Equal Credit Opportunity Act Valuations Rule

Overview

The Equal Credit Opportunity Act (ECOA), enacted in 1974, and it's implementing rules (known as Regulation B) prohibit creditors from discriminating on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised rights under certain credit laws, including the Truth in Lending Act (TILA).

In January 2013, to implement these amendments, the Consumer Financial Protection Bureau (CFPB) finalized the Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations under the ECOA Regulation B rule. This rule is referred to as the ECOA Valuations Rule.

Before the new rule, Regulation B only required that creditors provide copies of appraisals to applicants upon request and notify them of their right to make a request. The ECOA Valuations Rule changes both of these requirements. It requires creditors to disclose to applicants that they have the right to receive copies of appraisals and written valuations. The ECOA Valuations Rule also requires creditors to automatically send a free copy of home appraisals and other written valuations promptly after they are completed, regardless of whether credit is extended, denied, incomplete, or withdrawn.

The new rule applies to all written valuations (not just appraisals) that are developed in connection with an application for a covered transaction. It covers all first liens on dwellings.

Effective Date

Applications received file in the door at Interfirst on and after **January 18, 2014** are subject to the ECOA Valuations Rule.

The ECOA Valuations Rule

The new ECOA Valuations Rule amends the appraisal provisions of ECOA's Regulation B. It updates current ECOA rules to say that lenders must provide applicants for first-lien loans on a dwelling with copies of appraisals, as well as other written valuations, developed in connection with the application, whether or not the applicants request copies.

Under the ECOA Valuations Rule:

- The lender must notify the applicant of the right to receive a copy of appraisals and other valuations within three business days of application receipt.
- The lender must promptly share copies of appraisals and other written valuations with the applicant. Promptly means promptly upon completion, or at least three business days before the loan closes. See *When to Send the Valuations* for more detailed information.
- The applicant can waive the right to receive copies of the appraisal or other written valuations in advance of the closing, but in those cases, the lender must still deliver the copies at or prior to closing.

ECOA Valuations Rule (cont.)

The borrower cannot be charged for copies of appraisals or other written valuations, but can be charged a reasonable fee to reimburse for the cost of preparing appraisals and other written valuations, unless prohibited or restricted by law.

The ECOA Valuations Rule applies to applications for all owner-occupied, investment, and second home mortgages.

Dwelling Valuations

A dwelling "valuation" is any estimate of the value of a dwelling developed in connection with an application for credit.

Valuations include:

- An appraiser's report (whether or not the appraiser is licensed or certified), including the appraiser's estimate of the property's value or opinion of value
- A document the lender prepares that assigns value to the property
- A report approved by a government-sponsored enterprise for describing to the applicant an estimate developed by its proprietary methodology or mechanism
- Automated valuation model reports used to estimate the property's value
- A broker price opinion prepared by a real estate broker, agent, or sales person to estimate the property's value

Lenders must also share with the applicant any attachments or exhibits that are part of the valuation. Keep in mind that if a valuation is developed in connection with the application, then the lender must provide a copy to the applicant, even if the lender does not use the valuation or if the lender uses it only for a limited purpose.

Dwelling Valuation Exclusions

Not all documents that discuss or restate a property's value are valuations. Documents that discuss property value but are not valuations include the following:

- Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or other written valuation the lender provides to the applicant (e.g., an internal email that only mentions the appraised value in the appraiser's report to be provided to the applicant)
- Government agency statements of appraised value that are publicly available
- Publicly-available lists of valuations (e.g. published sales prices or mortgage amounts, tax assessments, and retail price ranges)
- Manufacturers' invoices for manufactured homes
- Reports reflecting property inspections that do not provide an estimate of the value of the property and are not used to develop an estimate of the value of the property
- Appraisal reviews that do not include the appraiser's estimate of the property's valuee

In addition, an appraisal review that does not itself state a different estimate from the appraisal would not be a valuation the lender must provide to the applicant.

ECOA Valuations Rule (cont.)

ECOA Valuations Rule Compliance

To comply with the ECOA Valuations Rule:

- The lender must notify the applicant in writing within three business days of application receipt of the right to receive a copy of any appraisals or written valuations developed in connection with the application.

  Note: IMC will provide this disclosure.
- When processing an application, the lender must deliver copies of appraisals and other written valuations "promptly upon completion," or three business days before the loan closes, whichever is earlier. For example, if a loan will close on Friday, April 4, the lender must deliver the valuation no later than Tuesday, April 1.
- The lender cannot charge the applicant for copies of any appraisal or written valuation it provides; however, the lender can charge a reasonable fee to reimburse the cost of the appraisal or other written valuation if not otherwise prohibited by law.
- For applicants who waive the right to receive the required copies at least three business days before the loan closes, the lender must provide the copies either at, or prior to, the closing.

If the loan is a closed-end, higher-priced transaction, the lender must also determine whether it is covered by the TILA appraisal requirements in the Appraisals for Higher-Priced Mortgage Loans Rule (HPML Appraisal Rule) under Regulation Z. **Note:** Interfirst will not originate HPMLs.

Standard Disclosure Notice

The lender's disclosure notice should include the following text (taken from Regulation B Appendix C):

"Interfirst Mortgage Company may develop an appraisal report or a written valuation to determine the property value and charge you for the cost of such appraisal or written valuation. Interfirst Mortgage Company will promptly give you a copy of any appraisal report or written valuation, even if your loan does not close.

You can pay for an additional appraisal report or written valuation for your own use at your own cost."

Obligations if the Loan Does Not Close

If the lender determines that the loan will not close, it must still give the applicant a copy of the appraisal and other written valuations "promptly upon completion." If the applicant has waived that deadline, the lender must provide copies of the appraisal and other written valuations to the applicant 30 days after the lender determines the transaction will not close.

How to Provide Information to Applicants

Copies must be sent to the applicant's last-known physical or electronic address. Delivery occurs three business days after the lender mails or transmits the copies, or whenever the lender has evidence indicating that the applicant received the copies. The earliest closing date is based on the latest delivery date of the appraisals/written valuations/initial TIL/redisclosures. See the table below.

ECOA Valuations Rule (cont.)

Disclosure Type	Loan Type	Earliest Closing Date
Appraisal	Investment and Non-Investment	**Email Delivery**[1] (if an email address was provided): 7 calendar days to acknowledge electronically, plus **US Mail Delivery** (if the email address was not provided or the borrower did not acknowledge electronically in the email delivery timeframe allowed): 3 business days (exclude Sundays and holidays), plus **Borrower Review:** 3 business days (exclude Sundays and holidays)
AVM	Investment and Non-Investment	**Email Delivery**[1] (if an email address was provided): 5 calendar days allowed to acknowledge electronically, plus **US Mail Delivery** (if the email address was not provided or the borrower did not acknowledge electronically in the email delivery timeframe allowed): 3 business days (exclude Sundays and holidays), plus **Borrower Review:** 3 business days (exclude Sundays and holidays)

[1] If the primary borrower has previously e-consented, IMC considers the appraisal/AVM delivered and the three business day review period will begin the same day.

Note: For electronic delivery, the lender must obtain the applicant's consent under the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Information about E-Sign is available at http://www.fdic.gov/regulations/compliance/manual/pdf/X-3.1.pdf.

Multiple Applicants

If there is more than one applicant, the lender may give the disclosure and copies to only one applicant. However, if it is readily apparent that one of the applicants is the primary applicant, the disclosure and copies should be given to that applicant.

When to Send the Valuations

The lender must send the valuations promptly upon completion. If one valuation is completed, it may be possible to wait a few days for another valuation to be completed, as long as copies are provided at least three business days before the loan closes. However, waiting for longer than a few days

ECOA Valuations Rule (cont.)

reduces the likelihood that delivery of the first valuation will be prompt. If the lender obtains a waiver from the applicant, the lender can wait until the closing to provide the valuations all at once.

The “promptly upon completion” standard does not refer to a particular time period. Its application and meaning depend on the facts and circumstances, including (but not limited to):

- When the lender receives the appraisal or other written valuation
- The extent of any review or revisions the lender does after receiving it

“Completion” of an appraisal or other written valuation occurs when the lender gets the last version of that appraisal or other written valuation, or when it is apparent that there will be only one version of that appraisal or other written valuation.

Multiple Versions of a Valuation

The reference to providing copies of “all” appraisals and other written valuations does not refer to all versions of the same appraisal or other written valuation. If the lender receives multiple versions of an appraisal or other written valuation, the lender only has to give the applicant the latest version. However, Interfirst will provide the applicants with copies of all appraisals and valuations.

If the lender gives the applicant a copy of an appraisal or other written valuation and then receives a revised version of the same appraisal or written valuation, then the lender must send the updated version to the applicant as well. The lender cannot charge a fee for providing the copy of an updated valuation.

If the lender only has one version of an appraisal or other valuation, then the copy of that version is the one that should be given to the applicant.

Timing Requirements Waiver

An applicant may waive the timing requirement of the ECOA Valuations Rule and agree to receive copies of valuations at or before the closing, except where prohibited by law. If there are multiple applicants, one applicant may provide a waiver, but it must be the primary applicant if one is readily apparent.

The lender must get the applicant’s waiver at least three business days prior to the closing date, unless clerical changes from a previous version are involved.

Note: At this time, Interfirst will not allow applicants to waive their right to receive an appraisal or valuation within the prescribed timeframe. In addition, there is no timing requirement waiver if the transaction is a higher-priced mortgage loan covered by the 2013 Appraisals for Higher-Priced Mortgage Loans Rule.