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OVERVIEW
The Dodd-Frank Act was enacted in an effort to overhaul certain aspects of the mortgage loan industry, provided for the creation of the Consumer Financial Protection Bureau (CFPB), and placed certain consumer protection laws and regulations under the administrative and regulatory control of the CFPB. The CFPB amended Regulation Z’s Appraiser Independence Rule (AIR), [Subpart E, Section 1026.42] to ensure that real estate appraisers, and others preparing valuations, are free to use their independent professional judgment in assigning home values without influence or pressure from those with interests in the transactions. AIR also ensures that appraisers receive customary and reasonable payments for their services and provides important protections to homebuyers, mortgage investors and the housing market. AIR replaced the Home Valuation Code of Conduct (HVCC), yet maintains the spirit and intent of the HVCC. AIR requirements became effective October 15, 2010.

Franklin American Mortgage Company (FAMC) purchases loans that are in compliance with the requirements of Regulation Z/Truth in Lending Act Appraiser Independence Requirements (TILA-AIR). FAMC will not purchase any loans not in compliance with TILA-AIR.

FEDERAL REGULATION

Summary
The TILA provisions governing appraisal independence as established by the Dodd-Frank Wall Street Reform and Consumer Protection Act and Regulation Z, Subpart E, Section 1026.42, prohibit certain actions in consumer credit transactions secured by a consumer’s principal dwelling. Basically, it is unlawful to cause or attempt to cause the value assigned to the property to be based on a factor other than the independent judgment of the appraiser by compensating, coercing, extorting, colluding with, instructing, inducing, bribing, or intimidating a person conducting or involved in an appraisal; misrepresenting or passing on a misrepresentation of the appraised value; seeking to influence an appraiser or otherwise encourage a targeted value in order to facilitate the making or pricing of a loan transaction; or withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services provided are in accordance with the contract between the parties.

However, TILA does not prohibit asking an appraiser to consider additional and appropriate information regarding additional comparable properties to make or support an appraisal, asking an appraiser to provide further detail, substantiation, or explanation for the value conclusion, or asking an appraiser to correct errors in the report.

Civil Money Penalties for Non-Compliance
A civil penalty of $10,000 may be imposed for each day any first violation of the appraiser independence rule continues. For subsequent violations, a civil penalty of $20,000 may be imposed for each day any violation continues.
Regulation Z Valuation Independence: Definitions

Covered Persons
Regulation Z Valuation Independence rules apply to creditors, appraisal management companies, appraisers, mortgage brokers, realtors, title insurers, and other settlement service providers (as defined in RESPA).

Covered Transaction
Both open- and closed-end credit transactions secured by consumer’s principal dwelling are subject to the valuation independence rules. Home equity plans secured by a consumer’s principal dwelling are also covered.

Valuation
A valuation is any estimate of value in written/electronic form, other than one produced solely by an automated model or system. All appraisals are valuations. A valuation is an estimate of value prepared by a natural person and includes an estimate of value developed by a natural person using an automated model or system.

Note: Valuation definition under TILA-AIR is different than what is required under the Equal Credit Opportunity Act (ECOA). Refer to the ECOA - Valuations Rule/AIR Appraisal Delivery chapter for further information.

Valuation Management Functions
Valuation Management Functions are administrative functions performed in connection with valuations including:

1. Recruiting, selecting, or retaining a person to prepare a valuation;
2. Contracting with or employing a person to prepare a valuation;
3. Managing or overseeing the process of preparing a valuation, or by providing administrative services such as receiving orders, submitting completed valuations to creditors and underwriters, collecting fees for valuation services rendered, and compensating the person that prepares the valuation;
4. Reviewing or verifying the work of the person that prepares the valuation.

General Appraiser Independence Rule Compliance
FAMC has adopted these written procedures implementing its Appraiser Independence Requirements to comply with the requirements of the Dodd-Frank legislation; the Truth in Lending Act and the CFPB’s amended Regulation Z, Subpart E, Section 1026.42, Fannie Mae, Freddie Mac, and FHA. Additionally, FAMC expects that any third parties, such as appraisal management companies or correspondent lenders, used in conjunction with the sale and delivery of a mortgage to third party agencies and investors for loans purchased are also in compliance with Appraiser Independence Requirements.
Prohibited Acts and Practices
No FAMC employee, officer or agent, or any third party or partner on behalf of FAMC shall not engage, nor will FAMC knowingly accept a mortgage loan from a third party or correspondent lender for sale into the secondary market including Fannie Mae, Freddie Mac, and FHA, who engages in the following acts or practices toward a person who prepares a valuation or a person engaged in valuation management functions:

1. Withholding or threatening to withhold timely payment or partial payment for an appraisal report;
2. Withholding or threatening to withhold future business for an appraiser, or demoting or terminating or threatening to demote or terminate an appraiser;
3. Expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;
4. Conditioning the ordering of an appraisal report or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary value estimate requested from an appraiser;
5. Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report prior to the completion of the appraisal report, or requesting that an appraiser provide estimated values or comparable sales at any time prior to the appraiser’s completion of an appraisal report;
6. Providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;
7. Providing to an appraiser, appraisal company, appraisal management company, or any entity or person related to the appraiser, appraisal company, or appraisal management company, stock or other financial or non-financial benefits;
8. Removing an appraiser from a list of qualified appraisers, or adding an appraiser to an exclusionary list of disapproved appraisers, in connection with the influencing or attempting to influence an appraisal as described in Paragraph B above (this prohibition does not preclude the management of appraiser lists for bona fide administrative or quality-control reasons based on written policy); and
9. Any other act or practice that impairs or attempts to impair an appraiser’s independence, objectivity, or impartiality or violates law or regulation, including, but not limited to, the Truth in Lending Act (TILA) and Regulation Z, or the Uniform Standards of Professional Appraisal Practice (USPAP).

Permissible Conduct
The following are permissible acts or practices:

1. Asking person who prepares valuation to consider additional, appropriate property information, including information about comparable properties, to make or support a valuation;
2. Requesting a person that prepares a valuation provide further detail, substantiation, or explanation for the person’s conclusion about the value;
3. Asking a person that prepares a valuation to correct errors in the valuation;
4. Obtaining multiple valuations for the consumer’s principal dwelling to select the most reliable valuation;
5. Withholding compensation due to breach of contract or substandard performance of services; and
6. Taking action permitted or required by applicable federal or state statute or regulation or agency guidance.

Conflicts of Interest
TILA prohibits a person from preparing a valuation or performing valuation management functions for a covered transaction if he or she has a direct or indirect interest in the property or transaction.

For creditors with assets exceeding $250 million as of December 31 of the past two calendar years, employees or affiliates do not have a conflict of interest based on the person’s employment or affiliation with creditor if:

1. The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation; or
2. The person preparing a valuation or performing valuation management functions reports to a person who is not part of the creditor’s loan production function and whose compensation is not based on the closing of the transaction to which the valuation relates.

For creditors with assets of $250 million or less for either of the past two calendar years, employees or affiliates do not have a conflict of interest based on the person’s employment or affiliation with creditor if:

1. The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation and the creditor requires that any employee, officer, or director of the creditor who orders, performs, or reviews a valuation for a covered transaction abstain from participating in any decision to approve, not approve, or set the terms of that transaction.

FAMC complies with these requirements regardless of asset size. FAMC expects any business partner meeting the definition of a creditor under TILA-AIR to comply with requirements appropriate to their asset size.

Customary and Reasonable Compensation
FAMC or its agents will consider the following factors in determining an amount that is reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property:

1. Type of property;
2. Scope of work;
3. Time in which appraisal services are required to be performed;
4. Fee appraiser qualifications;
5. Fee appraiser experience and professional record; and
6. Fee appraiser work quality.
FAMC and its agents shall be presumed to comply with the requirement to provide customary and reasonable compensation to fee appraisers if the creditor determines the amount of compensation paid to a fee appraiser:

1. By relying on information about rates based on objective third party information, including fee schedules prepared by independent third parties such as government agencies, academic institutions and private research firms;
2. By relying on information about rates based on recent rates paid to a representative sample of providers of appraisal services in the same market as the subject property or the fee schedules of those providers; and
3. If when relying on information based on fee schedules, studies or surveys, compensation paid to fee appraisers for appraisals ordered by appraisal management companies is excluded.

**Mandatory Reporting**

If FAMC reasonably believes an appraiser has materially failed to comply with the USPAP or ethical or professional requirements for appraisers, the matter will be referred to the appropriate state appraiser certifying and licensing agency within a reasonable period of time after it is determined that there is a reasonable basis for believing a material failure to comply has occurred.

A failure to comply is material if the failure is likely to affect the value assigned to the consumer’s principal dwelling. The following acts or practices are material failures to comply and this list is not exclusive:

1. Mischaracterizing the value of the consumer’s principal dwelling;
2. Performing an assignment in a grossly negligent manner; and
3. 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.

**Appraiser Engagement**

The lender or any third party specifically authorized (including, but not limited to, appraisal companies or appraisal management companies) shall be responsible for selecting, retaining, and providing for payment of all compensation to the appraiser.

**Provision of Appraisal to Borrower**

The borrower must be provided a copy of any appraisal report concerning the borrower’s subject property promptly upon the completion of the report at no additional cost to the borrower for reproduction or postage, and in any event no less than three business days prior to closing. The borrower may waive this three day requirement; however, in order for a borrower to waive this three day waiting period the waiver must be obtained at least three business days prior to the closing. If the borrower appropriately waives the three day timing of delivery requirement, the appraisal report(s) must be delivered prior to or at closing.
In the event an appraisal report is found to contain an error, the lender may provide the borrower at closing with a revised copy of an appraisal and information as to the nature of any revisions, so long as the revisions had no impact on value.

**Note:** Refer to the ECOA - Valuations Rule/AIR Appraisal Delivery chapter for detailed information.

**Appraisal Portability**
When appraisals are transferred between creditors, FAMC expects that the creditor ensure that any appraisal, including transferred appraisals are in compliance with TILA-AIR. Creditors are required to certify to TILA-AIR compliance.

Loans delivered with transferred appraisals that have been underwritten by FAMC are not eligible for purchase.

A transferred appraisal occurs when an initial lender takes the application and orders the appraisal, then subsequently transfers that appraisal to another lender prior to closing. An appraisal ordered by a correspondent lender for a loan closed and funded by that same lender and subsequently sold to FAMC is not considered a transferred appraisal.

**Non-Compliance**
A creditor that violates Section 1026.42 is subject to actual damages, statutory damages of up to $4,000 per violation, and attorney’s fees and costs. In addition, any person who violates Section 1026.42 is subject to an administrative civil penalty of up to $10,000 for each day the violation continues in the case of a first offense, and up to $20,000 per day for all subsequent violations.