



Overview

Interagency Appraisal and Evaluation Guidelines and

Federal Reserve Board's Regulation Z (TILA) appraisal provisions

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Disclaimer: The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on the Board of Governors of the Federal Reserve System

Interagency Appraisal and Evaluation Guidelines

- Effective Date: 12/10/10. On a case-by-case basis, an institution needing to improve its appraisal program may be granted some flexibility to revise procedures.
- Interagency press release on December 2, 2010
- Federal Register Notice: 75 FR 77450 (Dec. 10, 2010)
- FRB: www.federalreserve.gov Refer to “News and Events” for the press release. Under the tab for “Banking Information and Regulation” refer to “Supervision” for the “Supervision and Regulation Letters,” select year “2010” and select “SR letter 10-16”
- OCC: www.OCC.gov Click on “News and Issuances” from the top tabs, than click “Bulletins” on left-hand side, then “2010”, then select “OCC 2010-42”
- FDIC: www.FDIC.gov Click on “Quick Link for Bankers” and under “Policy and Legislation” select “Financial Institution Letters” and then select “FIL-82-2010”
- OTS: www.ots.treas.gov Click on “Supervision & Legal” from the top tabs, than under “Issuances” select “CEO Memos,” and then select “CEO Ltr 371”

Appraisal Regulations

Appraisal Regulations

- FRB: 12 CFR part 208, subpart E (state member banks) and 12 CFR part 225, subpart G (bank holding companies)
- OCC: 12 CFR part 34, subpart C (national banks)
- FDIC: 12 CFR part 323 (nonmember state banks)
- OTS: 12 CFR part 564 (thrifts)

Real Estate Lending Regulations and Guidelines

- FRB: 12 CFR part 208, subpart E (state member banks)
- OCC: 12 CFR part 34, subpart C (national banks)
- FDIC: 12 CFR part 365 (nonmember state banks)
- OTS: 12 CFR parts 560.100 and 560.101 (thrifts)

Independence

Collateral valuation function

- Appraisers need to be isolated from influence by the loan production staff
- Individuals who prepare evaluations need to be independent
- Appraiser should not begin work until the person has been engaged

Selection

- Institution must engage the appraiser
- Selection process must be independent of the loan production staff
- For residential transactions, loan production staff may use an approved appraiser list
- Appraiser should be competent for the assignment – both property type and market
- Institution may not use a borrower-ordered or borrower-provided appraisal

Communications

- There should be a process for responding to appraisers' questions
- An institution should avoid actions that may compromise independence
- An institution may provide a copy of the sales contract to the appraiser
- Engagement letters document expectations for the appraisal assignment

Minimum Regulatory Appraisal Standards

Conform to Uniform Standards Professional Appraisal Practice (USPAP)

- Results from an automated valuation model (AVM) by itself or signed by an appraiser is not an appraisal
- Broker Price Opinion (BPO) is not an appraisal

Contain sufficient information

- Consider risk and complexity of the transaction
- Reflect a scope of work that is appropriate for the appraisal assignment
- Contain disclosure of the nature and extent of inspection

Analyze deductions and discounts for construction projects

- Provide an estimate of market value based on future demand for the real estate
- Use realistic assumptions and appropriate valuation methods, including the holding, marketing, and sales period.

Contain an estimate of market value

- Comply with the regulatory definition of “market value”

Evaluations

Transactions that Require at a Minimum an Evaluation

- A transaction value equal to or less than the appraisal threshold of \$250,000
- A business loan equal to or less than \$1 million
- Transaction involves an existing extension of credit

Evaluation Development

- Consistent with safe and sound banking practices and support the bank's credit decision
- Address the property's actual physical condition and characteristics as well as the economic and market conditions that affect the estimate of the collateral's market value
- Based on supportable assumptions
- Include sufficient research or inspection to ascertain the property's actual physical condition, and economic and market factors

Evaluation Content

- Contain sufficient information detailing the analysis, assumptions, and conclusions to support the credit decision
- Be documented in the credit file or reproducible

Appraisal and Evaluation Review

Expectations

- Assess reasonableness and validity
- Perform before the final credit decision
- Reflect a risk-focused approach to deciding the depth of the review
- Ensure person performing the review is qualified and independent

Depth of Review

- The methods, assumptions, data sources, and conclusions should be reasonable, well-supported, and appropriate for the transaction, property, and market
- The review process should consider whether the appraisal or evaluation was obtained by the institution or from another financial services institution

Resolution of Deficiencies

- Communicate the noted deficiencies to, and request correction of such deficiencies by the appraiser or person who prepared the evaluation
- Implement adequate internal controls to ensure that communications with an appraiser do not result in any coercion or undue influence
- Address significant deficiencies by obtaining a second appraisal or relying on a review that complies with Standards Rule 3 of USPAP, including the reviewer's opinion of value

Third-Party Arrangements

An institution may use a third party to provide appraisal management related services

An institution is accountable for ensuring that any services performed by a third party comply with applicable laws and regulations and are consistent with supervisory guidance

An institution is responsible for ensuring that a third party selects an appraiser or a person to perform an evaluation who is competent and independent, has the requisite experience and training, and has market knowledge

An institution should ensure that the third party conveys to the appraiser or the person who performs an evaluation that the regulated institution is the client

Referrals of Unethical and Unprofessional Appraisers to States

1

- An institution should file a complaint with the appropriate state appraiser regulatory officials when it suspects that a state certified or licensed appraiser failed to comply with USPAP, applicable state laws, or engaged in other unethical or unprofessional conduct

2

- Under Regulation Z (Truth in Lending) effective April 1, 2011, an institution must file a complaint with the appropriate state appraiser certifying and licensing agency under certain circumstances (Refer to 12 CFR 226.42(g))

3

- An institution must file a suspicious activity report (SAR) with the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) when suspecting fraud in the appraisal or identifying other transactions meeting the SAR filing criteria

Regulation Z (Truth in Lending)

Appraisal Provisions

- Federal Reserve press release on October 18, 2010
- Federal Register Notice: 75 FR 66554 (Oct. 28, 2010)
- FRB: www.federalreserve.gov Refer to “News and Events” for the press release. On the main page, click on banner “Regulatory Reform” for information on rulemakings implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1472

1

- Added a new section (129E) to the Truth in Lending Act (TILA)

2

- Required the Federal Reserve to adopt interim final regulations within 90 days after enactment. An amendment to Regulation Z (12 CFR 226, subpart E)

4

- Covers consumer credit transactions secured by a 1-4 unit single family residence that is the consumer's principal dwelling

5

- Applies to creditors, appraisal management companies, appraisers, mortgage brokers, realtors, title insurers, and other firms that provide settlement services

6

- Applies to mortgage applications on or after April 1, 2011

Regulation Z: Prohibition of Coercion

- **The Regulation prohibits:**
 - Anyone with an interest in the transaction from influencing, or attempting to influence, the appraiser's judgment
- **The Regulation provides examples of actions that would violate this provision.**
 - Require a minimum or maximum value
 - Withhold or threaten to withhold payment if the appraiser does not value the property above a certain amount
 - Imply that future retention of the appraiser is dependent upon the individual providing a certain estimate of value
 - Exclude the appraiser from consideration for future appraisal work
 - Condition the payment of compensation to the appraiser on the closing of the loan

Regulation Z: Mischaracterization of Value

- **Key provisions:**
 - No person who prepares the valuation shall materially misrepresent the value of the consumer's principal dwelling.
 - The creditor shall not falsify or materially alter a valuation
 - The creditor shall not induce a person to misrepresent the value
- **Permitted actions:**
 - Ask the appraiser to consider additional information
 - Require the appraiser to provide more detail
 - Ask the appraiser to correct errors
 - Obtain another appraisal
 - Withhold compensation due to breach of contract
 - Take actions permitted under federal or statute, regulation or guidance

Regulation Z: Prohibition on Conflicts of Interest

- **Key provision:**
 - No person who prepares the valuation or performs valuation management functions may have a direct, or indirect interest, financial or otherwise, in the property or transaction
- **Permitted actions:**
 - Creditors may use in-house appraisers or an affiliated appraisal management company if the creditor has firewalls in place to separate the appraisal function from the loan production function.
 - Guidance is provided for small institutions that may not be able to completely separate the appraisal and loan production staff

Regulation Z: Customary and Reasonable Compensation

- **Key provision:** Creditor or its agent shall compensate a fee appraiser at a rate that is customary and reasonable for comparable appraisal services in the geographic market of the property being appraised.
- **Presumption of Compliance:** Creditor or its agent compensates the fee appraiser at a customary and reasonable rate, taking into account factors such as property type, scope of work, time, and appraiser's qualifications and quality of work. Further, the creditor or its agent do not engage in any anticompetitive acts in violation of federal or state law.
- **Alternative Presumption of Compliance:** Creditor or its agent determines the amount of compensation by relying on information based on:
 - i. Objective third-party information, including fee schedules, studies and surveys prepared by independent third parties such as government agencies, academic institutions, and private research firms that exclude compensation paid to fee appraisers for appraisals ordered by an AMC.
 - ii. Recent rates paid to a representative sample of appraisers in the geographic market of the property being appraised or the appraiser's fee schedule.

Regulation Z: Mandatory Reporting

- **Key provisions:**
 - Violations of USPAP or state or federal ethical or professional requirements must be reported to the appropriate state agency if the failure to comply is “material.”
 - A failure to comply is “material” if it is likely to affect the value assigned to the consumer’s principal dwelling.
- **Examples of Material Failures:**
 - Mischaracterizing the value of the consumer’s principal dwelling
 - Performing an appraisal in a grossly negligent manner, in violation of USPAP
 - Accepting an appraisal assignment on the condition that the appraiser will report a value equal to or greater than the purchase price for the consumer’s principal dwelling, in violation of USPAP
- **Matter that is not Material:** it is not likely to affect the value assigned to the consumer’s principal dwelling
- **Determination of Material:** The determination whether or not a violation is likely to affect the value assigned to the consumer’s principal dwelling is made on a case-by-case basis, depending on the particular facts and circumstances of the matter.