

SUMMARY OF PUBLIC INPUT¹

Appraisals for Higher-Risk Mortgage Loans – RIN 2590-AA58 - (12 CFR Part 1222)

Staff of the agencies² conducted a series of outreach meetings in January and February of 2012 summarized below. A diverse group of individuals representing a wide range of views participated in the meetings. *See* List of Participants, below. During these meetings, participants were invited to share their experiences, concerns, and suggestions regarding all aspects of the Dodd-Frank Act Higher-risk mortgages provisions discussed.

I. Current Market and Business Practices

A. Current market for “higher-priced” mortgage loans

Several creditor participants stated that little or no market for higher-priced mortgage loans currently exists, except in rural lending, where the higher price is due to certain unique characteristics of rural loans.

B. Past and current methods used by creditors to assess the value of collateral underlying mortgage loans

Appraiser participants stated that, in the height of the mortgage market, exterior-only inspections were common, especially for second-lien mortgages. In the aftermath of the subprime meltdown, however, creditors stopped allowing less rigorous valuation types for subprime loans (*e.g.*, drive-bys, “desktop” valuations). Some small creditor participants estimated that interior inspections currently occur in 95 percent of consumer mortgage valuations. An appraiser participant estimated that for purchase-money residential mortgage loans, 90 to 95 percent of the loans currently involve an interior inspection of the property; some appraisal management company (AMC) participants estimated interior inspections happened in “100%” of valuations of these types of loans.

One large creditor participant noted that the appraisal guidelines of Fannie Mae, Freddie Mac, the Veterans Administration, and Federal Housing Administration (FHA) typically require interior inspections for transactions secured by a principal dwelling. A large creditor participant stated that creditors tend to perform the type of valuation required by the most stringent regulatory requirement. This assures compliance if the loan unexpectedly becomes a more risky product during the origination process.

¹ The Summary of Public Input, *i.e.*, Sections I and II, and the List of Participants were prepared by staff at the Board of Governors for the Federal Reserve.

² The term “agencies” refers to the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Agency, and the Consumer Financial Protection Bureau.

Some small creditor participants stated that they may not order full appraisals for transactions with borrowers having the strongest credit and lowest LTVs. Several creditor participants stated that creditors are still less likely to conduct physical, interior property visits for second-lien mortgage transactions than for first-lien mortgage transactions. They stated that if they do not conduct an interior inspection, they generally rely on tax assessment values or AVMs as a basis for valuation.

- Current valuation methods for manufactured housing

Participants representing the manufactured housing industry stated that, for new manufactured homes, the value for underwriting is based primarily on the sales price listed on the manufactured home wholesale invoice. This invoice details the cost of the home at the point of manufacture. Proprietary allowances and calculations are also accounted for to arrive at a “maximum sales price.” The manufacturer certifies the authenticity of the invoice and the accuracy of the price paid by the retailer.

Participants representing the manufactured housing industry indicated that a used manufactured home’s value is most commonly based on the price guides published by the National Automobile Dealers Association (NADA). Certain variations exist depending on a number of factors, such as whether the used home is staying in its present location or being moved.

A manufactured housing industry participant noted that the FHA manufactured home lending guides for Title I and Title II manufactured home FHA insurance programs recognize that traditional appraisal methodology is generally not appropriate for manufactured home transactions. Participants stated that the Department of Housing and Urban Development (HUD) has accepted the industry practices of relying on the manufacturer’s invoice and NADA valuation guides as preferred methods for defining a manufactured home’s value.

C. Current practices of creditors regarding providing copies of appraisals and other valuations to consumers

The Equal Credit Opportunity Act (ECOA) and Regulation B have long required creditors to provide a copy of the appraisal report to the consumer.³ To comply with this requirement, some creditor participants stated that they routinely provide consumers with a copy of the appraisal, either as soon as practicable during the origination process or three days before closing. One creditor participant stated that his institution frequently uses the provision of ECOA that allows consumers to waive their right to receive a copy of the appraisal report.⁴

II. Statutory Requirements for Higher-Risk Mortgages

³ See 15 U.S.C. 1691e; 12 CFR 1002.14.

⁴ See 15 U.S.C. 1691e(2). See also, 12 CFR 1002.14(a)(2).

This section summarizes the comments of outreach participants on various aspects of the statutory appraisal requirements for “higher-risk mortgages.”

A. Definition of “higher-risk mortgage”

The definition of “higher-risk mortgage” is based on rate thresholds set by the statute. The statute expressly exempts any “qualified mortgage” and any “reverse mortgage that is a qualified mortgage.” Outreach participant discussion centered on possible exemptions from the definition. *See* TILA section 129H(f), 15 U.S.C. 1631(f).

- “Reverse mortgage that is a qualified mortgage”

Reverse mortgage industry participants suggested exemptions for reverse mortgages, even though, according to participants, reverse mortgage creditors for both HUD-insured Home Equity Conversion Mortgages (HECMs) and proprietary reverse mortgages already require interior inspections for appraisals conducted for reverse mortgage loans. They expressed concern that regulation under TILA would subject them to liability for mere technical errors in this process.

Reverse mortgage participants provided background on the nature of reverse mortgages and discussed calculation methods for the annual percentage rate (APR). They also indicated a lack of comprehensive reverse mortgage rate data for establishing an average prime offer rate (APOR) for reverse mortgages. Participants also discussed whether and how the term “reverse mortgage that is a qualified mortgage” should be defined.

One creditor participant expressed the view that reverse mortgage loans should not be exempt because, in his view, consumer protections afforded by the higher-risk appraisal rules should be available to consumers of all types of home mortgage transactions.

- Manufactured home loans

Participants representing the manufactured housing industry suggested an exemption for manufactured housing loans because they are typically not sold into the secondary market, involve unique collateral valuation methods, and are usually low-dollar transactions, so the costs of regulation would be significant in relation to the price of manufactured homes. They indicated that “100 percent” of manufactured housing financing transactions would meet the statutory rate thresholds and be subject to the higher-risk mortgage rules. However, they believed that manufactured home transactions would not be able to meet the definition of a “qualified mortgage,” so they would not be assured of an exemption from the rules unless the Agencies used exemption authority to exempt them by regulation.

- Construction and “bridge” loans

A creditor participant suggested exemptions for construction loans and “bridge” loans, consistent with exemptions from the definition of “higher-priced mortgage loan” under 12 CFR 1026.35(a). One creditor participant, however, believed that construction loans should not be exempt because he believed that consumer protections afforded by the higher-risk appraisal rules should be available to consumers of all types of home mortgage transactions.

- Small loans

Some small creditor participants suggested exemptions for low dollar value loans (*e.g.*, no more than \$80,000 to \$100,000), which they believe are not truly high risk.

- Portfolio loans

Some participants suggested exemptions for loans to be held in the creditor’s portfolio, because the creditors are retaining the credit risk.

- Loans in rural areas

A creditor participant suggested exemptions for rural loans and loans in other areas where access to appraisers might be limited. Another creditor participant believed that rural transactions should not be exempt from the general requirement to obtain an interior, USPAP-compliant appraisal, because creditors are already obtaining these types of appraisals despite purported challenges in finding qualified appraisers in those markets.

B. Interior Inspection

One major requirement of the statute is that an appraisal conducted for a higher-risk mortgage must include a physical inspection of the interior of the property securing the mortgage. *See* TILA section 129H(b)(1), 15 U.S.C. 1631(b)(1).

Regarding this requirement, appraiser participants stated that, in the subprime market, an interior inspection requirement would not change practices of creditors and appraisers materially, if at all, because creditors are already requiring interior inspections on properties securing these loans. One appraiser participant argued that an interior inspection is just as important, if not more so, for a second-lien home-equity loan as for a purchase-money mortgage, because the consumer’s and creditor’s positions are riskier. Another appraiser participant referenced a study in which purportedly 90 percent of exterior-only appraisals reviewed reflected discrepancies with the actual property characteristics and condition. The purported reason was that the county records on which the exterior-only inspections were based were not up to date or were otherwise inaccurate.

Some consumer advocates questioned whether the interior inspection requirement furthers the goal of preventing fraud, because rogue appraisers and other participants in the

transaction could still collude to fabricate the appraisal. They emphasized instead that creditors should have stronger obligations to review appraisals and oversee the appraisal process.

C. Licensed or Certified Appraiser Performing a USPAP-compliant Appraisal

The statute also requires that any appraisal for a higher-risk mortgage transaction be conducted by a “certified or licensed appraiser.” *See* TILA section 129H(b)(3), 15 U.S.C. 1631(b)(3). Under the statute, a person can qualify as a certified or licensed appraiser only if the person is licensed or certified under state law and performs the appraisal in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. TILA section 129H(b)(3)(B), 15 U.S.C. 1631(b)(3)(B).

Some appraiser participants stated that this requirement would have no impact on appraisers, because they are all state licensed or certified and because virtually all state licensed or certified appraisers are aware of USPAP criteria for physical, interior property inspections. However, appraiser participants were not certain whether AMCs always use a state licensed or certified appraiser. Several state regulator participants noted that reciprocal licensing or certification is acceptable between and among some states.

- USPAP-compliant appraisals and manufactured housing

Participants representing the manufactured housing industry stated that traditional, real estate-type, USPAP-compliant appraisals are not appropriate or feasible for the majority of manufactured home financing transactions. They stated that, at the time a manufactured home is financed, the site of the home is often unknown and that the loan closes before the home is sited. A manufactured housing industry participant estimated that 75% of manufactured home finance transactions are for the home only, and the land on which a manufactured home sits is often leased. The participant stated that, for a USPAP-compliant appraisal, the site is critical information for determining home value. Some participants representing the manufactured housing industry noted difficulties in determining permissible comparables for appraising a manufactured home finance transaction. Moreover, in new manufactured home transactions, the loan typically closes before the home is complete.

Participants representing the manufactured housing industry stated that even where USPAP-compliant appraisals are technically feasible, these appraisals can take two to five times as much work to complete as a traditional site-built home appraisal, because the real estate is frequently in rural areas where comparables are hard to find.

D. Second Appraisal on Flipped Property

The statute also requires the creditor to obtain two appraisals if a higher-risk mortgage is financing the purchase of a home that the seller purchased within the past 180 days for a lower price. *See* TILA section 129H(b)(2)(A), 15 U.S.C. 1631(b)(2)(A). The second appraisal must

include an analysis of the difference in sales prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

- Suggested price increase triggering second appraisal requirement

Many participants suggested that the second appraisal requirement should be triggered only by a sales price increase of some threshold amount. Suggestions for thresholds included a 10, 15, 20, 25, and 30 percent increase in sales price. One participant suggested that the second appraisal requirement should be triggered only on finding that the increase in price was not reasonable (*e.g.*, not supported by documentation of improvements). Another participant suggested generally following the FHA rules for requiring second appraisals in potential flipping situations. One consumer advocate suggested a flat dollar amount increase of \$1,000 as an appropriate trigger.

- Additional appraisal – in general

Regarding this requirement, some participants argued that different approaches would better detect fraudulent flipping than the requirement to obtain a second appraisal. A consumer advocate believed that an analysis of the price difference between the first and second transactions would be unnecessary if existing appraisal review requirements—such as interagency guidance, Fannie/Freddie guidelines, and USPAP— were enforced. One state regulator thought that requiring a robust review of the first appraisal would be more useful and more cost-effective. Some participants questioned whether 180 days was appropriate timing.

A number of participants believed that the impact of the provision would be minimal. State regulator participants, for example, stated that compliance costs would be minimal because, in their experience, property flipping does not frequently occur at the present time. Reverse mortgage participants indicated that, to their knowledge, under the HECM-for-purchase program, fewer than 5,000 purchase-money reverse mortgages are made each year. Some of these participants nonetheless supported this provision as a fraud prevention tool.

Regarding how to determine whether a higher-risk mortgage is subject to the additional appraisal requirement (based on prior sales data), appraiser and state regulator participants said that the availability and quality of data on prior transactions can vary widely by jurisdiction and marketplace, especially between “disclosure” and “non-disclosure” states. For example, there may be a lag in recording time for prior transaction data in the public records, and in nondisclosure states, previous sale information is not readily available. In addition, in some cases, appraisers have only the realtor or contractor to consult regarding improvements that may account for an increased price, and their information is not objective because they are interested parties. A state regulator participant noted, however, that a bank could obtain the information in nondisclosure states by demanding it from the buyer or seller as a condition of the loan.

Some state regulator participants suggested exempting creditors from the second appraisal requirement when foreclosure sales or short sales precede a higher-risk mortgage

transaction, because the resale value will inevitably be higher. Other participants suggested this exemption where credible proofs of improvements are provided.

- Additional appraisal – special analysis required

Some appraiser participants stated that the requirement to include certain analytical factors in the second appraisal should have no impact on appraisers because USPAP already effectively imposes these requirements for any appraisal. However, other appraiser participants noted that the current USPAP requirements are not well-enforced, and some appraisals might not include the elements required by USPAP.

E. Copy of Appraisal to Borrower

The statute requires a creditor to provide the consumer with a copy of any appraisal performed for a higher-risk mortgage transaction without charge at least three days before closing. *See* TILA Section 129H(c), 15 U.S.C. 1639h(c).

Some creditor participants stated that meeting the requirement to provide copies of appraisals three days before closing would be difficult. In rural areas in particular, they asserted, appraisals might not be completed until over a month after application; all parties, including the consumer, want to close the transaction immediately after an appraisal is complete, rather than wait another three days. Some creditor participants recommended that the Agencies allow consumers the ability to waive the right to receive a copy of the appraisal, so consumers could choose to avoid a closing delay.

However, another creditor stated that the consumer should receive the appraisal a sufficient time in advance of closing for the information to be beneficial. Some consumer advocates suggested that receiving a copy of the appraisal three days prior to consummation may not provide enough time for borrowers in need of mortgage counseling. Consumer advocates also suggested that the Agencies consider how to make it clear that a consumer's receipt of a copy of the appraisal in no way signifies the consumer's agreement that the appraisal was performed properly.

F. Notice to Consumer at Application

The statute also requires creditors to provide a notice to the consumer at application that the appraisal is for the creditor, but that the consumer has a right to order a separate appraisal. *See* TILA section 129H(d), 15 U.S.C. 1639(d).

Reverse mortgage participants requested that the Agencies clarify in the regulation that consumer-ordered appraisals should not be used in loan underwriting and that the creditor is under no obligation to consider an appraisal ordered by a consumer.

G. Projected Costs of Compliance

Participants urged the Agencies to include a rigorous cost-benefit analysis in the rule. To reduce compliance costs, a creditor participant recommended that the Agencies ensure that the higher-risk mortgage rules use a definition of APR and APOR that is consistent with the definitions of those terms in other rules.

Various appraiser and creditor participants suggested that an interior visit requirement could increase the cost of appraisals anywhere from \$25 to \$200—or by approximately 1/3. An appraiser participant referenced a study indicating that industry-wide cost savings for conducting lesser valuations (than interior inspections) was \$20 to \$50 million per year, but that the risks of not conducting interior inspections increased costs by several billion dollars per year.

Regarding the second appraisal requirement, some creditor participants believed that the challenges in finding information about prior sales might be difficult, would increase costs, and, as a result, could impede credit access.

**List of Participants in Meetings with staff of the Agencies
on Higher-Risk Mortgage Loans**

January 11, 2012

Participants: Daniel Crowley, Nancy Weissgold, Phil Schulman (K&L Gates; Coalition to Facilitate Appraisal Integrity Reform (FAIR Coalition) counsel); Don Blanchard (FAIR Coalition); Mark Johnson (Lender Processing Services, Inc. (LSI); FAIR Coalition); Wes McDaniel and Greg Janis (CoreLogic; FAIR Coalition); Don Kelly (Real Estate Valuation Advocacy Association (REVAA)); Helge Hukari (Clear Capital Inc.; REVAA member); Kathleen Rice (LSI; REVAA member); Jim Brodsky and Jack Konyck (Weiner Brodsky Sidman Kider; REVAA counsel); William Baker (Rels Valuation); Tim Scherf and Keith Murray (PCV Murcor); Cindy Harris and Chuck Mureddu (Quality Valuation Services); Jeryl Graham (ISGN); Michael Kleber-Diggs (Vesta Valuation); Jeff Dickstein (Pro Teck Valuation Services); Patrick Ames (Landsafe); Stephanie Rumph, David Hathaway, Andrew Glassford, and Sandra Wood (Bank of America)

John Brolin, Michael Scherzer, and Bill Matchneer (CFPB); Chrisanthy Loizos (NCUA); Charlotte Bahin, Karen McSweeney, and Bob Parson (OCC); Suzy Gardner and Mark Mellon (FDIC); Susan Cooper (FHFA); Virginia Gibbs, Will Giles, Lorna Neill, and David Snyder (FRB)

January 11, 2012

Participants: Peter Barash (Peter Barash Associates); John Russell, Michael Orman, William Wilson, and Karen Mann (American Society of Appraisers); Ann Susko and David Doering (Nat'l Ass'n of Independent Fee Appraisers); David Harman and Lawrence Netterville (Nat'l Society of Real Estate Appraisers); Bill Garber, Nick Tillema, Brian Rodgers, and Scott DiBiasio (Appraisal Institute); Tara Foscatto (Rich Feuer Group, Appraisal Institute representative); John Brenan (Appraisal Foundation); Peter Vidi, Matt Schneider, and Dan Drelich (American Guild of Appraisers); Leland Trice (The Trice Group); Jerry Nagy (National Association of Realtors); Jillian White (White Picket Fence Appraisals); Brandon Boudreau and Greg Stephens (Metro-West Appraisal Co.); Thomas Inserra (Pinnacle Peak Appraisal); Merrill Swanson (American Society of Farm Managers and Rural Appraisers)

John Brolin, Michael Scherzer, and Bill Matchneer (CFPB); Chrisanthy Loizos and Pamela Yu (NCUA); Charlotte Bahin, Karen McSweeney, and Bob Parson (OCC); Suzy Gardner and Mark Mellon (FDIC); Susan Cooper and Ming-Yuen Meyer-Fong (FHFA); Virginia Gibbs, Will Giles, Lorna Neill, and David Snyder (FRB)

January 18, 2012

Participants: Rod Alba (American Bankers Association); Chris Harrington (Consumer Mortgage Coalition); Steven Linville (National Association of Home Builders); Joe Barini (US Bank); Brian Quinlan (Capital One); Andrew Bough (ING Direct); Ken DeFeo (Union Bank); Ron D. Hartsoch (Sterling Savings Bank); Katherine Kelton (Wells Fargo Bank NA); Richard E. Meyer (First Horizon Nat'l Corp.); Michael Moran (SunTrust Bank); Mark Miller (Bank of America); Jordan Petkovski (TSI Appraisal Services (affiliate of Quicken Loans)); Michael Lyon (Quicken Loans); Carolyn Adams (JP Morgan Chase)

John Brolin, Michael Scherzer, and Bill Matchneer (CFPB); Vincent Vieten and Chrisanthy Loizos (NCUA); Charlotte Bahin and Bob Parson (OCC); Suzy Gardner, Sumaya Muraywid, Kim Stock, and Mark Mellon (FDIC); Ron Sugarman and Lori Bowes (FHFA); Virginia Gibbs, Will Giles, Lorna Neill, Benjamin McDonough, and David Snyder (FRB)

January 18, 2012

Participants: Valerie Moss, Colleen Kelly, Jared Ihrig, and Kristina Del Vecchio (Credit Union Nat'l Ass'n); Ann Grochala (Independent Community Bankers of America (ICBA)); Ron Haynie (ICBA Mortgage); Jo Ann Merfeld (First Citizens National Bank; ICBA Member); Timothy Zimmerman (Standard Bank; ICBA Federal Home Loan Bank Task Force); Dean Emanuels (Washington Trust Bank)

John Brolin, Michael Scherzer, and Bill Matchneer (CFPB); Vincent Vieten and Chrisanthy Loizos (NCUA); Charlotte Bahin and Bob Parson (OCC); Suzy Gardner, Sumaya Muraywid, and Mark Mellon (FDIC); Ron Sugarman and Lori Bowes (FHFA); Virginia Gibbs, Will Giles, Lorna Neill, and David Snyder (FRB)

January 19, 2012

Participants: Margot Saunders (National Consumer Law Center); Ken Edwards and Mike

Calhoun (Center for Responsible Lending); Lisa Rice, Morgan Williams, and Justin Monteiro (National Fair Housing Alliance)

John Brolin, Michael Scherzer, and Bill Matchneer (CFPB); Vincent Vieten and Pamela Yu (NCUA); Charlotte Bahin, Karen McSweeney, and Krista LaBelle (OCC); Suzy Gardner, Sumaya Muraywid, and Mark Mellon (FDIC); Ming-Yuen Meyer-Fong (FHFA); Lorna Neill, Walter McEwen, and David Snyder (FRB)

January 19, 2012

Participants: Michael Stevens and Matthew Lambert (Conference of State Bank Supervisors); Don Rodgers (North Carolina Appraisal Board; Association of Appraisal

Regulatory Officials (AARO)); Sherry Bren (Appraiser Certification Program, South Dakota; AARO); Larry Disney (Kentucky Real Estate Appraisers Board; AARO); Nikole Avers (Regulatory Boards, Tennessee; AARO); Dave Campbell (North Dakota Appraisal Board; AARO); Ami Milne-Allen (Vermont Real Estate Appraisal Board; AARO); Trenton Hogg (Wyoming Certified Real Estate Appraiser Board; AARO); Bob Clark and Elizabeth Cedars (CA Office of Real Estate Appraisers); Christopher K. McNally (State Board of Certified Real Estate Appraisers, Pennsylvania)

Michael Scherzer and Bill Matchneer (CFPB); Chrisanthy Loizos, Vincent Vieten and Pamela Yu (NCUA); Charlotte Bahin, Chris Manthey, and Krista LaBelle (OCC); Sumaya Muraywid and Mark Mellon (FDIC); Lori Bowes and Ron Sugarman (FHFA); Virginia Gibbs, Lorna Neill, Walter McEwen, and David Snyder (FRB)

February 7, 2012

Participants: Marc Lifset (McGlinchey Stafford); Dick Ernst (Consultant to the Factory Built Industry); Jim Milano (Weiner Brodsky Sidman Kider); Sherrie Clevenger (Nat'l Automobile Dealers Ass'n (NADA) Appraisal Guides); Dan Rinzema (Datacomp Appraisal Services); Tim Williams and Matt Webb (21st Mortgage Corp.); Chip Asch (U.S. Bank Manufactured Housing Finance)

John Brolin, Michael Scherzer, and Bill Matchneer (CFPB); Suzy Gardner, Sumaya Muraywid, and Kim Stock (FDIC); Lorna Neill (FRB)

February 10, 2012

Participants: Jim Milano (Weiner Brodsky Sidman Kider); Peter Bell and Steve Irwin (Nat'l Reverse Mortgage Lenders Ass'n (NRMLA)); Joe DeMarkey (Met Life; NRMLA); Sarah Hulbert (1st Reverse USA; NRMLA)

John Brolin, Michael Scherzer, and Bill Matchneer (CFPB); Suzy Gardner, Sumaya Muraywid, Mark Mellon, and Kim Stock (FDIC); Charlotte Bahin (OCC); Ron Sugarman, Ming-Yuen Meyer-Fong, and Lori Bowes (FHFA); Lorna Neill (FRB)