4. If Savings Association A is able to reallocate the $10 million loan made to Borrower in January to its Residential Development basket, it may make the $12 million commercial loan requested by Borrower in August. Once the January loan is reallocated to the Residential Development basket, however, the $10 million loan counts towards Savings Association A's 150 percent aggregate limitation on loans to all borrowers under the residential development basket (§32.3(d)(2)).

5. If Savings Association A reallocates the January loan to its domestic residential housing basket and makes an additional $12 million commercial loan to Borrower, Savings Association A's totals under the respective limitations would be: $12 million under the General Limitation; and $13 million under the Residential Development limitation. The full $13 million residential development loan counts toward Savings Association A's aggregate 150 percent limitation.

[77 FR 37282, June 21, 2012]

PART 33 [RESERVED]

PART 34—REAL ESTATE LENDING AND APPRAISALS

Subpart A—General

Subpart B—Adjustable-Rate Mortgages

Subpart C—Appraisals

Subpart D—Real Estate Lending Standards

Subpart E—Other Real Estate Owned

Subpart F [Reserved]

Subpart G—Appraisals for Higher-Priced Mortgage Loans

Subpart H—Appraisal Management Company Minimum Requirements

AUTHORITY: 12 U.S.C. 1 *et seq.*, 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.*, 5101 *et seq.*, and 5412(b)(2)(B) and 15 U.S.C. 1639h.

Subpart A—General

SOURCE: 61 FR 11300, Mar. 20, 1996, unless otherwise noted.

§ 34.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to set forth standards for real estate-related lending and associated activities by national banks.

(b) *Scope.* This part applies to national banks and their operating subsidiaries as provided in 12 CFR 5.34. For the purposes of 12 U.S.C. 371 and subparts A and B of this part, loans secured by liens on interests in real estate include loans made upon the security of condominiums, leaseholds, cooperatives, forest tracts, land sales contracts, and construction project loans. Construction project loans are not subject to subparts A and B of this part, however, if they have a maturity not exceeding 60 months and are made to finance the construction of either:

(1) A building where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the bank's loan upon completion of the building; or

(2) A residential or farm building.

§ 34.2 Definitions.

(a) *Due-on-sale clause* means any clause that gives the lender or any assignee or transferee of the lender the power to declare the entire debt payable if all or part of the legal or equitable title or an equivalent contractual interest in the property securing the loan is transferred to another person, whether by deed, contract, or otherwise.

(b) *State* means any State of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, and Guam.

(c) *State law limitations* means any State statute, regulation, or order of any State agency, or judicial decision interpreting State law.

§ 34.3 General rule.

(a) A national bank may make, arrange, purchase, or sell loans or extensions of credit, or interests therein, that are secured by liens on, or interests in, real estate (real estate loans), subject to 12 U.S.C. 1828(o) and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.

(b) A national bank shall not make a consumer loan subject to this subpart based predominantly on the bank's realization of the foreclosure or liquidation value of the borrower's collateral, without regard to the borrower's ability to repay the loan according to its terms. A bank may use any reasonable method to determine a borrower's ability to repay, including, for example, the borrower's current and expected income, current and expected cash flows, net worth, other relevant financial resources, current financial obligations, employment status, credit history, or other relevant factors.

(c) A national bank shall not engage in unfair or deceptive practices within the meaning of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), and regulations promulgated thereunder in connection with loans made under this part.

[68 FR 70131, Dec. 17, 2003, as amended at 69 FR 1917, Jan. 13, 2004]

§ 34.4 Applicability of state law.

(a) A national bank may make real estate loans under 12 U.S.C. 371 and § 34.3, without regard to state law limitations concerning:

(1) Licensing, registration (except for purposes of service of process), filings, or reports by creditors;

(2) The ability of a creditor to require or obtain private mortgage insurance, insurance for other collateral, or other credit enhancements or risk mitigants, in furtherance of safe and sound banking practices;

(3) Loan-to-value ratios;

(4) The terms of credit, including schedule for repayment of principal and interest, amortization of loans, balance, payments due, minimum payments, or term to maturity of the loan, including the circumstances under which a loan may be called due and payable upon the passage of time or a specified event external to the loan;

(5) The aggregate amount of funds that may be loaned upon the security of real estate;

(6) Escrow accounts, impound accounts, and similar accounts;

(7) Security property, including leaseholds;

(8) Access to, and use of, credit reports;

(9) Disclosure and advertising, including laws requiring specific statements, information, or other content to be included in credit application forms, credit solicitations, billing statements, credit contracts, or other credit-related documents;

(10) Processing, origination, servicing, sale or purchase of, or investment or participation in, mortgages;

(11) Disbursements and repayments;

(12) Rates of interest on loans;[1]

(13) Due-on-sale clauses except to the extent provided in 12 U.S.C. 1701j–3 and 12 CFR part 591; and

(14) Covenants and restrictions that must be contained in a lease to qualify the leasehold as acceptable security for a real estate loan.

(b) State laws on the following subjects are not inconsistent with the real estate lending powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996):

(1) Contracts;

(2) Torts;

(3) Criminal law;[2]

(4) Homestead laws specified in 12 U.S.C. 1462a(f);

(5) Rights to collect debts;

(6) Acquisition and transfer of real property;

(7) Taxation;

(8) Zoning; and

(9) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996), or that is made applicable by Federal law.

[69 FR 1917, Jan. 13, 2004, as amended at 76 FR 43569, July 21, 2011]

§ 34.5 Due-on-sale clauses.

A national bank may make or acquire a loan or interest therein, secured by a lien on real property, that includes a due-on-sale clause. Except as set forth in 12 U.S.C. 1701j–3(d) (which contains a list of transactions in which due-on-sale clauses may not be enforced), due-on-sale clauses in loans, whenever originated, will be valid and enforceable, notwithstanding any State law limitations to the contrary. For the purposes of this section, the term real property includes residential dwellings such as condominium units, cooperative housing units, and residential manufactured homes.

§ 34.6 Applicability of state law to Federal savings associations and subsidiaries.

In accordance with section 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b), Federal savings associations and their subsidiaries shall be subject to the same laws and legal standards, including regulations of the OCC, as are applicable to national banks and their subsidiaries, regarding the preemption of state law.

[76 FR 43569, July 21, 2011]

Subpart B—Adjustable-Rate Mortgages

SOURCE: 61 FR 11301, Mar. 20, 1996, unless otherwise noted.

§ 34.20 Definitions.

Adjustable-rate mortgage (ARM) loan means an extension of credit made to finance or refinance the purchase of, and secured by a lien on, a one-to-four family dwelling, including a condominium unit, cooperative housing unit, or residential manufactured home, where the lender, pursuant to an agreement with the borrower, may adjust

[1] The limitations on charges that comprise rates of interest on loans by national banks are determined under Federal law. *See* 12 U.S.C. 85 and 1735f–7a; 12 CFR 7.4001. State laws purporting to regulate national bank fees and charges that do not constitute interest are addressed in 12 CFR 7.4002.

[2] But see the distinction drawn by the Supreme Court in *Easton* v. *Iowa*, 188 U.S. 220, 238 (1903), where the Court stated that ''[u]ndoubtedly a state has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction * * *. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States.'' *Id.* at 239 (holding that Federal law governing the operations of national banks preempted a state criminal law prohibiting insolvent banks from accepting deposits).

the rate of interest from time to time. An ARM loan does not include fixed-rate extensions of credit that are payable at the end of a term that, when added to any terms for which the bank has promised to renew the loan, is shorter than the term of the amortization schedule.

§ 34.21 General rule.

(a) *Authorization.* A national bank and its subsidiaries may make, sell, purchase, participate in, or otherwise deal in ARM loans and interests therein without regard to any State law limitations on those activities.

(b) *Purchase of loans not in compliance.* Except as provided in paragraph (c) of this section, a national bank may purchase or participate in ARM loans that were not made in accordance with this part, provided such purchases are consistent with safe and sound banking practices as described in published OCC guidance, including appropriate diligence regarding the quality and characteristics of the loans, and other applicable regulations.

(c) *Purchase of loans from a subsidiary or affiliate.* ARM loans purchased, in whole or in part, from a subsidiary or affiliate must comply with this part and with other applicable regulations, and be consistent with safe and sound banking practices as described in published OCC guidance, including appropriate diligence regarding the quality and characteristics of the loans. For purposes of this paragraph, the terms affiliate and subsidiary have the same meaning as in 12 U.S.C. 371c.

[61 FR 11300, Mar. 20, 1996, as amended at 73 FR 22251, Apr. 24, 2008]

§ 34.22 Index.

(a) *In general.* If a national bank makes an ARM loan to which 12 CFR 226.19(b) applies (*i.e.*, the annual percentage rate of a loan may increase after consummation, the term exceeds one year, and the consumer's principal dwelling secures the indebtedness), the loan documents must specify an index or combination of indices to which changes in the interest rate will be linked. This index must be readily available to, and verifiable by, the borrower and beyond the control of the bank. A national bank may use as an index any measure of rates of interest that meets these requirements. The index may be either single values of the chosen measure or a moving average of the chosen measure calculated over a specified period. A national bank also may increase the interest rate in accordance with applicable loan documents specifying the amount of the increase and the times at which, or circumstances under which, it may be made. A national bank may decrease the interest rate at any time.

(b) *Exception.* Thirty days after filing a notice with the OCC, a national bank may use an index other than one described in paragraph (a) of this section unless, within that 30-day period, the OCC has notified the bank that the notice presents supervisory concerns or raises significant issues of law or policy. If the OCC provides such notice to the bank, the bank may not use that index unless it applies for and receives the OCC's prior written approval.

[61 FR 11300, Mar. 20, 1996, as amended at 73 FR 22251, Apr. 24, 2008]

§ 34.23 Prepayment fees.

A national bank offering or purchasing ARM loans may impose fees for prepayments notwithstanding any State law limitations to the contrary. For purposes of this section, prepayments do not include:

(a) Payments that exceed the required payment amount to avoid or reduce negative amortization; or

(b) Principal payments, in excess of those necessary to retire the outstanding debt over the remaining loan term at the then-current interest rate, that are made in accordance with rules governing the determination of monthly payments contained in the loan documents.

§ 34.24 Nonfederally chartered commercial banks.

Pursuant to 12 U.S.C. 3803(a), a State chartered commercial bank may make ARM loans in accordance with the provisions of this subpart. For purposes of this section, the term ''State'' shall have the same meaning as set forth in § 34.2(b).

§ 34.25 Transition rule.

If, on October 1, 1988, a national bank had made a loan or binding commitment to lend under an ARM loan program that complied with the requirements of 12 CFR part 29 in effect prior to October 1, 1988 (see 12 CFR Parts 1 to 199, revised as of January 1, 1988) but would have violated any of the provisions of this subpart, the national bank may continue to administer the loan or binding commitment to lend in accordance with that loan program. All ARM loans or binding commitments to make ARM loans that a national bank entered into after October 1, 1988, must comply with all provisions of this subpart.

Subpart C—Appraisals

SOURCE: 55 FR 34696, Aug. 24, 1990, unless otherwise noted.

§ 34.41 Authority, purpose, and scope.

(a) *Authority*. This subpart is issued by the Office of the Comptroller of the Currency (the OCC) under 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1828(m), 5412(b)(2)(B), and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, 103 Stat. 183 (1989)), 12 U.S.C. 3331 *et seq*.

(b) *Purpose and scope*. (1) Title XI of FIRREA provides protection for federal financial and public policy interests in real estate-related transactions by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This subpart implements the requirements of title XI, and applies to all federally related transactions entered into by the OCC or by institutions regulated by the OCC (*regulated institutions*).

(2) This subpart:

(i) Identifies which real estate-related financial transactions require the services of an appraiser;

(ii) Prescribes which categories of federally related transactions shall be appraised by a State certified appraiser and which by a State licensed appraiser; and

(iii) Prescribes minimum standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of the OCC.

[55 FR 34696, Aug. 24, 1990, as amended at 79 FR 28400, May 16, 2014]

§ 34.42 Definitions.

(a) *Appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(b) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

(e) *Commercial real estate transaction* means a real estate-related financial transaction that is not secured by a single 1-to-4 family residential property.

(f) *Complex appraisal for a residential real estate transaction* means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

(g) *Federally related transaction* means any real estate-related financial transaction entered into on or after August 9, 1990, that:

(1) The OCC or any of its regulated institutions engages in or contracts for; and

(2) Requires the services of an appraiser.

(h) *Market value* means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by

undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(i) *Real estate* or *real property* means an identified parcel or tract of land, with improvements, and includes easements, rights of way, undivided or future interests, or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights, or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(j) *Real estate-related financial transaction* means any transaction involving:

(1) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; or

(2) The refinancing of real property or interests in real property; or

(3) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(k) *Residential real estate transaction* means a real estate-related financial transaction that is secured by a single 1-to-4 family residential property.

(l) *State certified appraiser* means any individual who has satisfied the requirements for certification in a State or territory whose criteria for certification as a real estate appraiser currently meet the minimum criteria for certification issued by the Appraiser Qualifications Board of the Appraisal Foundation. No individual shall be a State certified appraiser unless such individual has achieved a passing grade upon a suitable examination administered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA. The OCC may, from time to time, impose additional qualification criteria for certified appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(m) *State licensed appraiser* means any individual who has satisfied the requirements for licensing in a State or territory where the licensing procedures comply with title XI of FIRREA and where the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI. The OCC may, from time to time, impose additional qualification criteria for licensed appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(n) *Tract development* means a project of five units or more that is constructed or is to be constructed as a single development.

(o) *Transaction value* means:

(1) For loans or other extensions of credit, the amount of the loan or extension of credit;

(2) For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

(3) For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

[55 FR 34696, Aug. 24, 1990, as amended at 57 FR 12202, Apr. 9, 1992; 59 FR 29499, June 7, 1994; 79 FR 28400, May 16, 2014; 83 FR 15035, Apr. 9, 2018; 84 FR 53597, Oct. 8, 2019]

§ 34.43 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction is a residential real estate transaction that has a transaction value of $400,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of $1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met OCC regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law;

(12) The OCC determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution;

(13) The transaction is a commercial real estate transaction that has a transaction value of $500,000 or less; or

(14) The transaction is exempted from the appraisal requirement pursuant to the rural residential exemption under 12 U.S.C. 3356.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraphs (a)(1), (5), (7), (13), or (14) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

(c) *Appraisals to address safety and soundness concerns.* The OCC reserves the right to require an appraisal under this subpart whenever the agency believes it is necessary to address safety and soundness concerns.

(d) *Transactions requiring a State certified appraiser*—(1) *All transactions of $1,000,000 or more.* All federally related transactions having a transaction value of $1,000,000 or more shall require an appraisal prepared by a State certified appraiser.

(2) *Commercial real estate transactions of more than $500,000.* All federally related transactions that are commercial real estate transactions having a transaction value of more than $500,000 shall require an appraisal prepared by a State certified appraiser.

(3) *Complex appraisals for residential real estate transactions of more than $400,000.* All complex appraisals for residential real estate transactions rendered in connection with federally related transactions shall require a State certified appraiser if the transaction value is more than $400,000. A regulated institution may presume that appraisals for residential real estate transactions are not complex, unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If during the course of the appraisal a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and co-sign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

(e) *Transactions requiring either a State certified or licensed appraiser.* All appraisals for federally related transactions not requiring the services of a State certified appraiser shall be prepared by either a State certified appraiser or a State licensed appraiser.

[55 FR 34696, Aug. 24, 1990, as amended at 57 FR 12202, Apr. 9, 1992; 59 FR 29499, June 7, 1994; 79 FR 28400, May 16, 2014; 83 FR 15035, Apr. 9, 2018; 84 FR 53597, Oct. 8, 2019; 84 FR 53597, Oct. 8, 2019]

§ 34.44 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, (*www.appraisalfoundation.org*), unless principles of safe and sound banking require compliance with stricter standards;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice;

(d) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(e) Be based upon the definition of market value as set forth in this subpart; and

(f) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this subpart.

[59 FR 29500, June 7, 1994, as amended at 79 FR 28400, May 16, 2014; 84 FR 53597, Oct. 8, 2019]

§ 34.45 Appraiser independence.

(a) *Staff appraisers.* If an appraisal is prepared by a staff appraiser, that appraiser must be independent of the lending, investment, and collection functions and not involved, except as an appraiser, in the federally related transaction, and have no direct or indirect interest, financial or otherwise, in the property. If the only qualified persons available to perform an appraisal are involved in the lending, investment, or collection functions of the regulated institution, the regulated institution shall take appropriate steps to ensure that the appraisers exercise independent judgment. Such steps include, but are not limited to, prohibiting an individual from performing an appraisal in connection with federally related transactions in which the appraiser is otherwise involved and prohibiting directors and officers from participating in any vote or approval involving assets on which they performed an appraisal.

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this subpart and is otherwise acceptable.

[55 FR 34696, Aug. 24, 1990, as amended at 59 FR 29500, June 7, 1994]

§ 34.46 Professional association membership; competency.

(a) *Membership in appraisal organizations.* A State certified appraiser or a State licensed appraiser may not be excluded from consideration for an assignment for a federally related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee appraisers performing appraisals in connection with federally related transactions must be State certified or licensed, as appropriate. However, a State certified or licensed appraiser may not be considered competent solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

§ 34.47 Enforcement.

Institutions and institution-affiliated parties, including staff appraisers and fee appraisers, may be subject to removal and/or prohibition orders, cease and desist orders, and the imposition of civil money penalties pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*, as amended, or other applicable law.

Subpart D—Real Estate Lending Standards

SOURCE: 57 FR 62889, Dec. 31, 1992, unless otherwise noted.

§ 34.61 Purpose and scope.

This subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribes standards for real estate lending to be used by national banks in adopting internal real estate lending policies.

§ 34.62 Real estate lending standards.

(a) Each national bank shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b)(1) Real estate lending policies adopted pursuant to this section must:

(i) Be consistent with safe and sound banking practices;

(ii) Be appropriate to the size of the institution and the nature and scope of its operations; and

(iii) Be reviewed and approved by the bank's board of directors at least annually.

(2) The lending policies must establish:

(i) Loan portfolio diversification standards;

(ii) Prudent underwriting standards, including loan-to-value limits, that are clear and measurable;

(iii) Loan administration procedures for the bank's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the bank's real estate lending policies.

(c) Each national bank must monitor conditions in the real estate market in its lending area to ensure that its real estate lending policies continue to be appropriate for current market conditions.

(d) The real estate lending policies adopted pursuant to this section should reflect consideration of the Interagency Guidelines for Real Estate Lending Policies established by the Federal bank and thrift supervisory agencies.

APPENDIX A TO SUBPART D OF PART 34—INTERAGENCY GUIDELINES FOR REAL ESTATE LENDING

The agencies' regulations require that each insured depository institution adopt and maintain a written policy that establishes appropriate limits and standards for all extensions of credit that are secured by liens on or interests in real estate or made for the purpose of financing the construction of a

building or other improvements.[1] These guidelines are intended to assist institutions in the formulation and maintenance of a real estate lending policy that is appropriate to the size of the institution and the nature and scope of its individual operations, as well as satisfies the requirements of the regulation.

Each institution's policies must be comprehensive, and consistent with safe and sound lending practices, and must ensure that the institution operates within limits and according to standards that are reviewed and approved at least annually by the board of directors. Real estate lending is an integral part of many institutions' business plans and, when undertaken in a prudent manner, will not be subject to examiner criticism.

Loan Portfolio Management Considerations

The lending policy should contain a general outline of the scope and distribution of the institution's credit facilities and the manner in which real estate loans are made, serviced, and collected. In particular, the institution's policies on real estate lending should:

- Identify the geographic areas in which the institution will consider lending.
- Establish a loan portfolio diversification policy and set limits for real estate loans by type and geographic market (e.g., limits on higher risk loans).
- Identify appropriate terms and conditions by type of real estate loan.
- Establish loan origination and approval procedures, both generally and by size and type of loan.
- Establish prudent underwriting standards that are clear and measurable, including loan-to-value limits, that are consistent with these supervisory guidelines.
- Establish review and approval procedures for exception loans, including loans with loan-to-value percentages in excess of supervisory limits.
- Establish loan administration procedures, including documentation, disbursement, collateral inspection, collection, and loan review.
- Establish real estate appraisal and evaluation programs.
- Require that management monitor the loan portfolio and provide timely and adequate reports to the board of directors.

The institution should consider both internal and external factors in the formulation of its loan policies and strategic plan. Factors that should be considered include:

- The size and financial condition of the institution.
- The expertise and size of the lending staff.
- The need to avoid undue concentrations of risk.
- Compliance with all real estate related laws and regulations, including the Community Reinvestment Act, anti-discrimination laws, and for savings associations, the Qualified Thrift Lender test.
- Market conditions.

The institution should monitor conditions in the real estate markets in its lending area so that it can react quickly to changes in market conditions that are relevant to its lending decisions. Market supply and demand factors that should be considered include:

- Demographic indicators, including population and employment trends.
- Zoning requirements.
- Current and projected vacancy, construction, and absorption rates.
- Current and projected lease terms, rental rates, and sales prices, including concessions.
- Current and projected operating expenses for different types of projects.
- Economic indicators, including trends and diversification of the lending area.
- Valuation trends, including discount and direct capitalization rates.

Underwriting Standards

Prudently underwritten real estate loans should reflect all relevant credit factors, including:

- The capacity of the borrower, or income from the underlying property, to adequately service the debt.
- The value of the mortgaged property.
- The overall creditworthiness of the borrower.
- The level of equity invested in the property.
- Any secondary sources of repayment.
- Any additional collateral or credit enhancements (such as guarantees, mortgage insurance or takeout commitments).

The lending policies should reflect the level of risk that is acceptable to the board of directors and provide clear and measurable underwriting standards that enable the institution's lending staff to evaluate these credit factors. The underwriting standards should address:

- The maximum loan amount by type of property.
- Maximum loan maturities by type of property.
- Amortization schedules.
- Pricing structure for different types of real estate loans.
- Loan-to-value limits by type of property.

[1] The agencies have adopted a uniform rule on real estate lending. See 12 CFR part 365 (FDIC); 12 CFR part 208, subpart C (FRB); 12 CFR part 34, subpart D (OCC); and 12 CFR 563.100–101 (OTS).

For development and construction projects, and completed commercial properties, the policy should also establish, commensurate with the size and type of the project or property:

- Requirements for feasibility studies and sensitivity and risk analyses (*e.g.*, sensitivity of income projections to changes in economic variables such as interest rates, vacancy rates, or operating expenses).
- Minimum requirements for initial investment and maintenance of hard equity by the borrower (*e.g.*, cash or unencumbered investment in the underlying property).
- Minimum standards for net worth, cash flow, and debt service coverage of the borrower or underlying property.
- Standards for the acceptability of and limits on non-amortizing loans.
- Standards for the acceptability of and limits on the use of interest reserves.
- Pre-leasing and pre-sale requirements for income-producing property.
- Pre-sale and minimum unit release requirements for non-income-producing property loans.
- Limits on partial recourse or non-recourse loans and requirements for guarantor support.
- Requirements for takeout commitments.
- Minimum covenants for loan agreements.

Loan Administration

The institution should also establish loan administration procedures for its real estate portfolio that address:

- Documentation, including:

Type and frequency of financial statements, including requirements for verification of information provided by the borrower;

Type and frequency of collateral evaluations (appraisals and other estimates of value).

- Loan closing and disbursement.
- Payment processing.
- Escrow administration.
- Collateral administration.
- Loan payoffs.
- Collections and foreclosure, including:

Delinquency follow-up procedures;

Foreclosure timing;

Extensions and other forms of forbearance;

Acceptance of deeds in lieu of foreclosure.

- Claims processing (*e.g.*, seeking recovery on a defaulted loan covered by a government guaranty or insurance program).
- Servicing and participation agreements.

Supervisory Loan-to-Value Limits

Institutions should establish their own internal loan-to-value limits for real estate loans. These internal limits should not exceed the following supervisory limits:

Loan category	Loan-to-value limit (percent)
Raw land	65
Land development	75
Construction:	
Commercial, multifamily,[1] and other nonresidential	80
1- to 4-family residential	85
Improved property	85
Owner-occupied 1- to 4-family and home equity	[2]

[1] Multifamily construction includes condominiums and cooperatives.

[2] A loan-to-value limit has not been established for permanent mortgage or home equity loans on owner-occupied, 1- to 4-family residential property. However, for any such loan with a loan-to-value ratio that equals or exceeds 90 percent at origination, an institution should require appropriate credit enhancement in the form of either mortgage insurance or readily marketable collateral.

The supervisory loan-to-value limits should be applied to the underlying property that collateralizes the loan. For loans that fund multiple phases of the same real estate project (e.g., a loan for both land development and construction of an office building), the appropriate loan-to-value limit is the limit applicable to the final phase of the project funded by the loan; however, loan disbursements should not exceed actual development or construction outlays. In situations where a loan is fully cross-collateralized by two or more properties or is secured by a collateral pool of two or more properties, the appropriate maximum loan amount under supervisory loan-to-value limits is the sum of the value of each property, less senior liens, multiplied by the appropriate loan-to-value limit for each property. To ensure that collateral margins remain within the supervisory limits, lenders should redetermine conformity whenever collateral substitutions are made to the collateral pool.

In establishing internal loan-to-value limits, each lender is expected to carefully consider the institution-specific and market factors listed under ''Loan Portfolio Management Considerations,'' as well as any other relevant factors, such as the particular subcategory or type of loan. For any subcategory of loans that exhibits greater credit risk than the overall category, a lender should consider the establishment of an internal loan-to-value limit for that subcategory that is lower than the limit for the overall category.

The loan-to-value ratio is only one of several pertinent credit factors to be considered when underwriting a real estate loan. Other credit factors to be taken into account are highlighted in the ''Underwriting Standards'' section above. Because of these other factors, the establishment of these supervisory limits should not be interpreted to mean that loans at these levels will automatically be considered sound.

LOANS IN EXCESS OF THE SUPERVISORY LOAN-TO-VALUE LIMITS

The agencies recognize that appropriate loan-to-value limits vary not only among categories of real estate loans but also among individual loans. Therefore, it may be appropriate in individual cases to originate or purchase loans with loan-to-value ratios in excess of the supervisory loan-to-value limits, based on the support provided by other credit factors. Such loans should be identified in the institutions's records, and their aggregate amount reported at least quarterly to the institution's board of directors. (See additional reporting requirements described under ''Exceptions to the General Policy.'')

The aggregate amount of all loans in excess of the supervisory loan-to-value limits should not exceed 100 percent of total capital.[2] Moreover, within the aggregate limit, total loans for all commercial, agricultural, multifamily or other non-1-to-4 family residential properties should not exceed 30 percent of total capital. An institution will come under increased supervisory scrutiny as the total of such loans approaches these levels.

In determining the aggregate amount of such loans, institutions should: (a) Include all loans secured by the same property if any one of those loans exceeds the supervisory loan-to-value limits; and (b) include the recourse obligation of any such loan sold with recourse. Conversely, a loan should no longer be reported to the directors as part of aggregate totals when reduction in principal or senior liens, or additional contribution of collateral or equity (e.g., improvements to the real property securing the loan), bring the loan-to-value ratio into compliance with supervisory limits.

EXCLUDED TRANSACTIONS

The agencies also recognize that there are a number of lending situations in which other factors significantly outweigh the need to apply the supervisory loan-to-value limits. These include:

• Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the supervisory loan-to-value limit.

• Loans backed by the full faith and credit of a State government, provided that the amount of the assurance is at least equal to the portion of the loan that exceeds the supervisory loan-to-value limit.

• Loans guaranteed or insured by a State, municipal or local government, or an agency thereof, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the supervisory loan-to-value limit, and provided that the lender has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.

• Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.

• Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs), or loans that are renewed, refinanced, or restructured in connection with a workout situation, either with or without the advancement of new funds, where consistent with safe and sound banking practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.

• Loans that facilitate the sale of real estate acquired by the lender in the ordinary course of collecting a debt previously contracted in good faith.

• Loans for which a lien on or interest in real property is taken as additional collateral through an abundance of caution by the lender (e.g., the institution takes a blanket lien on all or substantially all of the assets of the borrower, and the value of the real property is low relative to the aggregate value of all other collateral).

• Loans, such as working capital loans, where the lender does not rely principally on real estate as security and the extension of credit is not used to acquire, develop, or construct permanent improvements on real property.

• Loans for the purpose of financing permanent improvements to real property, but not secured by the property, if such security interest is not required by prudent underwriting practice.

EXCEPTIONS TO THE GENERAL LENDING POLICY

Some provision should be made for the consideration of loan requests from creditworthy borrowers whose credit needs do not fit within the institution's general lending policy. An institution may provide for prudently underwritten exceptions to its lending policies, including loan-to-value limits, on a loan-by-loan basis. However, any exceptions from the supervisory loan-to-value limits should conform to the aggregate limits on such loans discussed above.

[2] For the state member banks, the term ''total capital'' means ''total risk-based capital'' as defined in Appendix A to 12 CFR part 208. For insured state non-member banks, ''total capital'' refers to that term described in table I of Appendix A to 12 CFR part 325. For national banks and Federal savings associations, the term ''total capital'' is defined at 12 CFR 3.2.

The board of directors is responsible for establishing standards for the review and approval of exception loans. Each institution should establish an appropriate internal process for the review and approval of loans that do not conform to its own internal policy standards. The approval of any such loan should be supported by a written justification that clearly sets forth all of the relevant credit factors that support the underwriting decision. The justification and approval documents for such loans should be maintained as a part of the permanent loan file. Each institution should monitor compliance with its real estate lending policy and individually report exception loans of a significant size to its board of directors.

Supervisory Review of Real Estate Lending Policies and Practices

The real estate lending policies of institutions will be evaluated by examiners during the course of their examinations to determine if the policies are consistent with safe and sound lending practices, these guidelines, and the requirements of the regulation. In evaluating the adequacy of the institution's real estate lending policies and practices, examiners will take into consideration the following factors:

- The nature and scope of the institution's real estate lending activities.
- The size and financial condition of the institution.
- The quality of the institution's management and internal controls.
- The expertise and size of the lending and loan administration staff.
- Market conditions.

Lending policy exception reports will also be reviewed by examiners during the course of their examinations to determine whether the institutions' exceptions are adequately documented and appropriate in light of all of the relevant credit considerations. An excessive volume of exceptions to an institution's real estate lending policy may signal a weakening of its underwriting practices, or may suggest a need to revise the loan policy.

Definitions

For the purposes of these Guidelines:

Construction loan means an extension of credit for the purpose of erecting or rehabilitating buildings or other structures, including any infrastructure necessary for development.

Extension of credit or *loan* means:

(1) The total amount of any loan, line of credit, or other legally binding lending commitment with respect to real property; and

(2) The total amount, based on the amount of consideration paid, of any loan, line of credit, or other legally binding lending commitment acquired by a lender by purchase, assignment, or otherwise.

Improved property loan means an extension of credit secured by one of the following types of real property:

(1) Farmland, ranchland or timberland committed to ongoing management and agricultural production;

(2) 1- to 4-family residential property that is not owner-occupied;

(3) Residential property containing five or more individual dwelling units;

(4) Completed commercial property; or

(5) Other income-producing property that has been completed and is available for occupancy and use, except income-producing owner-occupied 1- to 4-family residential property.

Land development loan means an extension of credit for the purpose of improving unimproved real property prior to the erection of structures. The improvement of unimproved real property may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

Loan origination means the time of inception of the obligation to extend credit (i.e., when the last event or prerequisite, controllable by the lender, occurs causing the lender to become legally bound to fund an extension of credit).

Loan-to-value or *loan-to-value ratio* means the percentage or ratio that is derived at the time of loan origination by dividing an extension of credit by the total value of the property(ies) securing or being improved by the extension of credit plus the amount of any readily marketable collateral and other acceptable collateral that secures the extension of credit. The total amount of all senior liens on or interests in such property(ies) should be included in determining the loan-to-value ratio. When mortgage insurance or collateral is used in the calculation of the loan-to-value ratio, and such credit enhancement is later released or replaced, the loan-to-value ratio should be recalculated.

Other acceptable collateral means any collateral in which the lender has a perfected security interest, that has a quantifiable value, and is accepted by the lender in accordance with safe and sound lending practices. Other acceptable collateral should be appropriately discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral. Other acceptable collateral includes, among other items, unconditional irrevocable standby letters of credit for the benefit of the lender.

Owner-occupied, when used in conjunction with the term *1- to 4-family residential property* means that the owner of the underlying real property occupies at least one unit of the real property as a principal residence of the owner.

Readily marketable collateral means insured deposits, financial instruments, and bullion

in which the lender has a perfected interest. Financial instruments and bullion must be salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market. Readily marketable collateral should be appropriately discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral.

Value means an opinion or estimate, set forth in an appraisal or evaluation, whichever may be appropriate, of the market value of real property, prepared in accordance with the agency's appraisal regulations and guidance. For loans to purchase an existing property, the term ''value'' means the lesser of the actual acquisition cost or the estimate of value.

1- to 4-family residential property means property containing fewer than five individual dwelling units, including manufactured homes permanently affixed to the underlying property (when deemed to be real property under State law).

[57 FR 62896, Dec. 31, 1992; 58 FR 4460, Jan. 14, 1993, as amended at 79 FR 11312, Feb. 28, 2014; 84 FR 56374, Oct. 22, 2019]

Subpart E—Other Real Estate Owned

SOURCE: 61 FR 11301, Mar. 20, 1996, unless otherwise noted.

§ 34.81 Definitions.

Debts previously contracted (DPC) real estate means real estate (including leases) acquired by a national bank or Federal savings association through any means in full or partial satisfaction of a debt previously contracted.

Former banking premises means real estate permissible under § 7.1000(a)(1) of this chapter that is no longer used or contemplated to be used for the purposes permitted under that section.

Market value means the value determined in accordance with subpart C of this part.

Other real estate owned (OREO) means:

(1) DPC real estate; and

(2) Former banking premises.

Recorded investment amount means:

(1) For loans, the recorded loan balance, as determined by generally accepted accounting principles; and

(2) For former banking premises, the net book value.

[61 FR 11301, Mar. 20, 1996, as amended at 79 FR 11313, Feb. 28, 2014; 84 FR 56374, Oct. 22, 2019]

§ 34.82 Holding period.

(a) *Holding period for OREO*—(1) *National bank.* A national bank shall dispose of OREO at the earliest time that prudent judgment dictates, but not later than the end of the holding period (or an extension thereof) permitted by 12 U.S.C. 29.

(2) *Federal savings association.* A Federal savings association may hold OREO for not more than five years after commencement of the holding period. On the request of a Federal savings association, the OCC may extend the holding period for not more than an additional five years.

(b) *Commencement of holding period.* The holding period begins on the date that:

(1) Ownership of the property is originally transferred to a national bank or Federal savings association, including as a result of a merger with or acquisition of another organization holding OREO;

(2) A national bank or Federal savings association completes relocation from former banking premises to new banking premises or ceases to use the former banking premises without relocating;

(3) A national bank or Federal savings association decides not to use real estate acquired for future banking expansion;

(4) An institution converts to a national bank or Federal savings association, unless the institution was a national bank or Federal savings association immediately prior to the conversion; or

(5) Is January 1, 2020, for OREO obtained by a Federal savings association prior to that date.

(c) *Effect of statutory redemption period.* For DPC real estate that is subject to a redemption period imposed under State law, the holding period begins at the expiration of that redemption period.

(d) *Effect of failed disposition.* If a national bank or Federal savings association disposes of OREO, but the real estate subsequently is conveyed back to the institution within five years as a result of a valid rescission or invalidation of the original disposition, then the holding period will be tolled for the period during which the real estate was not in possession of the national bank or Federal savings association.

(e) *Re-acquisition of former OREO.* If a national bank or Federal savings association reacquires a property that had been OREO and was disposed of consistent with § 34.83, the holding period will reset.

[61 FR 11301, Mar. 20, 1996, as amended at 84 FR 56375, Oct. 22, 2019; 84 FR 64193, Nov. 21, 2019]

§ 34.83 Disposition of OREO.

(a) *Disposition.* A national bank or Federal savings association may dispose of OREO in the following ways:

(1) With respect to OREO in general:

(i) By entering into a transaction that is a sale under generally accepted accounting principles;

(ii) By entering into a transaction that involves a loan guaranteed or insured by the United States government or by an agency of the United States government or a loan eligible for purchase by a Federally-sponsored instrumentality that purchases loans; or

(iii) By selling the property pursuant to a land contract or a contract for deed;

(2) With respect to DPC real estate, by retaining the property for its own use as bank premises or by transferring it to a subsidiary or affiliate for use in the business of the subsidiary or affiliate;

(3) With respect to a lease:

(i) By obtaining an assignment or a coterminous sublease. If a national bank or Federal savings association enters into a sublease that is not coterminous, the period during which the master lease must be divested will be suspended for the duration of the sublease, and will begin running again upon termination of the sublease. A national bank or Federal savings association holding a lease as OREO may enter into an extension of the lease that would exceed the holding period referred to in § 34.82 if the extension meets the following criteria:

(A) The extension is necessary in order to sublease the master lease;

(B) The national bank or Federal savings association, prior to entering into the extension, has a firm commitment from a prospective subtenant to sublease the property; and

(C) The term of the extension is reasonable and does not materially exceed the term of the sublease;

(ii) Should the OCC determine that a national bank or Federal savings association has entered into a lease, extension of a lease, or a sublease for the purpose of real estate speculation, the OCC will take appropriate measures to address the violation, which may include requiring the bank or savings association to take immediate steps to divest the lease or sublease; and

(4) With respect to a transaction that does not qualify as a disposition under paragraphs (a)(1) through (3) of this section, by receiving or accumulating from the purchaser an amount in a down payment, principal and interest payments, and private mortgage insurance totalling at least 10 percent of the sales price, as measured in accordance with generally accepted accounting principles; or

(5) By any other method approved by the OCC.

(b) *Additional method for Federal savings associations.* A Federal savings association also may transfer OREO to a service corporation. A service corporation may hold real property transferred to it:

(1) As OREO, subject to the requirements otherwise applicable to the Federal savings association under this subpart E; or

(2) As an investment in real estate under § 5.59.

(c) *Disposition efforts and documentation.* A national bank or Federal savings association shall make diligent and ongoing efforts to dispose of each parcel of OREO, and shall maintain documentation adequate to reflect those efforts.

[61 FR 11301, Mar. 20, 1996, as amended at 84 FR 56375, Oct. 22, 2019; 85 FR 43422, July 17, 2020]

§ 34.84 [Reserved]

§ 34.85 Appraisal requirements.

(a) *General.* (1) Upon transfer to OREO, a national bank or Federal savings association shall substantiate the parcel's market value by obtaining either:

(i) An appraisal in accordance with subpart C of this part; or

(ii) An appropriate evaluation when the recorded investment amount is equal to or less than the threshold amount in subpart C of this part.

(2) A national bank or Federal savings association shall develop a prudent real estate collateral evaluation policy that allows the bank or savings association to monitor the value of each parcel of OREO in a manner consistent with prudent banking practice.

(b) *Exception.* If a national bank or Federal savings association has a valid appraisal or an appropriate evaluation obtained in connection with a real estate loan and in accordance with subpart C of this part, then the bank or savings association need not obtain another appraisal or evaluation when it acquires ownership of the property.

(c) *Sales of OREO.* A national bank or Federal savings association need not obtain a new appraisal or evaluation when selling OREO if the sale is consummated based on a valid appraisal or an appropriate evaluation.

[61 FR 11301, Mar. 20, 1996, as amended at 84 FR 56375, Oct. 22, 2019]

§ 34.86 OREO expenditures and notification.

(a) *Operating expenditures.* A national bank or Federal savings association may pay operating expenses on OREO, including taxes, insurance, utilities, and maintenance, that are reasonable and consistent with safe and sound banking practices.

(b) *Business expenditures.* A national bank or Federal savings association may pay expenses for OREO that includes the operation of a business, provided the expenses are:

(1) Reasonably calculated to reduce any shortfall between the property's market value and the recorded investment amount; and

(2) Consistent with safe and sound banking practices.

(c) *Additional expenditures.* For OREO that is a development or improvement project, a national bank or Federal savings association may make advances to complete the project if the advances are:

(1) Reasonably calculated to reduce any shortfall between the property's market value and the recorded investment amount;

(2) Not made for the purpose of speculation in real estate; and

(3) Consistent with safe and sound banking practices.

(d) *Notification procedures for additional expenditures.* (1) A national bank or Federal savings association shall notify the appropriate supervisory office at least 30 days before implementing a development or improvement plan for OREO when the sum of the plan's estimated cost and the bank's or savings association's current recorded investment amount (including any unpaid prior liens on the property) exceeds 10 percent of the bank's or savings association's total equity capital on its most recent report of condition. A national bank or Federal savings association need notify the OCC under this paragraph (d)(1) only once.

(2) The required notification must demonstrate that the additional expenditure is consistent with the conditions and limitations in paragraph (c) of this section.

(3) Unless informed otherwise, the national bank or Federal savings association may implement the proposed plan on the thirty-first day (or sooner, if notified by the OCC) following receipt by the OCC of the notification, subject to any conditions imposed by the OCC.

[84 FR 56375, Oct. 22, 2019]

Subpart F [Reserved]

Subpart G—Appraisals for Higher-Priced Mortgage Loans

SOURCE: 78 FR 10432, Feb. 13, 2013, unless otherwise noted.

§ 34.201 Authority, purpose and scope.

(a) *Authority.* This subpart is issued by the Office of the Comptroller of the

Currency under 12 U.S.C. 93a, 12 U.S.C. 1463, 1464 and 15 U.S.C. 1639h.

(b) *Purpose.* The OCC adopts this subpart pursuant to the requirements of section 129H of the Truth in Lending Act (15 U.S.C. 1639h) which provides that a creditor, including a national bank or operating subsidiary, a Federal branch or agency or a Federal savings association or operating subsidiary, may not extend credit in the form of a higher-risk mortgage without complying with the requirements of section 129H of the Truth in Lending Act (15 U.S.C. 1639h) and this subpart G. The definition of a higher-risk mortgage in section 129H is consistent with the definition of a higher-priced mortgage loan under Regulation Z, 12 CFR part 1026. Specifically, 12 CFR 1026.35 defines a higher-priced mortgage loan as a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

(1) By 1.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;

(2) By 2.5 or more percentage points, for a loan secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or

(3) By 3.5 or more percentage points, for a loan secured by a subordinate lien.

(c) *Scope.* This subpart applies to higher-priced mortgage loan transactions entered into by national banks and their operating subsidiaries, Federal branches and agencies and Federal savings associations and operating subsidiaries of savings associations.

(d) *Official Interpretations.* Appendix C to this subpart sets out OCC Interpretations of the requirements imposed by the OCC pursuant to this subpart.

§ 34.202 Definitions applicable to higher-priced mortgage loans.

(a) Consummation has the same meaning as in 12 CFR 1026.2(a)(13).

(b) Creditor has the same meaning as in 12 CFR 1026.2(a)(17).

(c) Higher-priced mortgage loan has the same meaning as in 12 CFR 1026.35(a)(1).

(d) Reverse mortgage has the same meaning as in 12 CFR 1026.33(a).

[78 FR 10432, Feb. 13, 2013, as amended at 78 FR 78579, Dec. 26, 2013]

§ 34.203 Appraisals for higher-priced mortgage loans.

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

(1) *Certified or licensed appraiser* means a person who is certified or licensed by the State agency in the State in which the property that secures the transaction is located, and who performs the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements applicable to appraisers in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations, in effect at the time the appraiser signs the appraiser's certification.

(2) *Credit risk* means the financial risk that a consumer will default on a loan.

(3) *Manufactured home* has the same meaning as in 24 CFR 3280.2.

(4) *Manufacturer's invoice* means a document issued by a manufacturer and provided with a manufactured home to a retail dealer that separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options (large appliances, built-in items and equipment), plus actual itemized charges for freight from the factory to the dealer's lot or the homesite (including any rental of wheels and axles) and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category.

(5) *National Registry* means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(6) *New manufactured home* means a manufactured home that has not been previously occupied.

(7) *State agency* means a ''State appraiser certifying and licensing agency'' recognized in accordance with section 1118(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347(b)) and any implementing regulations.

(b) *Exemptions.* Unless otherwise specified, the requirements in paragraph (c) through (f) of this section do not apply to the following types of transactions:

(1) A loan that satisfies the criteria of a qualified mortgage as defined pursuant to 15 U.S.C. 1639c.

(2) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in the OCC official interpretations to this paragraph (b)(2).

(3) A transaction secured by a mobile home, boat, or trailer.

(4) A transaction to finance the initial construction of a dwelling.

(5) A loan with a maturity of 12 months or less, if the purpose of the loan is a ''bridge'' loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

(6) A reverse-mortgage transaction subject to 12 CFR 1026.33(a).

(7) An extension of credit that is a refinancing secured by a first lien, with refinancing defined as in 12 CFR 1026.20(a) (except that the creditor need not be the original creditor or a holder or servicer of the original obligation), provided that the refinancing meets the following criteria:

(i) Either—

(A) The credit risk of the refinancing is retained by the person that held the credit risk of the existing obligation and there is no commitment, at consummation, to transfer the credit risk to another person; or

(B) The refinancing is insured or guaranteed by the same Federal government agency that insured or guaranteed the existing obligation;

(ii) The regular periodic payments under the refinance loan do not—

(A) Cause the principal balance to increase;

(B) Allow the consumer to defer repayment of principal; or

(C) Result in a balloon payment, as defined in 12 CFR 1026.18(s)(5)(i); and

(iii) The proceeds from the refinancing are used solely to satisfy the existing obligation and to pay amounts attributed solely to the costs of the refinancing; and

(8) A transaction secured by:

(i) A new manufactured home and land, but the exemption shall only apply to the requirement in paragraph (c)(1) of this section that the appraiser conduct a physical visit of the interior of the new manufactured home; or

(ii) A manufactured home and not land, for which the creditor obtains one of the following and provides a copy to the consumer no later than three business days prior to consummation of the transaction—

(A) For a new manufactured home, the manufacturer's invoice for the manufactured home securing the transaction, provided that the date of manufacture is no earlier than 18 months prior to the creditor's receipt of the consumer's application for credit;

(B) A cost estimate of the value of the manufactured home securing the transaction obtained from an independent cost service provider; or

(C) A valuation, as defined in 12 CFR 1026.42(b)(3), of the manufactured home performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes.

(c) *Appraisals required*—(1) *In general.* Except as provided in paragraph (b) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer without obtaining, prior to consummation, a written appraisal of the property to be mortgaged. The appraisal must be performed by a certified or licensed appraiser who conducts a physical visit of the interior of

the property that will secure the transaction.

(2) *Safe harbor.* A creditor obtains a written appraisal that meets the requirements for an appraisal required under paragraph (c)(1) of this section if the creditor:

(i) Orders that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in effect at the time the appraiser signs the appraiser's certification;

(ii) Verifies through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the State in which the appraised property is located as of the date the appraiser signed the appraiser's certification;

(iii) Confirms that the elements set forth in appendix A to this subpart are addressed in the written appraisal; and

(iv) Has no actual knowledge contrary to the facts or certifications contained in the written appraisal.

(d) *Additional appraisal for certain higher-priced mortgage loans*—(1) *In general.* Except as provided in paragraphs (b) and (d)(7) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals, if:

(i) The seller acquired the property 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or

(ii) The seller acquired the property 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

(2) *Different certified or licensed appraisers.* The two appraisals required under paragraph (d)(1) of this section may not be performed by the same certified or licensed appraiser.

(3) *Relationship to general appraisal requirements.* If two appraisals must be obtained under paragraph (d)(1) of this section, each appraisal shall meet the requirements of paragraph (c)(1) of this section.

(4) *Required analysis in the additional appraisal.* One of the two required appraisals must include an analysis of:

(i) The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller;

(ii) Changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and

(iii) Any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property.

(5) *No charge for the additional appraisal.* If the creditor must obtain two appraisals under paragraph (d)(1) of this section, the creditor may charge the consumer for only one of the appraisals.

(6) *Creditor's determination of prior sale date and price*—(i) *Reasonable diligence.* A creditor must obtain two written appraisals under paragraph (d)(1) of this section unless the creditor can demonstrate by exercising reasonable diligence that the requirement to obtain two appraisals does not apply. A creditor acts with reasonable diligence if the creditor bases its determination on information contained in written source documents, such as the documents listed in appendix B to this subpart.

(ii) *Inability to determine prior sale date or price—modified requirements for additional appraisal.* If, after exercising reasonable diligence, a creditor cannot determine whether the conditions in paragraphs (d)(1)(i) and (d)(1)(ii) are present and therefore must obtain two written appraisals in accordance with paragraphs (d)(1) through (d)(5) of this section, one of the two appraisals shall include an analysis of the factors in paragraph (d)(4) of this section only to

the extent that the information necessary for the appraiser to perform the analysis can be determined.

(7) *Exemptions from the additional appraisal requirement.* The additional appraisal required under paragraph (d)(1) of this section shall not apply to extensions of credit that finance a consumer's acquisition of property:

(i) From a local, State or Federal government agency;

(ii) From a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure as a result of the person's exercise of rights as the holder of a defaulted mortgage loan;

(iii) From a non-profit entity as part of a local, State, or Federal government program under which the nonprofit entity is permitted to acquire title to single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure;

(iv) From a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party;

(v) From an employer or relocation agency in connection with the relocation of an employee;

(vi) From a servicemember, as defined in 50 U.S.C. App. 511(1), who received a deployment or permanent change of station order after the servicemember purchased the property;

(vii) Located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in that area; or

(viii) Located in a rural county, as defined in 12 CFR 1026.35(b)(2)(iv)(A).

(e) *Required disclosure*—(1) *In general.* Except as provided in paragraph (b) of this section, a creditor shall disclose the following statement, in writing, to a consumer who applies for a higher-priced mortgage loan: ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will 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.'' Compliance with the disclosure requirement in Regulation B, 12 CFR 1002.14(a)(2), satisfies the requirements of this paragraph.

(2) *Timing of disclosure.* The disclosure required by paragraph (e)(1) of this section shall be delivered or placed in the mail no later than the third business day after the creditor receives the consumer's application for a higher-priced mortgage loan subject to this section. In the case of a loan that is not a higher-priced mortgage loan subject to this section at the time of application, but becomes a higher-priced mortgage loan subject to this section after application, the disclosure shall be delivered or placed in the mail not later than the third business day after the creditor determines that the loan is a higher-priced mortgage loan subject to this section.

(f) *Copy of appraisals*—(1) *In general.* Except as provided in paragraph (b) of this section, a creditor shall provide to the consumer a copy of any written appraisal performed in connection with a higher-priced mortgage loan pursuant to paragraphs (c) and (d) of this section.

(2) *Timing.* A creditor shall provide to the consumer a copy of each written appraisal pursuant to paragraph (f)(1) of this section:

(i) No later than three business days prior to consummation of the loan; or

(ii) In the case of a loan that is not consummated, no later than 30 days after the creditor determines that the loan will not be consummated.

(3) *Form of copy.* Any copy of a written appraisal required by paragraph (f)(1) of this section 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.*).

(4) *No charge for copy of appraisal.* A creditor shall not charge the consumer

for a copy of a written appraisal required to be provided to the consumer pursuant to paragraph (f)(1) of this section.

(g) *Relation to other rules.* The rules in this section 34.203 were adopted jointly by the Board of Governors of the Federal Reserve System (the Board), the OCC, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Agency, and the Consumer Financial Protection Bureau (Bureau). These rules are substantively identical to the Board's and the Bureau's higher-priced mortgage loan appraisal rules published separately in 12 CFR 226.43 (for the Board) and 12 CFR 1026.35(a) and (c) (for the Bureau).

[78 FR 10432, Feb. 13, 2013, as amended at 78 FR 78579, 78580, Dec. 26, 2013]

APPENDIX A TO SUBPART G OF PART 34—HIGHER-PRICED MORTGAGE LOAN APPRAISAL SAFE HARBOR REVIEW

To qualify for the safe harbor provided in §34.203(c)(2), a creditor must confirm that the written appraisal:

1. Identifies the creditor who ordered the appraisal and the property and the interest being appraised.

2. Indicates whether the contract price was analyzed.

3. Addresses conditions in the property's neighborhood.

4. Addresses the condition of the property and any improvements to the property.

5. Indicates which valuation approaches were used, and includes a reconciliation if more than one valuation approach was used.

6. Provides an opinion of the property's market value and an effective date for the opinion.

7. Indicates that a physical property visit of the interior of the property was performed, as applicable..

8. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.

9. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations.

[78 FR 10432, Feb. 13, 2013, as amended at 78 FR 78580, Dec. 26, 2013]

APPENDIX B TO SUBPART G OF PART 34—ILLUSTRATIVE WRITTEN SOURCE DOCUMENTS FOR HIGHER-PRICED MORTGAGE LOAN APPRAISAL RULES

A creditor acts with reasonable diligence under §34.203(d)(6)(i) if the creditor bases its determination on information contained in written source documents, such as:

1. A copy of the recorded deed from the seller.

2. A copy of a property tax bill.

3. A copy of any owner's title insurance policy obtained by the seller.

4. A copy of the RESPA settlement statement from the seller's acquisition (*i.e.,* the HUD–1 or any successor form).

5. A property sales history report or title report from a third-party reporting service.

6. Sales price data recorded in multiple listing services.

7. Tax assessment records or transfer tax records obtained from local governments.

8. A written appraisal performed in compliance with §34.203(c)(1) for the same transaction.

9. A copy of a title commitment report detailing the seller's ownership of the property, the date it was acquired, or the price at which the seller acquired the property.

10. A property abstract.

APPENDIX C TO SUBPART G OF PART 34—OCC INTERPRETATIONS

SECTION 34.202—DEFINITIONS APPLICABLE TO HIGHER-PRICED MORTGAGE LOANS

1. *Staff Interpretations.* Section 34.202 incorporates definitions from Regulation Z, 12 CFR part 1026. These OCC Interpretations of 12 CFR part 34, subpart G, incorporate the Official Staff Interpretations to the Bureau's Regulation Z associated with those definitions, at 12 CFR part 1026, Supplement I.

SECTION 34.203—APPRAISALS FOR HIGHER-PRICED MORTGAGE LOANS

34.203(a) Definitions.

34.203(a)(1) Certified or licensed appraiser.

1. *USPAP.* The Uniform Standards of Professional Appraisal Practice (USPAP) are established by the Appraisal Standards Board of the Appraisal Foundation (as defined in 12 U.S.C. 3350(9)). Under §34.203(a)(1), the relevant USPAP standards are those found in the edition of USPAP in effect at the time the appraiser signs the appraiser's certification.

2. *Appraiser's certification.* The appraiser's certification refers to the certification that must be signed by the appraiser for each appraisal assignment. This requirement is specified in USPAP Standards Rule 2–3.

3. *FIRREA title XI and implementing regulations.* The relevant regulations are those prescribed under section 1110 of the Financial

Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (12 U.S.C. 3339), that relate to an appraiser's development and reporting of the appraisal in effect at the time the appraiser signs the appraiser's certification. Paragraph (3) of FIRREA section 1110 (12 U.S.C. 3339(3)), which relates to the review of appraisals, is not relevant for determining whether an appraiser is a certified or licensed appraiser under §34.203(a)(1).

34.203(b) Exemptions.

1. *Compliance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).* Section 34.203(b) provides exemptions solely from the requirements of §34.203(c) through (f). Institutions subject to the requirements of FIRREA and its implementing regulations that make a loan qualifying for an exemption under §34.203(b) must still comply with appraisal and evaluation requirements under FIRREA and its implementing regulations.

34.203(b)(1) Exemptions

Paragraph 34.203(b)(1)

1. *Qualified mortgage criteria.* Under §34.203(b)(1), a loan is exempt from the appraisal requirements of §34.203 if either:

i. The loan is—(1) subject to the ability-to-repay requirements of the Consumer Financial Protection Bureau (Bureau) in 12 CFR 1026.43 as a ''covered transaction'' (defined in 12 CFR 1026.43(b)(1)) and (2) a qualified mortgage pursuant to the Bureau's rules or, for loans insured, guaranteed, or administered by the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS), a qualified mortgage pursuant to applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's definition of a qualified mortgage applies to those loans); or

ii. The loan is—(1) not subject to the Bureau's ability-to-repay requirements in 12 CFR 1026.43 as a ''covered transaction'' (defined in 12 CFR 1026.43(b)(1)), but (2) meets the criteria for a qualified mortgage in the Bureau's rules or, for loans insured, guaranteed, or administered by HUD, VA, USDA, or RHS, meets the criteria for a qualified mortgage in the applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). To explain further, loans enumerated in 12 CFR 1026.43(a) are not ''covered transactions'' under the Bureau's ability-to-repay requirements in 12 CFR 1026.43, and thus cannot be qualified mortgages (entitled to a rebuttable presumption or safe harbor of compliance with the ability-to-repay requirements of 12 CFR 1026.43, *see, e.g.,* 12 CFR 1026.43(e)(1)). These include an extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5, or pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008. *See* 12 CFR 1026.43(a)(3)(iv) and (vi). They also include extensions of credit made by a creditor identified in 12 CFR 1026.43(a)(3)(v). However, these loans are eligible for the exemption in §34.203(b)(1) if they meet the Bureau's qualified mortgage criteria in 12 CFR 1026.43(e)(2), (4), (5), or (6) or 12 CFR 1026.43(f) (including limits on when loans must be consummated) or, for loans that are insured, guaranteed, or administered by HUD, VA, USDA, or RHS, in applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). For example, assume that HUD has prescribed rules to define loans insured under its programs that are qualified mortgages and those rules are in effect. Assume further that a creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h), originates a loan insured by the Federal Housing Administration, which is a part of HUD. The loan is not a ''covered transaction'' and thus is not a qualified mortgage. *See* 12 CFR 1026.43(a)(3)(v)(A) and (b)(1). Nonetheless, the transaction is eligible for an exemption from the appraisal requirements of §34.203(b)(1) if it meets the qualified mortgage criteria in HUD's rules. Nothing in §34.203(b)(1) alters the definition of a qualified mortgage under regulations of the Bureau, HUD, VA, USDA, or RHS.

Paragraph 34.203(b)(2)

1. *Threshold amount.* For purposes of §34.203(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 203(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 203(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the

CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of §34.203(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

x. From January 1, 2023, through December 31, 2023, the threshold amount is $31,000.

4. *Qualifying for exemption—in general.* A transaction is exempt under §34.203(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under §34.203(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a §34.203(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of §34.203 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of §34.203 applies. *See* §34.203(b) and (d)(7).

Paragraph 34.203(b)(3).

1. *Secured by a mobile home.* For purposes of the exemption in §34.203(b)(3), a mobile home does not include a manufactured home, as defined in §34.203(a)(2).

Paragraph 34.203(b)(4).

1. *Construction-to-permanent loans.* Section 34.203 does not apply to a transaction to finance the initial construction of a dwelling. This exclusion applies to a construction-only loan as well as to the construction phase of a construction-to-permanent loan. Section 34.203 does apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor, unless the permanent financing is otherwise exempt from the requirements of §34.203. *See* §34.203(b). When a construction loan may be permanently financed by the same creditor, the general disclosure requirements for closed-end credit pursuant to Regulation Z (12 CFR 1026.17) provide that the creditor may give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. *See* 12 CFR 1026.17(c)(6)(ii) and the Official Staff Interpretations to the Bureau's Regulation Z, comment 17(c)(6)–2. Which disclosure option a creditor elects under §1026.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to §34.203. When the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under §34.203. When the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with 12 CFR 1026.35(a)(1) (incorporated into 12 CFR part 34, subpart G by §34.202) and appendix D to 12 CFR part 1026. The annual percentage rate must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under §34.203. If the transaction is determined to be a higher-priced mortgage loan not otherwise exempt under §34.203(b), only the permanent phase is subject to the requirements of §34.203.

2. *Financing initial construction.* The exemption for construction loans in §34.203(b)(4)

applies to temporary financing of the construction of a dwelling that will be replaced by permanent financing once construction is complete. The exemption does not apply, for example, to loans to finance the purchase of manufactured homes that have not been or are in the process of being built when the financing obtained by the consumer at that time is permanent. *See* §34.203(b)(8).

Paragraph 34.203(b)(7)

Paragraph 34.203(b)(7)(i)(A)

1. *Same credit risk holder.* The requirement that the holder of the credit risk on the existing obligation and the refinancing be the same applies to situations in which an entity bears the financial responsibility for the default of a loan by either holding the loan in its portfolio or guaranteeing payments of principal and any interest to investors in a mortgage-backed security in which the loan is pooled. *See* §34.203(a)(2) (defining ''credit risk''). For example, a credit risk holder could be a bank that bears the credit risk on the existing obligation by holding the loan in the bank's portfolio. Another example of a credit risk holder would be a government-sponsored enterprise that bears the risk of default on a loan by guaranteeing the payment of principal and any interest on a loan to investors in a mortgage-backed security. The holder of credit risk under §34.203(b)(7)(i)(A) does not mean individual investors in a mortgage-backed security or providers of private mortgage insurance.

2. *Same credit risk holder—illustrations.*

Illustrations of the credit risk holder of the existing obligation continuing to be the credit risk holder of the refinancing include, but are not limited to, the following:

i. The existing obligation is held in the portfolio of a bank, thus the bank holds the credit risk. The bank arranges to refinance the loan and also will hold the refinancing in its portfolio. If the refinancing otherwise meets the requirements for an exemption under §34.203(b)(7), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In this case, the exemption would apply regardless of whether the bank arranged to refinance the loan directly or indirectly, such as through the servicer or subservicer on the existing obligation.

ii. The existing obligation is held in the portfolio of a government-sponsored enterprise (GSE), thus the GSE holds the credit risk. The existing obligation is then refinanced by the servicer of the loan and immediately transferred to the GSE. The GSE pools the refinancing in a mortgage-backed security guaranteed by the GSE, thus the GSE holds the credit risk on the refinance loan. If the refinance transaction otherwise meets the requirements for an exemption under §34.203(b)(7), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In this case, the exemption would apply regardless of whether the existing obligation was refinanced by the servicer or subservicer on the existing obligation (acting as a ''creditor'' under 12 CFR 1026.2(a)(17)) or by a different creditor.

3. *Forward commitments.* A creditor may make a mortgage loan that will be sold or otherwise transferred pursuant to an agreement that has been entered into at or before the time the transaction is consummated. Such an agreement is sometimes known as a ''forward commitment.'' A refinance loan does not satisfy the requirement of §34.203(b)(7)(i)(A) if the loan will be acquired pursuant to a forward commitment, such that the credit risk on the refinance loan will transfer to a person who did not hold the credit risk on the existing obligation.

Paragraph 34.203(b)(7)(ii)

1. *Regular periodic payments.* Under §34.203(b)(7)(ii), the regular periodic payments on the refinance loan must not: Result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (*see* 12 CFR 1026.43, and the Official Staff Interpretations to the Bureau's Regulation Z, comment 43(e)(2)(i)–2); or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term ''substantially equal,'' *see* 12 CFR 1026.43, the Official Staff Interpretations to the Bureau's Regulation Z, comment 43(c)(5)(i)–4. In addition, a single-payment transaction is not a refinancing meeting the requirements of §34.203(b)(7) because it does not require ''regular periodic payments.''

Paragraph 34.203(b)(7)(iii)

1. *Permissible use of proceeds.* The exemption for a refinancing under §34.203(b)(7) is available only if the proceeds from the refinancing are used exclusively for the existing obligation and amounts attributed solely to the costs of the refinancing. The existing obligation includes the unpaid principal balance of the existing first lien loan, any earned unpaid finance charges, and any other lawful charges related to the existing loan. For guidance on the meaning of refinancing costs, *see* 12 CFR 1026.23, the Official Staff Interpretations to the Bureau's Regulations Z,

comment 23(f)–4. If the proceeds of a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under §34.203(b)(7) from the appraisal requirements in §34.203.

For applications received on or after July 18, 2015

Paragraph 34.203(b)(8)

Paragraph 34.203(b)(8)(i)

1. *Secured by new manufactured home and land—physical visit of the interior.* A transaction secured by a new manufactured home and land is subject to the requirements of §34.203(c) through (f) except for the requirement in §34.203(c)(1) that the appraiser conduct a physical inspection of the interior of the property. Thus, for example, a creditor of a loan secured by a new manufactured home and land could comply with §34.203(c)(1) by obtaining an appraisal conducted by a state-certified or -licensed appraiser based on plans and specifications for the new manufactured home and an inspection of the land on which the property will be sited, as well as any other information necessary for the appraiser to complete the appraisal assignment in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements of FIRREA and any implementing regulations.

Paragraph 34.203(b)(8)(ii)

1. *Secured by a manufactured home and not land.* Section 34.203(b)(8)(ii) applies to a higher-priced mortgage loan secured by a manufactured home and not land, regardless of whether the home is titled as realty by operation of state law.

Paragraph 34.203(b)(8)(ii)(B)

1. *Independent.* A cost service provider from which the creditor obtains a manufactured home unit cost estimate under §34.203(b)(8)(ii)(B) is ''independent'' if that person is not affiliated with the creditor in the transaction, such as by common corporate ownership, and receives no direct or indirect financial benefits based on whether the transaction is consummated.

2. *Adjustments.* The requirement that the cost estimate be from an independent cost service provider does not prohibit a creditor from providing a cost estimate that reflects adjustments to account for factors such as special features, condition or location. However, the requirement that the estimate be obtained from an independent cost service provider means that any adjustments to the estimate must be based on adjustment factors available as part of the independent cost service used, with associated values that are determined by the independent cost service.

Paragraph 34.203(b)(8)(ii)(C)

1. *Interest in the property.* A person has a direct or indirect in the property if, for example, the person has any ownership or reasonably foreseeable ownership interest in the manufactured home. To illustrate, a person who seeks a loan to purchase the manufactured home to be valued has a reasonably foreseeable ownership interest in the property.

2. *Interest in the transaction.* A person has a direct or indirect interest in the transaction if, for example, the person or an affiliate of that person also serves as a loan officer of the creditor or otherwise arranges the credit transaction, or is the retail dealer of the manufactured home. A person also has a prohibited interest in the transaction if the person is compensated or otherwise receives financial or other benefits based on whether the transaction is consummated.

3. *Training in valuing manufactured homes.* Training in valuing manufactured homes includes, for example, successfully completing a course in valuing manufactured homes offered by a state or national appraiser association or receiving job training from an employer in the business of valuing manufactured homes.

4. *Manufactured home valuation—example.* A valuation in compliance with §34.203(b)(8)(ii)(C) would include, for example, an appraisal of the manufactured home in accordance with the appraisal requirements for a manufactured home classified as personal property under the Title I Manufactured Home Loan Insurance Program of the U.S. Department of Housing and Urban Development, pursuant to section 2(b)(10) of the National Housing Act, 12 U.S.C. 1703(b)(10).

34.203(c)(1) In general.

1. *Written appraisal—electronic transmission.* To satisfy the requirement that the appraisal be ''written,'' a creditor may obtain the appraisal in paper form or via electronic transmission.

34.203(c)(2) Safe harbor.

1. *Safe harbor.* A creditor that satisfies the safe harbor conditions in §34.203(c)(2)(i) through (iv) complies with the appraisal requirements of §34.203(c)(1). A creditor that does not satisfy the safe harbor conditions in §34.203(c)(2)(i) through (iv) does not necessarily violate the appraisal requirements of §34.203(c)(1).

2. *Appraiser's certification.* For purposes of §34.203(c)(2), the appraiser's certification refers to the certification specified in item 9 of appendix A to this subpart. *See also* comment 34.203(a)(1)–2.

Paragraph 34.203(c)(2)(iii).

1. *Confirming elements in the appraisal.* To confirm that the elements in appendix A to this subpart are included in the written appraisal, a creditor need not look beyond the face of the written appraisal and the appraiser's certification.

34.203(d) Additional appraisal for certain higher-priced mortgage loans.

1. *Acquisition.* For purposes of §34.203(d), the terms ''acquisition'' and ''acquire'' refer to the acquisition of legal title to the property pursuant to applicable State law, including by purchase.

34.203(d)(1) In general.

1. *Appraisal from a previous transaction.* An appraisal that was previously obtained in connection with the seller's acquisition or the financing of the seller's acquisition of the property does not satisfy the requirements to obtain two written appraisals under §34.203(d)(1).

2. *90-day, 180-day calculation.* The time periods described in §34.203(d)(1)(i) and (ii) are calculated by counting the day after the date on which the seller acquired the property, up to and including the date of the consumer's agreement to acquire the property that secures the transaction. For example, assume that the creditor determines that date of the consumer's acquisition agreement is October 15, 2012, and that the seller acquired the property on April 17, 2012. The first day to be counted in the 180-day calculation would be April 18, 2012, and the last day would be October 15, 2012. In this case, the number of days from April 17 would be 181, so an additional appraisal is not required.

3. *Date seller acquired the property.* For purposes of §34.203(d)(1)(i) and (ii), the date on which the seller acquired the property is the date on which the seller became the legal owner of the property pursuant to applicable State law.

4. *Date of the consumer's agreement to acquire the property.* For the date of the consumer's agreement to acquire the property under §34.203(d)(1)(i) and (ii), the creditor should use the date on which the consumer and the seller signed the agreement provided to the creditor by the consumer. The date on which the consumer and the seller signed the agreement might not be the date on which the consumer became contractually obligated under State law to acquire the property. For purposes of §34.203(d)(1)(i) and (ii), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. If the dates on which the consumer and the seller signed the agreement differ, the creditor should use the later of the two dates.

5. *Price at which the seller acquired the property.* The price at which the seller acquired the property refers to the amount paid by the seller to acquire the property. The price at which the seller acquired the property does not include the cost of financing the property.

6. *Price the consumer is obligated to pay to acquire the property.* The price the consumer is obligated to pay to acquire the property is the price indicated on the consumer's agreement with the seller to acquire the property. The price the consumer is obligated to pay to acquire the property from the seller does not include the cost of financing the property. For purposes of §34.203(d)(1)(i) and (ii), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. *See also* comment 34.203(d)(1)–4.

34.203(d)(2) Different certified or licensed appraisers.

1. *Independent appraisers.* The requirements that a creditor obtain two separate appraisals under §34.203(d)(1), and that each appraisal be conducted by a different licensed or certified appraiser under §34.203(d)(2), indicate that the two appraisals must be conducted independently of each other. If the two certified or licensed appraisers are affiliated, such as by being employed by the same appraisal firm, then whether they have conducted the appraisal independently of each other must be determined based on the facts and circumstances of the particular case known to the creditor.

34.203(d)(3) Relationship to general appraisal requirements.

1. *Safe harbor.* When a creditor is required to obtain an additional appraisal under §34.203(d)(1), the creditor must comply with the requirements of both §34.203(c)(1) and §34.203(d)(2) through (5) for that appraisal. The creditor complies with the requirements of §34.203(c)(1) for the additional appraisal if the creditor meets the safe harbor conditions in §34.203(c)(2) for that appraisal.

34.203(d)(4) Required analysis in the additional appraisal.

1. *Determining acquisition dates and prices used in the analysis of the additional appraisal.* For guidance on identifying the date on which the seller acquired the property, see comment 34.203(d)(1)–3. For guidance on identifying the date of the consumer's agreement to acquire the property, see comment 34.203(d)(1)–4. For guidance on identifying the price at which the seller acquired the property, see comment 34.203(d)(1)–5. For guidance on identifying the price the consumer is obligated to pay to acquire the property, see comment 34.203(d)(1)–6.

34.203(d)(5) No charge for additional appraisal.

1. *Fees and mark-ups.* The creditor is prohibited from charging the consumer for the performance of one of the two appraisals required under §34.203(d)(1), including by imposing a fee specifically for that appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.

34.203(d)(6) Creditor's determination of prior sale date and price.

34.203(d)(6)(i) In general.

1. *Estimated sales price.* If a written source document describes the seller's acquisition price in a manner that indicates that the price described is an estimated or assumed

amount and not the actual price, the creditor should look at an alternative document to satisfy the reasonable diligence standard in determining the price at which the seller acquired the property.

2. *Reasonable diligence—oral statements insufficient.* Reliance on oral statements of interested parties, such as the consumer, seller, or mortgage broker, does not constitute reasonable diligence under §34.203(d)(6)(i).

3. *Lack of information and conflicting information—two appraisals required.* If a creditor is unable to demonstrate that the requirement to obtain two appraisals under §34.203(d)(1) does not apply, the creditor must obtain two written appraisals before extending a higher-priced mortgage loan subject to the requirements of §34.203 *See also* comment 34.203(d)(6)(ii)–1. For example:

i. Assume a creditor orders and reviews the results of a title search, which shows that a prior sale occurred between 91 and 180 days ago, but not the price paid in that sale. Thus, based on the title search, the creditor would not be able to determine whether the price the consumer is obligated to pay under the consumer's acquisition agreement is more than 20 percent higher than the seller's acquisition price, pursuant to §34.203(d)(1)(ii). Before extending a higher-priced mortgage loan subject to the appraisal requirements of §34.203, the creditor must either: perform additional diligence to ascertain the seller's acquisition price and, based on this information, determine whether two written appraisals are required; or obtain two written appraisals in compliance with §34.203(d)(6). *See also* comment 34.203(d)(6)(ii)–1.

ii. Assume a creditor reviews the results of a title search indicating that the last recorded purchase was more than 180 days before the consumer's agreement to acquire the property. Assume also that the creditor subsequently receives a written appraisal indicating that the seller acquired the property between 91 and 180 days before the consumer's agreement to acquire the property. In this case, unless one of these sources is clearly wrong on its face, the creditor would not be able to determine whether the seller acquired the property within 180 days of the date of the consumer's agreement to acquire the property from the seller, pursuant to §34.203(d)(1)(ii). Before extending a higher-priced mortgage loan subject to the appraisal requirements of §34.203, the creditor must either: perform additional diligence to ascertain the seller's acquisition date and, based on this information, determine whether two written appraisals are required; or obtain two written appraisals in compliance with §34.203(d)(6). *See also* comment 34.203(d)(6)(ii)–1.

34.203(d)(6)(ii) Inability to determine prior sales date or price—modified requirements for additional appraisal.

1. *Required analysis.* In general, the additional appraisal required under §34.203(d)(1) should include an analysis of the factors listed in §34.203(d)(4)(i) through (iii). However, if, following reasonable diligence, a creditor cannot determine whether the conditions in §34.203(d)(1)(i) or (ii) are present due to a lack of information or conflicting information, the required additional appraisal must include the analyses required under §34.203(d)(4)(i) through (iii) only to the extent that the information necessary to perform the analyses is known. For example, assume that a creditor is able, following reasonable diligence, to determine that the date on which the seller acquired the property occurred between 91 and 180 days prior to the date of the consumer's agreement to acquire the property. However, the creditor is unable, following reasonable diligence, to determine the price at which the seller acquired the property. In this case, the creditor is required to obtain an additional written appraisal that includes an analysis under §34.203(d)(4)(ii) and (iii) of the changes in market conditions and any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property. However, the creditor is not required to obtain an additional written appraisal that includes analysis under §34.203(d)(4)(i) of the difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property.

34.203(d)(7) Exemptions from the additional appraisal requirement.

Paragraph 34.203(d)(7)(iii).

1. *Non-profit entity.* For purposes of §34.203(d)(7)(iii), a ''non-profit entity'' is a person with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (12 U.S.C. 501(c)(3)).

Paragraph 34.203(d)(7)(viii).

1. *Bureau table of rural counties.* The Bureau publishes on its Web site a table of rural counties under 12 CFR 1026.35(b)(2)(iv)(A) for each calendar year by the end of that calendar year. *See* Official Staff Interpretations to the Bureau's Regulation Z, comment 35(b)(2)(iv)–1. A property securing an HPML subject to §34.203 is in a rural county under §34.203(d)(7)(viii) if the county in which the property is located is on the table of rural counties most recently published by the Bureau. For example, for a transaction occurring in 2015, assume that the Bureau most recently published a table of rural counties at the end of 2014. The property securing the transaction would be located in a rural county for purposes of §34.203(d)(7)(viii) if the county is on the table of rural counties published by the Bureau at the end of 2014.

34.203(e) Required disclosure.

34.203(e)(1) In general.

1. *Multiple applicants.* When two or more consumers apply for a loan subject to this section, the creditor is required to give the disclosure to only one of the consumers.

2. *Appraisal independence requirements not affected.* Nothing in the text of the consumer notice required by §34.203(e)(1) 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 appraisals or restrictions on the use of borrower-ordered appraisals by creditors.

34.203(f) Copy of appraisals.

34.203(f)(1) In general.

1. *Multiple applicants.* When two or more consumers apply for a loan subject to this section, the creditor is required to give the copy of each required appraisal to only one of the consumers.

34.203(f)(2) Timing.

1. ''*Provide.*'' For purposes of the requirement to provide a copy of the appraisal within a specified time under §34.203(f)(2), ''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 (which, in the case of electronic receipt, must be based upon consent that complies with the E-Sign Act), whichever is earlier.

2. *No waiver.* Regulation B, 12 CFR 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to §34.203. A consumer of a higher-priced mortgage loan subject to §34.203 may not waive the timing requirement to receive a copy of the appraisal under §34.203(f)(2).

34.203(f)(4) No charge for copy of appraisal.

1. *Fees and mark-ups.* The creditor is prohibited from charging the consumer for any copy of an appraisal required to be provided under §34.203(f)(1), including by imposing a fee specifically for a required copy of an appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.

APPENDIX B—ILLUSTRATIVE WRITTEN SOURCE DOCUMENTS FOR HIGHER-PRICED MORTGAGE LOAN APPRAISAL RULES

1. *Title commitment report.* The ''title commitment report'' is a document from a title insurance company describing the property interest and status of its title, parties with interests in the title and the nature of their claims, issues with the title that must be resolved prior to closing of the transaction between the parties to the transfer, amount and disposition of the premiums, and endorsements on the title policy. This document is issued by the title insurance company prior to the company's issuance of an actual title insurance policy to the property's transferee and/or creditor financing the transaction. In different jurisdictions, this instrument may be referred to by different terms, such as a title commitment, title binder, title opinion, or title report.

[78 FR 10432, Feb. 13, 2013, as amended at 78 FR 78580, Dec. 26, 2013; 79 FR 78298, Dec. 30, 2014; 80 FR 73945, Nov. 27, 2015; 81 FR 86254, Nov. 30, 2016; 82 FR 51974, Nov. 9, 2017; 83 FR 59274, Nov. 23, 2018; 84 FR 58015, Oct. 30, 2019; 85 FR 79387, Dec. 10, 2020; 86 FR 67845, Nov. 30, 2021; 87 FR 63665, Oct. 20, 2022]

Subpart H—Appraisal Management Company Minimum Requirements

SOURCE: 80 FR 32679, June 9, 2015, unless otherwise noted.

§ 34.210 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Office of the Comptroller of the Currency under 12 U.S.C. 93a and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376 (2010)), 12 U.S.C. 3331 *et seq.*

(b) *Purpose.* The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

(c) *Scope.* This subpart applies to States and to appraisal management companies (AMCs) providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(d) *Rule of construction.* Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines[3] or other relevant agency guidance that cautions banks, bank holding companies, Federal savings associations, state savings associations,

[3] *See http://www.occ.gov/news-issuances/bulletins/2010/bulletin-2010-42.html.*

and credit unions, as applicable, that each such entity is accountable for overseeing the activities of third-party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the financial institution.

§ 34.211 Definitions.

For purposes of this subpart:

(a) *Affiliate* has the meaning provided in 12 U.S.C. 1841.

(b) *AMC National Registry* means the registry of State-registered AMCs and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c)(1) *Appraisal management company* (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given 12-month period, as defined in § 34.212(d), oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States, as described in § 34.212;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(d) *Appraisal management services* means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing 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 secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(e) *Appraiser panel* means a network, list or roster of licensed or certified appraisers approved by an AMC to perform appraisals as independent contractors for the AMC. Appraisers on an AMC's ''appraiser panel'' under this part include both appraisers accepted by the AMC for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions and appraisers engaged by the AMC to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor for purposes of this subpart if the appraiser is treated as an independent contractor by the AMC for purposes of Federal income taxation.

(f) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(g) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(h) *Covered transaction* means any consumer credit transaction secured by the consumer's principal dwelling.

(i) *Creditor* means:

(1) A person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(2) A person regularly extends consumer credit if the person extended credit (other than credit subject to the requirements of 12 CFR 1026.32) more than 5 times for transactions secured by a dwelling in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the

requirements of 12 CFR 1026.32 or one or more such credit extensions through a mortgage broker.

(j) *Dwelling* means:

(1) A residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(2) A consumer can have only one ''principal'' dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of this section.

(k) *Federally regulated AMC* means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813 and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

(l) *Federally related transaction regulations* means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341–3343.

(m) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(n) *Secondary mortgage market participant* means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) *States* mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) *Uniform Standards of Professional Appraisal Practice* (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 34.212 Appraiser panel—annual size calculation.

For purposes of determining whether, within a 12-month period, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States pursuant to § 34.211(c)(1)(iii)—

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Accepts the appraiser for the AMC's consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor for a covered transaction or secondary mortgage market participant in connection with covered transactions.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 34.213 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 34.214 and with the legal authority and mechanisms to:

(1) Review and approve or deny an AMC's application for initial registration;

(2) Review and renew or review and deny an AMC's registration periodically;

(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;

(4) Verify that the appraisers on the AMC's appraiser panel hold valid State certifications or licenses, as applicable;

(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;

(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and

(7) Report an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the Appraisal Subcommittee.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution and not regulated by a Federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Engage only State-certified or State-licensed appraisers for Federally related transactions in conformity with any Federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a) through (i) of the Truth in Lending Act, 15 U.S.C. 1639e(a) through (i), and regulations thereunder.

§ 34.214 Ownership limitations for State-registered appraisal management companies.

(a) *Appraiser certification or licensing of owners.* (1) An AMC subject to State registration pursuant to § 34.213 shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the appropriate State appraiser certifying and licensing agency.

(2) An AMC subject to State registration pursuant to § 34.213 is not barred by paragraph (a)(1) of this section from being registered by a State or included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(b) *Good moral character of owners.* An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 34.215 Requirements for Federally regulated appraisal management companies.

(a) *Requirements in providing services.* To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in § 34.213(b)(2) through (5).

(b) *Ownership limitations.* (1) A Federally regulated AMC shall not be included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State for a substantive cause, as determined by the Appraisal Subcommittee.

(2) A Federally regulated AMC is not barred by this paragraph (b) from being included on the AMC National Registry if the license or certificate of the appraiser with an ownership interest was not revoked for a substantive cause and has been reinstated by the State or States in which the appraiser was licensed or certified.

(c) *Reporting information for the AMC National Registry.* A Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State to the Appraisal Subcommittee, pursuant to the Appraisal Subcommittee's policies regarding the determination of the AMC National Registry fee, including but not necessarily limited to the collection of information related to the limitations set forth in this section, as applicable.

§ 34.216 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

PART 35—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

Sec.

AUTHORITY: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1831y, and 5412(b)(2)(B).

SOURCE: 66 FR 2084, Jan. 10, 2001, unless otherwise noted.

§ 35.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, or affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) *Scope of this part.* The provisions of this part apply to—

(1) A national bank and its subsidiaries;

(2) A Federal savings association and its subsidiaries; and

(3) Nongovernmental entities or persons (NGEPs) that enter into covered agreements with any entity listed in paragraphs (b)(1) or (b)(2) of this section.

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (CRA) (12 U.S.C. 2901 *et seq.*), part 25 (Community Reinvestment Act