

SPECIAL ALERT: CFPB ISSUES FINAL RULE REQUIRING PROVISION OF COPIES OF APPRAISALS AND VALUATIONS TO CREDIT APPLICANTS

On January 18, the Consumer Financial Protection Bureau (CFPB) issued a [final rule](#) that implements amendments made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to the Equal Credit Opportunity Act (ECOA) to require creditors to provide applicants with copies of appraisals and other written valuations conducted as part of the credit process (the Final Rule). Specifically, the Final Rule requires creditors to provide residential mortgage loan applicants with a copy of any and all appraisals and other written valuations developed in connection with an application for closed or open-end credit that is to be secured by a first lien on a dwelling. The practical import of this Final Rule is that creditors will need to ensure that their systems and procedures ensure that any time an appraisal or valuation is conducted or obtained for an application for credit, the borrower is provided both notice of the right to a copy, and the actual copy itself, of such appraisals or valuations. The requirements of the Final Rule will become effective on January 18, 2014.

Previously, creditors were required to provide applicants with copies of appraisal reports only upon written request from the borrower. Under the Final Rule, creditors must: (i) provide a disclosure that notifies applicants, within three business days of receiving an application, of their right to receive a copy of any appraisals or other written valuations; and (ii) actually provide a copy of the appraisals and/or other written valuations to the applicant, regardless of whether the consumer requests them and regardless of whether the credit is extended or denied, or the application is incomplete or withdrawn.

Regarding the disclosure requirement, creditors must mail or deliver a notice in writing of the applicant's right to receive a copy of *all* written appraisals developed in connection with the application. Sample language for this notice was developed by the CFPB as part of the rulemaking and is provided in the Appendix to Regulation B. With respect to providing the actual appraisals, creditors must provide copies not only of appraisals but also of other written valuations (defined as any estimate of the value of a dwelling developed in connection with an application for credit). As a result, this requirement covers broker price opinions and automated valuation models created in connection with a covered transaction.

The requirements apply where credit will be secured by a first lien on a dwelling, which is defined as a residential structure that contains one-to-four units whether or not that structure is attached to real property, and apply regardless of whether the dwelling will be owner-occupied. The requirements also apply to any application for renewal of an existing extension of credit to the extent that the creditor develops appraisals in connection with the renewal.

The rule further prescribes the timing of the provision of copies of appraisals. Copies must be provided promptly upon completion, or three business days prior to consummation, whichever is earlier. Applicants may waive this timing requirement and agree to receive any copy at or before consummation. In the event that an applicant waives the timing requirement and the transaction is not consummated, the creditor must provide the copies no later than 30 days after the creditor determines that the transaction will not be consummated. Any waiver generally must be obtained at least three business days prior to

consummation (meaning a creditor cannot obtain a waiver after-the-fact in the instance of later discovering that the copy of the appraisal was not timely provided).

The disclosures and copies required to be given under the rule may be provided in electronic form. Finally, creditors may not charge applicants for providing the first copy of any appraisal report under the Final Rule, but may require applicants to pay a reasonable fee to reimburse the creditor for the cost of the performance of the appraisal as well as subsequently requested copies of the appraisal report.

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Questions regarding the matters discussed in this Alert may be directed to the lawyers listed below, or to any other BuckleySandler attorney with whom you have consulted in the past.

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