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and receives a fee for performing an appraisal, but who is not an employee of the person engaging the appraiser; or

(B) An organization that, in the ordinary course of business, employs state-licensed or state-certified appraisers to perform appraisals, receives a fee for performing appraisals, and is not subject to the requirements of section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 *et seq.*).

(ii) *Appraisal services.* The term “appraisal services” means the services required to perform an appraisal, including defining the scope of work, inspecting the property, reviewing necessary and appropriate public and private data sources (for example, multiple listing services, tax assessment records and public land records), developing and rendering an opinion of value, and preparing and submitting the appraisal report.

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

(A) Recruit, select, and retain fee appraisers;

(B) Contract with fee appraisers to perform appraisal services;

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

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

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

fect the value assigned to the consumer’s principal dwelling.

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

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

[75 FR 66580, Oct. 28, 2010, 75 FR 80676, Dec. 23, 2010]

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

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

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

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

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

(7) *Manufacturer’s invoice* means a document issued by a manufacturer and provided with a manufactured home to a retail dealer that separately

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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 home-site (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.

(8) *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.

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

(10) *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 paragraphs (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 official staff commentary 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 only 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

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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 N to this part 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 O to this part.

(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 (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 non-profit 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 were adopted jointly by the Board, the Office of the Comptroller of the Currency (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 OCC's and the Bureau's higher-priced mortgage loan appraisal rules published separately in 12 CFR part 34, subpart G and 12 CFR part 164, subpart B (for the OCC) and 12 CFR 1026.35(a) and (c) (for the Bureau). The Board's rules apply to all creditors who are State member banks, bank holding companies and their subsidiaries (other than a bank), savings and loan holding companies and their subsidiaries (other than a savings and loan association), and insured branches and agencies of foreign banks. Compliance with the Board's rules satisfies the requirements of 15 U.S.C. 1639h.

[78 FR 10437, Feb. 13, 2013, as amended at 78 FR 78582, 78583, Dec. 26, 2013]

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Subpart F—Special Rules for Private Education Loans

SOURCE: 74 FR 41232, Aug. 14, 2009, unless otherwise noted.

§ 226.46 Special disclosure requirements for private education loans.

(a) *Coverage.* The requirements of this subpart apply to private education loans as defined in § 226.46(b)(5). A creditor may, at its option, comply with the requirements of this subpart for an extension of credit subject to §§ 226.17 and 226.18 that is extended to a consumer for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes.

(1) *Relation to other subparts in this part.* Except as otherwise specifically provided, the requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this part.

(2) [Reserved]

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Covered educational institution* means:

(i) An educational institution that meets the definition of an institution of higher education, as defined in paragraph (b)(2) of this section, without regard to the institution's accreditation status; and

(ii) Includes an agent, officer, or employee of the institution of higher education. An agent means an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019) or an officer or employee of an institution-affiliated organization.

(2) *Institution of higher education* has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001–1002) and the implementing regulations published by the U.S. Department of Education.

(3) *Postsecondary educational expenses* means any of the expenses that are listed as part of the cost of attendance, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 108711), of a student at a covered educational institution. These expenses include tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance