

## Frequently Asked Question and Answer

October 15, 2015

### Question

As the ECOA Appraisal Disclosure language is now included on the Loan Estimate, are there any instances where the institution is still required to provide the applicant with a separate notice informing the applicant of the right to receive a copy of the appraisal?

### Short Answer

A separate appraisal disclosure is needed in a few instances in which the Loan Estimate would not be provided. A separate disclosure shall be mailed or delivered within three business days of the following scenarios:

- For an application for an open-end loan, such as a Home Equity Line of Credit, to be secured by a first lien on a dwelling;
- For an application for a commercial purpose loan to be secured by a first lien on a dwelling;
- For loan renewals if the creditor will develop a new appraisal or written valuation; and
- For a pre-approval request for a loan to be secured by a first lien on a dwelling.

If the Loan Estimate is provided following an initial application then the ECOA Appraisal Notice requirements have been met.

### Answer Details

Per Regulation B §1002.14(a)-(1) and (2) a creditor shall provide to an applicant a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling. The regulation obligates a creditor to mail or deliver to an applicant, not later than the third business day after the creditor receives an application for credit that is to be secured by a first lien on a dwelling, a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application.

The language in the regulation is not exclusive to closed-end consumer-purpose loans which are subject to the Integrated Disclosure rules and, as such, the separate disclosure and delivery of appraisals shall be required for any other loan to be secured by a 1<sup>st</sup> lien on a dwelling. "Dwelling" is defined in §1002.13(2) as a residential structure that contains 1-4 units, whether or not that structure is attached to real property. This term includes individual condominium or cooperative units and mobile or manufactured homes.

The Official Interpretation to §1002.14 – *Rules on Providing Appraisals and Valuations* addresses renewals of credit extensions, stating that; when an applicant requests the renewal of an existing extension of credit and the creditor develops a new appraisal or other written valuation, the appraisal copy and disclosure rule applies. It does not apply; however, to the extent that a creditor uses the appraisal and other written valuations that were previously developed in connection with the prior extension of credit to evaluate the renewal request.

Regulation B and Regulation Z do not define what constitutes an application in the same way. The issuance of the Loan Estimate under Regulation Z is prompted by the consumer's provision of six pieces of information (name, income, Social Security number, property address, an estimate of property's value and mortgage amount desired). Per Regulation B, §1002.2(f) an application means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The Official Interpretation to §1002.2(f) states that a creditor has the latitude under the regulation to establish its own application process and to decide the amount of information it will require from credit applicants. This refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures.

The Official Interpretation also provides the following example of an application: A person asks a financial institution to “pre-approve” her for a loan and the institution reviews the request under a program in which the institution, after a comprehensive analysis of her creditworthiness, issues a written commitment valid for a designated period of time to extend a loan up to a specified amount. The written commitment may not be subject to conditions other than conditions that require the identification of adequate collateral, conditions that require no material change in the applicant’s financial condition or creditworthiness prior to funding the loan, and limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional application. This means that if the creditor has procedures in place to take action and make a credit decision on a pre-approval request then the creditor has treated the request as an application and is subject to the appraisal copy and disclosure rule.

If you are interested in an audit or assistance with your Lending compliance program, please contact Brian Shea at [bshea@wolfandco.com](mailto:bshea@wolfandco.com) or Erica Torres at [etorres@wolfandco.com](mailto:etorres@wolfandco.com).