consummation.'' First, comment 14(b)(1)–1 was proposed to clarify that the question of when a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; proposed § 1002.14 does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise. Second, comment 14(b)(1)–2 was proposed to clarify that consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.

Public comments. The Bureau received very few comments on this definition. One industry commenter suggested the term would be confusing in the case of a rescindable transaction, and also queried whether consummation would occur when the lender issues a loan commitment. One commenter suggested the term is not plain English.

Discussion. The lack of industry comments on use of the term ''consummation'' suggests that industry is familiar with the meaning of the term. Consummation is a term that is defined elsewhere in regulations and used throughout mortgage regulations. The Bureau believes it is appropriate to use here for consistency and precision for closed-end transactions, and that given its common usage confusion is unlikely.[74] In any event, for clarity, this final rule adopts the proposed comments 14(b)(1)–1 and 2 clarifying the meaning of ''consummation;'' this guidance mirrors longstanding guidance in Regulation Z.[75] Accordingly, the final rule thus maintains the definition of the term ''consummation'' as proposed.

14(b)(2) Dwelling

The Bureau proposed that § 1002.14(b)(2) retain the definition of the term ''dwelling'' in current § 1002.14(c). Specifically, § 1002.14(b)(2) proposed to define the term ''dwelling'' as a residential structure that contains one to four units whether or not that structure is attached to real property, and including but not limited to an individual condominium or cooperative unit, and a mobile or other manufactured home.

Public comment. Industry commenters asked the Bureau to clarify several aspects of the definition of ''dwelling.'' For example, several commenters asked the Bureau to clarify in the final rule whether the definition of ''dwelling'' refers only to an owner-occupied dwelling, or to any residential

[72] The Bureau also does not believe that the final rule implementing section 701(e) affects the ability of credit unions to comply with the existing NCUA regulations at 12 CFR 701.31(c)(5). Credit unions that comply with the final rule requiring disclosure of appraisals and other valuations to applicants also would be able to comply with existing NCUA regulations by maintaining appraisals on file for the specified time period for provision upon request.

[73] Despite commenter suggestions that the Bureau could wait to see if NCUA adopted its own rule, the Dodd-Frank Act does not suggest it is the responsibility of NCUA to issue such a rule under ECOA, backed by the remedies which ECOA provides. Section 1085 of the Dodd-Frank Act amended ECOA to transfer ECOA rulemaking authority (including authority under ECOA section 701(e)) to the Bureau. Section 1061 of the Dodd-Frank Act also transferred consumer financial protection functions of the NCUA to the Bureau. In any event, if the NCUA were to amend its rules in a manner consistent with section 701(e), the Bureau would review that regulation and consider any consequences that regulation could have on the application of this final rule to credit unions.

[74] Section 3(2)(C) of the Plain Writing Act of 2010 excludes regulations from the scope of its requirements. In any event, the term ''consummation'' need not be included in the disclosure applicants will receive under § 1002.14(a)(2) and is not included in the sample disclosure.

[75] The Bureau also does not agree with the comment suggesting that consummation could occur at the end of the rescission period. TILA specifically defines its rescission right as arising ''following the consummation of the transaction,'' 15 U.S.C. 1635(a), such that the existence of a rescission period after consummation under TILA would not affect the pre-consummation timing standards in this final rule.

dwelling regardless of the applicant's residence in the building. Several commenters in the manufactured housing industry also requested that the definition of ''dwelling'' exclude residential structures that are not attached to the real property, such as recreational vehicles and house boats, as well as manufactured homes when titled as chattel. Further, some industry commenter asked for clarification on whether the rule applies to commercial transactions. Some of these comments requested that the final rule exclude commercial transactions even when they involve a first lien on a dwelling. One commenter argued, however, that covering commercial transactions would promote education, knowledge, and creditor safety and soundness by ensuring applicants are aware of the appraisals and other valuations on which the credit decisions are based. In addition, some industry commenters requested clarification on whether the final rule would cover certain multiple residence situations involving a single lot, such as three four-unit buildings situated on a single land parcel and operated as one small 12-unit apartment complex. Finally, one commenter suggested the definition of ''dwelling'' be harmonized with the definition in Regulation C promulgated under the Home Mortgage Disclosure Act (HMDA), which is not limited to one-to-four-family structures, while another commenter suggested the definition be limited to single-family housing.

Discussion. The final rule does not exclude business credit when it is secured by a first lien on a dwelling because business credit is covered by ECOA and Regulation B. ECOA section 701(e) applies to a ''creditor'', a term that ECOA section 702(e) defines by reference to the term ''credit'' in section 702(d). Section 702(d) of ECOA does not limit the term ''credit'' to credit for personal, family, or household purposes, and Regulation B has long interpreted ''credit'' to include personal and ''business credit.'' *See* comment 1002.2(j)–1 (discussing definition of ''credit'' in § 1002.2(j)); [76] § 1002.2(g) (definition of ''business credit'').[77] Thus, the final rule covers applications for business credit to be secured by a first lien on a dwelling.

The final rule adopts the definition of ''dwelling'' as proposed. When describing the transactions subject to section 701(e) of ECOA, Dodd-Frank Act section 1474 used the term ''dwelling'', which has been defined in § 1002.14(c) as follows: ''[T]he term dwelling means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium unit, and a mobile or other manufactured home.'' [78] Given that this definition was in place when Congress amended ECOA section 701(e) and used the term ''dwelling'' in specifying the scope of the requirement, the Bureau believes that it is appropriate to continue to use the existing definition of ''dwelling.''

The definition of ''dwelling'' in § 1002.14(c) requires that the unit be a ''residential structure'', but does not require that it be ''owner-occupied.'' As a result, the requirements of the final rule can apply to transactions involving one-to-four-unit residential structures that may be business or commercial in nature, including for investment purposes. Beyond this, whether a transaction meets the definition will depend on the facts and circumstances. Because transaction structures can vary widely, the Bureau does not believe it would be efficient or appropriate to try to address all such variations in the text of the rule or the commentary.[79]

The definition of ''dwelling'' in Regulation B, § 1002.14(c), currently includes a residential structure ''whether or not * * * attached to real property,'' and lists as an example a ''mobile or other manufactured home.'' Industry commenters reported that a significant number of consumers in the United States reside in manufactured homes. The Bureau does not believe the comments articulate a valid basis for a new exemption under Regulation B for manufactured homes that would otherwise meet the definition of ''dwelling.'' Whether an applicant has a right to receive a copy of an appraisal or other written valuation that has been performed should not turn on whether the residential structure is built on site or in a factory for later installation on site—particularly when such valuations can be done for these transactions.[80] The definition of ''dwelling'' in Regulation B is appropriately broad enough to encompass manufactured homes. The Bureau recognizes, however, that transactions involving manufactured homes will not always result in appraisals or other written valuations. This issue is taken into account in § 1002.14(b)(3) discussed below.

The final rule also provides clarification in response to comments by several industry trade associations that § 1002.14 should not apply to certain other structures, such as recreational vehicles or boats. Unlike manufactured homes, which are specifically enumerated examples of a ''dwelling'' in existing § 1002.14(c) and proposed § 1002.14(b)(2),[81] other structures such as boats and recreational vehicles are not enumerated as examples. Though boats and recreational vehicles may have residential uses in some cases, the fact that they are not expressly enumerated here in existing Regulation B suggests that, unlike manufactured homes, they are not exclusively residential by nature and are not always covered by the existing appraisal copy requirements at § 1002.14. Therefore,

[76] The comment provides that ''[u]nder Regulation B, a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge.''

[77] Regulation B generally uses the term ''business credit'' where unique or different requirements are applied to business or commercial transactions. The final rule does not adopt special or different requirements, and therefore uniformly uses the term ''credit.''

[78] This definition also is similar to the definition of dwelling in Regulation C, which covers ''a residential structure (whether or not attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or mobile or manufactured home.'' 12 CFR 1003.2. The Bureau does not believe the Regulation C definition should be adopted for this rule, however. The Regulation C definition could broaden the scope of the final rule beyond one-to-four family dwellings, while it is unclear that ECOA section 701(e) as amended contemplated this result.

[79] With respect to the example raised by a creditor and two national creditor associations—three four-unit buildings operated as a 12-unit apartment complex, the text of the rule makes clear that a four-unit residential building would be a dwelling, but a 12-unit apartment complex is not. Thus a transaction secured by a four-unit residential building would be covered by the rule, but a transaction secured by the entire 12-unit apartment complex would not be. Because this question can be analyzed in a straightforward manner by reference to the text of the rule, the Bureau does not believe that further commentary is needed for this to be apparent. Similarly, the definition of ''dwelling'' refers to the example of an ''individual condominium or cooperative unit,'' but not to a cooperative building as a whole, even though such a building may contain several individual units.

[80] HUD standards for its Title I insurance program for manufactured homes, for example, provide valuation standards. U.S. Dep't of Hous. & Urban Dev., TI–481, *Changes to the Title I Manufactured Home Loan Program,* at App. 2–1, D (Apr. 2009) (requiring valuations that meet HUD standards for transactions involving existing manufactured homes); *id.* at App. 8–9, C (describing valuation standards for certain manufactured home transactions); U.S. Dep't of Hous. & Urban Dev., TI–437, *Appraisals of Manufactured Homes and Lots,* at 1–2 (Jan. 1996) (describing valuation standards for manufactured homes classified as personal property and manufactured home transactions involving real property). GSEs also have standard forms available on their Web sites, such as Fannie Mae Form 1004C and Freddie Mac Form 70B, for conducting appraisals of manufactured home transactions eligible for purchase by them.

[81] For a definition of ''manufactured home,'' *see also* 42 U.S.C. 5402(6) and related HUD regulations at 24 CFR 3280.2.

while the Bureau does not see a basis for removing ''manufactured homes'' from the list of enumerated examples of a dwelling in § 1002.14 (*see* existing §§ 1002.14(c) and 1002.13(a)(2)), there is a basis for analyzing boats and recreational vehicles differently.

In addition, even though Regulation Z commentary has long stated that boats and trailers can be dwellings and has not ruled out that recreational vehicles and campers also could be dwellings,[82] they are not covered by the 2013 Interagency Appraisals Final Rule under TILA section 129H. *See* Regulation Z, § 1026.35(c)(2)(iii). As noted above, the rules implementing ECOA section 701(e) and TILA section 129H allow for identical consumer disclosure concerning appraisals and require creditors to provide copies of appraisals to applicants. To the extent regulations implementing ECOA section 701(e) and TILA section 129H can be aligned, burden on creditors is reduced.

Accordingly, the Bureau is adopting comment 14(b)(2)–1 to confirm that the requirements of § 1002.14 in particular do not apply to transactions secured solely by motor vehicles as defined by 12 U.S.C. 5519(f)(1)—a term that includes boats, motor homes, recreational vehicles, and other vehicles, but not manufactured homes.[83] It is not clear that in amending section 701(e) of ECOA in the Dodd-Frank Act, Congress intended to provide a basis for requiring creditors to provide copies of valuations when selling motor vehicles used as residences. The legislative history for section 701(e) specifically refers to providing protections for ''mortgage applicants,'' for example.[84] ECOA section 701(e)(6) also lists examples of ''valuations'' that are used in the real estate context—broker price opinions, GSE values, and AVMs (a term which section 1473 of the Dodd-Frank Act defined within the context of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), a statute focused on ''real estate related transactions'', 12 U.S.C. 3331). To the extent any motor vehicle transactions otherwise could be subject to § 1002.14, the Bureau exercises its exception authority under ECOA section 703(a) to exclude them. As noted above, because the legislative history does not clearly suggest an intent to cover motor vehicle transactions, the exclusion will facilitate compliance by reducing regulatory uncertainty, and will be consistent with the purposes of section 701(e) of ECOA as reflected in the legislative history described above.

The Bureau did not, however, seek comment in the proposal on whether structures that are ''motor vehicles'' can be covered by or should be excluded from the scope of ECOA and Regulation B more broadly, including the information collection requirements of § 1002.13. This clarification in comment 14(b)(2)–1 is therefore limited to § 1002.14 and is not a pronouncement on whether boats, trailers, recreational vehicles, campers, or motor vehicles would otherwise fall within the definition of ''dwelling'' in other provisions of Regulation B.

14(b)(3) Valuation

ECOA section 701(e) refers to ''valuations,'' which it defines as ''any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.'' Accordingly, proposed § 1002.14(b)(3) would have defined the statutory term ''valuation'' as ''any estimate of the value of a dwelling developed in connection with a creditor's decision to provide credit.'' Comment 14(b)(3)–1 was proposed, based on current comment 14(c)–1, to provide the following list of examples of valuations, which included the three examples listed in the existing comment (which were examples of an ''appraisal report''), and added the three additional specific examples of ''valuations'' provided in ECOA section 701(e)(6):

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

The proposal noted that the Bureau understands that many documents prepared in the course of a mortgage transaction may contain information regarding the value of a dwelling, but are not themselves an appraisal or other written valuation. The Bureau explained it does not believe that consumers would benefit from receiving duplicative pieces of information concerning appraisals and other written valuations. Additionally, the proposal noted that it is important that the rule make it simple for creditors to distinguish between documents that must be provided to applicants and those that are not required to be provided. Accordingly, the Bureau proposed comment 14(b)(3)–2, based on current comment 14(c)–2, to clarify that not all documents that discuss or restate a valuation of an applicant's property constitute ''appraisals or other written valuations'' for purposes § 1002.14(a)(1). For further clarification, the Bureau proposed that the comment provide the following list of examples of documents that discuss the valuation of the applicant's property but nonetheless are not appraisals or other written valuations for purposes of the requirement to provide a copy to applicants:

- Internal documents, that merely restate the estimated value of the dwelling contained in an appraisal or other written valuation being provided to the applicant.
- Governmental agency statements of appraised value that are publically available.

[82] *See* 12 CFR part 1026, Supp. I, comment 2(a)(19)–2. This comment states as follows: ''*Use as a residence.* Mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers, and the like not used as residences are not dwellings.''

[83] Under 12 U.S.C. 5519(f)(1), the term ''motor vehicle'' means—(A) Any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road; (B) recreational boats and marine equipment; (C) motorcycles; (D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103(d) of title 49, Code of Federal Regulations, or any successor thereto; and (E) other vehicles that are titled and sold through dealers.''

[84] H. Conf. Rept. 517, 111th Cong., at 877 (2010) (joint explanatory statement on Dodd-Frank Act); *see also* H. Rept. 94, 111th Cong., at 99 (2009) (discussing proposed revision to ECOA in H.R. 1728 that was later introduced in the Dodd-Frank Act, H.R. 4173).

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

Public Comments. As noted above, a few industry commenters argued that the definition of valuation generally should be limited to estimates that were relied upon or used by the creditor in making its credit decision.

An appraisal industry group suggested that the first proposed example of a valuation in proposed comment 14(b)(3)–1—a report prepared by an appraiser (whether or not licensed or certified)—should be modified to avoid suggesting that an unlicensed and uncertified appraiser is qualified.[85]

GSEs and other industry commenters commented on the fourth proposed valuation example, values developed pursuant to a GSE-required method or mechanism.[86] The GSE commenters noted that they allow but do not require that lenders use the GSE AVMs. A GSE commenter also noted that its AVM report could be provided to the borrower to satisfy the proposed rule. While some commenters expressed concern that GSE valuations were proprietary and creditors were forbidden from disclosing them, a large lending institution noted that the GSEs have reviewed and approved standard letters for the disclosure of GSE-developed valuations to consumers.

Several lending and appraisal industry groups commented on the fifth proposed valuation example—valuations developed by AVMs. Commenters noted that AVM reports can be highly technical, including special coding and information that would be confusing to consumers. Some of these commenters suggested that AVMs therefore be excluded from the definition of ''valuation.'' Other commenters requested additional clarification of how the term AVM is defined, such as whether it would include property inspection waivers (PIW), property inspection alternatives (PIA), Desktop Underwriter (DU)®, and Loan Prospector (LP)® reports. A few commenters suggested that the property inspection reports (PIPs) that may accompany some AVMs should be excluded from the definition of ''valuation.'' On the other hand, an appraisal industry commenter suggested including PIPs accompanying AVMs.

More broadly, a significant number of industry commenters strongly objected to the inclusion, in the first, fourth, fifth, and sixth proposed valuation examples, of ''written comments and other documents submitted to the creditor in support of'' the estimate. These commenters generally believed this language exceeded the statutory definition of the term ''valuation'' in section 701(e)(6) of ECOA, and argued that the language was vague and would expose them to substantial uncertainty as to what they would need to provide to applicants in a given transaction. Some commenters believed this wording could trigger time consuming and costly internal discovery by creditors and valuation preparers to search within and outside the credit institution for all written correspondence and other documents pertaining to the valuation, including reviews by AMCs, internal reviews, and evaluations of appraisal reports, some of which may be privileged or proprietary, and other materials. Some commenters also noted this language could result in burdensome disclosures to consumers who would be confused by voluminous information including background materials.

Industry commenters requested clarifications of and additions to the list of examples of documents that are not valuations. Manufactured housing industry commenters strongly supported the third proposed example excluding manufacturers' invoices for mobile homes, but suggested that the term ''mobile home'' is outdated and the term ''manufactured home'' should be used instead, consistent with industry usage and regulations of the Department of Housing and Urban Development (HUD). These comments also requested that the documents reflecting the ''maximum loan amount'' for manufactured homes be excluded, because they may reveal manufacturer pricing information.

Other commenters suggested that the list of examples of documents that are not valuations include the following: quality checks, fraud checks, internal reviews of valuations such as appraisal reviews, technical background data used by AVMs, and other ancillary documents developed for use by the appraiser or underwriter. Some commenters were concerned that some documents meeting the definition of valuation would be proprietary or reflect proprietary information. One industry commenter also was unsure whether a document integrating multiple publicly-available valuations would itself be a valuation. Finally, as discussed above, several industry commenters requested clarification that preliminary, draft, or other non-final documents be excluded.

Discussion. The Bureau is finalizing the definition of valuation in § 1002.14(b)(3) as proposed, with one technical change. In the proposal, the phrases ''developed in connection with an application for credit'' in the description of the requirement in § 1002.14(a)(1) regarding the materials that must be provided, and the phrase ''developed in connection with a creditor's decision to provide credit'' in the definition of valuation in § 1002.14(b)(3), were taken directly from the text of ECOA sections 701(e)(1) and (6) respectively. The Bureau does not believe that Congress intended these phrases to have different meanings. As a practical matter, many appraisals or other written valuations developed in connection with an application for credit will be a valuation developed in connection with a creditor's decision to provide credit and vice versa. However, using different terms in the rule could suggest there may be circumstances in which a valuation falls into one category, but not another. To facilitate compliance by eliminating uncertainty and to ensure the final rule gives full effect to section 701(e)(1), which is controlling as to the materials that must be provided to applicants, the Bureau interprets section 701(e)(6) consistently with 701(e)(1), and to the extent necessary is exercising its authority under ECOA section 703(a), to use the phrase ''developed in connection with an application for credit'' in the definition of ''valuation'' in § 1002.14(b)(3).

The final rule also makes a number of clarifying revisions to the commentary. As noted earlier, comment 14(a)(1)–7 is being added to the final rule to clarify that drafts or other non-final materials need not be provided if they have been superseded by later versions. In addition, as discussed below, the final rule incorporates several revisions to proposed comment 14(b)(3)–1 and proposed comment 14(b)(3)–2 (which is renumbered as comment 14(b)(3)–3), and adds a new comment 14(b)(3)–2. These revisions address certain additional concerns of commenters regarding the materials that must be provided to applicants.[87]

[85] An appraisal industry group also noted that the sixth proposed valuation example—broker price opinion—should clarify that they would not necessarily be permitted to be used in the credit transaction.

[86] In addition, a GSE commenter indicated that one of its tools does not communicate a ''value'' to the creditor.

[87] Comments 14(b)(3)–1 and 2 in the final rule provide a list of examples of documents that are valuations subject to the copy requirement, and comment 14(b)(3)–3 provides a list of documents that are not valuations subject to the copy requirement. As these comments note, these lists are not exclusive. The Bureau may issue guidance

The list of examples of valuations in comment 14(b)(3)–1 has been revised to eliminate the phrase ''written comments and other documents submitted to the creditor in support of'' the estimate. The Bureau believes that the list of materials that must be provided will be easier for creditors to understand if it refers simply to the reports themselves. The Bureau notes that this phrase (''written comments and other documents'') is not explicitly provided for in the definition of ''valuation'' in ECOA section 701(e)(6), and a number of commenters suggested that the phrase may be susceptible to uncertainty that could lead to overburdening creditors and consumers with the disclosure of information that is background in nature. The Bureau further notes that, in the absence of a definition of ''appraisal'' within ECOA, a 1993 amendment to the definition of an appraisal report in the commentary to Regulation B (58 FR 65658, 65659) had included this phrase ''written comments and other documents.'' In light of the inclusion in section 701(e) of ECOA of a definition of ''valuation'' that is broad enough to include appraisal reports, and the comments received, the Bureau does not believe a general reference to ancillary and supplementary information is useful to include in the list. Instead, the Bureau has added comment 14(b)(3)–2 in the final rule to clarify that the term ''valuation'' includes any attachments or exhibits that are part of an integrated valuation report. The Bureau believes that this comment is clearer, more specific, and addresses the commenters' concerns over uncertainty in the meaning of the phrase ''written comments and other documents.'' Under this comment in the final rule, for example, if a creditor receives an AVM report that has a list of comparable properties included as an exhibit or an attachment, then a copy of this exhibit or attachment would need to be provided. This comment therefore should ensure that consumers receive a copy of the complete, integrated report, without being distracted or burdened by additional ancillary information that falls outside the four corners of the report. Comment 14(b)(3)–1 also clarifies, however, that the list of examples is not exhaustive. Ultimately, the definition of ''valuation'' in § 1002.14(b)(3) governs.

For clarity and consistency across the examples in the final rule, the Bureau has revised the second proposed example to make clear that an internal creditor valuation must be disclosed, regardless of whether a third-party appraisal report is prepared. As a result of this change, the third proposed example—internal review documents reflecting the creditor valuation—was removed as largely duplicative. This deletion also addresses industry commenters' concerns that internal review documents, such as quality checks, fraud checks, automated underwriting determinations that do not estimate the value of the dwelling (such as certain GSE tools that simply suggest another valuation is excessive), or expressions of criticism of a valuation, should not be treated as themselves being valuations.

In response to GSE comments that they do not ''require'' use of their valuation methods, the Bureau has revised the example relating to GSE valuations to delete the word ''required'', which also is not used in the statute. The statute simply refers to values developed ''pursuant to a policy of a government sponsored enterprise.'' To provide additional guidance, this example in the comment now refers to GSE-approved forms for disclosing to consumers values developed pursuant to proprietary GSE mechanisms and methodologies.[88] This revision also should help to clarify the type of GSE automated tools whose output would be considered valuations.

The Bureau is finalizing inclusion of valuations developed by AVMs in the list of examples because they are included in the statutory list of valuation types in section 701(e)(6). The Bureau does not believe that the potential for AVM valuations to be coded or difficult for some consumers to understand is a basis for excluding them from the disclosure requirement. Consistent with the purpose of ECOA section 701(e) and ECOA more broadly, if an AVM develops a valuation in connection with the application that is provided to the creditor, then the creditor has a duty under the final rule to disclose a copy to the applicant. While some AVMs may use proprietary methods, the final rule does not require the disclosure of these methods *per se;* rather, the final rule requires disclosure of the written valuations developed by the AVMs which are provided to the creditors.[89] That is, the revised list of examples focuses on the report generated by the AVM to estimate the property's value, as opposed to the AVM methodology itself. Because AVM providers have control over such output, it should be within their control to ensure such output does not reveal proprietary information. Similarly, to the extent AVM reports are complex and coded, and creditors wish to voluntarily educate consumers, the creditors may provide additional explanatory information to the applicant at the time the AVM report is provided or request that the AVM generate such information. The rule does not require that creditors do so, however.

The Bureau also does not believe it would be appropriate to define the term ''automated valuation model'' in comment 14(b)(3)–1. When in receipt of a particular computer-generated report that may provide an estimate of the value of the dwelling, the creditor ultimately must make its own judgment of whether that report meets the definition of valuation in § 1002.14(b)(3). The final rule cannot foresee all the types of computer-generated reports that might include valuations. Moreover, comment 14(b)(3)–1 is merely intended as a list of examples of valuations. In addition, section 1473 of the Dodd-Frank Act amends a different statute—FIRREA—to define the term ''automated valuation model'' for purposes of that statute as ''any computerized model'' used to determine the value of a dwelling that secures a mortgage. That definition would be implemented by a separate inter-agency rulemaking.

Further, the Bureau does not believe that changes to the text of the regulation or commentary are needed to address the appraisal industry comments on the references to appraisers ''whether or not licensed or certified'' and to broker price opinions in the list of examples of valuations. The final rule does not regulate, or purport to regulate, the use of valuations such as broker price opinions by creditors. By referring to an example of a valuation, the final rule also does not suggest such a valuation would be permitted in any specific transaction, or that the person preparing such a valuation would be qualified.

The list of examples that do not qualify as valuations, finalized in comment 14(b)(3)–3, is revised to refer to a manufacturer's invoice for a ''manufactured home'' instead of a ''mobile home,'' consistent with the comment indicating that the term

from time to time to identify other examples for either list.

[88] This revision also is intended to focus this example on GSE valuation methods, and to distinguish this example from appraisals and other written valuations prepared by other third parties.

[89] Similarly, one commenter expressed concern that the proposed rule could require disclosure of documents in the possession of third parties other than the creditor. Yet the final rule does not apply to persons who are not creditors within the meaning of Regulation B, § 1002.2(l), and thus does not impose any obligation on a creditor to compel a third party to provide a copy of such documentation to the applicant.

''manufactured home'' is current industry usage.[90] Removing the reference to ''mobile home'' in this example also aligns with the exclusion of motor vehicles from the scope of the final rule.

The Bureau has considered the observations from manufactured housing industry commenters that data from the manufacturers' invoice for manufactured homes is sometimes included as a factor in the lender's calculation of the loan amount or maximum loan amount. For example, two industry commenters pointed to HUD Title I insurance underwriting criteria, under which the maximum Title I insurable loan amount for manufactured housing loans for new homes is based, in part, upon the manufacturer invoice amount. *See* HUD, TI–481, App. 2 at 3–4 (Apr. 2009). The comments did not provide information that would clearly establish a basis for categorically determining that loan amounts, maximum loan amounts, or loan-to-value calculations are not valuations under the final rule, however. These creditor calculations, if they would otherwise be valuations, would not lose such status merely by taking into account manufacturer invoice information. Indeed, the comments did not provide a rationale for why an applicant should be barred from viewing a valuation that contains manufacturer invoice data, if the creditor has received information from that invoice and used it in a valuation.

The list of examples that would not be covered by the rule also is revised to clarify that property inspection reports are not valuations, if they do not provide an estimate or opinion of the property's value and are not used in the development of such an estimate or opinion. This example is added to address several comments seeking clarification about a variety of property reports that may be provided in the underwriting process.

Finally, the comment clarifies that the list is not exhaustive. Again, the definition of ''valuation'' in § 1002.14(b)(3) governs. This serves to emphasize that the commentary cannot exhaustively catalog all of the types of documents that might or might not fit the definition of ''valuation.'' The final rule seeks to address those comments the Bureau believes point to the most common types of documents that may raise the most significant questions under the final rule.

[90] The phrase ''mobile or other manufactured home'' is retained in the definition of ''dwelling'' in § 1002.14(b)(2), however, to ensure internal consistency with the other definition of ''dwelling'' in Regulation B at § 1002.13(a)(2).

VI. Effective Date

This final rule is effective on January 18, 2014. The Bureau requested comment on the effective date of the final rule, particularly given the likelihood that the TILA–RESPA Loan Estimate containing the ECOA appraisal disclosure would not be finalized on the same timeline as this final rule. These comments and the Bureau's consideration of them are described below. As discussed above in part III, the Bureau believes that this effective date is consistent with the timeframes established in section 1400(c) of the Dodd-Frank Act and, on balance, will facilitate the implementation of the rules' overlapping provisions, while also affording creditors sufficient time to implement the more complex or resource-intensive new requirements.

A. Public Comments

Many industry commenters suggested that the effective date of the rule, or at least the disclosure requirement, should be delayed at least until the integrated TILA–RESPA Loan Estimate is finalized by the Bureau and the associated TILA–RESPA rule takes effect. One large lending institution suggested that the final ECOA rule take effect 12 months after the effective date for other rules under the Dodd-Frank Act that had mandatory statutory deadlines. Two industry group commenters suggested that the Bureau seek ways to avoid staggered effective dates of these rules, which in their view would be wasteful because it would require that lenders update their systems twice—once for the ECOA rule, and then again when the TILA–RESPA Loan Estimate takes effect.

Other commenters supported the use of a specific time period to set the rule's effective date, whether late 2013, 12 months, 18–24 months, or two years. A GSE also suggested that the rule take effect after 2013, to avoid interfering with home modification and refinance programs scheduled to end by late 2013 so that resources currently used to support the GSE-administered refinance and modification programs do not have to be diverted to systems and process changes that would in any event be short-lived.[91]

B. Discussion

The final rule will be effective on January 18, 2014. Thus, the final rule applies to loans to be secured by first liens on dwellings for which an application is received by the creditor on or after January 18, 2014.

The Bureau believes this transition period will provide sufficient time for creditors to make changes to their appraisal disclosures and their practices for providing copies of appraisals and other written valuations. The Bureau does not believe a later effective date, such as 18 or 24 months after issuance of this final rule, is necessary. Appraisal disclosures are already required by Regulation B and provided by creditors, the final rule allows for creditors to continue to make these disclosures electronically (even without compliance with the E-Sign Act if they are provided as an accompaniment to application documents), and creditors should not need to undertake complex dynamic systems programming to update this disclosure. In addition, copies of appraisals already are provided to applicants as a routine practice in most transactions covered by the final rule. While providing copies of valuations other than appraisals may be new in some transactions, the Bureau believes 12 months is sufficient time for creditors to prepare to include these with other materials (such as copies of appraisals) that already are provided to applicants as a routine practice in first lien transactions.[92] In addition, as noted in the proposal, the Bureau believes it is important that consumers begin to receive disclosures with information on their new rights under ECOA with respect to appraisals.

Further, if the effective date of the ECOA rule were delayed more than 12 months, then it would take effect after the 2013 Interagency Appraisals Final Rule under TILA section 129H, which must take effect within 12 months after its issuance pursuant to section 1400(c)(1)(B) of the Dodd-Frank Act. Because these rules under ECOA section 701(e) and TILA section 129H cover a similar subject matter (appraisals), with harmonized disclosure requirements, relating to an overlapping set of transactions (loans secured by first liens on dwellings), the Bureau believes it is important for these rules to take effect at the same time. The Bureau believes that staggered effective dates for the ECOA and TILA rules could increase complexity and burden rather than ease compliance.

[91] The GSE also requested further delayed implementation, in case these programs are extended very close to or after their expiration date at the end of 2013.

[92] Even if GSE refinance or modification programs are extended very shortly at or after the end of 2013, and the GSEs elected not to prepare to implement this final rule until that time, this effective date would still leave a few weeks to prepare to provide a short appraisals disclosure to consumers who file new applications and to provide copies of appraisals and other valuations to consumers.

As noted above, commenters raised concerns over the potential cost or burden of phased compliance, first with an ECOA disclosure requirement, and second with a rule on integrated TILA–RESPA disclosures. The Bureau does not believe, however, that it is appropriate to delay the consumer protections mandated by section 1474 of the Dodd-Frank Act for the 2012 TILA–RESPA Proposal, which would not even apply to some transactions covered by the ECOA Appraisals Rule. *See* 77 FR 51116 (Aug. 23, 2012). The disclosure required by the final rule will provide consumers with important information about their rights under ECOA. In addition, for transactions covered by the ECOA Appraisals Rule that also would be covered by the Bureau's 2012 TILA–RESPA Proposal, the Bureau does not believe it would significantly increase burden to set an earlier effective date for the ECOA Appraisals Rule. Under the 2012 TILA–RESPA Proposal, creditors in these transactions could simply adopt a TILA–RESPA Loan Estimate that includes the appraisals disclosure and therefore satisfies the ECOA Appraisals Rule.

VII. Dodd-Frank Act Section 1022(b)(2) Analysis

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts.[93] The proposal set forth a preliminary analysis of these effects, and the Bureau requested comments and received some comments on this topic. In addition, the Bureau has consulted, or offered to consult with, the prudential regulators, FHFA, HUD, and the Federal Trade Commission (FTC), including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The final rule amends Regulation B, which implements ECOA, and the official interpretations to the regulation, which interpret and clarify the requirements of Regulation B. The revisions to Regulation B implement an ECOA amendment concerning appraisals and other valuations that was enacted as part of the Dodd-Frank Act. In general, the revisions to Regulation B require creditors to provide a free copy of each appraisal and other written valuation developed in connection with an application for a loan to be secured by a first lien on a dwelling. The final rule also requires creditors to notify applicants in writing of the right to receive a copy of each written appraisal at no additional cost.

The amendment to ECOA section 701(e) is self-effectuating, and the Dodd-Frank Act does not require the Bureau to adopt a regulation to implement these amendments. Thus, many costs and benefits of the final rule considered below would arise largely or entirely from the statute, not from the final rule. The final rule would provide substantial benefits compared to allowing the amendment to ECOA section 701(e) to take effect alone. These benefits arise because the final rule clarifies parts of the statute that call for interpretation, such as the definition of ''valuation'' in section 701(e)(6), the provision governing reimbursement of the creditor for certain costs in section 701(e)(3), and the timing requirement for providing copies of appraisals and other written valuations in section 701(e)(1). Greater clarity on these issues should reduce the compliance burdens on covered persons by reducing costs for attorneys and compliance officers as well as potential costs of over-compliance and unnecessary litigation. In this light, the costs that the regulation would impose beyond those imposed by the statute itself are likely to be at most minimal.

Section 1022 permits the Bureau to consider the benefits, costs, and impacts of the final regulation solely compared to the state of the world in which the statute takes effect without an implementing regulation. To provide the public better information about the benefits and costs of the statute, however, the Bureau has chosen to consider the benefits, costs, and impacts of the major provisions of the final rule against a pre-statutory baseline (*i.e.,* the benefits, costs, and impacts of the relevant provisions of the Dodd-Frank Act and the regulation combined).[94]

Section 1022 of the Dodd-Frank Act requires that the Bureau, in adopting the rule, consider potential benefits and costs to consumers and covered persons resulting from the rule, including the potential reduction of access by consumers to consumer financial products or services resulting from the rule, as noted above; it also requires the Bureau to consider the impact of its rules on covered persons described in section 1026 and the impact on consumers in rural areas. These potential benefits and costs, and these impacts, however, are not generally susceptible to particularized or definitive calculation in connection with this rule. The incidence and scope of such potential benefits and costs, and such impacts, will be influenced very substantially by economic cycles, market developments, and business and consumer choices that are substantially independent from adoption of the rule. No commenter has advanced data or methodology that it claims would enable precise calculation of these benefits, costs, or impacts.

In considering the relevant potential benefits, costs, and impacts, the Bureau has utilized the available data discussed in this preamble, where the Bureau has found it informative, and applied its knowledge and expertise concerning consumer financial markets, potential business and consumer choices, and economic analyses that it regards as most reliable and helpful, to consider the relevant potential benefits and costs, and relevant impacts. The data relied upon by the Bureau also includes the public comment record established by the proposed rule. The Bureau notes, however, that for some aspects of this analysis, in particular with respect to the benefits of the rule, there are limited data available with which to quantify the potential impacts of the final rule. In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits of the final rule. General economic principles, together with the limited data that are available, provide insight into these benefits. Where possible, the Bureau has made quantitative estimates based on these principles and the data that are available; these estimates are primarily with regard to the costs of the rule. For the reasons stated in this preamble, the Bureau considers that the rule as adopted faithfully implements the purposes and objectives of Congress in the statute. Based on each and all of these considerations, the Bureau has concluded that the rule is appropriate as an implementation of the Dodd-Frank Act.

The primary source of data used in this analysis is data collected under the Home Mortgage Disclosure Act (HMDA).[95] Because the latest complete

[93] 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.

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

[95] The Home Mortgage Disclosure Act (HMDA), enacted by Congress in 1975, as implemented by the Bureau's Regulation C requires lending institutions annually to report public loan-level data regarding mortgage originations. For more information, see *http://www.ffiec.gov/hmda.* It should be noted that not all mortgage lenders report

Continued

data set available is for loans made in calendar year 2011, the empirical analysis generally uses the 2011 market as the baseline. Data from fourth quarter 2011 Reports of Condition and Income filed by federally-regulated banks and thrifts (Call Reports),[96] fourth quarter 2011 credit union call reports from the NCUA, and de-identified data from the Nationwide Mortgage Licensing System (NMLS) Mortgage Call Reports (MCR)[97] for the fourth quarter of 2011 were also used to identify financial institutions and their characteristics. The unit of observation in this analysis is the entity: If there are multiple subsidiaries of a parent company, then their originations are summed and revenues are total revenues for all subsidiaries.

In addition, the Bureau notes that Regulation B generally applies to open-end credit and business or commercial credit; accordingly, the final rule also applies to these types of credit to the extent they are secured by a first lien on a dwelling. Calculations from the Experian Oliver-Wyman analysis of credit bureau data in the Q3 2012 Market Intelligence Reports[98] were used to estimate the number of home equity lines of credit (HELOCs) originated in 2011, and the Survey of Consumer Finances (SCF) was used to calculate the proportion of HELOCs that are first liens.[99] Reverse mortgages are believed to be predominantly first liens; counts of reverse mortgages are calculated from home equity conversion mortgages (HECM) in the HUD HECM Endorsement Summary Report.[100]

Several comments from large and small lending institutions indicated it is standard practice for lenders in first lien residential real estate transactions to provide consumers with copies of appraisals performed. One lending institution stated its belief this is not a widespread industry practice, however. The comments did not provide data on the extent to which other valuations are conducted in first lien transactions, and also did not provide data on the extent to which creditors provide applicants with copies of valuations other than appraisal reports under current lending practices.[101] As discussed below, one commenter criticized the proposal's estimate of $1.80 as the average increase in per-loan cost due to the rule.

A large lending institution reported that in one month in 2012, more than 2,000 appraisals it ordered were revised to correct misspellings or clerical errors. This information was provided to illustrate challenges creditors could face if prohibited from making minor, non-substantive corrections to valuations and appraisals within three days of closing, after the time frame in which copies should have been provided to the applicant absent a waiver.

As discussed and addressed throughout this preamble, other commenters expressed general concerns about the burden of various aspects of the proposed rule. The Bureau has taken these comments into account in developing its final rule and in its analysis below.

A. Potential Benefits and Costs to Covered Persons and Consumers

Consumers. Because the final regulation requires creditors to deliver copies of written valuations, including appraisals, to consumers and creditors are explicitly prohibited from charging consumers for these copies, consumers do not bear any direct costs from the rule. As noted above and discussed further below, outreach indicated and GSE standards corroborated that it is standard practice for industry to provide copies of appraisals to applicants in first lien transactions that are consummated. Consumers therefore currently benefit from this industry practice already. The final rule provides a marginal increase in the number of transactions in which consumers will receive appraisals, and also ensures they will receive copies of other types of valuations (including in transactions where no appraisals are performed).

Providing a free copy of any valuation consumers do not already receive provides consumers with details about the valuation and, in some cases, additional information on the condition of the property. Although consumers may receive some of this information from a home inspection or from an appraisal they would otherwise receive already under standard industry practice, each valuation provides the consumer with another independent evaluation. To the extent it would not already be provided to them, this detailed information may be particularly valuable to the consumer in a purchase transaction when the estimated value is less than their offer.[102] In addition, consumers in transactions where appraisals are not conducted may not currently receive any information about the valuations developed in connection with their application. The final rule would therefore provide them with new information that may help them make decisions about their mortgage borrowing.

The final rule changes the consumer's right under Regulation B to obtain a copy from one where the consumer must request the copy to one where the copy is given as the default. Nonetheless, as noted above, it is standard industry practice to provide copies of appraisals in first lien transactions that are consummated. Thus the rule may result in more consumers obtaining copies of written appraisals in transactions that are not consummated because, despite low

HMDA data. The HMDA data capture roughly 90–95 percent of lending by the Federal Housing Administration and 75–85 percent of other first-lien home loans, in both cases including first liens on manufactured homes (transactions which also are subject to the final rule). U.S. Dep't of Hous. & Urban Dev., Office of Policy Development and Research, *"A Look at the FHA's Evolving Market Shares by Race and Ethnicity,"* U.S. Housing Market Conditions (May 2011), at 6–12. Depository institutions (including credit unions) with assets less than $40 million (in 2011), for example, and those with branches exclusively in non-metropolitan areas and those that make no home purchase loan or loan refinancing a home purchase loan secured by a first lien on a dwelling are not required to report under HMDA. Reporting requirements for non-depository institutions depend on several factors, including whether the company made fewer than 100 home purchase loans or refinancings of home purchase loans, the dollar volume of mortgage lending as share of total lending, and whether the institution had at least five applications, originations, or purchased loans from metropolitan areas. Robert B. Avery et al., *The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act,* 98 Fed. Res. Bull. (Fed. Res. Sys.), Dec. 2012, n.6.

[96] 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/.*

[97] 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, the number and dollar amount of loans brokered.

[98] Q3 2012 Experian-Oliver Wyman Market Intelligence Report. More information about the Experian-Oliver Wyman quarterly Market Intelligence Report is available at *http://www.marketintelligencereports.com.*

[99] The Bureau calculates that 26 percent of HELOCs are first liens from the 2010 SCF.

[100] Monthly HUD HECM Endorsement Summary reports are available at *http://www.hud.gov/pub/chums/f17fvc/hecm.cfm.* The non-HECM market for reverse mortgages has all but disappeared in recent years, so the Bureau believes the HECM count provides a reasonable estimate of reverse mortgage volume.

[101] One commenter stated that GSEs charge $50 to generate a report from their proprietary valuation tools. It was not clear from this comment that GSEs would impose additional charges for creditors to disclose the valuation results to consumers. GSEs did not mention any such charges in their comments.

[102] The value of the information may vary depending on when in the home purchase and loan origination process the consumer receives the information.

transaction costs, there is evidence that default rules can have significant effects on outcomes in various settings.[103] Consumers who previously may have requested copies of appraisals in the absence of the amendment save the time and effort required to make requests.

For those applicants who would not already receive a copy of an appraisal or other written valuation under existing practice, having a copy of any professional appraisal or other written valuation that is conducted as a point of reference may help them to gain a better understanding of the home's value and improve overall market efficiency, relative to the case where the applicant has less information about the value of the property.[104] Individual consumers engage in real estate transactions infrequently, and because the expertise to value real estate is costly consumers often rely on real estate agents and list prices to make price determinations. These methods may not lead a consumer to an accurate valuation of a property. For example, there is evidence that real estate agents sell their own homes for significantly more than other similar homes, which suggests that other sellers may not accurately price the homes that they are selling.[105] Other research, conducted in a laboratory setting, provides evidence that individuals are sensitive to anchor values when estimating home prices.[106] In such cases, an independent signal of the value of the home should benefit the consumer.

Although the Bureau has not received comments from consumers on the proposed rule indicating any concerns, the Bureau believes that some consumers may not be interested in receiving copies of appraisals or other written valuations. While copies of appraisals are routinely provided in first lien transactions that are consummated, it is unclear that copies of other types of valuations are provided. For these consumers, the additional information received in copies of valuations may be unwelcome, or potentially distract their attention from other disclosures that are received shortly before consummation or account opening. The final rule seeks to reduce the volume of unnecessary information, by clarifying the list of examples of ''valuations'' and that multiple versions of the same valuation need not be provided so long as the timing requirements of the regulation are satisfied.

In addition, the costs of the final rule may be indirectly passed on to consumers through very small increases in the cost of credit, largely associated with the costs of mailing copies to consumers who have not consented to receive them electronically under the E-Sign Act. Creditors also could charge for valuations—though this is not a consequence of the rule because creditors could charge for valuations now. These costs are discussed further below.

Covered Persons. In the context of the final rule, ''covered persons'' includes depository institutions such as banks, credit unions, and thrifts, as well as non-depository creditors such as IMBs. The Bureau estimates that, of the roughly 14,700 depository institutions, about 11,400 originate mortgage loans. Another 2,800 non-depository institutions engage in real estate credit, based on data from the NMLS MCR. The final rule codifies the common practice of sending copies of all written appraisals to consumers who obtain loans secured by a first lien on a dwelling. In outreach to creditors prior to the proposal, all respondents reported providing copies of written appraisals to borrowers as a matter of course if a first lien loan is originated.[107] This practice also aligns with pre-existing requirements of certain GSEs to provide copies of appraisals promptly and no later than three business days before closing, as discussed in the section-by-section analysis above. These GSEs participate in a substantial portion of first lien transactions each year. In addition, the final rule requires that copies of other written valuations be provided to the applicant, and that copies of written appraisals be sent in the event that an application is received but does not result in a loan being originated. The final rule prohibits creditors from charging consumers for these copies. The final rule does, however, eliminate the cost of responding to individual requests for copies of an appraisal on an ad hoc basis, which is currently required under Regulation B, § 1002.14. That is, the final rule eliminates any need to respond to ad hoc requests by querying a loan file, retrieving the appraisal, and then going through the process of sending copies of the appraisal to the applicant.

Under the final rule, covered persons would incur the paperwork costs, for a set of applications and originations, of replicating and sending (either electronically or physically) copies of the appraisals and other written valuations.[108] A recent government study found that appraisals are performed in about 90 percent of first lien transactions, and that non-appraisal valuations are obtained in first lien transactions in which an appraisal is not performed.[109] The Bureau also believes that a second appraisal is conducted, and is sent, for any property with a loan size equal to or above $600,000. Further, appraisals are considered to be of inadequate quality 10 percent of the time, necessitating a second appraisal. Based on outreach to industry prior to the proposal, the Bureau assumes that creditors currently send to consumers copies of 100 percent of those written appraisals that are performed for an application for a transaction secured by

[103] *See, e.g.,* John Beshears et al., *The Importance of Default Options for Retirement Savings Outcomes: Evidence from the United States,* Social Security Policy in a Changing Environment 169 (Jeffrey Brown et al. eds., Univ. of Chi. Press); Eric Johnson & Daniel Goldstein. *Do Defaults Save Lives?,* 302 Science 1338 (2003).

[104] For example, in Quan and Quigley's theoretical model where buyers and seller have incomplete information, trades are decentralized, and prices are the result of pairwise bargaining, ''[t]he role of the appraiser is to provide information so that the variance of the price distribution is reduced.'' Daniel Quan & John Quigley, *Price Formation and the Appraisal Function in Real Estate Markets,* 4 J. Real Est. Fin. and Econ. (1991).

[105] Steven Levitt & Chad Syverson, *Market Distortions When Agents are Better Informed: The Value of Information In Real Estate Transactions,* 90 Rev. Econ. & Stat. 599 (2008).

[106] Peter Scott & Colin Lizieri, *Consumer House Price Judgments: New Evidence of Anchoring and Arbitrary Coherence,* 29 J. Prop. Rsch. 49 (2012).

[107] Respondents include a large bank, a trade group of smaller depository institutions, and an IMB.

[108] Based on its pre-proposal outreach and research, the Bureau assumes that the average appraisal is 20 pages long and that printing a copy of an appraisal costs $0.10 per page. In the proposal, the Bureau assumed that 84 percent of appraisals are sent via email and that these are already being sent in a manner that complies with the E-Sign Act, 15.75 percent of appraisals are sent via the United States Postal Service, and 0.25 percent of appraisals are sent via courier. The final rule adopts this assumption, recognizing that some creditors, as reflected in comments received on the proposal, may elect not to provide copies electronically in compliance with the E-Sign Act (and therefore these copies would be provided as part of the 16 percent of copies that are sent via the postal service or courier). Because the Bureau does not have data, for purposes of this analysis, the Bureau conservatively assumes that the average non-appraisal valuation is as long as an appraisal (20 pages), that printing costs for valuations other than appraisals are the same as for appraisals, that currently, no written valuations other than appraisals are sent to applicants, and that the cost of sending copies of these valuations would be the same as an appraisal. Mailing an appraisal is assumed to cost $2.12 based on the cost of first class mail for a 3.7oz letter (20 pages of 20 lb paper weighs 3.2oz with a 0.5oz allowance for an envelope) and requires 5 minutes of loan officer time (a conservative assumption, because it is based on loan officer time rather than the time of a loan processor); sending an appraisal via a courier is assumed to cost $17 ($15 for courier fees and $2 for replication costs) in material costs and 5 minutes of loan officer time; and, sending a copy via email is assumed to cost $0.05 of material cost and 1 minute of loan officer time.

[109] U.S. Gov't Accountability Office, GAO–12–840T, *Residential Appraisals,* at 6–7 (June 28, 2012).

a first-lien on a dwelling that results in an origination. Because available data and outreach did not indicate otherwise, the Bureau conservatively assumes that copies of appraisals and other written valuations developed for applications that do not result in a transaction currently are not sent to consumers. Similarly, the Bureau conservatively assumes that copies of non-appraisal valuations currently are not sent to consumers. The burden calculations that follow assume that a non-appraisal written valuation is conducted for every application, which likely overstates the costs associated with the rule.

As a result, the new paperwork costs under the final rule arise from providing copies of any written appraisals for the proportion of applications that do not result in originations (a proportion the Bureau estimates from HMDA data on applications and originations), and from providing copies of any non-appraisal valuations developed in connection with an application whether or not originated.

The additional cost of providing a copy of any non-appraisal valuation in most cases will be limited to the cost of generating a copy of the non-appraisal valuation to send to the applicant. When the copy is generated in paper form, the Bureau estimates the cost of generating the copy based upon an assumption that the non-appraisal valuation is at most as long as the written appraisal. With respect to transmission costs, in the 90 percent of first lien transactions where an appraisal is conducted and a copy already provided, the copy of the non-appraisal valuation often can be included with the appraisal already being sent, which would only increase transmission costs in the small minority of cases where the copy is not sent electronically (because of the postal delivery or courier having a marginally greater weight). If the copy of the non-appraisal valuation needs to be provided at a different time than the copy of a written appraisal, however, the creditor would need to make a second transmission to the applicant, which for a majority of transactions using electronic communications, would involve the cost of an additional electronic transmission. To be conservative, for first-lien, closed-end, forward mortgage loans the Bureau calculates the cost of sending the non-appraisal valuation assuming that it is sent separately from the appraisal. Finally, in the 10 percent of first lien closed-end, forward mortgage transactions where only a non-appraisal valuation is prepared, the cost of generating the copy and transmission will be new. For the HECMs (reverse mortgages) and first lien HELOCs the Bureau estimates will be covered by the rule,[110] the Bureau assumes that one appraisal or other written valuation beyond what is current standard practice will be provided.[111]

To measure these paperwork costs, counts of originations and applications for reporting depository institutions and credit unions are obtained from the HMDA data; for non-HMDA reporters, counts are imputed using accepted statistical techniques that allow estimates based on the data available in call reports.[112] Different techniques are used to extrapolate from the applications and originations data available in HMDA for reporting IMBs to the broader set of all IMBs.

Covered persons would also incur some costs in reviewing the final rule and in training the relevant employees.[113] To estimate these costs, the number of loan officers who may require training is estimated based on the application or origination estimates.

Finally, covered persons would incur some costs in updating Regulation B disclosures provided to applicants concerning appraisals. The cost of sending these disclosures would not change, however. In addition, some commenters suggested that non-appraisal valuations would be difficult for consumers to understand. While some creditors or valuation providers could choose to modify their reports to be more easily understood by the consumer audience, the rule does not require such modifications.

Based upon the foregoing assumptions and estimates, costs from the final rule—including one-time costs and one year of annualized costs—are estimated to be approximately $39 million, or approximately $5.05 for each loan originated.[114] This estimated cost is higher than the estimate in the proposal principally because, in the absence of information provided otherwise by commenters on the proposal, the Bureau is including the estimated cost of providing copies of written valuations other than appraisals, and is not assuming that creditors already are providing copies of most of these other written valuations to applicants.[115] The bulk of these costs arise from the paperwork requirements; roughly 1.8 percent results from the one-time review and training costs. This estimate is conservative because it does not take into account cost savings that will be achieved as a result of the final rule removing subordinate lien transactions from the scope of § 1002.14. These transactions currently are subject

[110] For reverse mortgage loan counts, since the HUD HECM Monthly Endorsement summary does not provide summary statistics of loans made by depository institutions of different asset sizes or non-depository institutions, when calculations are performed for separate classes of institutions, all HECMs are attributed to that class of institutions to create an upper bound of the cost of the regulation for that class. Similarly, for HELOC first lien loan counts, the Experian-Oliver Wyman data cannot be split by size of depository institution, so a parallel convention of attributing all depository institution costs to each class of depository institutions is followed. The number of first lien HELOCs is calculated by multiplying the number of HELOCs for depository institutions (242,710) and non-depository institutions (76,790) by the proportion of HELOCs that are first liens in the 2010 SCF (0.26).

[111] This is a conservative estimate, particularly in the case of reverse mortgages, as the Bureau understands that creditors in HECM transactions already provide borrowers with copies of appraisals, or a completed HUD–92800.5B (Conditional Commitment Direct Endorsement Statement of Appraised Value). *See* U.S. Dep't. of Hous. & Urban Dev., Asst. Sec'y for Hous., Mortgagee Letter 2005–ML–48 (Dec. 19, 2005).

[112] Specifically, Poisson regressions are run projecting loan volumes in these categories on the natural log of the following characteristics available in the Call reports: total one-to-four family residential loan volume outstanding, full-time equivalent employees, and assets. The regressions are run separately for each category of depository institution.

[113] The cost of reviewing the regulation at each institution is assumed to be the time cost of reading and reviewing the regulation, which is assumed to be 3 minutes per page for 9 pages. It is assumed that the regulation is reviewed by one lawyer and by one compliance officer at each institution, on average. Smaller institutions may not have a compliance officer, in which case additional implementation time would be assumed by the lawyer or other employee. Finally, the Bureau also believes that as part of routine software updates, creditors may make adjustments to software systems to ensure compliance with this rule (including updating the standard notice and incorporating additional valuation types into their copy distribution system); the Bureau does not believe these adjustments would impose significant additional costs beyond the existing routine upgrade processes.

[114] A few industry commenters argued that the analysis did not adequately consider the proposal's costs and benefits in the context of related rulemakings, including the aggregate effects of the new regulations on the U.S. economy. The Bureau, however, interprets the consideration required by section 1022(b)(2)(A) to be focused on the potential benefits, costs, and impacts of the particular rule at issue, and to not include those of other pending or potential rulemakings. Moreover, the commenters do not suggest a reliable method for assessing cumulative impacts of multiple rulemakings. The Bureau believes that there are multiple reasonable approaches for conducting the consideration called for by section 1022(b)(2)(A) and that the approach it has taken in this analysis is reasonable and that, particularly in light of the difficulties of reliably estimating certain benefits and costs, it has discretion to decline to undertake additional or different forms of analysis. The Bureau notes that it has coordinated the development of the final rule with its other rulemakings and has, as appropriate, discussed some of the significant interactions of the rulemakings.

[115] In addition, a significant part of the annualized costs is attributable to the minority of institutions that are assumed not to provide copies electronically. Over time, an increasing number of institutions may provide copies electronically. Therefore, this assumption is a conservative one.

to the appraisal copy-on-request regime of § 1002.14. Under the final rule, these transactions would not be subject to § 1002.14 and creditors in these transactions would not otherwise be required to provide copies of appraisals if the transaction is not a higher-priced-mortgage that is a closed-end transaction subject to the requirements of TILA section 129H and its implementing regulations in the 2013 Interagency Appraisals Final Rule.

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

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

C. Impact of the Final Rule on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026 of the Dodd-Frank Act, and the Impact of the Final Rule on Consumers in Rural Areas

For depository institutions with total assets of $10 billion or less, the Bureau estimates that the cost of compliance with the final rule would be $9.3 million. Because of their smaller size, fixed training and reviewing costs are spread over fewer applications and originations, and as a result the proportion of costs due to one-time burdens increases slightly to 3.0 percent of total cost. For each loan these institutions originate, the cost is estimated to be roughly $4.08.[116]

At least one commenter specifically questioned the estimated cost of $1.80 per loan originated in the proposed rule. Specifically, the commenter argued that the language in proposed comment 14(b)(3)–1, ''including written comments and other documents submitted to the creditor in support of the estimate of the property value,'' would require creditors to provide additional documentation that would exceed the estimate of $1.80 per loan originated. As previously discussed, the Bureau has made changes to the list of examples of valuations in the commentary to make clear that the rule does not require a creditor to provide written comments and other documents unless they are attachments or exhibits to an integrated valuation report. Accordingly, the Bureau has addressed the basis for the commenter's concern over a potential for a higher cost. Furthermore, the Bureau has provided updated estimates of the per-loan cost which, as discussed above, include an estimate of the cost of providing copies of non-appraisal valuations.

The Bureau does not expect that the final rule will have a unique impact on consumers in rural areas.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[117] 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.[118] A FRFA is not required for this final regulation because the rule will not have a significant economic impact on a substantial number of small entities.

The final rule amends Regulation B, which implements ECOA, and the official interpretations to the regulation, which interpret and clarify the requirements of Regulation B. The revisions to Regulation B implement an ECOA amendment concerning appraisals and other valuations that was enacted as part of the Dodd-Frank Act. In general, the revisions to Regulation B require creditors to provide free copies of all appraisals and written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. The final rule also requires creditors to notify applicants in writing of the right to receive a copy of each written appraisal at no additional cost.

The empirical approach to calculating the impact of the final regulation on small entities subject to its requirements utilizes the same data and methodology outlined in Part VII above. The analysis that follows focuses on the economic impact of the final rule, relative to a pre-statute baseline, for small depository institutions, credit unions and non-depository IMBs.

The Small Business Administration classifies commercial banks, savings institutions, credit unions, and other depository institutions as small if they have assets less than $175 million, and classifies other real estate credit firms as small if they have less than $7 million in annual revenues.[119] All creditors that extend real estate credit secured by a first lien on a dwelling are affected by the final rule. As shown below, the vast majority of small banks, thrifts, credit unions, and IMBs originate such loans.

The estimates provided here 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 HMDA, the Bureau has matched HMDA data to Call Report data and 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. These projections use Poisson regressions that estimate loan volumes as a function of an institution's total assets, employment, mortgage holdings and geographic presence.

Of the roughly 17,462 depository institutions, credit unions, and IMBs, 12,568 are below the relevant small entity thresholds. Of these, 9,373 are estimated to have originated mortgage loans in 2011. The Bureau has loan counts for credit unions and HMDA-reporting DIs and IMBs.

[116] Note that costs per-loan differ by institution class because the number of loans nd loan officers per-institution differ across institution classes.

[117] 5 U.S.C. 605(b). For purposes of assessing the impacts of the final rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[118] 5 U.S.C. 609.

[119] 13 CFR Ch. 1.

Table 1: Counts and Originations of Creditors by Type

Category	NAICS Code	Total Entities	Small Entities	Entities That Originate Any Mortgage Loans[b]	Small Entities that Originate Any Mortgage Loans
Commercial Banking	522110	6,505	3,601	6,307[a]	3,466[a]
Savings Institutions	522120	930	377	922[a]	373[a]
Credit Unions[c]	522130	7,240	6,296	4,178[a]	3,240[a]
Real Estate Credit[d e]	522292	2,787	2,294	2,787	2,294[a]
Total		17,462	12,568	14,194	9,373

Source: 2011 HMDA, Dec 31, 2011 Bank and Thrift Call Reports, Dec 31, 2011 NCUA Call Reports, Dec 31, 2011 NMLSR Mortgage Call Reports.

[a] For HMDA reporters, loan counts from HMDA 2011. For institutions that are not HMDA reporters, loan counts projected based on Call Report data fields and counts for HMDA reporters.
[b] Entities are characterized as originating loans if they make one or more loans.

[c] Does not include cooperativas operating in Puerto Rico. The Bureau has limited data about these institutions or their mortgage activity.

[d] NMLSR Mortgage Call Report (MCR) for 2011. All MCR reporters that originate at least one loan or that have positive loan amounts are considered to be engaged in real estate credit (instead of purely mortgage brokers). For institutions with missing revenue values, the probability that institution was a small entity is estimated based on the count and amount of originations and the count and amount of brokered loans.

[e] Data do not distinguish nonprofit from for-profit organizations, but Real Estate Credit presumptively includes nonprofit organizations.

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

Consistent with the assumptions in the analysis of the previous section, the Bureau believes, based on its outreach prior to the proposal, that currently it is routine business practice for appraisals to be sent to consumers for all first-lien transactions that result in an origination and that copies of appraisals and other valuations conducted for applications that do not result in a loan are not sent to consumers. The Bureau also believes that a second appraisal is typically conducted, and is sent, for any property with a loan size equal to or above $600,000. Further, appraisals are considered to be of inadequate quality 10 percent of the time, necessitating a second appraisal.[120]

Under these assumptions, the total costs for small depository institutions, credit unions, and small IMBs of providing copies of the appraisals and other written valuations and any one-time costs for reviewing the regulation and training employees are estimated to be roughly $4.64 per-loan originated.[121] Across all small entities, the costs of the rule amount to a fraction of a percent of the revenue or profits from origination activity.[122]

Certification

Accordingly, the undersigned certifies that this final regulation will not have a significant economic impact on a substantial number of small entities.

[120] All other assumptions regarding costs are the same as those used in the analysis under Section 1022(b)(2). These include the following assumptions regarding wages based on the Bureau of Labor Statistics Occupation Employment Survey 2011: at depository institutions, loan officer wages are assumed to $31.69 per hour, lawyer wages are $77.31 per hour, and compliance officer wages are $30.41 per hour. At non-depository institutions, loan officer wages are assumed to be $32.16 per hour, lawyer wages are assumed to be $75.83 per hour, and compliance officer wages are $34.66 per hour. These rates are then increased to reflect that wages represent 66.6 percent of an employee's total compensation.

[121] As noted above, costs per-loan differ by institution class because the number of loans and loan officers per-institution differ across institution classes.

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

IX. Paperwork Reduction Act

A. Overview

The Bureau's information collection requirements contained in this final rule, and identified as such, have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (Paperwork Reduction Act or PRA). Further, the PRA (44 U.S.C. 3507(a), (a)(2) and (a)(3)) requires that a Federal agency may not conduct or sponsor a collection of information unless OMB approved the collection under the PRA and the OMB control number obtained is displayed. Finally, notwithstanding any other provision of law, no person is required to comply with, or is subject to any penalty for failure to comply with, a collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

This final rule contains revised information collection requirements that have not been approved by the OMB and, therefore, are not effective until OMB approval is obtained. The unapproved information collection requirements contained in this rule are described below. The Bureau will publish a separate notice in the **Federal Register** announcing the submission of these information collection requirements to OMB as well as OMB's

action on these submissions; including, the OMB control number and expiration date.

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

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

Under the final rule, the Bureau generally accounts for the paperwork burden for the following respondents pursuant to its enforcement/supervisory authority: insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain non-depository institutions. The Bureau and the FTC generally both have enforcement authority over non-depository institutions subject to Regulation B. Accordingly, the Bureau has allocated to itself half of the final rule's estimated burden to non-depository institutions. Other Federal agencies, including the FTC, are responsible for estimating and reporting to OMB the paperwork burden for the institutions for which they have enforcement/supervision authority. They may use the Bureau's burden estimation methodology, but need not do so.

Using the Bureau's burden estimation methodology, the total estimated burden for the roughly 14,200 creditors originate mortgages and therefore are subject to the final rule, including Bureau respondents, would be approximately 519,000 hours of ongoing burden annually and 14,500 hours in one-time burden. Because creditors generally already provide consumers copies of appraisals if a first lien transaction closes, the Bureau assumes that there are no required software or information technology upgrades associated with implementing the rule for providing copies of appraisals in transactions that are consummated or where the account is opened. The Bureau assumes that creditors would make a one-time technology upgrade to incorporate additional documents into this disclosure practice that may not be currently provided to applicants. This estimate also accounts for time to review the rule and for staff training. Under the final rule, creditors will be required to provide applicants with copies of these documents, such as appraisals developed in transactions that are not consummated or where the account is not opened, and non-appraisal valuations developed for first lien transactions (including both the estimated 10 percent of first lien transactions that involve a valuation other than an appraisal, as well as a portion of the other 90 percent of first lien transactions where a valuation is obtained in addition to an appraisal). The Bureau expects that the amount of time required to implement each of the required changes for a given institution may vary based on the size, complexity, and practices of the respondent.

B. Information Collection Requirements

The information collection requirements in the final rule consist of the provision of copies of appraisals and other written valuations to applicants. Under the final rule, copies of all appraisals and other written valuations developed in connection with a creditor's decision on an applicant for a loan to be secured by a first lien on a dwelling must be provided to the applicant free of charge promptly upon completion, or three business days before consummation or account opening, whichever is earlier, and these copies may be delivered physically or electronically. Currently, Regulation B requires that free copies of appraisals be provided upon request. From its outreach prior to the proposal, the Bureau learned that it is customary and in many cases already required by GSEs for creditors to send applicants a copy of all appraisals if the first lien loan closes, but firms differed in their practices of sending out copies of appraisals for such loans that did not close.[123] The outreach prior to the proposal stage also did not establish that creditors have a consistent practice of providing copies of valuations other than appraisals in first lien transactions. Therefore, the Bureau considers the incremental paperwork burden associated with the final rule's information collection requirements to be the cost of reviewing the rule, staff training, the one-time technology upgrade described above, sending out copies of non-appraisal valuations to applicants for first lien transactions, and sending out copies of appraisals and other written valuations to consumers who apply for loans that do not close but that reach the stage where an appraisal or other valuation is conducted. In some transactions in which more than one appraisal or other written valuation is conducted—a scenario that commenters did not state was frequent, but which nonetheless is assumed to be possible—separate transmissions to the applicant would be necessary, but only if they cannot both be provided promptly upon their respective completion in the same package.

While the final rule requires the creditor to provide a short written disclosure concerning the appraisal process within three business days of application, this disclosure may be classified as a warning label supplied by the Federal government. Accordingly, this requirement is not ''collection of information'' for purposes of the PRA. 5 CFR 1320.3(c)(2).

C. Summary of Estimated Burden for Bureau Respondents

The total annualized ongoing burden for the depository institutions and credit unions with more than $10 billion in assets (including their depository affiliates) that originate mortgage loans is estimated to be roughly 225,400 hours and the annualized ongoing burden for all non-depository institutions that originate mortgage loans is estimated to be approximately 171,300 hours. These respondents are estimated to incur an additional 5,200 hours and 4,000 hours in one-time burden, respectively. For purposes of the PRA analysis under this final rule, the Bureau would assume roughly 85,700 ongoing burden hours and 2,000 one-time hours for the non-depository institutions.[124]

The Bureau has a continuing interest in the public's opinions 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 Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC, 20552, or by the internet to *CFPB_Public_PRA@cfpb.gov.*

[123] Outreach conversations prior to the proposal included a large bank, a trade group of smaller depository institutions, and an IMB.

[124] There may be a small additional burden for privately insured credit unions estimated to originate mortgages. The Bureau will assume half of the burden on these institutions.

List of Subjects in 12 CFR Part 1002

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

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation B, 12 CFR part 1002, as set forth below:

PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

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

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

■ 2. Section 1002.4 is amended by revising paragraph (d)(2) to read as follows:

§ 1002.4 General rules.

* * * * *

(d) * * *

(2) *Disclosures in electronic form.* The disclosures required by this part that are required to be given in writing may be provided to the applicant in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Where the disclosures under §§ 1002.5(b)(1), 1002.5(b)(2), 1002.5(d)(1), 1002.5(d)(2), 1002.13, and 1002.14(a)(2) accompany an application accessed by the applicant in electronic form, these disclosures may be provided to the applicant in electronic form on or with the application form, without regard to the consumer consent or other provisions of the E-Sign Act.

■ 3. Section 1002.14 is revised to read as follows:

§ 1002.14 Rules on providing appraisals and other valuations.

(a) *Providing appraisals and other valuations.* (1) *In general.* A creditor shall provide an applicant a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling. A creditor shall provide a copy of each such appraisal or other written valuation promptly upon completion, or three business days prior to consummation of the transaction (for closed-end credit) or account opening (for open-end credit), whichever is earlier. An applicant may waive the timing requirement in this paragraph (a)(1) and agree to receive any copy at or before consummation or account opening, except where otherwise prohibited by law. Any such waiver must be obtained at least three business days prior to consummation or account opening, unless the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. If the applicant provides a waiver and the transaction is not consummated or the account is not opened, the creditor must provide these copies no later than 30 days after the creditor determines consummation will not occur or the account will not be opened.

(2) *Disclosure.* For applications subject to paragraph (a)(1) of this section, a creditor shall mail or deliver to an applicant, not later than the third business day after the creditor receives an application for credit that is to be secured by a first lien on a dwelling, a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application. In the case of an application for credit that is not to be secured by a first lien on a dwelling at the time of application, if the creditor later determines the credit will be secured by a first lien on a dwelling, the creditor shall mail or deliver the same notice in writing not later than the third business day after the creditor determines that the loan is to be secured by a first lien on a dwelling.

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

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

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

(b) *Definitions.* For purposes of paragraph (a) of this section:

(1) *Consummation.* The term ''consummation'' means the time that a consumer becomes contractually obligated on a closed-end credit transaction.

(2) *Dwelling.* The term ''dwelling'' means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

(3) *Valuation.* The term ''valuation'' means any estimate of the value of a dwelling developed in connection with an application for credit.

■ 4. In Appendix C to Part 1002:

■ A. Paragraph 1 is revised.

■ B. Sample Form C–9 is revised.

The revisions read as follows:

Appendix C to Part 1002—Sample Notification Forms

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

* * * * *

Form C–9—Sample Disclosure of Right To Receive a Copy of Appraisals

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

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

* * * * *

■ 5. In Supplement I to Part 1002—Official Interpretations:

■ A. Under *Section 1002.14,* the heading is revised.

■ B. Newly designated *Section 1002.14* is revised.

■ C. Under *Appendix C—Sample Notification Forms,* paragraph 1 is revised.

The revisions read as follows:

Supplement I To Part 1002—Official Interpretations

* * * * *

Section 1002.14—Rules on Providing Appraisals and Valuations

14(a) Providing appraisals and other valuations.

1. *Multiple applicants.* If there is more than one applicant, the written disclosure about written appraisals, and the copies of appraisals and other written valuations, need only be given to one applicant. However, these materials must be given to the primary applicant where one is readily apparent. Similarly, if there is more than one applicant for credit in the transaction, one applicant may provide a waiver under § 1002.14(a)(1), but it must be the primary applicant where one is readily apparent.

14(a)(1) In general.

1. *Coverage.* Section 1002.14 covers applications for credit to be secured by a first lien on a dwelling, as that term is defined in § 1002.14(b)(2), whether the credit is for a business purpose (for example, a loan to start a business) or a consumer purpose (for example, a loan to purchase a home).

2. *Renewals.* Section 1002.14(a)(1) applies when an applicant requests the renewal of an existing extension of credit and the creditor develops a new appraisal or other written valuation. Section 1002.14(a)(1) does not apply to the extent a creditor uses the appraisals and other written valuations that were previously developed in connection with the prior extension of credit to evaluate the renewal request.

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

4. *Timing.* Section 1002.14(a)(1) requires that the creditor ''provide'' copies of appraisals and other written valuations to the applicant ''promptly upon completion,'' or no later than three business days before consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier.

i. For purposes of this timing requirement, ''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, whichever is earlier. Delivery to or actual receipt by the applicant by electronic means must comply with the E-Sign Act, as provided for in § 1002.14(a)(5).

ii. The application and meaning of the ''promptly upon completion'' standard depends upon the facts and circumstances, including but not limited to when the creditor receives the appraisal or other written valuation, and the extent of any review or revision after the creditor receives it.

iii. ''Completion'' occurs when the last version is received by the creditor, or when the creditor has reviewed and accepted the appraisal or other written valuation to include any changes or corrections required, whichever is later. *See also* comment 14(a)(1)–7.

iv. In a transaction that is being consummated (for closed-end credit) or in which the account is being opened (for open-end credit), if an appraisal or other written valuation has been developed but is not yet complete, the deadline for providing a copy of three business days before consummation or account opening still applies, unless the applicant waived that deadline as provided under § 1002.14(a)(1), in which case the copy must be provided at or before consummation or account opening.

v. Even if the transaction will not be consummated (for closed-end credit) or the account will not be opened (for open-end credit), the copy must be provided ''promptly upon completion'' as provided for in § 1002.14(a)(1), unless the applicant has waived that deadline as provided under § 1002.14(a)(1), in which case as provided for in § 1002.14(a)(1) the copy must be provided to the applicant no later than 30 days after the creditor determines the transaction will not be consummated or the account will not be opened.

5. *Promptly upon completion–examples.* Examples in which the ''promptly upon completion'' standard would be satisfied include, but are not limited to, those in subparagraphs i, ii, and iii below. Examples in which the ''promptly upon completion'' standard would not be satisfied include, but are not limited to, those in subparagraphs iv and v below.

i. *Sending a copy of an appraisal within a week of completion with sufficient time before consummation (or account opening for open-end credit).* On day 15 after receipt of the application, the creditor's underwriting department reviews an appraisal and determines it is acceptable. One week later, the creditor sends a copy of the appraisal to the applicant. The applicant actually receives the copy more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the appraisal promptly upon completion.

ii. *Sending a copy of a revised appraisal within a week after completion and with sufficient time before consummation (or account opening for open-end credit).* An appraisal is being revised, and the creditor does not receive the revised appraisal until day 45 after the application, when the creditor immediately determines the revised appraisal is acceptable. A week later, the creditor sends a copy of the revised appraisal to the applicant, and does not send a copy of the initial appraisal to the applicant. The applicant actually receives the copy of the revised appraisal three business days before the date of consummation (or account opening). The creditor has provided the appraisal copy promptly upon completion.

iii. *Sending a copy of an AVM report within a week after its receipt and with sufficient time before consummation (or account opening for open-end credit).* The creditor receives an automated valuation model (AVM) report on day 5 after receipt of the application and treats the AVM report as complete when it is received. On day 12 after receipt of the application, the creditor sends the applicant a copy of the valuation. The applicant actually receives the valuation more than three business days before the date of consummation (or account opening). The creditor has provided the copy of the AVM report promptly upon completion.

iv. *Delay in sending an appraisal.* On day 12 after receipt of the application, the creditor's underwriting department reviews an appraisal and determines it is acceptable. Although the creditor has determined the appraisal is complete, the creditor waits to provide a copy to the applicant until day 42, when the creditor schedules the consummation (or account opening) to occur on day 50. The creditor has not provided the copy of the appraisal promptly upon completion.

v. *Delay in sending an AVM report while waiting for completion of a second valuation.* The creditor receives an AVM report on day 5 after application and completes its review of the AVM report the day it is received. The creditor also has ordered an appraisal, but the initial version of the appraisal received by the creditor is found to be deficient and is sent for review. The creditor waits 30 days to provide a copy of the completed AVM report, until the appraisal is completed on day 35. The creditor then provides the applicant with copies of the AVM report and the revised appraisal. While the appraisal report was provided promptly upon completion, the AVM report was not.

6. *Waiver.* Section 1002.14(a)(1) permits the applicant to waive the timing requirement if the creditor provides the copies at or before consummation or account opening, except where otherwise prohibited by law. Except where otherwise prohibited by law, an applicant's waiver is effective under § 1002.14(a)(1) in either of the following two situations:

i. If, no later than three business days prior to consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule; or

ii. If, within three business days of consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule and the waiver pertains solely to the applicant's receipt of a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation provided to the applicant three or more business days prior to consummation or account opening. For purpose of this second type of waiver, revisions will only be considered to be clerical in nature if they have no impact on the estimated value, and have no impact on the calculation or methodology used to derive the estimate. In addition, under § 1002.14(a)(1) the applicant still must receive the copy of the revision at or prior to consummation or account opening.

7. *Multiple versions of appraisals or valuations.* For purposes of § 1002.14(a)(1), the reference to ''all'' appraisals and other written valuations does not refer to all versions of the same appraisal or other

valuation. If a creditor has received multiple versions of an appraisal or other written valuation, the creditor is required to provide only a copy of the latest version received. If, however, a creditor already has provided a copy of one version of an appraisal or other written valuation to an applicant, and the creditor later receives a revision of that appraisal or other written valuation, then the creditor also must provide the applicant with a copy of the revision to comply with § 1002.14(a)(1). If a creditor receives only one version of an appraisal or other valuation that is developed in connection with the applicant's application, then that version must be provided to the applicant to comply with § 1002.14(a)(1). *See also* comment 14(a)(1)–4 above.

14(a)(2) Disclosure.

1. *Appraisal independence requirements not affected.* Nothing in the text of the disclosure required by § 1002.14(a)(2) 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 appraisers or the use of applicant-ordered appraisals by creditors.

14(a)(3) Reimbursement.

1. *Photocopy, postage, or other costs.* Creditors may not charge for photocopy, postage, or other costs incurred in providing a copy of an appraisal or other written valuation in accordance with section 14(a)(1).

2. *Reasonable fee for reimbursement.* Section 1002.14(a)(3) does not prohibit a creditor from imposing a reasonable fee to reimburse the creditor's costs of the appraisal or other written valuation, so long as the fee is not increased to cover the costs of providing copies of such appraisals or other written valuations under § 1002.14(a)(1). A creditor's cost may include an administration fee charged to the creditor by an appraisal management company as defined in 12 U.S.C. 3350(11). Section 1002.14(a)(3) does not, however, legally obligate the applicant to pay such fees. Further, creditors may not impose fees for reimbursement of the costs of an appraisal or other valuation where otherwise prohibited by law. For instance, a creditor may not charge a consumer a fee for the performance of a second appraisal if the second appraisal is required under 15 U.S.C. 1639h(b)(2) and 12 CFR 1026.35(c).

14(b) Definitions.

14(b)(1) Consummation.

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

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

14(b)(2) Dwelling.

1. *''Motor vehicles'' not covered.* The requirements of § 1002.14 do not apply to ''motor vehicles'' as defined by 12 U.S.C. 5519(f)(1).

14(b)(3) Valuation.

1. *Valuations—examples.* Examples of valuations include but are not limited to:

i. A report prepared by an appraiser (whether or not licensed or certified) including the appraiser's estimate or opinion of the property's value.

ii. A document prepared by the creditor's staff that assigns value to the property.

iii. A report approved by a government-sponsored enterprise for describing to the applicant the estimate of the property's value developed pursuant to the proprietary methodology or mechanism of the government-sponsored enterprise.

iv. A report generated by use of an automated valuation model to estimate the property's value.

v. A broker price opinion prepared by a real estate broker, agent, or sales person to estimate the property's value.

2. *Attachments and exhibits.* The term ''valuation'' includes any attachments and exhibits that are an integrated part of the valuation.

3. *Other documentation.* Not all documents that discuss or restate a valuation of an applicant's property constitute a ''valuation'' for purposes of § 1002.14(b)(3). Examples of documents that discuss the valuation of the applicant's property or may reflect its value but nonetheless are not ''valuations'' include but are not limited to:

i. Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or written valuation being provided to the applicant.

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

iii. Publicly-available lists of valuations (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges).

iv. Manufacturers' invoices for manufactured homes.

v. Reports reflecting property inspections that do not provide an estimate or opinion of the value of the property and are not used to develop an estimate or opinion of the value of the property.

* * * * *

Appendix C—Sample Notification Forms

1. *Form C–9.* If not otherwise provided under other applicable disclosure requirements, creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which a copy of the appraisal or other written valuation should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or other valuation.

Dated: January 18, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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