

§ 1026.42

(B) Is a Housing Finance Agency, as defined in 24 CFR 266.5; or

(C) Is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor. For purposes of this paragraph (e)(4)(ii)(C), the following definitions apply:

(I) The term “nonprofit entity” means an entity having a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)–1), and;

(2) The term “associated nonprofit entities” means nonprofit entities that by agreement operate using a common name, trademark, or servicemark to further and support a common charitable mission or purpose.

(iii) *Small servicer determination.* In determining whether a servicer satisfies paragraph (e)(4)(ii)(A) of this section, the servicer is evaluated based on the mortgage loans serviced by the servicer and any affiliates as of January 1 and for the remainder of the calendar year. In determining whether a servicer satisfies paragraph (e)(4)(ii)(C) of this section, the servicer is evaluated based on the mortgage loans serviced by the servicer as of January 1 and for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt as a small servicer. The following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer:

(A) Mortgage loans voluntarily serviced by the servicer for a creditor or assignee that is not an affiliate of the servicer and for which the servicer does not receive any compensation or fees.

(B) Reverse mortgage transactions.

(C) Mortgage loans secured by consumers’ interests in timeshare plans.

(5) *Consumers in bankruptcy.* A servicer is exempt from the requirements of this section for a mortgage loan while the consumer is a debtor in

12 CFR Ch. X (1–1–16 Edition)

bankruptcy under Title 11 of the United States Code.

[78 FR 11007, Feb. 14, 2013, as amended at 78 FR 44718, July 24, 2013; 78 FR 63005, Oct. 23, 2013; 79 FR 65322, Nov. 3, 2014]

§ 1026.42 Valuation independence.

(a) *Scope.* This section applies to any consumer credit transaction secured by the consumer’s principal dwelling.

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

(1) “Covered person” means a creditor with respect to a covered transaction or a person that provides “settlement services,” as defined in 12 U.S.C. 2602(3) and implementing regulations, in connection with a covered transaction.

(2) “Covered transaction” means an extension of consumer credit that is or will be secured by the consumer’s principal dwelling, as defined in § 1026.2(a)(19).

(3) “Valuation” means an estimate of the value of the consumer’s principal dwelling in written or electronic form, other than one produced solely by an automated model or system.

(4) “Valuation management functions” means:

(i) Recruiting, selecting, or retaining a person to prepare a valuation;

(ii) Contracting with or employing a person to prepare a valuation;

(iii) Managing or overseeing the process of preparing a valuation, including by providing administrative services such as receiving orders for and receiving a valuation, submitting a completed valuation to creditors and underwriters, collecting fees from creditors and underwriters for services provided in connection with a valuation, and compensating a person that prepares valuations; or

(iv) Reviewing or verifying the work of a person that prepares valuations.

(c) *Valuation of consumer’s principal dwelling—*(1) *Coercion.* In connection with a covered transaction, no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer’s principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations,

through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.

(i) Examples of actions that violate paragraph (c)(1) include:

(A) Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;

(B) Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;

(C) Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;

(D) Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and

(E) Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

(2) *Mischaracterization of value*—(i) *Misrepresentation*. In connection with a covered transaction, no person that prepares valuations shall materially misrepresent the value of the consumer's principal dwelling in a valuation. A misrepresentation is material for purposes of this paragraph (c)(2)(i) if it is likely to significantly affect the value assigned to the consumer's principal dwelling. A *bona fide* error shall not be a misrepresentation.

(ii) *Falsification or alteration*. In connection with a covered transaction, no covered person shall falsify and no covered person other than a person that prepares valuations shall materially alter a valuation. An alteration is material for purposes of this paragraph (c)(2)(ii) if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

(iii) *Inducement of mischaracterization*. In connection with a covered trans-

action, no covered person shall induce a person to violate paragraph (c)(2)(i) or (ii) of this section.

(3) *Permitted actions*. Examples of actions that do not violate paragraph (c)(1) or (c)(2) include:

(i) Asking a person that prepares a valuation to consider additional, appropriate property information, including information about comparable properties, to make or support a valuation;

(ii) Requesting that a person that prepares a valuation provide further detail, substantiation, or explanation for the person's conclusion about the value of the consumer's principal dwelling;

(iii) Asking a person that prepares a valuation to correct errors in the valuation;

(iv) Obtaining multiple valuations for the consumer's principal dwelling to select the most reliable valuation;

(v) Withholding compensation due to breach of contract or substandard performance of services; and

(vi) Taking action permitted or required by applicable Federal or state statute, regulation, or agency guidance.

(d) *Prohibition on conflicts of interest*—

(1)(i) *In general*. No person preparing a valuation or performing valuation management functions for a covered transaction may have a direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is or will be performed.

(ii) *Employees and affiliates of creditors; providers of multiple settlement services*. In any covered transaction, no person violates paragraph (d)(1)(i) of this section based solely on the fact that the person:

(A) Is an employee or affiliate of the creditor; or

(B) Provides a settlement service in addition to preparing valuations or performing valuation management functions, or based solely on the fact that the person's affiliate performs another settlement service.

(2) *Employees and affiliates of creditors with assets of more than \$250 million for both of the past two calendar years*. For any covered transaction in which the creditor had assets of more than \$250 million as of December 31st for both of

the past two calendar years, a person subject to paragraph (d)(1)(i) of this section who is employed by or affiliated with the creditor does not have a conflict of interest in violation of paragraph (d)(1)(i) of this section based on the person's employment or affiliate relationship with the creditor if:

(i) The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation;

(ii) The person preparing a valuation or performing valuation management functions reports to a person who is not part of the creditor's loan production function, as defined in paragraph (d)(5)(i) of this section, and whose compensation is not based on the closing of the transaction to which the valuation relates; and

(iii) No employee, officer or director in the creditor's loan production function, as defined in paragraph (d)(5)(i) of this section, is directly or indirectly involved in selecting, retaining, recommending or influencing the selection of the person to prepare a valuation or perform valuation management functions, or to be included in or excluded from a list of approved persons who prepare valuations or perform valuation management functions.

(3) *Employees and affiliates of creditors with assets of \$250 million or less for either of the past two calendar years.* For any covered transaction in which the creditor had assets of \$250 million or less as of December 31st for either of the past two calendar years, a person subject to paragraph (d)(1)(i) of this section who is employed by or affiliated with the creditor does not have a conflict of interest in violation of paragraph (d)(1)(i) of this section based on the person's employment or affiliate relationship with the creditor if:

(i) The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation; and

(ii) The creditor requires that any employee, officer or director of the creditor who orders, performs, or reviews a valuation for a covered transaction abstain from participating in

any decision to approve, not approve, or set the terms of that transaction.

(4) *Providers of multiple settlement services.* For any covered transaction, a person who prepares a valuation or performs valuation management functions in addition to performing another settlement service for the transaction, or whose affiliate performs another settlement service for the transaction, does not have a conflict of interest in violation of paragraph (d)(1)(i) of this section as a result of the person or the person's affiliate performing another settlement service for the transaction if:

(i) The creditor had assets of more than \$250 million as of December 31st for both of the past two calendar years and the conditions in paragraph (d)(2)(i)-(iii) are met; or

(ii) The creditor had assets of \$250 million or less as of December 31st for either of the past two calendar years and the conditions in paragraph (d)(3)(i)-(ii) are met.

(5) *Definitions.* For purposes of this paragraph (d), the following definitions apply:

(i) *Loan production function.* The term "loan production function" means an employee, officer, director, department, division, or other unit of a creditor with responsibility for generating covered transactions, approving covered transactions, or both.

(ii) *Settlement service.* The term "settlement service" has the same meaning as in the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*

(iii) *Affiliate.* The term "affiliate" has the same meaning as in Regulation Y of the Board of Governors of the Federal Reserve System, 12 CFR 225.2(a).

(e) *When extension of credit prohibited.* In connection with a covered transaction, a creditor that knows, at or before consummation, of a violation of paragraph (c) or (d) of this section in connection with a valuation shall not extend credit based on the valuation, unless the creditor documents that it has acted with reasonable diligence to determine that the valuation does not materially misstate or misrepresent the value of the consumer's principal dwelling. For purposes of this paragraph (e), a valuation materially misstates or misrepresents the value of the

consumer's principal dwelling if the valuation contains a misstatement or misrepresentation that affects the credit decision or the terms on which credit is extended.

(f) *Customary and reasonable compensation*—(1) *Requirement to provide customary and reasonable compensation to fee appraisers.* In any covered transaction, the creditor and its agents shall compensate a fee appraiser for performing appraisal services at a rate that is customary and reasonable for comparable appraisal services performed in the geographic market of the property being appraised. For purposes of paragraph (f) of this section, “agents” of the creditor do not include any fee appraiser as defined in paragraph (f)(4)(i) of this section.

(2) *Presumption of compliance.* A creditor and its agents shall be presumed to comply with paragraph (f)(1) of this section if:

(i) The creditor or its agents compensate the fee appraiser in an amount that is reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property being appraised. In determining this amount, a creditor or its agents shall review the factors below and make any adjustments to recent rates paid in the relevant geographic market necessary to ensure that the amount of compensation is reasonable:

- (A) The type of property,
- (B) The scope of work,
- (C) The time in which the appraisal services are required to be performed,
- (D) Fee appraiser qualifications,
- (E) Fee appraiser experience and professional record, and
- (F) Fee appraiser work quality; and

(ii) The creditor and its agents do not engage in any anticompetitive acts in violation of state or Federal law that affect the compensation paid to fee appraisers, including:

(A) Entering into any contracts or engaging in any conspiracies to restrain trade through methods such as price fixing or market allocation, as prohibited under section 1 of the Sherman Antitrust Act, 15 U.S.C. 1, or any other relevant antitrust laws; or

(B) Engaging in any acts of monopolization such as restricting any person

from entering the relevant geographic market or causing any person to leave the relevant geographic market, as prohibited under section 2 of the Sherman Antitrust Act, 15 U.S.C. 2, or any other relevant antitrust laws.

(3) *Alternative presumption of compliance.* A creditor and its agents shall be presumed to comply with paragraph (f)(1) of this section if the creditor or its agents determine the amount of compensation paid to the fee appraiser by relying on information about rates that:

(i) Is based on objective third-party information, including fee schedules, studies, and surveys prepared by independent third parties such as government agencies, academic institutions, and private research firms;

(ii) Is based on recent rates paid to a representative sample of providers of appraisal services in the geographic market of the property being appraised or the fee schedules of those providers; and

(iii) In the case of information based on fee schedules, studies, and surveys, such fee schedules, studies, or surveys, or the information derived therefrom, excludes compensation paid to fee appraisers for appraisals ordered by appraisal management companies, as defined in paragraph (f)(4)(iii) of this section.

(4) *Definitions.* For purposes of this paragraph (f), the following definitions apply:

(i) *Fee appraiser.* The term “fee appraiser” means:

(A) A natural person who is a state-licensed or state-certified appraiser and receives a fee for performing an appraisal, but who is not an employee of the person engaging the appraiser; or

(B) An organization that, in the ordinary course of business, employs state-licensed or state-certified appraisers to perform appraisals, receives a fee for performing appraisals, and is not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3353).

(ii) *Appraisal services.* The term “appraisal services” means the services required to perform an appraisal, including defining the scope of work, inspecting the property, reviewing necessary

and appropriate public and private data sources (for example, multiple listing services, tax assessment records and public land records), developing and rendering an opinion of value, and preparing and submitting the appraisal report.

(iii) *Appraisal management company.* The term “appraisal management company” means any person authorized to perform one or more of the following actions on behalf of the creditor:

(A) Recruit, select, and retain fee appraisers; (B) Contract with fee appraisers to perform appraisal services;

(C) Manage the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and compensating fee appraisers for services performed; or

(D) Review and verify the work of fee appraisers.

(g) *Mandatory reporting*—(1) *Reporting required.* Any covered person that reasonably believes an appraiser has not complied with the Uniform Standards of Professional Appraisal Practice or ethical or professional requirements for appraisers under applicable state or Federal statutes or regulations shall refer the matter to the appropriate state agency if the failure to comply is material. For purposes of this paragraph (g)(1), a failure to comply is material if it is likely to significantly affect the value assigned to the consumer’s principal dwelling.

(2) *Timing of reporting.* A covered person shall notify the appropriate state agency within a reasonable period of time after the person determines that there is a reasonable basis to believe that a failure to comply required to be reported under paragraph (g)(1) of this section has occurred.

(3) *Definition.* For purposes of this paragraph (g), “state agency” means “state appraiser certifying and licensing agency” under 12 U.S.C. 3350(1) and any implementing regulations. The appropriate state agency to which a covered person must refer a matter under paragraph (g)(1) of this section is the

agency for the state in which the consumer’s principal dwelling is located.

(h) The Bureau issued a joint rule to implement the appraisal management company minimum requirements in the Financial Institutions Reform, Recovery, and Enforcement Act, as amended by section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* 12 CFR part 34.

[76 FR 79772, Dec. 22, 2011, as amended at 80 FR 32687, June 9, 2015]

§ 1026.43 Minimum standards for transactions secured by a dwelling.

(a) *Scope.* This section applies to any consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than:

(1) A home equity line of credit subject to § 1026.40;

(2) A mortgage transaction secured by a consumer’s interest in a timeshare plan, as defined in 11 U.S.C. 101(53(D)); or

(3) For purposes of paragraphs (c) through (f) of this section:

(i) A reverse mortgage subject to § 1026.33;

(ii) A temporary or “bridge” loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling;

(iii) A construction phase of 12 months or less of a construction-to-permanent loan;

(iv) An extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5;

(v) An extension of credit made by:

(A) A creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h);

(B) A creditor designated as a Downpayment Assistance through Secondary Financing Provider, pursuant to 24 CFR 200.194(a), operating in accordance with regulations prescribed by the U.S. Department of Housing and Urban Development applicable to such persons;