Consumer Financial Protection Bureau

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Factsheet: Transaction coverage under the ECOA Valuations Rule

This factsheet[1] explains the coverage requirements under the Equal Credit Opportunity Act (ECOA) Valuations Rule (Rule) and addresses frequently asked questions the Bureau has received since it went into effect. In 2013, the Bureau published the Rule, which amended Regulation B to require creditors to provide applicants free copies of *all* appraisals and other written valuations developed in connection with an application secured by a first lien on a dwelling and to notify applicants of their right to receive copies of appraisals within three business days.

The Rule guarantees that applicants receive important information about the value of their homes in a mortgage transaction and generally requires creditors to:

[1] This is a Compliance Aid issued by the CFPB. The Bureau published a Policy Statement on Compliance Aids, *available at* https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/, that explains the Bureau's approach to Compliance Aids.

- provide applicants with copies of *all* appraisals and other written valuations developed in connection with an application for credit secured by a first lien on a dwelling. 12 CFR § 1002.14(a)(1); and
- notify applicants in writing of their right to receive copies of all appraisals and written valuations developed in connection with their application within three business days of receipt of an application. 12 CFR § 1002.14(a)(2).

To determine whether a transaction is covered under the Rule, there are three questions that the creditor must answer in the affirmative:

1. Whether there is an application for credit?
2. Whether the application for credit is secured by a first lien on a dwelling?
3. Whether an appraisal or written valuation is prepared in connection with the application?

This factsheet addresses all three components of coverage and discusses common questions received regarding each of these three criteria.

1. Is there an application for credit?

The first step in determining whether a transaction is covered under the Rule is to ascertain whether there is an "application for credit." 12 CFR § 1002.14(a)(1). To determine if there is an "application for credit," the creditor must first determine whether there is an "application."

An "application" is defined as an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. 12 CFR § 1002.2(f). The definition of an "application" under Regulation B is dependent, in part, on the definition of "extension of credit" and "creditor."

An "extension of credit" is the granting of credit in any form. 12 CFR § 1002.2(q). "Credit" is the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefore. 12 CFR § 1002.2(j).

A "creditor" is a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. 12 CFR § 1002.2(i).

Thus, if an entity grants "extensions of credit," meets the definition of "creditor," and received an oral or written request (made in accordance with its policies and procedures) for an extension of credit, then there is an application for credit under Regulation B. If a creditor provides an extension of credit, it should proceed to Sections 2 and 3 to determine if it is covered by the Rule.

ARE LOSS MITIGATION PROGRAM APPLICATIONS "APPLICATIONS FOR CREDIT?"

Loss mitigation programs such as loan modifications may be covered under the Rule in certain circumstances.

Because there are many types of loss mitigation programs, it is important to evaluate each program and each transaction in order to determine whether an application for an extension of credit exists. To ascertain coverage under the Rule, the party that receives the application for credit must return to the definitions highlighted above to answer the related questions, i.e., i) is there an "application" for that credit; ii) is it an "extension of credit" and does the loss mitigation transaction involve "credit"; and iii) is the party a "creditor" under Regulation B?

If the response is affirmative for all three of these questions, the transaction is an application for credit and the creditor should review Sections 2 and 3 below to ascertain coverage by the Rule.

ARE APPLICATIONS FOR BUSINESS PURPOSE CREDIT "APPLICATIONS FOR CREDIT?"

Another common question we receive is whether business purpose credit is covered under the Rule. Comment 1002.14(a)(1)-1 explains that if a credit transaction is secured by a first lien on a

dwelling it will be covered under the Rule, even if the credit is for a business purpose. In addition, "credit" as defined in ECOA and Regulation B covers both consumer and business purpose credit.

If the application is a business purpose application that is secured by a first lien on a dwelling, it is an application for credit and the creditor should continue reviewing Sections 2 and 3 below for determination of coverage by the Rule.

ARE DENIED OR WITHDRAWN APPLICATIONS FOR CREDIT COVERED UNDER THE RULE?

Yes. There are no exceptions for withdrawn or denied applications. The requirements of the Rule apply regardless of whether an application is approved, withdrawn, denied, or incomplete.

Thus, assuming an application is withdrawn or denied, and the requirements in Sections 2 and 3 below are met, the creditor is required to provide the disclosure and the appraisal or other written valuation to the applicant, if one was prepared in connection with the application. 12 CFR § 1002.14(a)(4). If no appraisal or other written valuation was developed in connection with the application, there is no valuation to provide to the applicant and the creditor is not required to develop one.

Additionally, assuming the requirements in Sections 2 and 3 below are met, the creditor is also required to provide the applicant written notice of the right to receive a copy of all written appraisals developed in connection with the credit application within three business days of receipt, even when the application is denied or withdrawn. If a creditor denies, or an applicant withdraws, an application for credit subject to § 1002.14(a)(1) within three business days of receipt of the application, the creditor is still required to provide in writing a notice of the applicant's right to receive a copy of all written appraisals prepared in connection with the application. The creditor may choose to modify the notice of right form to make clear to the applicant that the credit application has been denied.

2. Is the application for credit secured by a first lien on a dwelling?

After establishing that an application for credit exists, the second prong of the test is to ascertain that the application for credit is secured by a first lien on a dwelling. An application for credit is secured by a first lien on a dwelling if it is: (1) secured by a dwelling and (2) is a first lien. For purposes of the Rule, a "dwelling" is a residential structure that contains one to four units regardless of whether the structure is attached to real property. 12 CFR § 1002.14(b)(2). It includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

There are two factors that determine whether a structure is a dwelling under the Rule. The structure: (1) must be residential and (2) contain one-to-four units. When both factors are present, a dwelling exists.

Example of structures that are dwellings:

- A parcel of land with multiple residential structures totaling 20 units but with two-units in the same structure securing the loan.
- A 4-unit residential structure with three units securing the loan.

Examples of structures that are not dwellings include:

- Multiple structures, such as an inventory of individual housing structures, pledged as collateral.
- A building with more than four residential units securing a loan. For example, a 10-unit residential structure with eight units securing the loan.
- Land without any type of structure on it.
- Motor vehicles as defined in 12 USC § 5519(f)(1), including recreational vehicle trailers, motor homes, campers, and recreational boats.
- A three-unit commercial property.

If the definition of a dwelling is not met, the transaction is not covered by the Rule. For example, assume three four-unit buildings operated as a twelve-unit apartment complex is used as security for a loan. Because the twelve-unit apartment complex exceeds the one-to-four-unit requirement for a dwelling, this transaction is not covered under the Rule.

On the other hand, if one of the buildings—containing four units—is pledged as security for the loan, the definition of a dwelling has been met and the transaction is covered under the Rule (assuming it also meets the prongs in Sections 1 and Section 3).

Furthermore, the definition of a dwelling only requires that the unit be a residential structure. Because there is no requirement that the dwelling be owner-occupied, the Rule applies to commercial transactions involving one to four unit residential structures, including rental homes and other investment properties.

If the creditor determines that the application for credit is secured by (1) a dwelling and (2) is a first lien, it should proceed to review Section 3.

ARE MIXED-USE PROPERTIES "DWELLINGS?"

Structures that are not solely residential may satisfy the definition of a dwelling under the Rule (for example, structures that have commercial or retail space attached to or within a residential structure—often referred to as "mixed-use" properties). If the residential portion of a mixed-use property with one-to-four units secures the loan, the definition of a dwelling is satisfied. For example, a one-to-four-unit property that includes both a residential and commercial structure would satisfy the definition of a dwelling if:

- Only the residential portion of the property is pledged as collateral for the loan; or
- The entire property (both the commercial and residential structure) is pledged as collateral.

If the commercial structure alone (*e.g.* retail space) is pledged as collateral, it would not satisfy the definition of a dwelling and would therefore not be a covered transaction under the Rule.

3. Is the appraisal or written valuation prepared in connection with the application?

Finally, the creditor should consider whether an appraisal or other written "valuation" was prepared in connection with the application for credit. A creditor must determine 1) whether there is a "valuation" and 2) whether it was made in connection with the application.

A "valuation" is any estimate of the value of a dwelling developed in connection with an application for credit. 12 CFR § 1002.14(b)(3). A creditor must determine whether a report or document meets this definition and, if it does, the creditor must comply with the requirements of the Rule. Comments 14(b)(3)-1 and -3 provide a non-exhaustive list of examples of what are and are not valuations. In this factsheet, we provide further clarity on two of those examples.

- Comment 14(b)(3)-1.ii states that a document prepared by a creditor's staff that assigns value to a property is a valuation. Thus, any internal creditor valuation must be disclosed to the applicant regardless of whether it is prepared by a third party.

- Comment 14(b)(3)-3.iii provides that publicly-available lists of valuations (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges) are not valuations. Additionally, not all documents that simply restate or discuss a valuation of an applicant's property are appraisals or written valuations as described in § 1002.14(a)(1).

WHEN ARE PUBLICLY AVAILABLE LISTS "VALUATIONS?"

Although publicly available lists themselves are not valuations, it may meet the definition of an appraisal or other written valuation under 1002.14(b)(3) if a creditor conducts some analysis that ascribes a value to a property, and this valuation is prepared in connection with an application for credit. For example, if a creditor's staff conducts an internal review or analysis that combines publicly available lists to generate an estimate of the value of the property, a copy of such valuation must be provided to the applicant. Comment 14(b)(3)-1.ii.

WHEN ARE VALUATIONS "DEVELOPED IN CONNECTION WITH THE APPLICATION?"

A valuation is developed in connection with the application if it was prepared as part of the application process. For example, when dealing with loan renewals—where an applicant requests that an existing extension of credit be renewed—if an appraisal or other written valuation is prepared in connection with the credit transaction, the valuation is "developed in connection with the application." Assuming the prongs in Section 1 and 2 are also met, the applicant has a right to receive the disclosure and copies of the appraisal and other written valuation in accordance with the Rule.

However, if an appraisal was prepared for the prior extension of credit—i.e., the original extension of credit rather than the renewal—and this "old" appraisal is used for the loan renewal application, then the valuation is not developed in connection with the application and the Rule is not triggered. Comment 14(a)(1)-2.

If the valuation was not "used" by the creditor—for example, if the valuation did not factor into a construction or bridge loan transaction—but was developed in connection with the application for credit, the creditor may inform the applicant that the valuation was not used but would still be required to provide the valuation to the applicant. If no appraisal or written valuation is developed in connection with the credit application, the creditor is not required to develop an appraisal or other written valuation for the purpose of satisfying the requirements of § 1002.14.

Conclusion

The Rule requires creditors to provide an appraisal to an applicant if all three coverage components are present. These components are: 1) an application for credit, 2) an application that is secured by a first lien on a dwelling and 3) a valuation made in connection with the application. If a creditor determines that all three prongs are present, then the application is covered by the Rule, and the disclosure and valuation requirements apply.