8 Hour FL SAFE Comprehensive: Compliance for 2023

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Module 1 Federal Laws

In the following sections, "CFR" stands for "Code of Federal Regulations" and "USC" stands for "United States Code". Once Congress passes a law it is recorded in the United States Code (USC) books. The Code of Federal Regulations (CFR) are regulations issued by the various agencies which congress assigned to enforce the various laws (code) it adopted. The agencies explain their interpretation of those laws assigned to them and how it intends to implement it.

Other abbreviations include:

"MMC" – Multi-State Mortgage Committee

"CSBS" – Conference of State Bank Supervisors

"AARMR" – American Association of Residential Mortgage Regulators

"CFPB" – Consumer Financial Protection Bureau

"MME" – Multi-State Mortgage Entities

"NMLS" – Nationwide Mortgage Licensing System

"SAFE Act" - Secure and Fair Enforcement for Mortgage Licensing Act

These course topics are the required topics for 2023 NMLS Continuing Education. They were ranked as the top ten topics the Multi-State Mortgage Committee (MMC) considers important information. These topics were derived from the 2020 3rd quarter examination reports and are required for every Mortgage Loan Originator to learn and prevent violations actionable by State Regulators.

For this module, we will review the importance of Multi-State Mortgage Committee (MMC), and some of the most frequent violations it found during examinations. Regulators want licensees to learn how to properly comply with federal regulations. The student will review the most non-compliant issues found in the examination reports. Laws covered include aspects of ECOA, TILA and RESPA compliance with examples. With this knowledge, students will understand what is considered compliant with the federal laws that govern the mortgage lending industry.

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MMC Influences

Licensee Oversight Authority

To ensure compliance in the mortgage industry, the government uses layers of regulators. From local, and state to federal agencies. The federal regulators' focus is on an overall health and safety of the financial services industry and enforcement of consumer protection laws.

The Consumer Financial Protection Bureau (CFPB) is responsible for the Nationwide Mortgage Licensing System (NMLS) system, federal law enforcement and supervision of financial services including the mortgage industry.

State agencies function on the first level of the financial industry to provide support for federal law enforcement and oversight with regular examinations. They are charged with the tasks of issuing the licenses, supervising of licensees, coordinating examinations, and enforcing state laws governing the financial services industry. To better use the information from the state's examination findings for federal regulators, the Multi-State Mortgage Committee was formed.

Multi-State Mortgage Committee

The Multi-State Mortgage Committee (MMC) is a representative body of ten state mortgage regulators appointed by and reporting to the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). The MMC includes one member of the Consumer Financial Protection Bureau (CFPB) to provide a team approach to the comprehension of the examination data.[1]

The MMC's primary focus is on Multi-state Mortgage Entities (MMEs) and works toward a less burdensome examination process. In the past, MMEs had issues with discrepancies between state agencies' interpretation and enforcement of some regulations. The MMC constructed a Mortgage Examination Manual to promote transparency and consistency in its examinations of these MMEs across state lines and provides guidance for state agencies' examinations to concur with its method.

[1] https://www.csbs.org/sites/default/files/2019-05/MMC%20Mortgage%20Examination%20Manual%20v2%20-%20May%202019.pdf

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MMC Mortgage Examination Manual

The MMC Mortgage Examination Manual is comprised of several sections which provide information and guidance on specific topical areas. The general format is as follows:

- **Introduction** - Provides background information to introduce and support examination of the specific area.
- **Examination Objectives** - Outlines basic goals that should be of primary interest to the examiner in reviewing the respective area.
- **Criteria and/or Guidance** - Outlines applicable requirements, standards, or additional criteria relevant to the examination area.
- **Examination Procedures** - Provides procedural guidance to assist the examiner in evaluating the specific topical area.

Federal and State Agencies

State department of financing agencies use the MCCs Mortgage Examination Manual for guidance when examining its state licensees. An examination completed by a State Regulator will review financial institution's loan files and corporate records to verify the licensee is effectively meeting the requirement to operate, monitor, and control risks associated with mortgage loan origination activities.

With the support of the NMLS and CSBS, the issuing of licenses to state-licensed mortgage professionals is managed by State Regulators. Their responsibility includes licensee supervision, and examinations of licensed activities of state-chartered banks and non-bank entities including mortgage lenders. State agencies are to ensure financial services operate in a safe and sound manner with the citizens of their state.

The Consumer Financial Protection Bureau (CFPB) may examine loan files of state licensees, but its primary focus is on multi-state large licensees or entities. However, if enough complaints are received through its complaint portal that warrants further attention, CFPB can examine a licensee, or unlicensed entity. Their responsibility includes interpretation for compliance and enforcement for all federal laws governing the mortgage lending industry.

MMC Examination Influence on License Topics

Licensees are required to follow all federal laws that govern their licensing activities. To ensure the licensee is in compliance, it will receive regulator examinations. Examiners are in a position to identify

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common deficiencies across state licensees. It provides this information to the Conference State Banking Supervisors (CSBS) for mandatory topics required for MLO annual continuing education. The CSBS requires all NMLS licenses to take continuing education course that reviews the deficiencies and learn guidance on how to properly comply with the rules or regulations.

Individual Mortgage Loan Originators generally are taught the business by someone in their company. That MLO tutor may not have provided proper guidance to the regulations. With the continuing education requirements, all licensees are held accountable to State Regulators for learning how to be compliant and the consequences of violations found during examinations.

RESPA Compliance

Charging Advanced Fee

In the pursuit of encouraging consumers to shop around for their home financing, regulators enforce the RESPA requirement to stop lenders from charging fees upfront to discourage consumers from shopping other lenders for their home financing. Real Estate Settlement Procedures Act (RESPA) Regulation X, as a consumer protection financing legislation, regulates at what point in the home loan request the borrower may be charged a fee. While the Truth-in-Lending Act (TILA) focuses is on owner occupied consumer protections, RESPA offers consumer protections for all residential home financing.

In compliance with RESPA, the lender may charge a fee for the cost of a credit report, but it cannot charge additional fees until after the applicant receives the initial loan application disclosures and indicates an intention to proceed with the loan covered by that good faith estimate.

Examination Findings: MMC examinations found violations of RESPA when it found lenders were charging fees before the borrower's intention to proceed was given. Lenders are prohibited from charging a fee to the borrower, as a condition for providing the required initial loan disclosures {Loan Estimate (LE) or Good Faith Estimate (GFE)}.[2] Lenders were collecting a fee in advance of the borrower's receipt of the initial disclosures and intent to proceed with the loan application.

For example, a fee for an appraisal, inspection, or other similar settlement services was collected before the borrower receives the initial disclosures and provided an intent to proceed to the lender.

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[2] RESPA 12 C.F.R. §1024.7(a)(4)

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This violation pressures the borrower to not shop for another lender as they may not have sufficient funds to pay fees with another lender.

Initial Application Disclosure

RESPA requires a lender to provide a good faith estimate of all known loan fees for the loan transaction using the loan estimate or good faith estimate forms depending on the type of loan requested.

Except as otherwise provided in the regulations, the initial disclosures must be sent not later than three business days after a lender receives an application, or information sufficient to complete an application. In the case of brokered loans, the lender must either provide the GFE or ensure that the broker provided the GFE in compliance with the regulations.[3]

The lender may provide the initial disclosures to the loan applicant by hand delivery, by placing it in the mail, or if the applicant agrees in writing, by fax, email, or other electronic means. The lender is not required to provide the applicant with a GFE if, before the end of the three-business day period, the lender denies the application, or the applicant withdraws the application.

The lender is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or another similar settlement service. This includes obtaining a credit card authorization form for future fees to be charged. The lender may charge a fee limited to the cost of a credit report. The lender may not charge additional fees until after the applicant has received the initial disclosures and indicated an intention to proceed with the loan covered by that GFE. If the initial disclosures are mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and legally recognized public holidays.

The lender may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the lender is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.[4]

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[3] § 1024.7 Good faith estimate

[4] https://www.consumerfinance.gov/rules-policy/regulations/1024/7/

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Lender Bound by Fees Disclosed

The lender is bound, within the tolerances provided in the regulations, to the settlement charges and terms listed on the initial disclosures provided to the borrower, unless a revised disclosure is provided prior to settlement consistent with the allowable change of circumstances. If a lender provides a revised initial disclosure consistent with the regulations, the lender must document the reason that a revised disclosure was provided. Lenders must retain documentation of any reason for providing a revised initial disclosure for no less than three years after settlement.

If a borrower does not express an intent to continue with an application within ten business days after the initial disclosures are provided, the lender is no longer bound to the fees disclosed on the initial disclosure. If the borrower wishes to continue, the lender may issue an updated disclosure without the restrictions of change of circumstance rules.

TILA Intent to Proceed

The compliance for a home loan file's 'intent to proceed' is covered in TILA Regulation Z. Regulation Z provides that a consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses unless a particular manner of communication is required by the creditor. The creditor must document this communication to satisfy the requirements for this regulation.

For example, according to the regulations, a face-to-face oral communication delivery of the disclosures is sufficiently indicative of intent.[5] However, lenders require this intention be in writing due to the importance of compliance with the timing for other compliance aspects of loan processing.

Truth-in-Lending Compliance

The Truth in Lending Act (TILA) regulates the fees charged on residential mortgage loans. A lender may not charge more than what a third-party charge for their services. Charging excessive fees is a violation of TILA Regulation Z.[6] TILA Regulation Z states, the amount imposed upon the consumer for any settlement service shall not exceed the amount charged by the settlement service provider for that service.

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[5] TILA Regulation Z. Section 1026.19(e)(2)(i)(A)

[6] https://www.consumerfinance.gov/rules-policy/regulations/1026/19/#f-2-v

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Examination Findings: MMC examinations found violations of TILA that prohibit lenders from charging fees in excessive of the actual third-party charge. Lenders may not profit from overcharging third party fees. During the examination, regulators found excessive compensation was charged or received by a third party for loan-related goods, products, and services.

The following is a review of Regulation Z compliance requirements. Regulation Z requires the amount imposed upon the consumer for any settlement service may not exceed the amount actually received by the settlement service provider for that service, except as otherwise provided with average charges in the regulation.[7]

Third Party Average Charges

The exception allows a creditor or settlement service provider may charge a consumer or seller the average charge for a settlement service if the following conditions are satisfied:

- The average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions.
- The creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan.
- The creditor or settlement service provider uses the same average charge for every transaction within the defined class, and
- The creditor or settlement service provider does not use an average charge:
    - For any type of insurance
    - For any charge based on the loan amount or property value, or
    - If doing so is otherwise prohibited by law

Official Interpretation of Third-Party Average Charges

Average-charge pricing is the exception to the rule that consumers shall not pay more than the exact amount charged by a settlement service provider for the performance of that service. If the creditor develops representative samples of specific settlement costs for a particular class of transactions, the creditor may charge the average cost for that settlement service instead of the actual cost for such

[7] https://www.consumerfinance.gov/rules-policy/regulations/1026/19/#f-3-i

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transactions. An average-charge program may not be used in a way that inflates the cost for settlement services overall.

To comply with defining the class of transactions requires a creditor to use an appropriate period of time, an appropriate geographic area, and the appropriate type of loan to define a particular class of transactions. A **period of time** is appropriate if the sample size is sufficient to calculate average costs with reasonable precision, provided that the period of time is not less than thirty days and not more than six months. A **geographic area** and loan type are appropriate if the sample size is sufficient to calculate average costs with reasonable precision, provided that the area and loan type is not defined in a way that pools costs between dissimilar populations.[8]

For example:

Assume a creditor defines a geographic area that contains two subdivisions, one with a median appraisal cost of $200, and the other with a median appraisal cost of $1,000. This geographic area would not satisfy the requirements because the cost characteristics of the two populations are dissimilar. However, a geographic area would be appropriately defined if both subdivisions had a relatively normal distribution of appraisal costs, even if the distribution for each subdivision ranges from below $200 to above $1,000.

Assume a creditor defines a type of loan that includes two distinct rate products. The median recording fee for one product is $80, while the median recording fee for the other product is $130. This definition of loan type would not satisfy the average charge requirements because the cost characteristics of the two products are dissimilar.

However, a type of loan would be appropriately defined if both products had a normal distribution of recording fees, even if the distribution for each product ranges from below $80 to above $130.

If a creditor chooses to use an average charge for a settlement service for a particular loan within a class, regulations require the creditor to use that average charge for that service on all loans within the class. The charge may not cause the borrower for the creditor to pay more on the average then what the actual average is.

[8] § 1026.19(f)(3)(ii)(B)

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For example, assume a creditor elects to use an average charge for appraisal fees. The creditor defines a class of transactions as all fixed-rate loans originated between January 1 and April 30 and secured by real property or a cooperative unit located within a particular metropolitan statistical area. The creditor must then charge the average appraisal charge to all consumers who obtain fixed-rate loans originated between May 1 and August 30 secured by real property or a cooperative unit located within the same metropolitan statistical area.

This example assumes that a consumer would not be required to pay the average appraisal charge unless an appraisal was required on that particular loan. Using the example above, if a consumer applies for a loan within the defined class, but already has an appraisal report acceptable to the creditor from a prior loan application, the creditor may not charge the consumer the average appraisal fee because an acceptable appraisal report has already been obtained for the consumer's application.

Similarly, although the creditor defined the class broadly to include fixed-rate rate loans, the creditor may not require the consumer to pay the average appraisal charge if the particular fixed-rate loan program the consumer applied for does not require an appraisal.

If the loan program does not require an appraisal, or the borrower paid for the appraisal fee outside of the transaction, the creditor is not able to use the average charge fee for appraisal in these type of loan transactions. The average charge must correspond to the average amount paid by or imposed on consumers and sellers during the prior defined time period.

For example, assume a creditor calculates an average tax certification fee based on four-month periods starting January 1 of each year. The tax certification fees charged to a consumer on May 20 may not exceed the average tax certification fee paid from January 1 through April 30. A creditor may delay the period by a reasonable amount of time if such delay is needed to perform the necessary analysis and update the affected systems, provided that each subsequent period is scheduled accordingly.

For example, a creditor may define four months from January 1 to April 30 and begin using the average charge from that period on May 15, provided the average charge is used until September 15, at which time the average charge for the period from May 1 to August 31 becomes effective.

Again, creditors using average charges must ensure that the total amount paid by or imposed on consumers for a service does not exceed the total amount paid to the providers of that service for the particular class of transactions. A creditor may find that even though it developed an average-

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cost pricing program in accordance with the requirements, over time it has collected more from consumers than it has paid to settlement service providers.

For example, assume a creditor defines a class of transactions and uses that class to develop an average charge of $135 for pest inspections. The creditor then charges $135 per transaction for one hundred transactions from January 1 through April 30, but the actual average cost to the creditor of pest inspections during this period is $115. The creditor then decreases the average charge for the May to August period to account for the lower average cost during the January to April period.

At this point, the creditor has collected $2,000 more than it has paid to settlement service providers for pest inspections. The creditor then charges $115 per transaction for seventy transactions from May 1 to August 30, but the actual average cost to the creditor of pest inspections during this period is $125. Based on the average cost to the creditor from the May to August period, the average charge to the consumer for the September to December period should be $125.

However, while the creditor spent $700 more than it collected during the May to August period, it collected $1,300 more than it spent from January to August. In cases such as these, the creditor remains responsible for ensuring that the amount collected from consumers does not exceed the total amounts paid for the corresponding settlement services over time. The creditor may develop a variety of methods that achieve this outcome.

CSBS does not provide creditors with exactly how to achieve this goal of reasonable precision for average charges but provides these examples in their Official Interpretation.

For example, the creditor may choose to refund the proportional overage paid to the affected consumers. Or the creditor may choose to factor in the excess amount collected to decrease the average charge for an upcoming period. Almost any method may comply with this requirement, and the creditor is deemed to have complied if it defines a six-month time period and establishes a rolling monthly period of reevaluation.

For example, assume a creditor defines a six-month time period from January 1 to June 30 and the creditor uses the average charge starting July 1. If at the end of July, the creditor recalculates the average cost from February 1 to July 31 and then uses the recalculated average cost for transactions starting August 1, the creditor complies with the requirements, even if the creditor actually collected more from consumers than was paid to providers over time.

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Adjustments based on prospective analysis are permitted but are not required. A creditor may prospectively adjust average charges if it develops a statistically reliable and accurate method for doing so.

For example, assume a creditor calculates average charges based on two time periods: winter (October 1 to March 31), and summer (April 1 to September 30). If the creditor can demonstrate that the average cost of a particular settlement service is always at least 15% more expensive during the winter period than the summer period, the creditor may increase the average charge for the next winter period by 15% over the average cost for the current summer period, provided that the creditor performs retrospective periodic adjustments as required in the official interpretations and regulations.

Average Charge Prohibited Fees

An average charge may not be used for any charge that varies according to the loan amount or property value.

For example, an average charge may not be used for a transfer tax if the transfer tax is calculated as a percentage of the loan amount or property value. In addition, an average charges may not be used for any insurance premium.

For example, average charges may not be used for title insurance or the upfront premium or initial escrow deposit for hazard insurance.

An average charge may not be used where prohibited by any applicable State or local law.

For example, a creditor may not impose an average charge for an appraisal if applicable state law prohibits creditors from collecting any amount in excess of the actual cost of the appraisal.

Average Charge Retention Period

To comply with TILA Regulation Z record retention requirements, a creditor must retain all documentation used to calculate the average charge for a particular class of transactions for at least three years after any settlement for which that average charge was used.[9] The documentation must support the components and methods of calculation.

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[99] https://www.consumerfinance.gov/rules-policy/regulations/1026/25/

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For example, if a creditor calculates an average charge for a particular county recording fee by simply averaging all of the relevant fees paid in the prior month, the creditor need only retain the receipts for the individual recording fees, a ledger demonstrating that the total amount received did not exceed the total amount paid overtime, and a document detailing the calculation.

However, if a creditor develops complex algorithms for determining averages, not only must the creditor maintain the underlying receipts and ledgers, but the creditor must maintain documentation with sufficient detail to allow an examiner to verify the accuracy of the calculations.[10]

TILA HPML Compliance

Regulation Z is a consumer protection law that provides safeguards for unsuspecting financing consumers. One of the safeguards in place is Section 35 of TILA, Higher-Priced Mortgage Loans. It states a creditor cannot 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 with required analysis, if the seller acquired the property:

- Ninety 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%, or
- 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%.[11]

Additionally, Regulation Z states one of the two required appraisals must include an analysis of:

- 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 purchase agreement to acquire the property from the seller.
- Changes in market conditions between the date the seller acquired the property and the date of the purchase agreement to acquire the property; and

[10] Official interpretation of 19(f)(3)(ii) Average charge. in Supplement I
[11] TILA - 12 C.F.R. §1026.35(c)(4)

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- Any improvements made to the property between the date the seller acquired the property and the date of the purchase agreement to acquire the property.

Examination Findings: The MMC examiners found violations with improper compliance for Higher-Priced Mortgage Loans (HPML). The Examiner found the two required appraisals conducted showed discrepancies that did not comply with the higher-priced mortgage loan requirements.

Official Interpretation HPML Appraisal Compliance

For purposes of this section, the terms "acquisition" and "acquire" refer to the acquisition of legal title to the property under applicable State law, including by purchase.[12]

An appraisal from a previous transaction obtained in connection with the seller's acquisition or the financing of the seller's acquisition of the property does not satisfy the requirements to obtain two written appraisals.[13]

The time periods required are calculated by counting the day after the date on which the seller acquired the property, up to and including the date of the purchase agreement to acquire the property that secures the transaction.

For example, assume that the creditor determines that the date of the purchase acquisition agreement is October 15, 2022, and the seller acquired the property on April 17, 2022. The first day to be counted in the 180-day calculation would be April 18, 2022, and the last day would be October 15, 2022. In this case, the number of days from April 17 would be 181, so an additional appraisal is not required. The date on which the seller acquired the property is the date on which the seller became the legal owner of the property according to applicable State law.

The creditor should use the date on which the consumer and the seller signed the agreement provided to the creditor by the consumer. The date on which the consumer and the seller signed the agreement might not be the date on which the consumer became contractually obligated under State law to acquire the property. A creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. If the dates on which the consumer and the seller

[12] § 1026.35(c)(4)
[13] Official interpretation of 35(c)(4)(i) In General

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signed the agreement differ, the creditor should use the latter of the two dates to meet this regulation timing requirement.

- The price at which the seller acquired the property refers to the amount paid by the seller to acquire the property.
- The price at which the seller acquired the property does not include the cost of financing the property.
- The price the consumer is obligated to pay to acquire the property is the price indicated in the purchase agreement with the seller to acquire the property.
- The price the consumer is obligated to pay to acquire the property from the seller does not include the cost of financing the property.

A creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties.[14]

TILA – Loan Estimate Compliance

TILA Regulation Z requires that the lender provide all borrowers with Loan Estimates that accurately states the late payment charge for the loan program. This disclosure provides the borrower an accurate snapshot of the terms of the loan in an easy-to-read format. Consumers rely on this information in making their choice of which creditor and loan program to choose.

The payment late fee is required to be accurately disclosed on the Loan Estimate under the master heading "Additional Information About This Loan," and then under the subheading "Other Considerations." A statement detailing any late payment that may be imposed must be stated as a dollar amount or percentage charge of the late payment amount, and the number of days late to trigger the late payment fee, labeled "Late Payment."

Examination Findings: The MMC Examiner found lenders failed to accurately complete correct content on their Loan Estimates the Examiner found, borrowers received Loan Estimates that contained a late charge of five percent for United States Department of Veterans Affairs (VA Loans)

[14] https://www.consumerfinance.gov/rules-policy/regulations/1026/35/#c-4-i

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and Federal Housing Administration (FHA) loans. The maximum late charge for these government-backed loan programs is four percent.[15]

Official Interpretation of Late Payment

Regulation Z requires a disclosure of charges that are added to an individual delinquent installment by a creditor that otherwise considers the transaction ongoing on its original terms. Late payment charges do not include:

- The right of acceleration
- fees imposed for actual collection costs, such as foreclosure charges or attorney's fees
- referral and extension charges
- the continued accrual of simple interest at the Note rate after the payment due date

However, an increase in the interest rate on account of late payment by the consumer is a late payment charge to the extent of the increase.[16]

Many State laws authorize the calculation of late charges as either a percentage of the delinquent payment amount or a specified dollar amount and permit the imposition of the lesser or greater of the two calculations. The language provided in the disclosure may reflect the requirements and alternatives allowed under State law.[17]

Providing the consumer with **miss-information** is a violation and could be considered misleading.

TILA Closing Disclosure Summary of Required Content

Regulation Z states, in part, "Mortgage loans secured by real property final disclosures are required in a closed-end consumer credit transaction, other than a reverse mortgage, the creditor shall provide the consumer with the disclosures reflecting the actual terms of the transaction."[18]

Regulation Z states, for each transaction subject to these regulations, the creditor shall disclose the information in compliance with this regulation. This is a summary, and then we will expand on the official interpretations of the regulation for additional clarity.

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[15] TILA - 12 C.F.R. §1026.37(m)(4)
[16] Official interpretation of 37(m)(4) Late payment
[17] https://www.consumerfinance.gov/rules-policy/regulations/1026/37/#m-4
[18] TILA Closing Disclosure 12 C.F.R. §1026.19(f)(1) and §1026.38

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Under the master heading ‘Closing Cost Details’ disclosed pursuant to this regulation, columns are provided to state whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all costs in connection with the transaction, other than those required to be disclosed elsewhere, listed in a table with a heading disclosed as ‘Other Costs.’

The table shall contain the items and amounts listed under five subheadings, as required. Under the subheading ‘Prepaids’ and in the applicable column as described, an itemization of each amount for charges must describe the name of the person receiving the payment or government entity assessing the property tax. The total of itemized amounts that are designated borrower-paid at or before closing must be noted as such.

Under the subheading ‘Initial escrow payment at closing’ and in the applicable column, an itemization of each amount for charges, the applicable aggregate adjustment along with the label ‘aggregate adjustment,’ and the total of all such itemized amounts that are designated borrower-paid at or before closing.

Under the subheading ‘Other’ and in the applicable column, an itemization of each amount for charges in connection with the transaction that is in addition to the charges disclosed for services that are required or obtained in the real estate closing by the consumer, the seller, or other party. The itemized fee shows the name of the person ultimately receiving the payment, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

For any cost that is a component of title insurance services, the introductory description ‘Title —' shall appear at the beginning of the label for that actual cost. The parenthetical description ‘(optional)’ shall appear at the end of the label for costs designated borrower-paid at or before closing for any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.

Under the heading ‘Other Disclosures’ is a brief statement of whether, and the conditions under which, the consumer may remain responsible for any default deficiency after foreclosure as applicable under State laws. This section of the disclosure requires a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, with a statement that the consumer should consult an attorney for additional information, under the subheading ‘Liability after Foreclosure’.”

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Closing Disclosure Accurate Information

TILA Regulation Z requires that the lender provide all borrowers with Closing Disclosures (CD) that includes all of the charges incurred for the home loan transaction, including those paid by the seller. The Regulation requires the borrower know and understand all the costs to close their home loan transaction.

The lender may not mask the true transaction costs or fees, even if the seller is paying the cost at closing. The total closing costs being reduced by a seller contribution is acceptable, provided it meets the loan program guidelines, and is properly disclosed in compliance with TILA on the closing disclosure.

Examination Findings: The MMC Examiner found lenders failed to provide an accurate and complete closing disclosure. Borrowers received CDs that did not include all seller-paid charges or charges were improperly designated as to who paid the fee and when, as required by the TILA/RESPA Integrated Disclosure Requirements.[19]

Closing Cost Details & Loan Costs Sections

On the CD, under the master heading "Closing Cost Details" with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all loan costs associated with the transaction must be listed in a table under the heading "Loan Costs." The table must contain the items and amounts listed under the four subheadings.

Official Interpretation of Closing Cost Details

The charges that are designated as paid by others may include the letter "L" in parentheses, for example, "(L)" to the left of the amount in the column to designate those charges paid by the lender under the legal obligation between the lender and consumer.[20]

Origination Charges Section

Under the subheading "Origination Charges," and in the applicable columns as described, an itemization of each amount paid for lender fee charges, the amount of compensation paid by the creditor to a third-party loan originator along with the name of the loan originator ultimately receiving

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[19] Regulation Z, 12 CFR, Section 1026.38(f), (g) and (t)(5)(v)
[20] Official interpretation of 38(f) Closing cost details; loan costs

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the payment, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

Official Interpretation of Origination Charges

All compensation paid to a mortgage loan originator that is a third party associated with the transaction, regardless of the party that pays the compensation, must be disclosed.

Compensation from the **consumer to a third-party mortgage loan originator** is designated as **borrower-paid** at or before closing, as applicable, on the Closing Disclosure.

Compensation from the **creditor to a third-party mortgage loan originator** is designated as **paid by others** on the Closing Disclosure.

Compensation to a **third-party mortgage loan originator from both the consumer and the creditor** in the transaction is **prohibited**.[21]

Calculating compensation to a loan originator from the creditor requires the amount disclosed as paid from the creditor to a third-party mortgage loan originator and must be shown as a dollar value of salaries, commissions, and any financial or similar compensation provided to a third-party mortgage loan originator which are considered to be points and fees.[22]

Interest rate discount points are different from origination points charge. The points paid to the creditor to reduce the interest rate shall be itemized separately, as both a percentage of the amount of credit extended and a dollar amount and using the label "__% of Loan Amount (Points)." If points to reduce the interest rate are not paid, the disclosure required by regulation must be left blank.[23] The number of items disclosed under this section, including the points disclosed shall not exceed thirteen items.

Services Borrower Did Not Shop for Section

TILA Regulation Z states, for loans other than reverse and second mortgage, the creditor shall utilize the Closing Disclosure (CD) form to disclose an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer did or did not

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[21] Official interpretation of 38(f)(1) Origination charges
[22] § 1026.32(b)(1)(ii)
[23] Official interpretation of 37(f)(1) Origination Charges

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shop.[24] Whether or not the borrower shopped for the service is important to encourage a consumer to shop around for their services, to possibly save money.

In compliance with TILA Regulation Z, the amount imposed upon the consumer for any settlement service cannot exceed the amount received by the settlement service provider for that service.

For example, a third-party mortgage broker who originated the loan application requires the CD to show the name of the person receiving the payment for each itemized amount, and the total of all itemized amounts that are designated borrower-paid at or before closing. If the consumer was provided, by the lender, a written list of settlement service providers and the consumer selected a settlement service provider contained on that list, the itemization of services and cost must be moved from this section and disclosed under the subheading "Services You Cannot Shop For."

In this section, 'Services Borrower Did Not Shop,' any item that is a component of title insurance or is for conducting the closing, the introductory description "Title -" shall appear at the beginning of the label for that item and charge. The number of items disclosed under this section shall not exceed thirteen.

Official Interpretation of Services You Cannot Shop for

The next section on the CD, under the subheading "Services You Cannot Shop For," requires an itemization of each amount, and a subtotal of all itemized amounts. Items in this section disclose what the consumer will pay for settlement services for which the consumer cannot shop for due to loan or law requirements, and that service is provided by persons other than the creditor or mortgage broker.

With more detail, the items included under the subheading "Services You Cannot Shop For" are for those services that the creditor requires in connection with the transaction that would be provided by persons other than the creditor or mortgage broker and for which the creditor does not permit the consumer to shop for.

[24] TILA - 12 C.F.R. §1026.38(f)(2) and §1026.19(f)(2)(i)

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For example, allowing the borrower to provide their own credit report would not meet requirements for mortgage lending regulations. Charges included in this section that a consumer is not permitted to shop, include services the consumer must choose from a list provided by the creditor.[25]

For example, the services and amounts to be disclosed in compliance with regulations might include an appraisal fee, appraisal management company fee, credit report fee, flood determination fee, government funding fee, homeowner's association certification fee, lender's attorney fee, tax status research fee, third-party subordination fee, title - closing protection letter fee, title - lender's title insurance policy, and an upfront mortgage insurance fee, provided that the fee is charged at consummation. Government funding fees include a VA or United States Department of Agriculture (USDA) guarantee fee, or any other fee paid to a government entity as part of a governmental loan program, which is paid at consummation.

The services required to be labeled beginning with "Title -" are those required for the issuance of title insurance policies to the creditor in connection with the consummation of the transaction or for conducting the closing.

Examples of Title Terms:

- Title Search - The examination and evaluation, based on relevant law and title insurance underwriting principles and guidelines, of the title evidence to determine the insurability of the title being examined, and what items to include or exclude in any title commitment and policy to be issued.
- Title Commitment - Preparation and issuance of the title commitment or other document that discloses the status of the title as it is proposed to be insured, identifies the conditions that must be met before the policy will be issued, and obligates the insurer to issue a policy of title insurance if such conditions are met.
- Resolution of underwriting issues and taking the steps needed to satisfy any conditions for the issuance of the policies.
- After closing, the preparation and issuance of the policy or policies of title insurance.
- Premiums for any title insurance coverage for the benefit of the creditor.

[25] Official interpretation of 37(f)(2) Services you cannot shop for

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The Lender's title insurance policy requires disclosure of the amount the consumer will pay for the lender's title insurance policy. However, an owner's title insurance policy that covers the consumer and is not required to be purchased by the creditor is only disclosed in Closing Cost Details section.

Accordingly, the creditor must quote the amount of the lender's title insurance coverage as applicable based on the type of lender's title insurance policy required by its underwriting standards for that loan. The amount disclosed for the lender's title insurance policy is the amount of the premium without any adjustment that might be made for the simultaneous purchase of an owner's title insurance policy. This amount may be disclosed as "Title - Premium for Lender's Coverage," or in any similar manner that clearly indicates the amount of the premium disclosed for the lender's title insurance coverage.[26]

Services the Borrower Did Shop for

Under the CD subheading "Services Borrower Did Shop For" and in the applicable column, an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer did shop, and that is provided by persons other than the creditor or mortgage broker or their referral. These fees require the name of the person ultimately receiving the payment for each amount listed, and the total of all itemized costs that are designated borrower-paid at or before closing.[27]

Official Interpretation for Services Borrower Did Shop for

Loan closing cost items that were disclosed in compliance in this section of the Loan Estimate cannot then be disclosed in this section of the Closing Disclosure when the consumer selected a provider contained on the written list. Instead, lenders must place such costs from the provider the consumer chose from the provided written list in the section Services borrower did not shop for in compliance with this regulation.[28]

If the consumer was provided a written list of settlement service providers, and the consumer did not select a settlement service provider contained on that written list Items, the lender must disclose the

[26] https://www.consumerfinance.gov/rules-policy/regulations/1026/37/#f-3
[27] § 1026.19(e)(1)(vi)(A)
[28] https://www.consumerfinance.gov/rules-policy/regulations/1026/interp-38/#38-f-2-Interp

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service provider information and charge in this section of the CD, because the borrower DID shop independent of the lender or mortgage broker for the service.[29]

In this section, for any item that is a component of title insurance or is for conducting the closing, the introductory description "Title -" shall appear at the beginning of the label for that item. This section may not disclose more than fourteen items.

Official Interpretation of Other Charges

Owner's Title Insurance Policy Rate

The amount disclosed for an owner's title insurance premium is based on a basic owner's policy rate, and not on an "enhanced" or discounted title insurance policy premium. Except the creditor may instead disclose the premium for an "enhanced" policy when the "enhanced" title insurance policy is required by the real estate sales contract if such requirement is known to the creditor when issuing the Loan Estimate. This amount disclosed is labeled as "Title - Owner's Title Policy (optional)," or in any similar manner that includes the introductory description "Title -" at the beginning of the label for the item. The parenthetical description "(optional)" at the end of the label, and clearly indicates the amount of the premium disclosed for the owner's title insurance coverage. The consumer must be informed of all the true costs without enhancement or discounts.[30]

Simultaneous Title Insurance Premium Rate in Purchase Transactions

The premium for an owner's title insurance policy for which a special rate may be available based on the simultaneous issuance of a lender and an owner's policy is calculated and disclosed as follows:

- The title insurance premium for a lender's title policy is based on the full premium rate.
- The owner's title insurance premium is calculated by taking the full owner's title insurance premium, adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for the lender's coverage.

Designation of Optional Items

Products disclosed for which the parenthetical description "(optional)" is included at the end of the label for the item on the Loan Estimate, as applicable.

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[29] Official interpretation of 38(f)(2) Services borrower did not shop for
[30] https://www.consumerfinance.gov/rules-policy/regulations/1026/interp-37/#37-g-4-Interp-4

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For example, such items may include optional owner's title insurance, credit life insurance, debt suspension coverage, debt cancellation coverage, warranties of home appliances and systems, and similar products, when coverage is written in connection with a credit transaction. However, because the requirement applies to separate products only, additional coverage and endorsements on insurance otherwise required by the lender are not disclosed under the subheading "Other."

For example, other items that are disclosed in this section if the creditor is aware of those items when it issues the Loan Estimate include commissions of real estate brokers or agents, additional payments to the seller to purchase personal property per the property purchase contract, homeowner's association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer per the property purchase contract.

Although the consumer is obligated for these costs, they are not imposed upon the consumer by the creditor or loan originator. Therefore, they are not disclosed with the parenthetical description "(optional)" at the end of the label for the item. They are disclosed in the section "Closing cost details; other costs" rather than "Closing cost details; loan costs." Even if such items are not required to be disclosed on the Loan Estimate, however, they may be required to be disclosed on the Closing Disclosure.

Official Interpretations of Regulation Z States "Prepaids"

Prepaid items required to be disclosed include the interest due at consummation for the period of time before interest begins to accrue for the first scheduled periodic payment and certain periodic charges that are required by the creditor to be paid at consummation. Each periodic charge listed as a prepaid item indicates, as applicable, the time period that the charge will cover, the daily amount, the percentage rate of interest used to calculate the charge, and the total dollar amount of the charge.

For example, periodic charges that are disclosed include:

- Real estate property taxes due within 60 days after consummation of the transaction
- Past-due real estate property taxes
- Mortgage insurance premiums
- Flood insurance premiums

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- Homeowner's insurance premiums[31]

TILA – Disclosure of Liability after Foreclosure & Content Table Completion

"Other Disclosures" Section of Closing Disclosure

Official Interpretations of Regulation Z State Liability After Foreclosure

If the creditor forecloses on the property and the proceeds of the foreclosure sale are less than the unpaid balance on the loan, this disclosure informs the consumer if they will have continued or additional responsibility for the remaining loan balance after foreclosure. This disclosure should inform the consumer the conditions under which liability occurs, which varies by State Laws. If the applicable State law affords any type of protection, other than a statute of limitations that only limits the timeframe in which a creditor may seek redress, this regulation requires a statement that State law may protect the consumer from liability for the unpaid balance.

The brief statement informs the consumer that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information, under the subheading "Liability after Foreclosure."

Examination Findings: MMC Examiner found the Closing Disclosure required information and content section were either incomplete or disclosed incorrectly. The MMC Examiners found the statement that disclosed whether state law may protect the consumer from liability for the unpaid default balance was checked incorrectly in the "Liability after Foreclosure" section.

Additionally, the MMC Examiner found the "Contact Information" table provided to the Borrowers on the closing disclosures contained incomplete contact information in violation of the regulations.[32]

Official Interpretation of State Law Liability After Foreclosure

If the creditor forecloses on the property and the proceeds of the foreclosure sale are less than the unpaid balance on the loan, this section of the disclosure informs the consumer whether they would have continued or additional responsibility for the remaining default loan balance after foreclosure. It discloses the conditions under which liability occurs, which varies by State. If the applicable State law affords any type of protection, other than a statute of limitations that only limits the timeframe in

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[31] Comment 38(g)(2) of the Official Interpretations of Regulation Z states, in part, "Prepaids.

[32] TILA - 12 C.F.R. §1026.38(f), (g), (p)(3), (r), and (t)(5)(v)

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which a creditor may seek redress, this regulation requires a statement that State law may protect the consumer from liability for the unpaid balance.[33]

Official Interpretation of Contact Information

On the CD, in a separate table under the heading "Contact Information," the following information for each creditor (under the subheading "Lender"), mortgage broker (under the subheading "Mortgage Broker"), consumer's real estate broker (under the subheading "Real Estate Broker (B)"), seller's real estate broker (under the subheading "Real Estate Broker (S)"), and settlement agent (under the subheading "Settlement Agent") participating in the transaction must be completed with the following completed information:

(1) Name of the person
(2) Address, using that label
(3) Nationwide Mortgage Licensing System & Registry (NMLSR ID) identification number, labeled "NMLS ID," or, if none, the license number, or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered. This information must be labeled "License ID," with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label.
(4) Name of the natural person who is the primary contact for the consumer with the person identified in this section, labeled "Contact"
(5) NMLSR ID, labeled "Contact NMLS ID," or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, labeled "Contact License ID," with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label, for the natural person identified in this section.
(6) Email address for the person identified in this section, labeled "Email"
(7) Telephone number for the person identified in this section, labeled "Phone"

The CFPB provides Form H-25 of appendix H on its website which includes the contact information required to be disclosed in a five-column tabular format.

[33] § 1026.38(p)(3)

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For example, there are columns from left to right that disclose the contact information for the creditor, mortgage broker, consumer's real estate broker, seller's real estate broker, and settlement agent. Columns are left blank where no such person is participating in the transaction.

For example, if there is no mortgage broker involved in the transaction, the column for the mortgage broker is left blank. Conversely, in the event, the transaction involves more than one of each such person (e.g., two sellers' real estate brokers splitting a commission), the space in the contact information table may be altered to accommodate the information for such persons, provided that all the information required is disclosed on the same page.

If the space provided does not accommodate the addition of such information, an additional table to accommodate the information may be provided on a separate page, with an appropriate reference to the additional table. A creditor or settlement agent may also omit a column on the table that is inapplicable or, if necessary, replace an inapplicable column with the contact information for the additional person.

The name of the person participating in the transaction, the person's legal name (e.g., the name used for registration, incorporation, or chartering purposes), the person's trade name, if any, or an abbreviation of the person's legal name or the trade name is disclosed, so long as the disclosure is clear and conspicuous as required.

For example, if the creditor's legal name is "Alpha Beta Chi Bank and Trust Company, N.A." and its trade name is "ABC Bank," then enter the full legal name, the trade name, or an abbreviation such as "ABC Bank & Trust Co." may be disclosed. However, the abbreviation "Bank & Trust Co." is not sufficiently distinct to enable a consumer to identify the person, and therefore would not be clear and conspicuous.

If the creditor, mortgage broker, seller's real estate broker, consumer's real estate broker, or settlement agent participating in the transaction is a natural person, the natural person's name is listed in the disclosure (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

The address disclosed should be the identified person's place of business where the primary contact for the transaction is located (usually the local office), rather than a general corporate headquarters address. If a natural person's name is to be disclosed, the business address of such natural person is listed (assuming that such a natural person is the primary contact for the consumer or seller, as applicable).

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The form requires the disclosure of an NMLS unique identification number (UIN) for each person identified in the table. The UIN is a unique number that is assigned by the Nationwide Mortgage Licensing System & Registry (NMLS) to individuals registered or licensed through NMLS who provide mortgage loan-originating services. An entity may also have an NMLS unique identification number (UIN).

Thus, any UIN for a creditor, mortgage broker entity, or natural person must be disclosed, as required under the SAFE Act, accurately and completely. If the creditor, mortgage broker, or natural person has a UIN and a separate license number issued by their State, locality, or other regulatory body with responsibility for licensing and/or registering, both the UIN and the separate license number may be disclosed as required by state regulations. The space in the table is left blank for the disclosure when corresponding to persons that have no NMLS UIN to be disclosed; provided that, the creditor may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. A creditor complies with the requirements to disclose the abbreviation of the State by disclosing a U.S. Postal Service State abbreviation, if applicable.[34]

This regulation requires the disclosure of the primary contact for the consumer. The primary contact is the natural person employed by the person disclosed who interacts most frequently with the consumer and who has an NMLS UIN or, a license number, or other unique identifier, as applicable.[35]

The disclosure requires entry of the email address and phone number, respectively, for the persons listed in compliance with this regulation. Disclosure of a general number or email address for the lender, mortgage broker, real estate broker, or settlement agent, as applicable, satisfies this requirement if no such information is available for such person.

TILA/RESPA Exceptions to Form H-25 Disclosure

Separation of Consumer and Seller Information

The creditor or settlement agent preparing the form may use form H-25 of appendix H for the disclosure provided to both the consumer and the seller, with the following modifications to separate the information of the consumer and seller, as necessary:

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[34] Section §1026.38(r)(3) and (5)
[35] Section §1026.38(r)(4)

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- The information required to be disclosed may be disclosed on separate pages to the consumer and the seller. The information disclosed to the consumer must be disclosed on the same page as the information required by this regulation.
- The information required to be disclosed with respect to costs paid by the consumer may be left blank on the disclosure provided to the seller.
- The information required with respect to the creditor and mortgage broker, may be left blank on the disclosure provided to the seller.

Official Interpretation of Separation of Consumer and Seller Information

Modifications to the form are permitted and may be made by the creditor in any one of the following ways:

1. Leave the applicable disclosure blank concerning the seller or consumer on the form provided to the other party
2. Omit the table or label, as applicable, for the disclosure concerning the seller or consumer on the form provided to the other party
3. Provide to the seller, or assist the settlement agent in providing to the seller, a modified version of the form as allowed by regulation[36]

If applicable, State law prohibits sharing with the consumer the information disclosed for either party, a creditor may provide a separate form to the consumer. A creditor may also provide a separate form to the consumer in any other situation where the creditor at its discretion chooses to do so, such as based on the seller's request.

To separate the information of the consumer and seller a creditor may assist the settlement agent in providing a separate form to the seller where applicable State law prohibits sharing with the seller the information with respect to closing costs paid by the consumer, or with respect to closing costs paid by the creditor and mortgage broker. A creditor may also assist the settlement agent in providing (or providing when acting as a settlement agent) a separate form to the seller in any other situation where the creditor in its discretion chooses to do so, such as based on the consumer's request.

[36] Official interpretation of 38(t)(5)(v) Separation of consumer and seller information

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TILA Corrected Closing Disclosure

Regulation Z specifies that if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed, the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that a corrected closing disclosure is to be provided.[37]

Examination Findings: The MMC Examination found loans containing corrected closing disclosure that were delivered after 30 days. The CD's showed excessive compensation was charged or received by a third party for loan-related goods, products, and services.[38]

Official Interpretation of Changes to CD after Consummation

If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed, the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.[39]

The following examples illustrate this requirement.

For example, assume consummation occurs on a Monday, and the security instrument is recorded on Tuesday, the day after consummation. If the creditor learns on Tuesday that the fee charged by the recorder's office differs from that previously disclosed on the CD, and the changed fee results in a change in the amount actually paid by the consumer, the creditor complies with Regulation Z by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Tuesday.

For example, assume consummation occurs on a Tuesday, October 1, and the security instrument is not recorded until 15 days after October 1 on Thursday, October 16. The creditor learns on Monday, November 4 that the transfer taxes owed to the State differ from those previously disclosed,

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[37] §1026.19 Certain mortgage and variable-rate transactions, (f)(2)(iii)
[38] TILA- 12 C.F.R. §1026.19(f)(2)(iii)
[39] Official interpretation of Changes due to events occurring after consummation

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resulting in an increase in the amount actually paid by the consumer. The creditor complies with Regulation Z by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Monday, November 4.

Assume further that the increase in transfer taxes paid by the consumer also exceeds the amount originally disclosed above the limitations allowed for a change of circumstances. The creditor does not violate Regulation Z if the creditor refunds the excess to the consumer no later than 60 days after consummation, and delivers disclosures corrected to reflect the refund of excess no later than 60 days after consummation. The creditor satisfies these requirements if it revises the disclosures accordingly and delivers or places them in the mail by November 30.

For example, assume consummation occurs on a Monday, and the security instrument is recorded on Tuesday, the day after consummation. During the recording process on Tuesday the settlement agent and the creditor discover that the property is subject to an unpaid $500 nuisance abatement assessment, which was not disclosed. They learn that pursuant to an agreement with the seller, the seller will pay the $500 assessment rather than the consumer. Because the $500 assessment does not result in a change to an amount actually paid by the consumer, the creditor is not required to provide a corrected disclosure.

However, the assessment will result in a change to an amount actually paid by the seller from the amount disclosed. The settlement agent must deliver or place in the mail corrected disclosures to the seller no later than 30 days after Tuesday and provide a copy to the creditor.

For example, assume consummation occurs on a Monday, and the security instrument is recorded on Tuesday, the day after consummation. Assume further that ten days after consummation the municipality in which the property is located raises property tax rates effective after the date on which settlement concludes. The regulations do not require the creditor to provide the consumer with corrected disclosures because the increase in property tax rates is not in connection with the settlement of the transaction.

If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed the creditor must provide the consumer corrected disclosures. A creditor is not required to provide corrected disclosures if the only changes that would be required in the corrected disclosure are changes to per-

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diem interest and any disclosures affected by the change in per-diem interest. Even if the amount of per-diem interest actually paid by the consumer differs from the amount disclosed on the CD.

If a creditor is providing a corrected disclosure for reasons other than changes in per-diem interest and the per-diem interest has changed as well, the creditor must disclose in the corrected disclosures the corrected amount of the per-diem interest.[40]

Certain Mortgage/Variable-Rate Transactions, Final Disclosure of Subsequent Changes

Except as provided in the regulations, if the disclosures provided become inaccurate before consummation, the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. Notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor shall permit the consumer to inspect the corrected closing disclosures with the completed items that are known to the creditor, a business day immediately preceding consummation. The creditor may omit from borrower inspection items related only to the seller's transaction.[41]

Official Interpretation of Changes Before Consummation Not Requiring a New Waiting Period

If the disclosures provided become inaccurate before consummation, the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. The creditor need not comply with new timing requirements in this example of a change event if the lender was in compliance with providing the initial closing disclosure no later than three business days before consummation. No new waiting period is started by issuance of the corrected final disclosure after the creditor already provided the initial closing disclosure that started the three-day waiting period for closing.[42]

For example:

Assume consummation is scheduled for Thursday, the consumer received the disclosures required on Monday, and a walk-through inspection occurs on Wednesday morning. During the walk-through, the consumer discovers damage to the dishwasher. The seller agrees to credit the consumer $500

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[40] https://www.consumerfinance.gov/rules-policy/regulations/1026/19/#f-2-iii
[41] § 1026.19 Certain mortgage and variable-rate transactions (f)(2)
[42] Official interpretation of 19(f)(2)(i) Changes before consummation not requiring a new waiting period

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towards a new dishwasher. The creditor complies with the regulation if the creditor provides corrected disclosures so that the consumer receives them at or before consummation on Thursday.

Assume consummation is scheduled for Friday and on Monday morning the creditor sends the disclosures via overnight delivery to the consumer, ensuring that the consumer receives the disclosures on Tuesday. On Monday night, the seller agrees to sell certain household furnishings to the consumer for an additional $1,000, to be paid at the real estate closing, and the consumer immediately informs the creditor of the change. The creditor must provide corrected disclosures so that the consumer receives them at or before consummation. The creditor does not violate this regulation because the change to the transaction resulting from negotiations between the seller and consumer occurred after the creditor provided the final disclosures, regardless of the fact that the change occurred before the consumer had received the final disclosures.

Assume consummation is scheduled for Thursday, the consumer received the disclosures required on Monday, and a walk-through inspection occurs on Wednesday morning. As a result of consumer and seller negotiations, the total amount due from the buyer increases by $500. Also on Wednesday, the creditor discovers that the homeowner's insurance premium that was disclosed as $800 is actually $850. The new $500 amount due and the $50 insurance premium understatements are not violations, and the creditor complies by providing corrected disclosures reflecting the $550 increase so that the consumer receives them at or before consummation.[43]

ECOA Notice of Action Taken Compliance

The Equal Credit Opportunity Act (ECOA) Regulation B requires a creditor to notify the applicant of the action taken (credit decision) within 30 days after receiving a completed loan application concerning the creditor's approval of, counteroffer to, or adverse action on the application.[44]

Additionally, the Regulation states, within 30 days after receiving an application that is incomplete due to the applicant’s failure to provide the requested information, the creditor shall notify the applicant either:

- of action taken, in accordance with Regulations; or

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[43] https://www.consumerfinance.gov/rules-policy/regulations/1026/19/#f-2-v
[44] 12 C.F.R. § 1002.9(a)(1)

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- of the incompleteness, in accordance with Regulations.[45]

Content of Notification When Adverse Action is Taken

Regulation B requires a notification given to an applicant when adverse action is taken shall be in writing and shall contain a statement of the action taken; the name and address of the creditor; a statement of the provisions of the Act; the name and address of the Federal agency that administers compliance with respect to the creditor; and either:

- A statement of specific reasons for the action taken; or
- A disclosure of the applicant's right to a statement of specific reasons within 30 days if the statement is requested within 60 days of the creditor's notification.
- The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained.
- If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving the applicant's written request for confirmation.[46]

Examination Findings: The MMC Examiner found a notice of approval, notice of adverse action or a notice of incompleteness within 30 days of receiving the application was not provided to consumers. Often the borrower can cause this delay by not providing the information necessary to make a credit decision, but no action taken by the lender is a violation. A notice of incompleteness would be appropriate when the borrower does not supply the necessary information.

ECOA Notice Requirements

When the lender is unable to make a credit decision due to lack of information needed from the consumer, it needs to take action to get the information. The creditor is required to send a written notice to the applicant specifying the information needed to make a credit decision.

Regulators have provided examples, which includes a statement of incompleteness that designates a reasonable period for the applicant to provide the information and informs the applicant that failure to provide the information requested will result in no further consideration being given to the loan

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[45] ECOA Compliance with Notice of Action Taken- 12 C.F.R. §1002.9(a)(1) and (c)(1)(i)(ii)(2)
[46] https://www.consumerfinance.gov/rules-policy/regulations/1002/9/#a-2-ii

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application. After providing this notice, the creditor has no further obligation under this regulation if the applicant fails to respond within the designated time in the notice.

If the applicant supplies the requested information within the designated time, the creditor shall take action on the application and notify the applicant in accordance with ECOA regulations.

To satisfy the disclosure requirements of this section of the Act, the creditor shall provide a notice that is substantially similar to the following:

> *The Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law for this creditor is the Consumer Financial Protection Bureau (enter CFPB's correct address as specified for the appropriate agency).*

The statement of reasons for adverse action required by this regulation must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor's credit scoring system are insufficient reasons for adverse action notice.

ECOA Disclosure Provided in Timely Manner

Regulation B requires that once a creditor has obtained all the information it considers in making a credit decision and the application is complete, the creditor has 30 days to notify applicants of credit decisions in writing.

Examination Findings: The MMC Examiner found the Notice of Adverse Action was not provided within 30 days of receiving a complete application. Loan files reviewed contained Notice of Adverse Action letters that were not provided to borrowers within 30 days after receiving a completed application or taking adverse action on the loan.[47]

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[47] ECOA Provided in Timely Manner- 12 C.F.R. §1002.9(a)(1)

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Notification of Action Taken Timing

As stated in the Regulations, a creditor must notify an applicant of action taken within:

- 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application.
- 30 days after taking adverse action on an incomplete application unless notice is provided.
- 30 days after taking adverse action on an existing account.
- 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

Official Interpretation of Credit Decision Notification

When an application is complete and the creditor has obtained all the information it normally considers in making a credit decision, the application is considered complete. The timing starts with receipt of a complete application, the creditor has 30 days in which to notify the applicant of the credit decision. Upon the lender's credit decision, a notification of approval must be given. Regulations allow the notification of approval may be expressed or by implication.

Note: To document compliance to this regulation, all mortgage lenders will provide ECOA Notices in writing. Secondary market investors require proof of ECOA compliance for the loan files sold into the market.

Timing of Notice - When an Application is Complete

Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete, and the creditor has 30 days in which to notify the applicant of the credit decision.[48]

Incomplete Application - Denial for Incompleteness

When an application is incomplete regarding information that the applicant can provide and the creditor lacks sufficient data for a credit decision, the creditor may deny the application giving as the reason for denial that the application is incomplete.

[48] Official interpretation of ECOA Timing Paragraph 9(a)(1)

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Alternatively, the creditor has the option of providing a notice of incompleteness. The creditor is required to keep the loan request moving through the process and may not use the applicant's lack of cooperation as the reason to not make a credit decision, unless they follow the procedures required in the regulation.

Incomplete Application - Denial for Reasons Other than Incompleteness

When an application is missing information, but provides sufficient data for a credit decision, the creditor may evaluate the application, make its credit decision, and notify the applicant accordingly. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance missing information or "incomplete application" cannot be given as the reason for the denial.

Counter Offers

A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with the regulations need not send a second adverse action notice if the applicant does not accept the counteroffer.[49]

Length of Counteroffer

Regulation B does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.

Denial of a Telephone Application

When an application is made by telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification of adverse action. If the applicant declines to provide that information, then the creditor has no further notification responsibility.[50]

Official Interpretation Preapprovals

The requirement to provide a notice of incompleteness does not apply to preapprovals that do not constitute an application.

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[49] See interpretation of Paragraph 9(a)(1). in Supplement I
[50] https://www.consumerfinance.gov/rules-policy/regulations/1002/9/

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Official Interpretation Additional Adverse Action Requirement

If the information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.[51]

At its option, a creditor may inform the applicant orally of the need for additional information. If the application remains incomplete, the creditor shall send a notice in accordance with this regulation.

When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with this regulation.

When an application involves more than one applicant, notification need only be given to one of them but must be given to the primary applicant where one is readily apparent.

When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use the credit offered, each creditor taking adverse action must comply with this regulation, directly or through a third party. A notice given by a third party shall disclose the identity of each creditor on whose behalf the notice is given.[52]

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[51] See interpretation of Paragraph 9(c)(2). in Supplement I
[52] https://www.consumerfinance.gov/rules-policy/regulations/1002/9/#g

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Module 2 - Ethics

Ethics Module Objective:

The student will learn the regulations that govern ethical behavior in the mortgage industry. Some of these laws include: The Bank Secrecy Act Anti-Money laundering rules, Gramm-Leach-Bliley Act privacy rights, Fair and Accurate Credit Transaction Act Identity theft rules, and Telemarketing and Consumer Fraud and Abuse Prevention Act for consumer rights to opt-out. Students will learn what is considered compliance with these mortgage industry regulations, and ways to make ethical based decisions. Students will have a strong understanding of what actions are prohibited after a review of these federal regulations.

Ethics

Ethics is a required topic for annual licensing, and an important part of professional mortgage lending. Regulators believed licensing mortgage loan originators (MLOs) would effectuates the purposes of the regulations while ensuring that responsible, affordable mortgage credit remains available to consumers. Regulators understand reducing uncertainty facilitates compliance.[53]

Most licensed mortgage loan officers (MLOs), manage their business in an ethical manner. Other MLOs may not understand ethics, and the laws that govern ethical behavior. An MLO may believe they are managing things ethically, but not be in compliance with ethical legislation. It is important as a licensed MLO to ensure your personal compliance and understanding of your ethical duties as an MLO.

Definitions

Ethics

The discipline dealing with what is good and bad with moral duty and obligation; the principles of conduct governing an individual or a group; moral principles that govern a person's behavior or the conducting of an activity.[54]

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[53] https://files.consumerfinance.gov/f/201301_cfpb_final-rule_loan-originator-compensation.pdf
[54] https://www.merriam-webster.com/dictionary/ethics

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Morals

The principle of right and wrong behavior is the dictionary definition, such as ethical moral judgments. MLOs are required to conform to a standard of right behavior according to mortgage federal and state regulations, federal and state regulators, professional industry associations, and company policies. Our licensed daily activities that are not defined by morals are governed by federal and state regulations.

Integrity

Performing your job with ethics is a matter of integrity. Integrity takes a positive approach to remind employees, managers, and owners that the public and lending investors put a special trust in them to 'do the right thing' for their clients.[55]

Misrepresentation

Honest misrepresentations may happen, but as a licensee, you are still responsible to know better. What is it to misrepresent information? To present a borrower's information falsely or unfairly would be the dictionary definition.[56]

For example, the borrower has told you they have another installment debt, but the debt does not show on his credit report. The debt has a large monthly payment which would make the debt ratios over 60%. Is it your responsibility to add this debt to the application? Is it ethical to leave it off the application, knowing in reality the borrower did not meet the loan program guidelines when all his monthly obligations were disclosed?

As a mortgage loan originator, it is your job to present the borrower to the underwriter in the best possible light, up to not committing fraud or misrepresenting the borrower's true financial picture. When going into underwriting, the cover letter on the file should outline the challenges of the file. Then overcome those issues with documented compensating factors. When the loan originator hides information or presents false information there is intent to misrepresent the borrower's true picture, which is mortgage fraud.

[55] https://www.merriam-webster.com/dictionary/integrity
[56] https://www.merriam-webster.com/dictionary/misrepresentation

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Mistakes

To make a mistake is to be wrong about something. Do you come forward and admit it was an honest mistake and take the measures to correct the issue. Or do you ignore it and continue to claim it was not wrong and hope it goes away. Some may confuse honest mistakes with fraud. Determining the difference may be in how someone handles the aftermath of the mistake once it is discovered.

It has been said, 'If you are not making a mistake in the mortgage business, you are not doing anything.' There are too many laws, regulations, guidelines, and restrictions to be perfect. Too often making mistakes and finding out ourselves you were wrong is how we learn the mortgage business.

If you make a mistake you need to determine if correcting it will cause more problems, yet make sure the mistake will not be interpreted as fraud. If the mistake changes the credit decision on a loan file, the mistake needs to be addressed with the funding lender or underwriter.

It is important how you handle the mistake with a borrower as well. If you made a mistake, apologize, and move forward with how you are going to correct the mistake. Do not get caught in the blame game and pointing fingers to others involved in the transaction. Even if you did not make the mistake and it was someone you work or deal within the transaction, remember you chose the team of people to assist you in getting this loan closed.

How you handle the situation will determine the outcome. Even when a borrower gets angry with you about the mistake, stay professional. Treat them professionally, and they will most likely treat you professionally even when you do make a mistake.

Fraud

Fraud is an Act or course of deception, an intentional concealment, omission, or perversion of truth, to

- gain unlawful or unfair advantage,
- induce another to part with some valuable item or surrender a legal right, or
- inflict injury in some manner.

Willful fraud is a criminal offense which calls for severe penalties, and its prosecution and punishment is not bound by the statute of limitations. However, incompetence or negligence in managing a business or even a reckless waste of firm's assets (for example, by speculating on the stock market) does not normally constitute a fraud.

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Ethical Federal Laws

When an industry harms a consumer with unethical behavior, the regulators write and pass legislation to govern the industry's actions. The mortgage industry has had many regulations passed to protect consumers and regulate actions of the mortgage industry.

From our earlier example, *is it ethical to not disclose the large debt missing on the borrower's credit report, knowing in reality the borrower does not meet the loan program debt ratio guidelines when all his monthly obligations were disclosed on the application?*

It is unethical to not disclose this large debt. The MLOs needs to ensure the consumer has the ability to repay all his debts including the house payment after closing. Putting a borrower in a foreclosure position where they are unable to meet their monthly obligations is unethical and a violation of federal regulations. The borrower's debt to income ratio was over 60% of his gross income, before taxes and living expenses.

We will cover some of the federal laws enacted to enforce ethical behavior, removing the decision of the MLO on how to perform their duties, and providing penalties for violations in an attempt to protect consumers from unethical mortgage practices.

Ability to Repay Regulations

The Bureau of Consumer Financial Protection (CFPB) amended Regulation Z, which implements the Truth in Lending Act (TILA). Regulation Z prohibits a creditor from making a higher-priced mortgage loan without regard to the consumer's ability to repay the loan. The final rule implements sections 1411 and 1412 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which required creditors to make a reasonable, good faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan) and establishes certain protections from liability under this requirement for "qualified mortgages." The final rule also limits prepayment penalties. Finally, the rule requires creditors to retain evidence of compliance with the rule for three years after a covered loan is consummated.[57]

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[57] https://www.federalregister.gov/documents/2013/01/30/2013-00736/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z

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Earlier example discussion continued. The borrower told you they have another installment debt, even though the debt does not show on his credit report. The debt is a large monthly payment which would make the debt ratios over 60% if included. It is your responsibility as a licensed MLO to add this debt to the application.

It is unethical to leave it off the application, knowing in reality the borrower did not meet the loan program guidelines when all his monthly obligations were disclosed? The MLOs must be honest and present the truth of the borrower's debts and ability to repay the mortgage loan. Setting a borrower up to face the stress and anxiety of losing their home to foreclosure is not a benefit or favor to the borrower.

Gramm-Leach-Bliley Act

Gramm-Leach-Bliley Act (GLB) is an important privacy law that enforces ethical treatment of consumer nonpublic personal information (NPI). Protecting consumer information held by 'financial institutions' is the heart of Gramm-Leach-Bliley Act (GLB), and it enhanced the Privacy Act. GLB required financial institutions to ensure the security and confidentiality of consumer information, provide consumers a notice about their privacy protection practices, and give consumers the option to not have personal information shared with non-affiliated third parties ('Opt Out' of information sharing).

This Act was also known as the Financial Services Modernization Act that gave banks the ability to directly offer clients securities sales when previous laws had restricted securities to be sold through a separate securities division in light of the market crash of 1929. The GLB changed government policies and was a major factor to take down the restrictive walls imposed on banks allowing them to offer more financial services to their clients from one financial institution.[58]

The GLB gave authority to several federal agencies and state administers to enforce Financial Privacy and other Safeguard Rules. These include the Consumer Financial Protection Bureau (CFPB) who is charged with enforcing the Privacy Act which includes GLB Regulation P for financial institutions.

Gramm-Leach-Bliley Act (GLB) Regulation P requires a financial institution to safeguard a consumers' private information and provide a privacy notice to customers. This privacy notice must disclose if a

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[58] https://fhlbanks.com/

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financial institution may disclose the consumers' nonpublic personal information to nonaffiliated third parties and provide a method for consumers to prevent a financial institution from disclosing their information to non-affiliated third parties by "opting out" of information sharing.

Customer Relationships and Loans

GLB requires lenders to provide a clear and conspicuous notice that accurately reflects the financial institution's privacy policies and practices to its:

- **Customer** - An individual who becomes a financial institution's customer, not later than when it establishes a customer relationship; and
- **Consumer** - A consumer, before a financial institution discloses any nonpublic personal information about the consumer to any nonaffiliated third party.

A special rule defines the customer relationship when several financial institutions participate in a loan transaction. A financial institution establishes a customer relationship with an individual when it originates a loan:

- If the financial institution sells the loan but maintains the servicing rights, it continues to have a customer relationship with the individual.
- If the financial institution transfers the servicing rights but retains an ownership interest in the loan, the individual is a "consumer" of that institution and a "customer" of the institution with the servicing rights.
- If other institutions hold an ownership interest in the loan (but not the servicing rights), the individual is their consumer, too.

The opt-out notice to a consumer is not required if the:

- Financial institution does not disclose any nonpublic personal information about the consumer to any nonaffiliated third party; and
- Financial institution does not have a customer relationship with the consumer.[59]

You establish a customer relationship when you and the consumer enter into a continuing relationship. **For example**, when the consumer completes a loan application. Upon completion of

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[59] https://files.consumerfinance.gov/f/documents/102016_cfpb_GLBAExamManualUpdate.pdf

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the application, the consumer becomes your customer. At time of establishing this relationship, the initial privacy notice is required to be provided to your customer.

A financial institution establishes a continued relationship with the consumer when it originates or acquires the servicing rights to a loan to the consumer for personal, family, or household purposes. If the Financial institution subsequently transfer the servicing rights to another financial institution, the customer relationship transfers with the servicing rights.

GLB Prohibition

GLB governs the treatment of nonpublic personal information about consumers by financial institutions and prohibits financial institution from disclosing nonpublic personal information about a consumer to nonaffiliated third parties, unless the institution satisfies the notice and opt-out requirements, and the consumer has not elected to opt-out.

Nonpublic Information In-depth Review

GLB defines Nonpublic Information (NPI) as:

- Any information an individual provides to get a financial product or service.
    - **For example**, name, address, income, Social Security number, or other information on an application,
- Any information provided about an individual from a transaction involving its financial product(s) or service(s).
    - **For example**, the fact that an individual is its consumer or customer, account numbers, payment history, loan or deposit balances, and credit or debit card purchases.
- Any information provided by third-party about an individual in connection with obtaining a financial product or service.
    - **For example**, information from court records or from a consumer report.

Information that is **publicly available** is when an institution has a reasonable basis to believe the information is available to the general public from government records, online, widely distributed media, or legally required disclosures to the general public.

For example, if a customer's income is from a publicly traded company, its financials are available to the public and shareholders.

For example, information in a google search, or a publicly recorded document, such as a mortgage or security interest filing.

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Nonpublic personal information may include individual items of information as well as lists of information.

For example, nonpublic personal information may include names, addresses, phone numbers, social security numbers, income, credit score, and information obtained through Internet collection devices such as cookies.

Information may be nonpublic information, depending on how the list is derived.

For example, a list is not nonpublic information even if it is drawn entirely from publicly available information, such as a list of a lender's mortgage customers in a jurisdiction that requires that information to be publicly recorded. In addition, it is not nonpublic information if the list is taken from information that is not related to a company's financial activities.

For example, a list of individuals who respond to a newspaper ad promoting a non-financial product the company sales.

However, a list derived even partially from nonpublic information is still considered nonpublic information.

For example, a creditor's list of borrowers' names and phone numbers is NPI even if the creditor has a reasonable basis to believe that those phone numbers are publicly available, because the existence of the customer relationships between the borrowers and the creditor is NPI.

Yet, if the financial institution has a reasonable basis to believe that certain customer relationships are a matter of public record, then any list of these relationships would be considered publicly available information.

For example, a list of mortgage customers developed from public mortgage recordings would be considered publicly available information. The institution could provide a list of such customers and include on that list any other publicly available information it has about those customers without having to provide notice or opt-out.

It does not include a list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.

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GLB Terms Defined

Nonaffiliated third party

The term “nonaffiliated third party” means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution. It does not include a joint employee of such institution.

Affiliate

The term “affiliate” means any company that controls, is controlled by, or is under common control with another company.

Joint agreement

The term “joint agreement” means a formal written contract pursuant to which two or more financial institutions jointly offer, endorse, or sponsor a financial product or service, and as may be further defined in the regulations.

GLB Disclosure

At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations, of such financial institution’s privacy policies and practices with respect to:[60]

- disclosing nonpublic personal information to affiliates and nonaffiliated third parties, including the categories of information that may be disclosed.
- disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and
- protecting the nonpublic personal information of consumers.

If financial institutions share certain customer information with particular types of third parties, the institutions are required to provide notice to their customers and an opportunity to opt out of the sharing.[61] The Fair Credit Reporting Act (FCRA) requires similar notices of opt-out rights for sharing.

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[60] https://www.law.cornell.edu/uscode/text/15/6803 0

[61] http://files.consumerfinance.gov/f/201410_cfpb_final-rule_annual-privacy-notice.pdf

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Financial institutions must provide or make available annual GLB privacy notices to their customers. CFPB allows lenders to mail the disclosure to the consumers or use an alternative delivery method through posting the annual notices on their websites if they meet certain conditions. Specifically, financial institutions may use the alternative delivery method for annual privacy notices if:

1. no opt-out rights are triggered by the financial institution's information sharing practices under GLBA or FCRA section 603 and opt-out notices required by FCRA have previously been provided, or the annual privacy notice is not the only notice provided to satisfy those requirements.
2. the information included in the privacy notice has not changed since the customer received the previous notice; and
3. the financial institution uses the model form provided in Regulation P as its annual privacy notice.

To use the alternative method, the financial institution must continuously post the annual privacy notice in a clear and conspicuous manner on a page of its website, without requiring a login or similar steps, agreement to, or any conditions to access the notice. In addition, to assist customers with limited or no access to the internet, the institution must mail annual notices to customers who request them by telephone, within ten days of the request.[62]

Identity Theft Issues

Fraud is an illegal act that occurs when people try to trick you out of your personal information and your money. Identity theft is when someone uses your personal information.

For example, your name, Social Security number, or credit card number are used without your permission. Millions of Americans are victims of fraud or identity theft each year.[63]

The Fair Credit Reporting Act

Prior to amendments to this Act, victims of Identity Theft were forced to hire expensive attorneys to try to correct their credit and prove their innocence. This brought about the change in The Fair Credit Reporting Act (FCRA), which was amended by the Fair and Accurate Credit Transactions Act

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[62] https://www.consumerfinance.gov/rules-policy/final-rules/amendment-annual-privacy-notice-requirement-under-gramm-leach-bliley-act/
[63] https://files.consumerfinance.gov/f/documents/cfpb_building_block_activities_defining-fraud-identity-theft_guide.pdf

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(FACT Act). FACT Act added the requirement for consumer reporting companies to notify the consumers of their rights under FACT Act, and the steps to protect themselves against identity theft. The amended law was an attempt to improve the credit industry and curb identity theft.[64]

These major identity theft rights include the right to place fraud alerts on their credit reports. In addition, consumers may block businesses and credit bureaus from reporting information in their credit files that were a result of identity theft, and to obtain from businesses information about accounts or transactions in their name that were from identity theft. To receive these rights, the victim may have to file a police report on the crime.

The Act increased data privacy, and credit report accessibility. General consumer rights allow consumers to see their credit files and know when they have been used against them. The consumer can correct mistakes and opt-out of unsolicited offers. It also allowed consumers free access to their credit report annually through a federally mandated access website. www.annualcreditreport.com

Unlike the previous FCRA, which had termed the consumer had to meet to obtain a free credit report, the FACT Act amended this to allow free annual access to all three credit repositories for anyone with a credit file. Credit scores are an important factor in the finance industry and may affect employment opportunities. Consumers were educated to monitor their credit reports and encouraged to continually monitor their credit reports. Now there are many ways a borrower can use to monitor their credit scores from credit cards, and other services offering this credit monitoring service.

Identity Theft Program

As a licensee, how do you identify fraud and stop them from hurting an identity theft or fraud victim? By following your company's Fraud Prevention Program and federal law requirements.

The FACT Act amended the Fair Credit Reporting Act (FCRA) to require lenders to have a comprehensive Fraud Prevention Program to enable a financial institution to the Red Flag Rules, which includes:

1. Identify relevant patterns, practices, and specific forms of activity that are "red flags" signaling possible identity theft and incorporate those red flags into their Program,

[64] 16 CFR Part 681, RIN 3084–AA9

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These "red flags" fall into these categories:

a. alerts, notifications, or warnings from a consumer reporting agency.
b. suspicious documents.
c. suspicious personally identifying information, such as a suspicious address (document information does not match credit report information).
d. unusual use of – or suspicious activity relating to – a covered account (such as checking account or credit card); and
e. notices from customers, victims of identity theft, law enforcement authorities, or other businesses about possible identity theft in connection with covered accounts.

2. Detect red flags that have been incorporated into their Program.
3. Respond appropriately to any red flags that are detected to prevent and mitigate identity theft, and
4. Ensure the Program is updated periodically to reflect changes in risks from identity theft. Financial institutions are entrusted with safeguarding customer's information. If they are negligent in that regard, they will face serious consequences under this legislation.

Current Identity Theft Issues

As regulations change, creditor programs catch fraud scams and uncover deception, fraudsters will continually change how they defraud consumers and lenders. Annual ethics courses are just one way licensees can keep abreast of the new trends and learn how to stop identity theft or become an unwanted participant in a fraud scheme. Here are some recent fraud examples found in the industry.

Data breach - The unauthorized movement or disclosure of sensitive information to a party, usually outside the organization, which is not authorized to have or see the information. Someone who gets the data might use it for identity theft.

Elder financial exploitation - The illegal or improper use of an older adult's funds, property, or assets by family members, caregivers, friends, or strangers who gain their trust.

Foreclosure relief fraud - Scheme to take your money or your house often by making a false promise of saving you from foreclosure; includes mortgage loan modification frauds.

Identity theft - Using your personal information — such as your name, Social Security number, or credit card number — without your permission.

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Imposter fraud - An attempt to get you to send money by pretending to be someone you know or trust, like a sheriff; local, state, or federal government employee; a family member; or charity organization.

Mail fraud swindle - Letters that look real but contain fake promises. A common warning sign is a letter asking you to send money or personal information now to receive something of value later.

Phishing fraud - When someone tries to get you to give them personal information, such as through an email or text message, often by impersonating a business or government agency. This can be thought of as "fishing for confidential information."

Romance fraud - When a new friend says they like or love you, but they really just want your money and may not be who they say they are.

Scam - A dishonest trick used to cheat somebody out of something important, like money. Frauds can happen in person, through social media, or by phone, email, postal mail, or text.

Spoofing - When a caller disguises the information shown on your caller ID to appear as though they are calling as a certain person or from a specific location.

Tax-related identity theft - When someone steals your Social Security number to file a tax return claiming a fraudulent refund; may also be called tax-filing related identity theft.

Wire transfer fraud - Tricking someone into wiring or transferring money to steal from them. One common example of a wire transfer fraud is the "grandparent scam." This is when a scammer posing as a grandchild or a friend of a grandchild calls to say they are in a foreign country, or in some kind of trouble, and need money wired or sent right away.[65]

Red Flag Rules

Part of the FACT Act requires each financial institution and creditor that holds any consumer account, or other account with a reasonably foreseeable risk for identity theft must set policies and procedures and have a prevention program for detecting, preventing, and mitigating identity theft.

1. Identity theft program
    a. Elements of the program to detect and prevent identity theft

[65] https://files.consumerfinance.gov/f/documents/cfpb_building_block_activities_defining-fraud-identity-theft_guide.pdf

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2. Detecting and identifying relevant Red Flags
3. Actions taken when identity theft occurs
    a. Situations of identity theft detected

Experian Fraud Tip Sheet-The Fraud Balancing Act

This expert is from Experian and covers how to manage fraud well.

There is a disconnect between what consumers want in their digital experiences and what companies currently deliver. While consumers place the most importance on security and convenience, businesses see the greatest value in delivering personalized digital experiences. So how can your business manage this fraud balancing act?[66]

These are the suggestions Experian provides to balance fraud.

1. **Put the customer at the center of your fraud strategy** by breaking down your customer view into micro journeys. That is, individual interactions between you and your customer, rather than a macro view of the entire life cycle.

First, you can optimize the balance between customer experience and fraud protection at each step, from initial account setup to re-recognition across devices and locations.

Second, you can focus on the highest value journeys to ensure that you are correctly allocating resources.

Then you can assess how each micro journey contributes to an overall seamless experience from onboarding on through the customer's life cycle. And most importantly, you will more easily recognize and address pain points in the customer life cycle because you are looking at smaller cross-sections of that life cycle.

2. **Differentiate between types of friction**. Visible signs of security such as logins and passwords, PINs, and biometric authentication are accepted and even expected forms of protection. Customers want that level of friction (known as "elastic friction"), especially when engaging with an account to make a purchase or to submit sensitive information such as a mortgage application. However, an

[66] https://www.experian.com/innovation/thought-leadership/fraud-balancing-act-tip-sheet.jsp

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arduous new account setup process or requiring multiple authentication steps for a known and low-risk customer can cause consumers to move on to your competitors instead.

3. **Use the customer experience to build trust**. Sixty-seven percent of consumers rank security as the most important aspect related to their digital experience.

It is important to note this does not mean scaling back your security. In fact, a recent Experian survey revealed that 67% of consumers rank security as the most important aspect related to their digital experience, far above convenience or personalization.[67] Sensible, visible security that is presented consistently across physical and digital platforms creates a better user experience and initiates a virtuous cycle of trust between you and your customer.

4**. Revise your onboarding methods**. Start by creating a cross-functional team to tackle the challenge. Bring together IT, Marketing, Risk and Compliance, Operations, and Customer Engagement. As a team, determine what information you can gather during onboarding that will lend itself to future engagements with that same customer. By ensuring that you get correct customer information, you will enhance future micro journeys, including login, online applications, and outreach from your business. Do not be afraid to challenge existing frameworks and think outside of the box. Consider incorporating strategies that allow customers to push information to you from their mobile device lessening the burden on them and decreasing the opportunity to make a mistake while inputting their information and giving you additional information, you can use for re-recognition purposes later in the customer journey.

5. **Rethink your authentication strategies.** Traditional identification methods, such as usernames and passwords, are often considered strong, but they are actually quite brittle. Once compromised, they offer full access to whoever is presenting credentials be they legitimate or a criminal. If a username and password are compromised, a fraudster can gain full control of an account and the associated assets. A defense strategy that continues to layer similar strategies upon one another will not create a more robust fraud shield.

Instead, implement a dynamic risk-based approach that includes biometrics, device intelligence, and new identity tools such as tokenization and reusable IDs, along with other advancing technologies.

[67] 2020 Global Identity and Fraud Report: Challenging businesses to think differently about customer engagement

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This way you can accurately identify and re-recognize customers, giving them the confidence that you have applied the correct level of security to protect their information.

6. **Be transparent as consumers want transparency**. In a recent Experian survey, 87% of consumers said that they want to know why their data is being requested and how it is being protected and stored. Additionally, 83% say that it is very or extremely important to be transparent about how their data is being used.[68] Properly implemented, this openness helps create bilateral trust. When consumers understand that giving more information can help you create better recognition programs, reducing fraud risk and improving their overall experience, they are happier to provide that information. This accurate identification of your customers in turn becomes the cornerstone of personalized experiences.

7. **Utilize artificial intelligence and machine learning**. Advanced tools like artificial intelligence and machine learning can enable better risk decisions across the customer journey. Machine learning can be used to pinpoint which transactions are most likely to be fraudulent through the automated discovery of patterns across large volumes of streaming transactions. It also significantly reduces false positives. Artificial intelligence then takes that information and can utilize it to make real-time decisions according to your unique risk profile. With these tools, you can better identify questionable login attempts or transactions and quickly apply additional identity checks, as necessary. Better still, you can inform your customers about the reason for the additional check.

For example, when they are logging in on an unfamiliar device, prompting you to ask for an additional authentication method for their protection.[69] Most currently used is asking for a verification code sent to the consumers known cell phone number or email address. They must then enter the code number to proceed to their log in.

Anti-Money Laundering Issues in Mortgage Lending

The term "money laundering" has been a mortgage industry fraud problem for decades. As an MLO you may think this only affects banks and does not apply to the mortgage industry. This is not a true

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[68] 2020 Global Identity and Fraud Report: Challenging businesses to think differently about customer engagement
[69] https://www.experian.com/innovation/thought-leadership/fraud-balancing-act-tip-sheet.jsp

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statement. A residential money laundering scheme was linked to the attacks on the Twin Towers in New York on 9/11.[70]

Money laundering involves transactions intended to:

- Disguise the true source of funds
- Disguise the ultimate disposition of the funds
- Eliminate any audit trail
- Make it appear as though the funds came through legitimate sources
- Evade income taxes

Money laundering disrupts the integrity of financial system by reducing tax revenues through underground economies, restricting fair competition with legitimate businesses, and disrupting economic development. Laundered money flows into global financial systems such as Iran which could compromise the world with funded terrorism. Money laundering is not only a law enforcement and financial industry problem but poses a serious national and international security threat as well.[71]

Money launderers look for any source to participate in their schemes. Financial institutions, such as banks, mortgage lenders, and other businesses, have been both willing and unwilling participants.

Bank Secrecy Act

Congress enacted the Bank Secrecy Act (BSA) to require insured depository institutions to maintain certain records and to report certain currency transactions, in an effort to prevent banks from being used to hide money derived from criminal activity and tax evasion. These records and reports have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings.[72]

The BSA defines the term "financial institution" to include, in part, a loan or finance company. The term, however, can be construed to extend to any business entity that makes loans to or finance purchases on behalf of consumers and businesses. Non-bank residential mortgage lenders and originators, known as "mortgage companies" and "mortgage brokers" in the residential mortgage business sector, are a significant subset of the "loan or finance company" category.

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[70] https://journals.sagepub.com/doi/10.1177/00027642221108943
[71] https://www.fdic.gov/regulations/examinations/bsa/basics1.html
[72] https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act#:~:text=Specifically%2C%20the%20act%20requires%20financial,evasion%2C%20or%20other%20criminal%20activities

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Since the BSA was enacted, there have been legislative and regulatory standards imposed to help prevent money laundering and to strengthen the government's ability to combat money laundering and terrorist activity financing. These financial crime laws are regulated by the Financial Crimes Enforcement Network (FinCEN).

Money Laundering Control Act made money laundering a federal crime supported by the Bank Secrecy Act (BSA). It made it illegal to structure transactions to avoid BSA as well.[73] Criminal investigations focus on money laundering from all sources and involve the Internal Revenue Service if income from illegal activities is withheld or hidden.

Annunzio-Wylie Anti-Money Laundering Act (AML) increased penalty for depository found guilty of money laundering and added the Suspicious Activities Reports (SAR). Mortgage lenders are required to file a SAR when suspicious activity is identified. It also required verification, and record keeping for wire transfers.

Money Laundering Suppression Act further addressed the US Treasury's role in combating money laundering. It required banking agencies to review and enhance training and develop anti-money laundering examination procedures.[74]

Anti-Money Laundering Program ("AML")

Requiring identification of the consumer seeking a mortgage loan, being alert to any suspicious activity that occurs during the loan process, and verifying information provided by the consumer as part of the qualifying process for a loan are useful tools in the complying with the AML.[75]

AML is applicable to:

- Any business that accepts a mortgage loan application on behalf of one or more lenders.
- Any entity that negotiates rates or the terms of a mortgage loan.
- All loan transactions except sellers financing the sale of their own real property.[76]

To meet the AML provisions, a non-depository lender must have an AML compliance program in place and must follow these steps:

[73] https://www.fdic.gov/regulations/examinations/bsa/bsa_3.html
[74] https://www.ffiec.gov/bsa_aml_infobase/documents/regulations/ML_Suppression_1994.pdf
[75] https://www.ecfr.gov/current/title-31/subtitle-B/chapter-X/part-1029/subpart-B/section-1029.210
[76] https://www.law.cornell.edu/cfr/text/31/1029.210

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1. Create a company AML policy manual that documents internal policies, procedures, and other controls to assure compliance with the BSA.
2. Designate a person to assume the role of BSA officer to ensure the day-to-day compliance with the AML.
3. Provide training on AML compliance at the time of employment and additional training every year after that.
4. Perform the required independent audit by an unaffiliated qualified party or firm or an audit by an experienced employee of the company to ensure compliance and conformity with the AML.

Money Laundering Risks in the Real Estate Sector

According to FinCEN, real estate transactions and the real estate market have certain characteristics that make them vulnerable to abuse by illicit actors seeking to launder criminal proceeds.

For example, real estate transactions involve high-value assets, opaque entities, and processes that can limit transparency because of their complexity and diversity. In addition, the real estate market can be an attractive vehicle for laundering illicit gains because of the manner in which it appreciates in value, "cleans" large sums of money in a single transaction and shields ill-gotten gains from market instability and exchange-rate fluctuations. For these reasons and others, drug traffickers, corrupt officials, and other criminals can and have used real estate to conceal the existence and origins of their illicit funds.[77]

Corruption and Residential Real Estate

This money laundering risk in the real estate market was a principal driver of FinCEN's decision to issue Geographic Targeting Orders (GTOs), which have provided greater insight into illicit finance risks in the high-end real estate market. FinCEN's analysis of BSA and GTO reported data, law enforcement information, and real estate deed records, indicates that high-value residential real estate markets are vulnerable to penetration by foreign and domestic criminal organizations and corrupt actors by misusing otherwise legitimate limited liability companies or other legal entities to shield their identities. In addition, when these transactions are conducted without any financing (i.e.,

[77] https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2017-a003

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“all-cash” buyer), they can potentially avoid traditional anti-money laundering (AML) measures adopted by lending financial institutions, presenting increased risk.

FinCEN reviewed the GTOs that cover certain counties within the following major U.S. metropolitan areas: Boston; Chicago; Dallas-Fort Worth; Honolulu; Las Vegas; Los Angeles; Miami; New York City; San Antonio; San Diego; San Francisco; and Seattle. FinCEN, working in conjunction with local law enforcement partners, identified additional regions that present greater risks for illicit finance activity through all-cash purchases of residential real estate.

Currently, FinCEN has expanded the geographic coverage of the GTOs to parts of the District of Columbia, Northern Virginia, and Maryland (DMV) metropolitan area, the Hawaiian Islands of Maui, Hawaii, and Kauai, and Fairfield County, Connecticut. The purchase amount threshold remains $300,000 for each covered metropolitan area, with the exception of the City and County of Baltimore, where the purchase threshold is $50,000. With targeted scrutiny on these markets, the MLOs licensed in these areas need to be especially vigilant to ensure they do not become an unknowing partner in a fraud scam. It is your responsibility to report suspicious financial activities.

Just because a SAR is filed, does not mean the file will not close. The SAR allows your compliance officer or BSA officer to make that decision and report the activity to FinCEN. FinCEN then reviews all SARs received to identity trends or other similar illegal behavior in the market areas.

Suspicious Activity Red Flags

MLOs must notify their company’s BSA officer when they encounter suspicious activity in their origination activities. There are various factors that should be considered when assessing the decision to investigate further or file a SAR:

- The dollar amount of the transaction
- The number of transactions and the frequency of them
- The identification of the consumer and if the consumer is known to the non-depository institution
- The identity of the recipient of the transfers and his business association with the consumer

There are other alerts or red flags that should cause the MLO or non-depository entity to further investigate the transaction. The red flags indicate that the transaction might be unusual or suspicious about the mortgage transaction and might require further investigation.

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Real estate brokers, escrow agents, title insurers, and other real estate professionals can identify potential suspicious transactions by reviewing available facts and circumstances.[78] Real estate professionals may determine a transaction is suspicious after evaluating whether the real estate transaction:

- Lacks economic sense or has no apparent lawful business purpose. Suspicious real estate transactions may include purchases/sales that generate little to no revenue or are conducted with no regard to high fees or monetary penalties.
- Is used to purchase real estate with no regard for the property's condition, location, assessed value, or sale price.
- Involves funding that far exceeds the purchaser's wealth, comes from an unknown origin, or is from or goes to unrelated individuals or companies.
- Is deliberately conducted in an irregular manner. Illicit actors may attempt to purchase property under an unrelated individual's or company's name or ask for records (e.g., assessed value) to be altered.

These red flags may include questions or concerns about a consumer's identity, such as:

- The customer presents fraudulent identification.
- The consumer changes the transaction after being asked to present identification.
- The consumer changes his name on the documents after being asked to present identification that does not match the initial consumer's name used.
- A consumer who presents different identification pieces for each transaction.
- A consumer who changes the spelling of his name or uses a different name with every transaction.
- Any individual who offers something of value in exchange for the MLO originating a loan or overlooking known BSA/AML violations.
- A consumer without a local address who appears to reside locally because he is a frequent or repeat customer.
- An identification that appears to have been changed.

[78] https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2017-a003

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- An identification document, such as a driver's license or passport that provides the description of the borrower's eye or hair color that does not match the MLO's visual observation.
- An expired identification document.
- A consumer who presents suspicious or unusual identification documents.
- A consumer who states that he is self-employed but hesitates or is reluctant to provide information regarding the nature of the business.

Those that believe that the BSA/AML only applies to the banking industry should understand the red flags listed demonstrates how an MLO can also encounter violations of the act. MLOs may encounter consumers who are perpetrating a fraud to gain ownership of a property (straw buyer) or cash out loans to enrich themselves and their partners. These consumers typically provide false identification documents or other knowingly false documents to obtain a mortgage loan in violation of the BSA/AML.

Suspicious Activity Reports

Now that you understand the red flags, you need to take action. FinCEN requires mortgage companies to submit a SAR when it has identified or suspect a criminal offense on transactions over $5,000. If licensee suspect money laundering, undocumented sources of funds, or a violation the BSA, the MLO must follow their company's Money Laundering Procedures.[79]

As required in the company's Money Laundering Procedures, the MLO will be required to complete an internal SAR report and forward to the company's designated BSA Officer. The MLO will continue to process the loan request and close the loan unless they hear back from the BSA Officer to do differently. The MLO may not tell anyone outside their internal staff of need-to-know individuals that a SAR report was filed. The borrower or real estate agents are never to know a SAR was filed, as they are not in the internal staff need to know category.

The BSA Officer must then investigate and document the suspicious activity. If the findings warrant a SAR report filing with FinCEN, the BSA officer files the SAR. The SAR should contain complete and accurate information, including relevant facts in appropriate SAR fields, and information about the

[79] https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2017-a003

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real estate transaction and the circumstances and clear reasons why such transaction may be suspicious written in the narrative section of the SAR.

To report suspicious transactions, financial institutions, including persons involved in real estate closings and settlements, should electronically submit a SAR through FinCEN's BSA E-Filing System. The SAR required, shall be filed by the financial institution within thirty calendar days following the day on which the reportable transaction occurred.[80]

SARs are among the government's main weapon in the battle against money laundering and other financial crimes. Such reports are also a key component of an effective anti-money-laundering compliance program. Financial Institutions must retain the SAR and supporting documents for five years after filing the report.

Voluntary Reporting of Suspicious Activity

SARs play an important role in assisting law enforcement to combat crime as they identify possible illicit activity and criminals. Currently, more than one hundred thousand financial institutions are subject to FinCEN's requirements. Although real estate title and escrow companies are not specifically listed among the businesses defined as financial institutions in the BSA, "persons involved in real estate closings and settlements" are listed as financial institutions.

FinCEN has not issued regulations defining who is included in this category, and current FinCEN regulations do not require real estate title and escrow companies to establish anti-money laundering (AML) programs or to file suspicious activity reports (SAR).

FinCEN encourages persons involved in real estate closings and settlements which may include real estate brokers, escrow agents, title insurers, and other real estate professionals, although not mandated by BSA legislation, to voluntarily file a SAR to report any suspicious transactions**.** These persons are well-positioned to identify potentially illicit activity as they have access to a more complete view and understanding of the real estate transaction moneys than others involved in the transaction.[81]

[80] § 1010.311 or § 1021.311
[81] https://www.fincen.gov/sites/default/files/shared/Title_and_Escrow_508.pdf

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For example, real estate brokers may have greater insight as to the potential purpose for which a property is being purchased or the possible origin of a purchaser's funds. When reporting suspicious activity, persons involved in real estate closings and settlements should note that they could benefit with protection from civil liability if they filed a SAR on suspicious activity**.** Filing a SAR would show they were not a participant in the scam or fraud.

Real estate brokers, escrow agents, title insurers, and other real estate professionals can identify potential suspicious transactions by reviewing available facts and circumstances. Real estate professionals may determine a transaction is suspicious after evaluating whether the real estate transaction:

- Involves funding that far exceeds the purchaser's wealth, comes from an unknown origin, or is from or goes to unrelated individuals or companies; or
- Is deliberately conducted in an irregular manner. Illicit actors may attempt to purchase property under an unrelated individual's or company's name or ask for records to be altered.

In addition, when these transactions are conducted without any financing (i.e., "all-cash"), they can potentially avoid traditional anti-money laundering (AML) measures adopted by lending financial institutions, presenting increased risk.

FinCEN encourages both financial institutions subject to mandatory suspicious reporting requirements, as well as real estate professionals filing voluntary suspicious activity reports, to keep the risks detailed below in mind when identifying and reporting suspicious transactions.[82]

Shell Companies Decreases Transparency

Criminals launder money to obscure the illicit origin of their funds. To this end, money launderers can use a number of vehicles to reduce the transparency of their transactions. One such vehicle is the use of shell companies. Shell companies are typically non-publicly traded corporations, limited liability companies (LLCs), or trusts that have no physical presence beyond a mailing address and generate little to no independent economic value. Most shell companies are formed by individuals and businesses for legitimate purposes, such as to hold stock or assets of another business entity or to facilitate domestic and international currency trades, asset transfers, and corporate mergers. Shell

[82] https://www.fincen.gov/sites/default/files/2022-03/FinCEN%20Alert%20Russian%20Elites%20High%20Value%20Assets_508%20FINAL.pdf

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companies can often be formed without disclosing the individuals that own or control them (i.e., their beneficial owners) and can be used to conduct financial transactions without disclosing their true beneficial owners' involvement. Criminals abuse this anonymity to mask their identities, involvement in transactions, and origins of their wealth, hindering law enforcement efforts to identify individuals behind illicit activity.

For example, fraud abuse of the luxury real estate sector involved a Venezuelan Vice President Tareck El Aissami and his front man Samark Lopez Bello. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) designated El Aissami under the Foreign Narcotics Kingpin Designation Act for playing a significant role in international narcotics trafficking. Lopez Bello was designated for providing material assistance, financial support, or goods or services in support of the international narcotics trafficking activities of, and acting for or on behalf of, El Aissami. In addition, OFAC designated shell companies tied to Lopez Bello that were used to hold real estate. Lopez Bello is tied to significant properties and other assets, which were also blocked as a result of OFAC's action.

The misuse of shell companies to launder money is a systemic concern for law enforcement and regulatory agencies, but it is of particular concern in the "all-cash" segment of the real estate market, which currently has fewer AML protections.

"All-Cash" Real Estate Purchases Further Decreases Transparency

Criminals can use all-cash purchases to make payments in full for properties and evade scrutiny on themselves and the origin of their wealth that is regularly performed by financial institutions in transactions involving mortgages. All-cash transactions account for one in four residential real estate purchases, totaling hundreds of billions of dollars nationwide, and are particularly exposed to abuse.

All-cash transactions account for an even larger stake in some U.S. markets. For instance, nearly 50% of residential real estate sales in Miami-Dade County were all-cash transactions in 2015 and 2016. Many all-cash transactions are routine and legitimate however, they also present significant opportunities for exploitation by illicit actors.

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BSA Penalties

Penalties for willful violations vary depending on the violation. It may be a flat fine as high as $1,000,000 or fine assessed per day as high as $25,000 per day.[83]

Telemarketing and Consumer Fraud and Abuse Prevention Act (TCPA)

Telemarketing Sales Rule

The Telemarketing Sales Rule (TSR) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (TCPA) gives the consumers a choice about whether they want to receive telemarketing calls, and makes it illegal for telemarketers to call someone that has opted out.

The TSR:

- requires telemarketers to make specific disclosures of material information
- prohibits misrepresentations
- sets limits on the times telemarketers may call consumers
- prohibits calls to a consumer who has asked not to be called again; and
- sets payment restrictions for the sale of certain goods and services

Calling to solicit a consumer listed on the Do Not Call Registry is a violation. Some nonprofit organizations, political organizations, telephone surveyors, and charities are exempt from the TSR provision. [84]

TSR Prohibitions

The TSR prohibits sellers and telemarketers from engaging in certain abusive practices that infringe on a consumer's right to be left alone.[85] The TSR's privacy protections include prohibitions on:

- calling a person whose number is on the National Do Not Call Registry or a person who has asked not to get telemarketing calls from a particular company or charity.
- misusing a Do Not Call list
- denying or interfering with a person's Do Not Call rights
- calling outside the permissible hours

[83] https://www.ftc.gov/legal-library/browse/rules/telemarketing-sales-rule
[84] Telemarketing and Consumer Fraud and Abuse Prevention Act 15 USC 6101 et seq.
[85] https://www.ftc.gov/business-guidance/resources/complying-telemarketing-sales-rule#privacy

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- abandoning an outbound telephone call
- placing an outbound telephone call, delivering a prerecorded message to a person without that person's express written agreement to receive such calls, and without providing an automated interactive opt-out mechanism
- failing to transmit Caller ID information
- using threats, intimidation, or profane or obscene language
- causing any telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass

Do Not Call Provision

The Telephone Consumer Protection Act (TCPA) was enacted to restrict the use of telephone auto dialing systems (Robocalls), artificial or pre-recorded voice messages, and fax machines that sent unsolicited advertisements. The Federal Communication Commission (FCC) adopted rules and regulations implementing the TCPA. The original TSR contained a provision prohibiting calls to any consumer who previously asked not to get calls from or on behalf of a particular seller. Amendments to the TSR retain that provision, and added calls prohibited to any phone numbers consumers have placed on the National Do Not Call Registry (Registry) maintained by the Federal Trade Commission (FTC).

Telemarketers must review the registry and remove any numbers found in the registry from their telemarketing call list (termed scrubbing the list). To synchronize your lists with an updated version of the National Registry or scrubbing the list must be done every 31 days for compliance to TSR.

The prohibition on calls to numbers on the Registry does not apply to business-to-business calls or calls to consumers from or on behalf of charities. However, tele-funders calling to solicit charitable contributions must honor a donor's request not to be called on behalf of a particular charitable organization.

Prompt Oral Disclosures in Outbound Sales Calls and Upselling Transactions

An outbound call is a call initiated by a telemarketer to a consumer. The TSR requires that a telemarketer making an outbound sales call promptly disclose, before any sales pitch is given, the following four items of information truthfully, clearly, and conspicuously:

1. **The identity of the seller.** The seller is the entity that provides goods or services to the consumer in exchange for payment. The identity of the telemarketer, or person making the

call, need not be disclosed if it is different from the identity of the seller. If the seller commonly uses a fictitious name that is registered with appropriate state authorities, it is fine to use that name instead of the seller's legal name.

2. **That the purpose of the call is to sell goods or services**. The TSR requires that the purpose of the call be disclosed truthfully and promptly to consumers. How you describe or explain the purpose of the call is up to you, as long as your description is not likely to mislead consumers. **For example**, it would be untruthful to state that a call is a "courtesy call" if it is a sales call.
3. **The nature of the goods or services being offered.** This is a brief description of items you are offering for sale.
4. **In the case of a prize promotion, that no purchase or payment is necessary to participate or win, and that a purchase or payment does not increase the chances of winning.** If the consumer asks, you must disclose without delay instructions on how to enter the prize promotion without paying any money or purchasing any goods or services.

These same disclosures must be made in an upselling transaction if any of the information in these disclosures is different from the initial disclosures (if the initial transaction was an outbound call subject to the TSR), or if no disclosures were required in the initial transaction, like a non-sales customer service call.

For example, in an external upsell, where the second transaction in a single telephone call involves a second seller, you must tell the consumer the identity of the second seller the one on whose behalf the upsell offer is being made. On the other hand, in an internal upsell, where additional goods or services are offered by the same seller as the initial transaction, no new disclosure of the seller's identity is necessary because the information is the same as that provided in the initial transaction.[86]

TSR Violations and Fines

Calling a consumer who has asked the individual caller not to be called potentially exposes an MLO and telemarketer to a civil penalty of $50,120 for each violation, if they continue to call that consumer. In addition, MLOs and telemarketers are prohibited from calling any consumer whose

[86] https://www.ftc.gov/business-guidance/resources/complying-telemarketing-sales-rule#promptdisclosures

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number is in the Do Not Call database. These violations are subject to civil penalties of up to $41,484 for each violation, as well as injunctive remedies.[87]

As a reminder, an MLO that uses a telemarketing service accepts that they have complied with the TSR and takes full liability if they use the telemarketer's list. It is suggested that MLOs do their own due diligence to ensure the telemarketing company they use is in full compliance with this regulation.

Senior Citizen Consumer Fraud

Reverse mortgage fraud is most prevalent for seniors. A reverse mortgage is a special type of loan that allows homeowners sixty-two and older to borrow against the accrued equity in their homes or purchase a home with no monthly principal and interest payment. The loan must be paid back when the borrower dies, moves, or no longer lives in the home.

CFPB advises seniors, reverse mortgage ads do not always tell the whole story, so consider these facts when they see advertisements:

1. A reverse mortgage is a home loan, not a government benefit. Reverse mortgages have fees and compounding interest that must be repaid, just like other home loans.
2. You can lose your home with a reverse mortgage even though a reverse mortgage ad may say you will retain ownership of your home, or that you can live there as long as you want to, do not take these messages at face value.
3. Without a good plan, you could outlive your loan money. After seeing a reverse mortgage ad, you might think that a reverse mortgage guarantees your financial security no matter how long you live.

Equity-rich, cash poor, elderly homeowners are an attractive target for unscrupulous mortgage lenders. Many elderly homeowners are on fixed or limited incomes yet need access to credit to pay for home repairs, medical care, property or municipal taxes, and other expenses. The equity they have amassed in their home may be their primary or only financial asset. The loan does not need to be a reverse mortgage but may be a cash out refinance or second mortgage the senior is requesting.

[87] https://www.ftc.gov/business-guidance/resources/complying-telemarketing-sales-rule#privacy

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It is important for MLOs to ask question and ensure as best they can in the situation that the consumer, they are working with is not being defrauded.

Predatory financial planners, lenders, and MLOs seek to capitalize on elders' need for cash by offering "easy" credit and loans, then pair it with a financial investment product that may not provide sufficient return on investment to the elderly person, or the purchase of an expensive whole life insurance policy.[88] Predatory contractors have also taken the equity from the elderly in home improvement scams.

Scenarios of Predatory Acts

Examples of senior predatory lending:

- One 70-year-old woman obtained a 15-year mortgage in the amount of $54,000 at a rate of 12.85%. Paying $596 a month, she will still be left with a final balloon payment of $48,000 in 2024, when she will be 83 years old.
- Another 68-year-old woman took out a mortgage on her home in the amount of $20,334 in the early 1990s. Her loan was refinanced six times in as many years, bringing the final loan amount to $55,000. She paid for credit life insurance all six times, with each premium exceeding $2,300. This is termed 'churning,' and is unethical and illegal.
- The mortgage loan of a 72-year-old man was refinanced three times in four years, twice by the same company. Over the course of the three refinancing, the loan amount doubled, from about $16,500 to $33,000. The final loan had an interest rate of 16.85%. Living on Social Security and unable to afford the monthly payments, he sought bankruptcy in an attempt to save his home.

An MLO needs to be aware of these facts, and help the senior citizen make a sound financial decision for their situation.

[88] https://www.nclc.org/images/pdf/older_consumers/consumer_concerns/cc_elderly_victimized_predatory_mortgage.pdf

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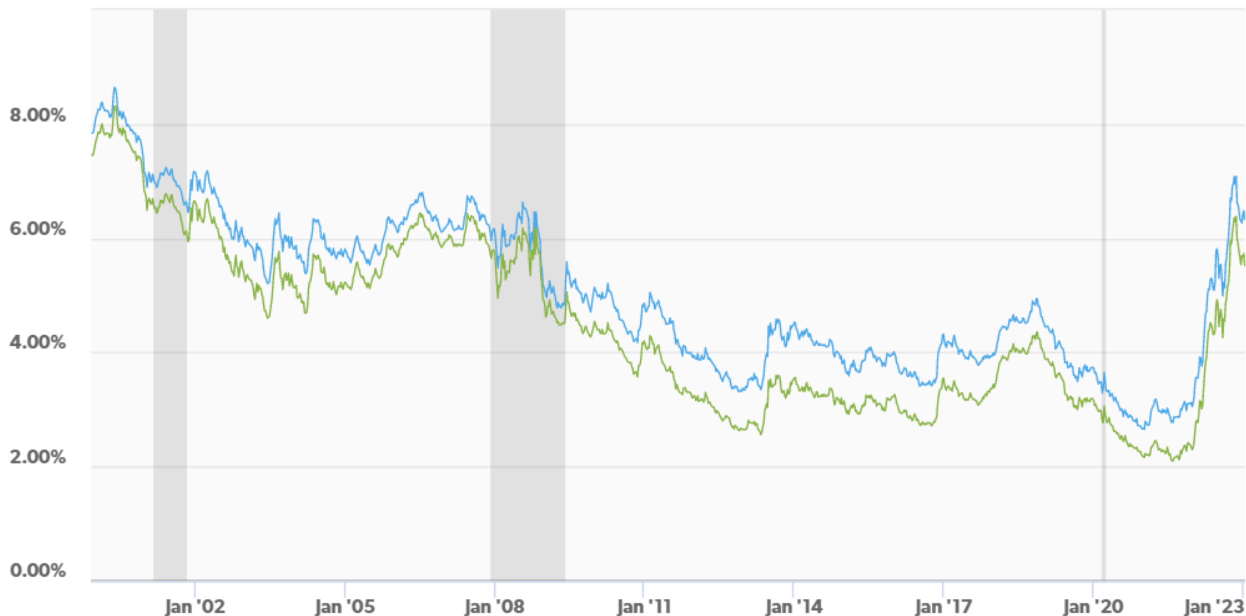
Module 3 – Non-Traditional

Non-traditional Module Objective:

In this lesson, the student will understand and learn how to adapt to our current changing market with non-traditional loan programs that help to meet borrowers' needs. Programs reviewed are two one buydown and how they can be used in comparison to discount points. The assumption process and the importance of second mortgages to meet the down payment. Adjustable-rate mortgages with current indexes and requirements. Students will understand how these programs benefit the borrower and take a brief review of current industry changes including the United States Space Force (USSF) members eligibility for the VA home loan program.

Our current market interest rate is going through changes with the federal reserve bank chairperson determining what the optimum prime rate needs to be to get the economy in harmony with no inflation nor rescission. The industry and consumer have benefited from the massive prime rate decreases the feds imposed after the market crash of 2008. The following chart reflects the mortgage market rates over the last 20 years.

Mortgage Interest Rates from 2002 to 2023



Green is the 15-year rate, and blue is the 30-year rate

As you see by this graph, the rates went lower when the Feds lowered the prime rates for the mortgage market meltdown. Now the feds are moving prime rate up with the rates likely to return to historic levels of 6 to 8%. In our long-term history interest rate are reasonable at this level and are

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lower rates than the 18% for conforming loan in 1980.[89] When rates change, the market loan programs adjust to assist the borrowers to qualify with the current market environment.

MLOs need to adapt to this changing market climate to understand how to offer the best loan programs available for your clients. This lesson will cover some areas to help your clients in this uncertain market climate.

2-1 Buydowns

A buydown is used to allow the borrower to pay a lower monthly payment for one or two years depending on the buy down periods. The cost is paid at closing and held in an escrow account by the servicing company. The buydown fee may be paid by the lender, borrower, or seller.

Buydowns vs. Discount Points

As interest rates climb, consumers become sensitive to their payment increasing. To help a client get closer to the payment they want, MLOs may use a buydown loan program or discount points to buy the interest down from the market rate. It is important to understand the differences and the costs for both to discuss with your clients.

The first thing to remember is the borrower must qualify for the loan program. We are in a changing mortgage marketplace where loan programs are coming and going without notice. As with every mortgage market downturn, companies have closed, and thousands have been laid off. With this said, a 2-1 buydown is a specialty program and as with most specialty loan programs it will be subject to investors wanting to purchase these types of mortgages allowing loan program availability.

Note, a loan program that allows for the buydown may have a different interest rate than a strait loan because of the servicing required for the buydown escrow account. The market may offer a 3-2-1 buydowns when available. Currently, FHA, VA, FNMA and FHLMC are allowing 2-1 and 1% buydown loan programs on the 30-year fixed products.

When a borrower wants to wait for a lower payment from a lower interest rate, a buy-down could be an option to offer the borrower. Here is an example of how a 2-1 buydown works:

$725,000 sales price with 5% down payment = $688,750 loan amount

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[89] https://www.freddiemac.com/pmms

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With a 2-1 buydown, the seller or borrower would pay approximately $16,500 (or 2.40% of loan amount) at closing. This amount goes into an escrow account to pay the Note rate payment on a monthly basis during repayment.

For this scenario - 7.625% is the Note rate with a payment of $4,875

1. 5.625% = $3,965 is the P&I payment for the first 12 months of repayment + $910 buydown escrow payment is added to make the borrower's payment equal $4,875 (amount due)
    a. $910 x 12 = $10,920 is the amount pulled from escrow for first 12 months payments.
    b. The escrow amount is funded through the loan closing in fees (2.40% in this example). The servicing lender draws monthly from the escrow account to supplement the payment the borrower is making to equal the full payment required by the Note.
2. 6.625% = $4,410 is the P&I payment for the next 12 months + $465 escrow payment
    a. $465 x 12 = $5,580 is the amount pulled from escrow for the 13-24 month's payments on the loan.
3. On the third year (25th payment) the borrower pays the Note rate $4,875 payment until the loan is paid in full. The 2-1 Buydown escrow has been depleted.

The borrower qualifies for the loan at the Note rate of 7.625% for a buy down loan.

What if the borrower used their funds for discount points?

If the borrower purchased 2.40% in discount points ($16,530), their Note rate would be approximately .75% points lower rate.

For example, if the market interest rate is 7.625%, the discounts may adjust the rate down to 6.875% (7.625% - .75% = 6.875% interest rate for 2.40% discount points). Using discount points, the borrower's payment would be $4,525 at 6.875% for the life of the repayment of the loan. The initial savings is less with discount points but have permanency the buy-down program does not.

The borrower will qualify with the Note rate of 6.875%, so it is a benefit in qualifying to buy the rate down with discount points.

How do you know which to choose?

That will depend on the benefit the borrower is wanting and their long-term homeownership goals. The ultimate decision will be made by the borrower, but the MLO will need to explain what is available and how the differences may benefit the borrower.

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Buy-down Benefits

- A borrower that is a first-time homebuyer (FTHB) may benefit more to have the $910 lower payment for the first year with a buy down so they can purchase furniture and adapt to the expense of maintaining a home.
- A borrower may want to have a lower payment amount as they remodel their new home. The $910 less monthly payment for the first year is a benefit for the borrower's cash flow. They can use the money for remodeling or buying furniture to fill their new home.
- A borrower that moves every 2-3 years, which is the national average, would benefit much more with a 2-1 buydown than paying for discount points. These are borrowers with short-term goals.
- A borrower with student loan debts that is coming out of deferment, may benefit more from the lower initial payment as they adjust their budget to a new career and student loan debts. The borrower is assumed to be in a better financial position at work with their earnings two years after college.

Discount Points Benefits

- ✓ A borrower that is tight on the debt ratio may benefit more with discount points, as they will qualify with the 6.875%, whereas they would qualify with 7.625% with 2-1 buydown program. Lower rate allows them to qualify for higher priced home.
- ✓ A borrower with a fixed income may benefit more from discount points due to the increased payment in two years, which may be more than they could manage with their stable and not increasing income.
- ✓ A borrower that is nearing retirement or another source of income ending or changing would do best with discount points. Uncertainty in future income and raising house payments are not a good combination.
- ✓ A borrower that wants to pay their loan off early would benefit more with a discounted interest rate due to the reduced amount of interest they will pay over the life of the loan.

The complication of consumers' lives provides mortgage loan professionals with challenges to offer the appropriate mortgage loan program choices that will provide their borrowers with the best loan program for their situation and goals.

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Prepayment Penalty Benefit

For investment home loans, which are exempt from the TILA Regulation Z, have the option to take a prepayment penalty to lower their Note rate. When a borrower purchases a property, they will not owner occupy, they may have home financing with a prepayment penalty. For property investors that are planning to hold the property for a year, two, three, etc.… can structure the prepayment penalty period to cover the planned property retention period.

Accepting a prepayment penalty in the nonconforming marketplace can effectively lower interest rates from 9.625% with no prepayment penalty, to 8% for a 5-year prepayment penalty. This saves the investor in their monthly payment and increases their return on investment as the prepayment penalty is not an added fee paid at closing. It functions like a discount point in that the Note rate will be lower, but the borrower will incur a prepayment penalty if they pay the loan off prior to the end of the prepayment penalty period.

If the property investor has short term plans for the property, the 9.625% rate would be factored into their return-on-investment plans to determine the profit for a fix and flip property. Buy low, fix it up and sell at a market high. The high interest rate 9.625% would be a motivator to complete the improvements and sell quickly.

Assumable Loans

In our current housing climate, we are going to see some loan features come into play that we have not seen in a while. When interest rates are on the rise, qualifying for a home becomes more challenging for borrowers. In addition, selling the listings becomes more challenging as fewer potential buyers come through the open houses.

When able, have your borrower look for home listings with the option to assume an underlying mortgage with a low-interest rate. Federal Housing Administration (FHA) loans, U.S. Department of Veterans Affairs (VA) loans, and U.S. Department of Agriculture (USDA) loans are assumable, while conventional loans are only assumable in special cases. Review the seller's mortgage Note to determine if the loan is assumable.

An assumable mortgage allows someone to find a house they want to buy and take over the seller's existing home loan without applying for a new mortgage. Assumable mortgages provide a release of liability to the seller when an original homeowner sells his or her property to a creditworthy borrower who executes an agreement to assume, obtains loan servicer approval to assume, and agrees to

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become the substitute borrower. This means the remaining loan balance, mortgage rate, repayment period, and other loan terms stay the same, but the responsibility for the debt is transferred to the new home buyer.

Assumptions are a huge benefit when the current market interest rate is more than 2% points above the Note rate, which our current market with rates around 7% meet this requirement. The purchaser then covers the difference between the sales price and the existing loan amount (down payment) by either paying cash or providing secondary home financing.

A low-rate loan assumption can be a powerful enticement for home buyers as they shop for houses. A lower rate allows them to pay lower house payments than if they took the current mortgage rate. This may expand your buyer's buying power.

A loan servicer will have an Assumption Department to oversee qualifying Note Assumptions, as allowed by the Note. The person buying the home will collaborate with the seller's loan servicer to be qualified for the assumption and complete the needed paperwork.

Potential assumption benefits:

- May enhance the property's marketability, especially if current interest rates are much higher
- Allows a borrower to qualify at the existing lower Note rate, increasing their buying power to purchase a more expensive home
- May not need a new appraisal, lender title policy, survey, and inspection
- Lower-interest rate on the underlying mortgage than the current market provides
- Fewer closing costs with caps on certain closing costs
- No appraisal is typically required when transferring or selling through assumption
- Faster equity growth with less interest paid over the remaining term of the loan, as the first few years of the loan repayment cover the largest amount of interest

Considerations:

- There are fees to assume a loan, including closing costs, assumption fee, and any ongoing mortgage insurance payments
- The buyer assuming the loan must meet credit and income underwriting qualifications and provide the requested documentation
- The servicing lender's Assumption Department must agree to sell the home through assumption by underwriting the buyers to meet the loan program's requirements

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- For VA home loan sellers, the seller's VA loan entitlement will not be available until the assumed loan is paid off unless the buyer is a qualifying veteran with entitlement to substitute their eligibility
- Higher down payment when the seller's equity is high, so may have a higher down payment requirement than planned
- Borrower may need to obtain a second mortgage to help with the down payment

FHA Assumptions

FHA have restrictions on Loan-to-Value Ratio but allow borrower to assume a loan they plan to owner occupy if they qualify for the loan. The maximum Loan-to-Value (LTV) for an Investment Property assumption is 75%. Either the original appraised value or new Property Value may be used to determine compliance with the 75% LTV limitation. HUD-Approved Secondary Residence assumption maximum LTV is 85%. Either the original appraised value or new Property Value may be used to determine compliance with the 85% LTV limitation.

The Mortgagee must prepare form HUD-92210.1, Approval of Purchaser and Release of Seller. This form releases the original owner when they sell by assumption to the assuming Borrower who executes an agreement to assume the Mortgage and to pay the debt. FHA does not allow a non-qualifying simple assumption.

The assuming Borrower is not required to make a cash investment in the Property. The assuming Borrower may assume 100% of the outstanding principal balance of the Mortgage, subject to the restrictions on LTV ratio for Investment Properties and HUD-approved Secondary Residences.

VA Assumption

All VA loans are assumable, but with additional rules and qualification requirements that govern exactly how the lender must approve and deem the buyer creditworthy.

Because VA loans are provided by the U.S. Department of Veterans Affairs, borrowers normally have to be active-duty service members, veterans, or eligible surviving spouses to qualify for a VA loan. However, in cases of assumption, the person assuming the loan is not required to be affiliated with the military or have VA eligibility.

What Happens to the Veteran Seller's VA Eligibility?

For the Veteran seller to obtain a release of their VA eligibility, the buyer must have eligibility and provide their Certificate of Eligibility to the lender for substitution of eligibility. The Veteran seller can

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then obtain restitution of entitlement to use their eligibility on another owner-occupied home loan. If the buyer does not have eligibility for a VA loan, the seller's eligibility will stay with the assumed loan until the loan is paid in full by the buyer of their home.

Can the Veteran Use Partial Eligibility to Purchase another Home?

Yes, however, if the Veteran seller does not obtain the release of their entitlement, there may or may not be a sufficient entitlement to cover the 25% guarantee requirement on their next home loan. If the veteran has partial eligibility left over from the purchase of the home he is selling, the Veteran may then use their partial eligibility, if any, to purchase another home. This often requires the Veteran to pay a down payment but is less than you may think due to the VA down payment formula for partial eligibility.[90]

USDA Assumptions

USDA loans are assumable in two ways:

1. **New rates and terms** - Most USDA loans are assumable in this manner, which transfers responsibility for the mortgage debt to the buyer but also adjusts the debt by re-amortizing it with new rates and terms.
2. **Same rates and terms** - Available only in special circumstances, this assumption is usually reserved for family members exchanging the title of a property. In these cases, the rates and terms of the original mortgage are preserved and no review of the buyer's creditworthiness nor appraisal of the property itself is required. Termed a simple assumption.

Mortgage Assumption after Death and Divorce

To be assumable, a mortgage note usually has to contain a clause that allows for this special type of sale and gives the lender the right to look into the buyer's financial situation. However, exceptions to this rule exist to protect people going through significant life events. After death or divorce, for instance, mortgage assumption can help families transfer mortgaged assets even without the approval of the lender.

[9090] https://www.benefits.va.gov/HOMELOANS/documents/docs/guaranty_calculation_examples.pdf

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Are Conventional Loans Assumable?

The answer is - sometimes. In most cases, Fannie Mae and Freddie Mac conforming loans are not assumable because the mortgage Note contains a due-on-sale clause. This clause allows the lender to demand the entire remaining loan amount as due and payable when the property is sold but the lien is not paid off. Sometimes conventional ARM loans may allow an assumption. Check the sellers Note for details of what is allowable on the underlying existing mortgage.

The table below lists the minimum qualifying assumption requirements for the common loan types:

	Conventional loan	FHA loan	VA loan	USDA loan
Minimum credit score	620	580 with 3.5% down; 500-579 with 10% down	No minimum, but 620 is lender standard	No minimum, but 640 is lender standard
Minimum DTI	45% back-end ratio	31% front-end ratio; 43% back-end ratio	41% back-end ratio	29% front-end ratio; 41% back-end ratio

Illegal Assumption

There are title companies or attorneys that prepare assumption paperwork to complete an 'illegal assumption.' It is considered illegal because the servicing lender would not be notified about the change in ownership of the property. The buyer avoids the servicer because they would call the loan due and payable if they knew a title change occurred.

If there is a lien on the property, the servicing lender must be notified of the transfer of title ownership of the property and the transfer of title must meet the requirements on the Note. If the assumption is not in compliance with the terms of the Note, the Note's acceleration clause is triggered by the violation.

Source of Down Payment

When a borrower does not have the down payment needed due to the large difference between the existing loan amount and the sales price, the borrower may obtain a second mortgage to help fund the purchase of the assumable first mortgage. This is provided the borrower qualifies and the transaction CLTV meets the underlying lender and second mortgage requirements.

For example, if the seller has a $200,000 loan balance on a $300,000 sales price home, the buyer will need a $100,000 down payment at the closing to cover the difference. If the buyer decides to get

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secondary (subordinate) financing, he must disclose the source of the down payment and meet underlying loan CLTV requirements.

In addition to sending the applicable Notice to Homeowner, and Release of Personal Liability in Assumptions, if the loan is an ARM, the Mortgagee must attach a copy of the original ARM Disclosure Statement that established the index, margin, and the Change Date.

What is a Blended Rate?

When an assumption of an existing first mortgage with a piggyback second mortgage (simultaneous close with assumption process) is a good for the consumer when the blended rate is lower than the current market rate. A home equity fixed loan (HELOAN) or home equity line of credit (HELOC) are common second mortgage options for buyers who are assuming a mortgage and do not want to or cannot put all the cash needed for the down payment. Although this second loan will have a higher interest rate than the market first mortgage rate, the goal is to have a blended rate lower than what current interest rates would provide. This gives the borrower a lower monthly house payment and interest paid overall.

Blended Rate Example

This is an example of the math to determine the blended rate.

- The sales price of the home is $450,000
- Existing mortgage balance of $350,000 with 3% Note rate - has $1686 PI Payment with 20 years left on the term of the loan.
- The borrower needs $100,000 to purchase the home (22% down payment). If he has it that is perfect. He can assume the loan if he qualifies.

A borrower may purchase the home by obtaining a new first loan with 10% down payment. This would require $45,000 down payment and a $405,000 first mortgage loan amount. With a rate of 7% the payment would be $2694 P&I. That is $1008 higher than if they assume the existing loan payment and put $104,000 in down payment.

Alternatively, if the borrower does not have sufficient down payment, and the increased payment is causing them to not meet debt ratios, they can try to assume the existing mortgage and obtain a second mortgage to assist with the cash to close. A 90% CLTV second mortgage loan would give the borrower a $55,000 second mortgage with a payment of $404 at an 8% interest rate for a 30-year term. The borrower would then have a $45,000 cash out of pocket down payment. Same as if they

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purchased with their own first mortgage loan product. ($100,000 down required- $55,000 2nd mtg = $45,000 out of pocket cash to close).[91]

To calculate a blended rate –
$350,000 x .03 = $10,500 annual interest
$ 55,000 x .08 = $ 4,400 annual interest
Subtotal $14,500
$14,500/$405,000 (total loan amounts) = 3.679% blended rate

In this situation, the borrower will get an effective blended rate of 3.679%. Much lower than the market rate of 7%.

In addition, the purchaser/borrower will only have 20 years left to pay on the first mortgage. This lower loan term will save them much more in interest than obtaining a new first mortgage for 30 years. A creative MLO may obtain a 20-year second mortgage to match the first mortgage term giving the consumer even more benefit to the assumption. Paying off their home in only 20 years instead of 30 years will save them thousands in interest.

Type of Assumptions

There are two types of mortgage assumption: simple assumption and novation. Both types have different implications for the ongoing relationship between the buyer, seller, and lender.

Simple Assumption

In a simple assumption, the transfer of responsibility for the mortgage from the seller to the buyer maybe private. The mortgage lender may or may not be privy to this transfer. A simple assumption does not require the buyer to qualify for the loan nor go through the servicer's underwriting process. In practice, this means that if the buyer fails to make payments or otherwise breaches the mortgage contract with the lender, both the buyer and seller are liable. The seller that sells their home on a simple assumption, is still liable for the mortgage if their assuming buyer fails to make the payment. The seller's credit reports may also reflect the outstanding first mortgage loan amount owned and continued repayment history.

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[91] https://corporatefinanceinstitute.com/resources/commercial-lending/blended-rate/

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Novation Assumption

In novation, the mortgage lender participates in and agrees to the full transfer of liability from the seller to the buyer. Because the lender can put the buyer through the underwriting process, it is willing to release the seller from all future responsibility for the mortgage payments. This is the most common assumption process in our mortgage industry and is required by most existing mortgage notes. The seller's credit report will show the home loan paid off with 'Assumption,' and will not reflect the buyer's payment history.

Adjustable-Rate Mortgages

An ARM is an Adjustable-Rate Mortgage. Unlike fixed rate mortgages that have an interest rate that remains the same for the life of the loan, the interest rate on an ARM will change periodically. When the initial interest rate of an ARM loan is lower than those for a fixed rate mortgage, an ARM loan may be a good option to consider for your borrowers. Just consider how long the borrower plans to stay in the home, if the borrower expects an increase in future earnings, or when the prevailing interest rate for a fixed rate mortgage is too high.[92]

An adjustable-rate mortgage (ARM) allows lenders the freedom from being locked into a fixed-interest rate for the entire life of a loan. As interest rates adjust according to the terms in the Note to reflect the current cost of money. Investors like this benefit. Investors like ARM loans because they can pass the risk of fluctuating interest rates on to borrowers. Lenders may offer multiple types of ARM programs and terms.

Terms, rate changes, and other aspects of Arm's guidelines are prescribed by several entities, depending on the loan program investor. Fannie Mae, Freddie Mac, FHA, and/or private mortgage insurers set their own rules on what they will accept regarding these types of loans, and creditors must also comply with TILA regulations regarding required ARM disclosures.

[92] https://www.hud.gov/program_offices/housing/sfh/ins/203armt

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Components of ARMs

Index

Once the initial interest rate for the loan is set, the rate of the loan is tied to a widely recognized and published index. The index is often referred to as the cost of money.

At the time a loan is made, the consumer may choose the loan program with the index terms that meets their financial goals. While in repayment the index will fluctuate based on market conditions. The index moves in line with other short-term interest rate debt instruments. At the time of adjustment, the index is added to the margin to determine the next period's interest rate. The index is the only thing that changes with an ARM loan program. All other features remain the same once the loan is locked and are disclosed in the note.

Commonly used adjustable-rate mortgage indices include:

FedCofi is a calculated formula of the monthly average interest rates for marketable Treasury bills and Treasury notes. It is calculated as the sum of the monthly average interest rates for marketable Treasury bills and for marketable Treasury notes, divided by two, and rounded to three decimal places. The Federal COFI (Cost of Funds Index) is made available by Freddie Mac on or about the 20th day of each month.[93]

SOFR is the Secured Overnight Financing Rate (SOFR) Index. SOFR is a broad measure of the cost of borrowing cash overnight collateralized by U. S. Treasury securities in the repurchase agreement (repo) market. The SOFR is calculated as a volume-weighted median of transaction-level tri-party repo data collected from the Bank of New York Mellon, as well as GCF Repo transaction data, and data on bilateral Treasury repo transactions cleared through FICC's DVP service. Each business day, the New York Fed publishes the SOFR on the New York Fed website at approximately 8:00 a.m. ET.[94] Lenders use the 30-day average SOFR to price mortgage loan programs. This is the index that replaced the LIBOR index.

Prime Rate Index is the U.S. Prime Rate and is commonly used for short-term interest rate in the US banking systems. All types of American lending institutions (traditional banks, credit unions,

[93] https://www.freddiemac.com/research/datasets/cofi
[94] https://www.newyorkfed.org/markets/reference-rates/sofr

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thrifts, etc.) use the U.S. Prime Rate as an index or foundation rate for pricing various short- and medium-term loan products. The Prime Rate is consistent because banks want to offer businesses and consumers loan products that are both profitable and competitive. Most home equity lines of credit will use the Prime Rate Index + margin to determine the rates offered.[95]

These indices are subject to change over time and is, therefore, likely to be different each time there is an adjustment to the loan's interest rate. Indices with longer terms offer borrowers more protection from short-term fluctuations in the economy than indices with short terms.

Margin

A margin, which is sometimes referred to as a spread, remains fixed or constant for the duration of the loan. The margin is the number of percentage points added to the index and set by the loan program at time of rate lock. The margin never changes once locked and set out in the Note. The lower the margin the higher the initial interest rate and cost for the loan. The higher the margin the lower the initial interest rate and costs on the loan.

Having a high margin benefits the creditor when the loan adjusts, by allowing the lender to adjust upward quickly when the market has escalated. Having the lowest margin benefits the borrower with no large payment jumps during the loan repayment.

The **fully indexed rate** is the value of the applicable index and the margin, which is then rounded to the nearest one-eighth percent.[96] The applicable index value that determines the fully indexed rate is the index value in effect during the 30-90 days that precede the Note date depending on investor requirements.

The index plus the margin equals the adjusted interest rate or the **fully indexed rate.** This is the rate the loan would be if it were to adjust with the current index and margin today.

For Example, fully indexed rate:

4.375% SOFR Current Index Value[97] (2/7/2023 - 4.34397% rounded to nearest 1/8%)
+ 2.50% Margin

[95] http://www.fedprimerate.com/
[96] https://selling-guide.fanniemae.com/Selling-Guide/Origination-thru-Closing/Subpart-B2-Eligibility/Chapter-B2-1-Mortgage-Eligibility/Section-B2-1-4-Loan-Amortization-Types/1032991911/B2-1-4-02-Adjustable-Rate-Mortgages-ARMs-12-16-2020.htm#ARMs.20and.20Temporary.20Interest.20Rate.20Buydowns
[97] https://sofracademy.com/current-sofr-rates/

6.875% Fully Indexed Rate

Most loan programs require the borrower qualify at the fully indexed rate, but other loan programs may require the borrower qualify at a higher rate such as 2% over the start rate. Check your loan program guidelines to identify what the program uses for the qualifying interest rate.

Teaser Rates

When an ARM's initial rate, or start rate, is less than the current market fully indexed rate, this is considered a discounted rate or teaser rate. Lenders offer teaser rates to make ARMs more attractive for borrowers to use. Teaser rates may have a higher first payment adjustment cap which may cause a large bump in the payment for the first adjustment in a rising rate market environment.

Rate Adjustment Period

The rate adjustment period is the length of time between ARM loan's interest rate adjustments.

Per Adjustment Rate Cap and Floor Interest Rate

Interest rate caps are used to limit the number of percentage points an interest rate increases or decreases during the term of a loan. It helps to eliminate large fluctuations in mortgage payments and payment shock.

Rate caps are often displayed as two or three numbers. For example, a one-year ARM loan may have 2/6 caps. This means:

- 2 – The first number indicates the maximum amount the interest rate can increase (or potentially decrease) from one adjustment period to the next.
- 6 – The second number indicates the maximum amount the interest rate can increase during the life of the loan.

For example, the start rate + the lifetime cap 6% = maximum interest rate for the life of the loan

For example, a Hybrid 5/1 ARM may have 3/2/6 caps. This means:

- 3 – First adjustment cap - maximum the loan may increase with the first adjustment after five years. When have hybrid with long initial stable interest rate period, the lender may want to recoup losses with a larger increase for the first adjustment.
- 2 – Subsequent adjustment cap - maximum the loan may increase or decrease on all subsequent adjustments after the first adjustment
- 6 – Lifetime cap - maximum the loan may increase over the life of the loan

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The **floor rate** is the minimum a loan may adjust down. The floor rate is the lowest the interest rates may go regardless of potential market downward adjustments. Some loan programs will use the start rate as the floor rate, and others may allow the initial interest rate to decrease below the start rate on the first and/or subsequent adjustments.

Conversion Option

Fannie Mae and Freddie Mac programs often use this option for their ARM loan programs. This option allows the borrower to convert the adjustable-rate mortgage to a fixed rate mortgage without the expense of a refinance or re-qualifying for a new loan or the conversion. There is small window of time called the conversion period set out in the Note, and the borrower must exercise their option to convert during this period of time or loan will remain an ARM loan for the life of the loan. The conversion, if offered, is 'optional.' This works well with changing market climate as the borrower can adjust their loan program to a fixed rate, as the hope is market rates may will be lower in the future.

Adjustable-Rate Loan Program Differences

So far we have covered a general description of ARM loans and their components. When a consumer determines they want to obtain an Adjustable-Rate Mortgage, MLOs will need to understand the different specific loan program requirements. The following is a brief description and may vary with what you find in the market depending on funding lender requirements, mortgage insurance company requirements and loan program availability.

Review of Conventional ARMS

Conforming key ARM features.[98]

- temporary interest rate buydown allowed with a buydown period no greater than 24 months
- principal residence or second home allowed
- have initial interest rate period of three years or more
- be secured by one-or two-unit property
- maximum mortgage margin may be no more than 300 basis points
- The borrower must qualify two points over the initial start rate

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[98] https://selling-guide.fanniemae.com/Selling-Guide/Origination-thru-Closing/Subpart-B2-Eligibility/Chapter-B2-1-Mortgage-Eligibility/Section-B2-1-4-Loan-Amortization-Types/1032991911/B2-1-4-02-Adjustable-Rate-Mortgages-ARMs-12-16-2020.htm#ARMs.20and.20Temporary.20Interest.20Rate.20Buydowns

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- It limits the initial Note rate with initial interest rate periods of less than five years
- “Teaser rate” ARMs have additional guidelines and disclosure requirements

When assumptions are restricted, the lender must advise the borrower of the exact nature of the restriction(s). Once an ARM loan is assumed, the conversion option may not be exercised.

Conforming loans use the Secured Overnight Financing Rate (SOFR) Index. It uses a 30-day average of SOFR index as published by the Federal Reserve Bank of New York.

Review of FHA 251 ARM Program

The interest rate must remain constant for an initial period of 3, 5, 7, or 10 years, depending on the ARM program chosen by the Borrower, and then may change annually for the remainder of the mortgage term.

The 251 FHA program does not allow for interest rate buydowns. The first scheduled Loan Payment must be due no later than two months from the date of the Loan.[99]

Acceptable index option used is the Constant Maturity Treasury (CMT) index (weekly average yield of U.S. Treasury securities, adjusted to a constant maturity of one year).[100]

FHA offers four "hybrid" ARM products. Hybrid ARMs offer an initial interest rate that is constant for the first 3, 5, 7, or 10 years. After the initial period, the interest rate will adjust annually. Below are the different interest rate cap structures for the various ARM products:

- A 3-year ARM may increase by one percentage point annually after the initial fixed interest rate period, and five percentage points over the life of the Mortgage. (1/1/5 caps)
- A 5-year ARM may either allow for increases of one percentage point annually, and five percentage points over the life of the Mortgage; or increases of two percentage points annually, and six points over the life of the Mortgage. (1/5 caps or 2/6 caps)
- A 7- and 10-year ARM may only increase by two percentage points annually after the initial fixed interest rate period, and six percentage points over the life of the Mortgage. (2/6)[101]

[99] https://www.hud.gov/sites/dfiles/SFH/documents/sfh_hb_4000_1_update_12_redline_06_29_22.pdf
[100] https://www.hud.gov/program_offices/housing/sfh/ins/203armt
[101] https://www.hud.gov/sites/dfiles/SFH/documents/sfh_hb_4000_1_update_12_redline_06_29_22.pdf

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Note: index changes in excess of one or two percentage points allowed may not be carried over for inclusion in an adjustment in a subsequent year.

Review of VA ARMS

An ARM loan offers interest rates based on negotiated initial fixed period of time coupled with periodic adjustments to the interest rate over time. Hybrid ARMs have longer initial fixed period of time for the interest rates before the first adjustment. Often 3, 5, 7, or 10 years.

Hybrid ARMs with the initial contract interest rate remains fixed for 5 years or less, the initial adjustment is limited to a maximum increase, or decrease of one percentage point and the interest rate increase over the life of the loan is limited to five percentage points. (1/1/5 caps)

If the initial contract interest rate remains fixed for 7 years or more, the initial adjustment will be limited to a maximum increase or decrease of two percentage points and the interest rate increase over the life of the loan will be limited to six percentage points. (2/1/6 caps)

Hybrid ARMs with a fixed period of 3 or more years may be underwritten at the initial interest rate.

The loan application must be underwritten based on the fully indexed payment amount if there are no strong indications that the income used to support the application can be expected to keep pace with the increases in loan payments.

A 2-1 buydown arrangement can be considered a compensating factor if the residual income and/or debt-to-income ratio is marginal, the buydown plan (used to offset a short-term debts), along with other compensating factors, may support approval of the loan. Lenders must provide the Veteran-borrower with a clear, written explanation of the buydown agreement.

The margin is 200 basis points or 2% is set by VA. It may be higher but is not expected to be greater than 300 basis points or 3%.

The VA ARM program uses the CMT index. The index is taken from the most recent weekly index available 30 days before the change date when calculating the new interest rate and rounded to the nearest one-eighth percent to establish the calculated interest rate.

MCC Tax Credits

The Mortgage Tax Credit Certificate (MCC) program was established by the Deficit Reduction Act of 1984 and was modified by the Tax Reform Act of 1986. Under the law, states can convert a portion of their federal allocation of private activity bonds (PABs) to MCC authority on a four-to-one basis.

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Mortgage tax credit certificates can help lenders increase their appeal to first-time homebuyers and help more borrowers qualify for homes by reducing their mortgage payments or providing additional effective income.

Some states do not offer MCC tax credit, but instead may offer BOND issues. BOND issues are monies set aside for lending to homebuyers and offer a lower than market interest rate. Bond issues help lower income families obtain favorable low interest rate financing. Contact your state's division of housing (HFA) to determine what is available in your market area. County and city housing divisions may also have special programs for low-income families and community development areas.

State Housing Finance Agencies (HFAs) manage a program that provides home purchasers with a significant tax credit in connection with their home loans. The MCC credit can be used in a manner that assists people in making their monthly payments more affordable (affecting underwriting) for as long as the home remains their primary residence. Participating bankers provide information to their customers about the tax credit and apply to the HFA for the certificate on the borrower's behalf. The MCC Certificate must be in the loan file for the underwriter to consider the tax saving benefits.

MCCs are not a loan product, but rather a federal tax credit. MCCs are certificates issued by state HFAs that increase the federal tax benefits of owning a home and helps low- and moderate-income, first-time homebuyers offset a portion of the amount they owe in mortgage interest. An MCC is not a tax deduction, but it provides a dollar-for-dollar tax credit to recipients to increase housing payment affordability.

In some cases, MCCs can also help borrowers who might not otherwise qualify for a loan by reducing their net monthly mortgage payment. MCCs are issued directly to qualifying homebuyers who are then entitled to take a nonrefundable federal tax credit equal to a specified percentage of the interest paid on their mortgage loan each year.

These tax credits can be taken at the time the borrowers file their tax returns, or borrowers can amend their W-4 tax withholding forms from their employer to reduce the amount of federal income tax withheld from their paychecks in order to receive the benefit on a monthly basis. The tax credit percentages vary by state but are generally in the amount of 20% to 40% of the total mortgage interest. The remaining interest obligation may be deducted (by those who itemize deductions) as a standard home mortgage interest deduction. Regardless of the tax credit percentage issued, the Internal Revenue Service (IRS) caps the maximum tax credit that may be taken for any given year at $2,000 for each MCC recipient.

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The MCC tax credit remains in place for the life of the mortgage, so long as the residence remains the borrower's principal residence. The total MCC tax credit for each year cannot exceed the recipient's total federal income tax liability for that year, after accounting for all other credits and deductions. Credits in excess of the current year tax liability may be carried forward for use in the subsequent three years. Therefore, it is important to consider the potential limitations of the credit for those homebuyers with a minimal tax obligation. Unlike down payment and closing cost assistance programs, MCC programs do not restrict the type of mortgage financing with which they are coupled.[102]

MCC Eligibility and Benefits

- Available to first-time homebuyers, homebuyers who have not owned a home in 3-years, and Veterans to help keep housing costs down through federal income tax credits.
- Income limits apply. Limits vary by county and could be lower than down payment assistance (DPA) program income limits.
- Purchase price limits apply.
- MCC funds are limited.
- An MCC can reduce federal income taxes owed. Because of the potential tax savings, an MCC holder may choose to adjust their W-4 withholdings with their employer. With less money withheld for taxes, the MCC holder receives more take-home pay.
- The MCC can be used by the lender to gross up qualifying income and improving debt-to-income qualifying ratios (if allowed by the respective mortgage agency guidelines).
- MCC issued may be combined with state down payment assistance program for double benefit to the borrower. Check with your State's HFA.

Qualifying with MCC

To calculate the amount of the MCC tax credit, take 20% (or state allowable amount up to 40% if loan program allows) of the annual mortgage interest paid on the loan divided by twelve equals monthly MCC tax credit.

For example, $400,000 mortgage with 7% interest rate = $28,000 annual mortgage interest

[102] https://www.fdic.gov/resources/bankers/affordable-mortgage-lending-center/guide/part-2-docs/mortgage-tax-credit.pdf

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$28,000 x 20% = $5,600 annual interest (limited to the MCC credit cap of $2,000 in this scenario)

$2,000/12 months = $166.67 for qualifying depending on how the loan program allows the use of this federal tax credit.

For example, $110,000 mortgage with 7% interest rate = $7,700 annual mortgage interest

$7,700 x 20% = $1,540/12 = $128.33 for qualifying for the mortgage loan.

FHA Home Loans MCC Eligibility Requirements

Mortgage credit certificate credit that is not used to directly offset the Loan Payment before calculating the qualifying ratio may be included as Effective Income.

For example, using the previous example calculation for a $400,000 purchase and loan with a monthly principal and interest payment of $2,665 would be reduced to qualify at the lower payment amount.

$2,665 - $166.67 = $2,498.33 qualifying P&I payment with MCC tax credit

VA Home Loans MCC Eligibility Requirements

VA loan use MCC Tax Credits differently from FHA. For VA home loans the MCC tax credit reduces the federal tax amount used to calculate residual income and does not affect the debt ratio calculation.

VA Form 26-6393, Loan Analysis Section E – Monthly Income and Deductions

Federal Income tax is determined using the appropriate deductions for Federal income tax from the 'Employer's Tax Guide,' circular E issued by the IRS (Internal Revenue Service). If the applicant has a Mortgage Credit Certificate (MCC), reduce the Federal income tax by the estimated tax credit.

For example, for a borrower that has a tax liability of $325 a month based on family size, would have their tax line reduced by the MCC tax credit.

$325 monthly federal taxes - $166.67 MCC monthly tax credit = $158.33 reduced federal taxes due, which increases their residual income for qualifying.

Conventional Loan MCC Eligibility Requirements

When calculating the borrower's DTI ratio, conventional lenders may use the maximum possible MCC income as an addition to the borrower's income, rather than as a reduction to the amount of the borrower's mortgage payment.

Use the following calculation when determining the available income:

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[(Mortgage Amount) x (Note Rate) x (MCC %)] ÷ 12 = Amount added to borrower's monthly income.[103]

For example, if a borrower obtains a $100,000 mortgage that has a note rate of 7.5% and they are eligible for a 20% credit under the MCC program, the amount that should be added to their monthly income would be:

$100,000 x 7.5% x 20% = $1500 ÷ 12 = $125 added to borrower's effective monthly income for qualifying. Remembering the maximum is $2,000 for MCC Tax credit.

The lender must obtain a copy of the MCC certificate, and the lender's documented calculation of the adjustment to the borrower's income and include them in the loan file.

For refinance transactions, the lender may allow the MCC to remain in place as long as it obtains confirmation prior to loan closing from the MCC provider that the MCC remains in effect for the new loan. Copies of the MCC documents, including the reissue certification, must be maintained in the new loan file.[104]

FHA Mortgage Updates

FHA issues Mortgagee letters (ML) to update lenders and MLOs of the changes that are made to the FHA home loan program. These mortgagee letters provide valuable updates to loan programs without having to re-read the FHA Manual 4000.1.

Mortgagee Letter 2022-17 - This ML updates guidance in Handbook 4000.1 section II.A.4.b.iii – Evaluating Credit History (TOTAL) by adding a new section: II.A.4.b.iii (L) – Positive Rental History, when at least one Borrower is identified as a first-time homebuyer and at least one Borrower has a documented positive rental history.

Positive Rental Payment History refers to the on-time payment by a borrower of all rental payments in the previous 12 months. A rental payment is considered to be on time when it is paid within the month due.

[103] https://guide.freddiemac.com/app/guide/content/a_id/1001586

[104] https://selling-guide.fanniemae.com/Selling-Guide/Origination-thru-Closing/Subpart-B3-Underwriting-Borrowers/Chapter-B3-3-Income-Assessment/2367083361/Is-a-mortgage-credit-certificate-allowed-as-income.htm#Mortgage.20Credit.20Certificates

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A First Time Homebuyer refers to an individual who has not held an ownership interest in another property in the three years prior to the case number assignment. First Time Homebuyer includes an individual who is divorced or legally separated and who has had no ownership interest in a principal residence (other than joint ownership interest with a spouse) during the three years prior to case number assignment.

A Mortgagee may submit the transaction to TOTAL Mortgage Scorecard indicating a Positive Rental Payment History provided:

- the transaction is a purchase.
- at least one Borrower is identified as a First Time Homebuyer.
- the Minimum Decision Credit Score (MDCS) is 620 or greater; and
- at least one Borrower has a documented history of a positive rental payment history with monthly payments of $300 or more for the previous 12 months.

Required Documentation

To verify the Borrower's rental payment history, the Mortgagee must obtain a copy of the executed rental or lease agreement and one of the following:

- written verification of rent from a property owner with no Identity of Interest with the Borrower; or
- 12 months canceled rent checks; or
- 12 months bank or payment service statements documenting rents paid; or
- property owner reference from a rental management company.
- Borrowers renting from a Family Member must provide a copy of the executed rental or lease agreement and 12 months canceled checks or bank statements to demonstrate the satisfactory rental payment history.[105]

Mortgagee Letter 2022-18, General Property Eligibility (II.A.1.b.iv(A)) Special Flood Hazard Areas

The Mortgagee must determine if a property is located in a Special Flood Hazard Area (SFHA) as designated by the Federal Emergency Management Agency (FEMA). The Mortgagee must obtain

[105] https://www.hud.gov/sites/dfiles/OCHCO/documents/2022-17hgnml.pdf

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flood zone determination services, independent of any assessment made by the Appraiser, to cover the Life of the Loan Flood Certification.

A Property is not eligible for FHA insurance if:

- a residential building and related improvements to the Property are located within any SFHA Zone beginning with the letter A, a Special Flood Hazard Area, or any Zone beginning with the letter V, a Coastal High Hazard Area, and insurance under the National Flood Insurance Program (NFIP) is not available in the community; or the improvements are, or are proposed to be, located within the Coastal Barrier Resources System (CBRS).

To be eligible for FHA insurance, a property located in a Special Flood Hazard Area (SFHA) must be in a community that participates in the National Flood Insurance Program (NFIP) and has NFIP available, regardless of whether the Borrower obtains NFIP coverage. Flood Insurance refers to insurance provided by a National Flood Insurance Program (NFIP) or a Private Flood Insurance (PFI) policy that covers physical damage by floods.

A **National Flood Insurance Program** (NFIP) policy refers to insurance managed by the Federal Emergency Management Agency (FEMA) that covers physical damage by floods.

A **Private Flood Insurance** (PFI) policy refers to insurance provided by a private insurance carrier that covers physical damage by floods.

Eligible Properties

If the property improvements (dwelling and related structures/equipment essential to the value of the Property) are located in an area designated by FEMA as an SFHA and NFIP insurance is available in that community, the Mortgagee must ensure the Borrower obtains and maintains Flood Insurance.

For Properties located within an SFHA, Flood Insurance must be maintained for the life of the Mortgage in an amount at least equal to the lowest of the following:

- 100 percent replacement cost of the insurable value of the improvements, which consists of the development or project cost less estimated land cost.
- the maximum amount of NFIP insurance available with respect to the particular type of Property; or
- the outstanding principal balance of the Mortgage.

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Requirements for PFI

If the Borrower purchases a PFI policy in lieu of an NFIP policy, the Mortgagee must ensure the PFI policy meets the following requirements:

- is issued by an insurance company that is licensed, admitted, or otherwise approved to engage in the business of insurance in the state or jurisdiction in which the Property to be insured is located, by the insurance regulator of the state or jurisdiction.
- provides Flood Insurance coverage that is at least as broad as the coverage provided under a standard Flood Insurance policy under the NFIP for the particular type of property, including when considering exclusions and conditions offered by the insurer.
- includes deductibles that are no higher than the specified maximum, and includes similar non applicability provisions, as under a standard flood insurance policy under the NFIP.
- includes a requirement for the insurer to provide written notice 45 Days before cancellation or nonrenewal of Flood Insurance coverage to the Borrower and the Mortgagee.
- includes information about the availability of Flood Insurance coverage under the NFIP.
- includes a mortgage interest clause similar to the clause contained in a standard Flood Insurance policy under the NFIP.
- includes a provision requiring the Borrower to file suit no later than one year after the date of a written denial for all or part of a claim under the policy; and
- contains cancellation provisions that are as restrictive as the provisions contained in a standard Flood Insurance policy under the NFIP.

The Private Flood Insurance (PFI) Policy Compliance Aid is the statement: "This policy meets the definition of private flood insurance contained in 24 CFR 203.16a(e) for FHA insured mortgages."

The Mortgagee may rely on the PFI Policy Compliance Aid to determine whether a PFI policy meets the Flood Insurance requirements. A Mortgagee may not reject a policy solely because it is not accompanied by a PFI Policy Compliance Aid.

A Property is not eligible for FHA insurance if a home site on which a Manufactured Home is placed is:

- located within SFHA Zone V, a Coastal High Hazard Area; or
- located within SFHA Zone A and insurance under the NFIP is not available in the community; or
- proposed to be located within a CBRS.

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To be eligible for FHA insurance, a property located in an SFHA must be in a community that participates in the National Flood Insurance Program (NFIP) and has NFIP available, regardless of whether the Borrower obtains NFIP coverage.[106]

Mortgagee Letter 2022-11-Revised Appraisal Validity Periods

This Mortgagee Letter (ML) increases the Federal Housing Administration (FHA) initial appraisal validity period to 180 days from the effective date of the appraisal. This ML also extends the appraisal update validity period to one year from the effective date of the initial appraisal report that is being updated.

The provisions of this ML apply to FHA Single Family Title II forward and Home Equity Conversion Mortgage (HECM) programs.[107]

VA Mortgage Updates

The VA uses Circulars to announce changes to their guidelines. As with FHA Mortgagee letters, lenders and MLOs are responsible to know the changes to loan programs they offer.

Circular 26-23-5 - Oversight of Appraisal Reports to Promote Fair Housing for All Veterans Obtaining Loans Backed by the Department of Veterans Affairs

This Circular announced enhanced oversight procedures that will better enable the Department of Veterans Affairs (VA) to identify discriminatory bias in home loan appraisals and act against participants who illegally discriminate based on race, color, national origin, religion, sex (including gender identity and sexual orientation), age, familial status, or disability.[108]

Circular 26-23-3 - Updates to VA Forms 26-1820 and 26-1802a

This Circular advises stakeholders that VA Form 26-1820 (Report and Certification of Loan Disbursement) has been revised. Additionally, VA 26-1802a (HUD/VA Addendum to the Uniform Residential Loan Application) has been discontinued.[109]

Circular 26-23-2 - Updates to VA Eligibility Request Forms 26-1880 and 26-1817

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[106] https://www.hud.gov/sites/dfiles/OCHCO/documents/2022-18hsgml.pdf
[107] https://www.hud.gov/sites/dfiles/OCHCO/documents/2022-11hsgml.pdf
[108] https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-23-05.pdf
[109] https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-23-02.pdf

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This Circular advises stakeholders that VA Form 26-1880 (Request for a Certificate of Eligibility) and VA Form 26-1817 (Request for Determination of Loan Guaranty Eligibility – Unmarried Surviving Spouses) have been revised.[110]

Circular 26-22-17 - Private Roads and Shared Driveways

The purpose of this Circular is to announce changes to VA's procedural requirements related to the acceptability of private roads and shared driveways for VA lending purposes.[111]

Many states have enacted laws that govern the maintenance of private roads and shared driveways, particularly those private roads and shared driveways in which a joint maintenance agreement does not exist. Veterans may also request a waiver from VA in situations where a joint maintenance agreement does not exist.

Therefore, requiring the Veteran to obtain such agreement, when this requirement can be met by existing state law or waived at the Veteran's request, creates an undue burden on the Veteran, disadvantages the Veteran when purchasing a property accessed by a private road or shared driveway, creates additional expense to obtain a maintenance agreement, and extends the time it takes for the Veteran to obtain financing for their transaction.

Effective immediately with this circular, an ongoing maintenance agreement from a homeowner's association or a joint maintenance agreement from the owners of properties accessed by the private road or shared driveway is no longer required for properties with private roads and shared driveways.

The following actions will be taken on these properties:

- A recorded permanent easement or recorded right-of-way from the property to a public road is still required to be placed in the loan file.
- Item 5 of the Notice of Value (NOV) will no longer be marked as item 5 of the NOV conditions no longer applies

Circular 26-22-11 - Pest Inspection Fees and Repair Costs

This circular addresses the Department of Veterans Affairs policies regarding wood destroying pest inspection fees and repair costs. Effective immediately from the issuance of this circular, VA is

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[110] https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-23-02.pdf
[111] https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-22-17.pdf

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authorizing in advance, as a local variance, that Veterans may be charged wood destroying pest inspection fees, where required by the Notice of Value (NOV). Veterans may also pay for any repairs required to ensure compliance with minimum property requirements (MPRs). Veterans are encouraged to negotiate the cost of the wood destroying pest inspection and repairs with the seller.[112]

Circular 26-22-10 - United States Space Force Certificate of Eligibility Update

The purpose of this Circular is to announce Certificate of Eligibility (COE) enhancements to include the United States Space Force (USSF) as a branch of service.[113] Current and discharged members of the USSF or USSF Reserves, otherwise known as Guardians, may be eligible for VA home loan benefits upon meeting length-of service (LOS), and character-of service (COS) requirements. Qualifying Surviving Spouses of Veterans who served in the USSF may also be eligible for the VA home loan benefit. Because the USSF is a distinct branch of service, lenders requesting COEs for current or discharged Guardians, should select Space Force as the branch of service on the military service section on the electronic COE application. COEs issued for these Veterans will identify Space Force as the branch of service unless the Veteran had a previously qualifying tour in a different branch of service.

Conforming Loan – 2023 Cash Out and LLPA Changes

Conforming cash-out refinance transaction now require that any existing first mortgage paid off through the refinance transaction must be at least 12 months old, as measured from the Note date of the existing loan to the Note date of the new loan. This change is in addition to the existing requirement that at least one borrower be on title to the subject property for at least six months prior to the disbursement date of the new loan, unless meeting one of the qualifying exemptions (i.e., awarded via inheritance or divorce).

Last year, changes were announced on pricing for second homes, high-balance loans, and cash-out refinances, and they introduced loan level price adjustments (LLPA) waivers for certain borrowers and affordable mortgage products. Fannie Mae is implementing additional changes to its LLPA framework that represent the next step in its effort to increase support for borrowers historically

[112] https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-22-11.pdf
[113] https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_22_10.pdf

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underserved by the housing finance market while ensuring a level playing field for small and large lenders, fostering capital accumulation, and achieving viable returns on capital.

Fannie Mae has issued updated LLPA Matrix to include stand-alone, base price grids for purchase loans, limited cash-out refinance loans, and cash-out refinance loans, along with additional LLPAs by loan attribute. The modernized matrix supports pricing model durability through market cycles and conditions. Some other notable changes include new delineation of credit score and LTV ratio buckets and the inclusion of an additional LLPA attribute related to DTI ratio, which may be subject to an applicable waiver.[114]

*These matrixes are effective for all conforming whole loans purchased on or after May 1, 2023, and for loans delivered with issue dates on or after May 1, 2023.[115]

Purchase Money Loans – LLPA by Credit Score/LTV Ratio

Credit Score	LTV Range Applicable for all loans with terms greater than 15 years								
	≤ 30.00%	30.01 – 60.00%	60.01 – 70.00%	70.01 – 75.00%	75.01 – 80.00%	80.01 – 85.00%	85.01 – 90.00%	90.01 – 95.00%	>95.00%
≥ = 780	0.000%	0.000%	0.000%	0.000%	0.375%	0.375%	0.250%	0.250%	0.125%
760 – 779	0.000%	0.000%	0.000%	0.250%	0.625%	0.625%	0.500%	0.500%	0.250%
740 – 759	0.000%	0.000%	0.125%	0.375%	0.875%	1.000%	0.750%	0.625%	0.500%
720 – 739	0.000%	0.000%	0.250%	0.750%	1.250%	1.250%	1.000%	0.875%	0.750%
700 – 719	0.000%	0.000%	0.375%	0.875%	1.375%	1.500%	1.250%	1.125%	0.875%
680 – 699	0.000%	0.000%	0.625%	1.125%	1.750%	1.875%	1.500%	1.375%	1.125%
660 – 679	0.000%	0.000%	0.750%	1.375%	1.875%	2.125%	1.750%	1.625%	1.250%
640 - 659	0.000%	0.000%	1.125%	1.500%	2.250%	2.500%	2.000%	1.875%	1.500%
≤ 639[1]	0.000%	0.125%	1.500%	2.125%	2.750%	2.875%	2.625%	2.250%	1.750%

Additional LLPAs by Loan Attribute Applicable to Purchase Money Loans

Loan Feature	LTV Range Applicable for all loans								
	≤ 30.00%	30.01 – 60.00%	60.01 – 70.00%	70.01 – 75.00%	75.01 – 80.00%	80.01 – 85.00%	85.01 – 90.00%	90.01 – 95.00%	>95.00%
Adjustable-rate mortgage	0.000%	0.000%	0.000%	0.000%	0.000%	0.000%	0.000%	0.250%	0.250%
Condo[2]	0.000%	0.000%	0.125%	0.125%	0.750%	0.750%	0.750%	0.750%	0.750%
Investment property	1.125%	1.125%	1.625%	2.125%	3.375%	4.125%	4.125%	4.125%	4.125%
Second home	1.125%	1.125%	1.625%	2.125%	3.375%	4.125%	4.125%	4.125%	4.125%
Manufactured home[3]	0.500%	0.500%	0.500%	0.500%	0.500%	0.500%	0.500%	0.500%	0.500%
Two- to four-unit property	0.000%	0.000%	0.375%	0.375%	0.625%	0.625%	0.625%	0.625%	0.625%
High-balance fixed-rate	0.500%	0.500%	0.750%	0.750%	1.000%	1.000%	1.000%	1.000%	1.000%
High-balance ARM	1.250%	1.250%	1.500%	1.500%	2.500%	2.500%	2.500%	2.750%	2.750%
Subordinate financing[4]	0.625%	0.625%	0.625%	0.875%	1.125%	1.125%	1.125%	1.875%	1.875%
DTI Ratio > 40%	0.000%	0.000%	0.250%	0.250%	0.375%	0.375%	0.375%	0.375%	0.375%

[114] https://singlefamily.fanniemae.com/media/33241/display
[115] https://singlefamily.fanniemae.com/media/9391/display

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Limited Cash-out Refinances – LLPA by Credit Score/LTV Ratio									
Credit Score	LTV Range Applicable for all loans with terms greater than 15 years								
	≤ 30.00%	30.01 – 60.00%	60.01 – 70.00%	70.01 – 75.00%	75.01 – 80.00%	80.01 – 85.00%	85.01 – 90.00%	90.01 – 95.00%	>95.00%
≥ = 780	0.000%	0.000%	0.000%	0.125%	0.500%	0.625%	0.500%	0.375%	0.375%
760 – 779	0.000%	0.000%	0.125%	0.375%	0.875%	1.000%	0.750%	0.625%	0.625%
740 – 759	0.000%	0.000%	0.250%	0.750%	1.125%	1.375%	1.125%	1.000%	1.000%
720 – 739	0.000%	0.000%	0.500%	1.000%	1.625%	1.750%	1.500%	1.250%	1.250%
700 – 719	0.000%	0.000%	0.625%	1.250%	1.875%	2.125%	1.750%	1.625%	1.625%
680 – 699	0.000%	0.000%	0.875%	1.625%	2.250%	2.500%	2.125%	1.750%	1.750%
660 – 679	0.000%	0.125 %	1.125%	1.875%	2.500%	3.000%	2.375%	2.125%	2.125%
640 - 659	0.000%	0.250%	1.375%	2.125%	2.875%	3.375%	2.875%	2.500%	2.500%
≤ 639[1]	0.000%	0.375%	1.750%	2.500%	3.500%	3.875%	3.625%	2.500%	2.500%

Additional LLPAs by Loan Attribute Applicable to Cash-out Refinances					
Loan Feature	LTV Range Applicable for all loans				
	≤30.00%	30.01-60.00%	60.01-70.00%	70.01-75.00%	75.01-80.00%
Condo[2]	0.000%	0.000%	0.125%	0.125%	0.750%
Investment property	1.125%	1.125%	1.625%	2.125%	3.375%
Second home	1.125%	1.125%	1.625%	2.125%	3.375%
Manufactured home[3]	0.500%	0.500%	0.500%	0.500%	0.500%
Two- to four-unit property	0.000%	0.000%	0.375%	0.375%	0.625%
High-balance fixed-rate	1.250%	1.250%	1.500%	1.500%	1.750%
High-balance ARM	2.000%	2.000%	2.250%	2.250%	3.250%
Subordinate financing[4]	0.625%	0.625%	0.625%	0.875%	1.125%
DTI Ratio > 40%	0.000%	0.000%	0.250%	0.250%	0.375%

With these changes, it will be important to note how changes to the loan request can impact the interest rate you quote. LLPAs are driven by lower LTVs, lower DTI ratios of 40% or less, changes in the type of property or reason for purchase or increase in the borrower's credit score will impact the interest rate you quote. These LLPA charges are among the reasons it is hard to currently get an interest rate at par (zero points charged for the rate quoted).

For example, in the above matrix (snapshot below) the LLPA changes dramatically for a condominium if the borrower obtains an 80% LTV. If the borrower choses the minimum down payment loan for their condominium, the borrower will pay.625% higher cost or take a higher interest rate by up to .50%.

Loan Feature	LTV Range Applicable for all loans				
	≤30.00%	30.01-60.00%	60.01-70.00%	70.01-75.00%	75.01-80.00%
Condo[2]	0.000%	0.000%	0.125%	0.125%	0.750%

This type of pricing encourages increased down payment for reduced exposure to foreclosure losses for the lender. MLOs need to understand these impacts and provide the borrower with choices. When

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possible, show the borrower the lower rate they would receive if they put 5% more down payment on the loan. Is the borrower cash to close sensitive or payment sensitive?

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Module 4 – Review of Florida Mortgage Laws

OVERVIEW

In this lesson we will review Florida laws pertaining to mortgage loan originators. We will provide an overview of Compliance Filings, Financial Statements, and Net Worth Requirements. We will also discuss necessary Disclosures and Advertising and Limitations of Certain Mortgage Transactions. Finally, we will discuss Prohibited Practices and Penalties in the mortgage lending industry as well the associated Disciplinary Actions.

Learning Objectives

- By the end of this lesson students should be familiar with:
  - Compliance filings and audits;
  - Record maintenance and trust accounts;
  - Certain laws pertaining to enforcement and prohibited actions for those who have a license as a loan originator or mortgage broker.

Definitions

As used in this chapter, the term

(24) "Mortgage loan" means any:

a) Residential loan primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in the federal Truth in Lending Act (TILA), or for the purchase of residential real estate upon which a dwelling is to be constructed;
b) Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or
c) Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

Compliance filings (MCR, Financial Condition, and Audited Financial Statements)

Records, Financial Statements and Reports

494.0016 Books, accounts, and records; maintenance; examinations by the office

(1) Each licensee shall maintain, at the principal place of business designated on the license, all books, accounts, records, and documents necessary to determine the licensee's compliance with this chapter.

(2) The office may authorize maintenance of records at a location other than a principal place of business. The office may require books, accounts, and records to be produced and available at a reasonable and convenient location in this state.

(3) All books, accounts, records, documents, and receipts for expenses paid by the licensee on behalf of the borrower, including each closing statement signed by a borrower, shall be preserved and kept available for examination by the office for at least 3 years after the date of original entry.

(4) The commission may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of licensees so that such records will enable the office to determine the licensee's compliance with this chapter. In addition, the commission may prescribe by

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rule requirements for the destruction of books, accounts, records, and documents retained by the licensee after completion of the time period specified in subsection (3).

69V-40.170 Books and Records.

(1) Books, accounts, and records that are required to be maintained at the principal place of business shall be made available to the Office of Financial Regulation for review, upon the Office of Financial Regulation's request.[116]

(2)(a) A licensee may maintain required books, accounts, and records at a location other than the principal place of business. Each licensed mortgage broker or mortgage lender which proposes to change the location of books, accounts, and records must file an amendment to NMLS Company Form (Form MU1) through the Registry not later than 30 days prior to the effective date of the change.

(b) The books, accounts, and records must be stored in a building of stationary construction wherein the books, accounts, and records will be kept in a secured location under conditions, which will not lead to the damage or destruction of the records.

(3) If the Office of Financial Regulation is notified by a licensee that it will maintain the books, accounts, and records at a location other than the principal place of business, such books, accounts, and records shall be made available to the Office of Financial Regulation for review within 3 business days from the date of a written request by the Office of Financial Regulation and at a reasonable and convenient location in this State designated by the Office of Financial Regulation.

(4) All books, accounts, and records must be maintained for 3 years from the date of "original entry." For the purpose of this rule, "original entry" means the date the documentation was originated by the licensee or received by the licensee.

(5) NMLS Company Form (Form MU1) is incorporated by reference in rule 69V-40.002, F.A.C.

<u>Examinations and Audits</u>

494.0012 Investigations; complaints; examinations

(1) The office may conduct an investigation of any person whenever the office has reason to believe, either upon complaint or otherwise, that any violation of this chapter has been committed or is about to be committed.

(2) Any person having reason to believe that a provision of this act has been violated may file a written complaint with the office setting forth details of the alleged violation.

(3)(a) The office may, at intermittent periods, conduct examinations of any licensee or other person under the provisions of this chapter.

(b) The office shall conduct all examinations at a convenient location in this state unless the office determines that it is more effective or cost-efficient to perform an examination at the licensee's out-of-state location. For an examination performed at the licensee's out-of-state location, the licensee shall pay the travel expense and per diem subsistence at the rate provided by law for up to thirty 8-hour days per year for each office examiner who participates in such an examination. However, if the examination involves or reveals fraudulent conduct by the licensee, the licensee shall pay the travel

[116] https://www.flrules.org/gateway/RuleNo.asp?id=69V-40.170

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expense and per diem subsistence provided by law, without limitation, for each participating examiner.

(4) To reduce the burden on persons subject to this chapter, the office may conduct a joint or concurrent examination with a state or federal regulatory agency and may furnish a copy of all examinations to an appropriate regulator if the regulator agrees to abide by the confidentiality provisions in chapter 119 and this chapter. The office may also accept an examination from an appropriate regulator.

Net Worth Requirements

494.00721 Net worth

(1) The net worth requirements in s. 494.00611 (The financial audit report must document that the applicant has a bona fide and verifiable net worth, of at least $63,000 if the applicant is not seeking a servicing endorsement, or at least $250,000 if the applicant is seeking a servicing endorsement, which must be continuously maintained as a condition of licensure) shall be continually maintained as a condition of licensure.

(2) If a mortgage lender fails to satisfy the net worth requirements, the mortgage lender shall immediately cease taking any new mortgage loan applications. Thereafter, the mortgage lender shall have up to 60 days within which to satisfy the net worth requirements. If the licensee makes the office aware, prior to an examination, that the licensee no longer meets the net worth requirements, the mortgage lender shall have 120 days within which to satisfy the net worth requirements. A mortgage lender may not resume acting as a mortgage lender without written authorization from the office, which authorization shall be granted if the mortgage lender provides the office with documentation which satisfies the requirements of s. 494.00611, whichever is applicable.

(3) If the mortgage lender does not satisfy the net worth requirements within 120 days, the license of the mortgage lender shall be deemed to be relinquished and canceled and all servicing contracts shall be disposed of in a timely manner by the mortgage lender.

Escrow and Trust Accounts

494.00172 Mortgage Guaranty Trust Fund; payment of fees and claims.

A nonrefundable fee is imposed on each application for a mortgage broker, mortgage lender, or loan originator license and on each annual application for a renewal of such license. For a loan originator, the initial and renewal fee is $20. For mortgage brokers and lenders, the initial and renewal fee is $100. This fee is in addition to the regular application or renewal fee assessed and shall be deposited into the Mortgage Guaranty Trust Fund of the office for the payment of claims in accordance with this section.

(1) If the amount in the trust fund exceeds $5 million, the additional fee shall be discontinued and may not be reimposed until the fund is reduced to below $1 million pursuant to disbursements made in accordance with this section.

(2) A borrower in a mortgage loan transaction is eligible to seek recovery from the trust fund if all of the following conditions are met:

(a) The borrower has recorded a final judgment issued by a state court wherein the cause of action against a licensee under this chapter was based on a violation of this chapter and the damages were the result of that violation.

(b) The borrower has caused a writ of execution to be issued upon such judgment, and the officer executing the judgment has made a return showing that no personal or real property of the

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judgment debtor liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's property pursuant to such execution is insufficient to satisfy the judgment.

(c) The borrower has made all reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets subject to being sold or applied in satisfaction of the judgment, and has discovered no such property or assets; or he or she has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment, but the amount realized is insufficient to satisfy the judgment.

(d) The borrower has applied any amounts recovered from the judgment debtor, or from any other source, to the damages awarded by the court.

(e) The borrower, at the time the action was instituted, gave notice and provided a copy of the complaint to the office by certified mail. The requirement of a timely giving of notice may be waived by the office upon a showing of good cause.

(f) The act for which recovery is sought occurred on or after January 1, 2011.

(3) The requirements of subsection (2) are not applicable if the licensee upon which the claim is sought has filed for bankruptcy or has been adjudicated bankrupt. However, the claimant must file a proof of claim in the bankruptcy proceedings and must notify the office by certified mail of the claim by enclosing a copy of the proof of claim and all supporting documents.

(4) Any person who meets all of the conditions in subsection (2) may apply to the office for payment from the trust fund equal to the unsatisfied portion of that person's judgment or $50,000, whichever is less, but only to the extent that the amount reflected in the judgment is for actual or compensatory damages, plus any attorney's fees and costs awarded by the trial court which have been determined by the court, and the documented costs associated with attempting to collect the judgment. Actual or compensatory damages may not include post-judgment interest. Attorney's fees may not exceed $5,000 or 20 percent of the actual or compensatory damages, whichever is less. If actual or compensatory damages, plus attorney's fees and costs, exceed $50,000, actual or compensatory damages must be paid first. The cumulative payment for actual or compensatory damages, plus attorney's fees and costs, may not exceed $50,000 as described in this section.

(a) A borrower may not collect more than $50,000 from the trust fund for any claim regardless of the number of licensees liable for the borrower's damages.

(b) Payments for claims are limited in the aggregate to $250,000 against any one licensee under this chapter. If the total claims exceed the aggregate limit of $250,000, the office shall prorate payments based on the ratio that a claim bears to the total claims filed.

(c) Payments shall be made to all persons meeting the requirements of subsection (2) 2 years after the date the first complete and valid notice is received by the office. Persons who give notice after 2 years and who otherwise comply with the conditions precedent to recovery may recover from any remaining portion of the $250,000 aggregate as provided in this subsection, with claims being paid in the order notice was received until the $250,000 aggregate has been disbursed.

(d) The claimant shall assign his or her right, title, and interest in the judgment, to the extent of his or her recovery from the fund, to the office and shall record, at his or her own expense, the assignment of judgment in every county where the judgment is recorded.

(e) If the money in the fund is insufficient to satisfy any valid claim or portion thereof, the office shall satisfy such unpaid claim or portion as soon as a sufficient amount of money has been

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deposited in the trust fund. If there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were filed with the office.

(f) The payment of any amount from the fund in settlement of a claim or in satisfaction of a judgment against a licensee constitutes prima facie grounds for the revocation of the license.

Disclosures and Advertising

494.00165 Prohibited advertising; record requirements

(1) It is a violation of this chapter for any person to:

(a) Advertise that an applicant shall have unqualified access to credit without disclosing the material limitations on the availability of such credit. Material limitations include, but are not limited to, the percentage of down payment required, that a higher rate or points could be required, or that restrictions on the maximum principal amount of the loan offered could apply.

(b) Advertise a mortgage loan at an expressed interest rate unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing.

(c) Advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on such loans, unless the person is able to make such mortgage loans available to a reasonable number of qualified applicants.

(d) Falsely advertise or misuse names indicating a federal agency pursuant to 18 U.S.C. s. 709.

(e) Engage in unfair, deceptive, or misleading advertising regarding mortgage loans, brokering services, or lending services.

(2) Each person required to be licensed under this chapter must maintain a record of samples of each of its advertisements, including commercial scripts of each radio or television broadcast, for examination by the office for 2 years after the date of publication or broadcast.

Conditions and Limitations of Certain Mortgage Transactions

494.00255 Administrative penalties and fines; license violations

(1) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (2) may be taken against a person licensed or required to be licensed under part II or part III of this chapter:

(a) Failure to immediately place upon receipt, and maintain until authorized to disburse, any money entrusted to the licensee as a licensee in a segregated account of a federally insured financial institution in this state.

(b) Failure to account or deliver to any person any property that is not the licensee's, or that the licensee is not entitled to retain, under the circumstances and at the time that has been agreed upon or as required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery.

(c) Failure to disburse funds in accordance with agreements.

(d) Any misuse, misapplication, or misappropriation of personal property entrusted to the licensee's care to which the licensee had no current property right at the time of entrustment.

(e) Fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction.

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(f) Requesting a specific valuation, orally or in writing, from an appraiser for a particular property, implying to an appraiser that a specific valuation is needed for a particular property, or in any manner conditioning the order for an appraisal on the appraisal meeting a specific valuation. The numeric value of the specific valuation sought need not be stated, but rather the mere statement that a specific valuation is sought violates this section.

(g) Consistently and materially underestimating maximum closing costs.

(h) Disbursement, or an act which has caused or will cause disbursement, to any person in any amount from the Mortgage Guaranty Trust Fund, the Securities Guaranty Fund, or the Florida Real Estate Recovery Fund, regardless of any repayment or restitution to the disbursed fund by the licensee or any person acting on behalf of the licensee.

(i) Commission of fraud, misrepresentation, concealment, or dishonest dealing by trick, scheme, or device; culpable negligence; breach of trust in any business transaction in any state, nation, or territory; or aiding, assisting, or conspiring with any other person engaged in any such misconduct and in furtherance thereof.

(j) Being convicted of or entering a plea of guilty or nolo contendere to, regardless of adjudication, any felony or any crime involving fraud, dishonesty, breach of trust, money laundering, or act of moral turpitude.

(k) Having a final judgment entered against the licensee in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit.

(l) Having been the subject of any:

1. Decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court, administrative law judge, state or federal agency, national securities exchange, national commodities exchange, national option exchange, national securities association, national commodities association, or national option association involving a violation of any federal or state securities or commodities law or rule or regulation adopted under such law or involving a violation of any rule or regulation of any national securities, commodities, or options exchange or association.

2. Injunction or adverse administrative order by a state or federal agency regulating banking, insurance, finance or small loan companies, real estate, mortgage brokers or lenders, money transmitters, or other related or similar industries.

(m) In any mortgage transaction, violating any provision of the federal Real Estate Settlement Procedures Act, as amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted under such acts.

(n) Having a loan originator, mortgage broker, or mortgage lender license, or the equivalent of such license, revoked in any jurisdiction.

(o) Having a license, or the equivalent of such license, to practice any profession or occupation revoked, suspended, or otherwise acted against, including the denial of licensure by a licensing authority of this state or another state, territory, or country.

(p) Acting as a loan originator, mortgage broker, or mortgage lender without a current license issued under part II or part III of this chapter.

(q) Operating a mortgage broker or mortgage lender branch office without a current license issued under part II or part III of this chapter.

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(r) Conducting any mortgage brokering or mortgage lending activities in the absence of a properly designated principal loan originator or mortgage brokering or mortgage lending activities at any particular branch office without a properly designated branch manager.

(s) A material misstatement or omission of fact on an initial or renewal license application.

(t) Payment to the office for a license or permit with a check or electronic transmission of funds which is dishonored by the applicant's or licensee's financial institution.

(u) Failure to comply with, or violations of, any provision of this chapter, or any rule or order made or issued under this chapter.

(v) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by this chapter and the rules of the commission.

(w) Refusal to permit an investigation or examination of books and records, or refusal to comply with an office subpoena or subpoena duces tecum.

(x) Failure to timely pay any fee, charge, or fine imposed or assessed pursuant to this chapter or related rules.

(y) Pursuant to an investigation by the Mortgage Testing and Education Board acting on behalf of the registry, being found in violation of Nationwide Mortgage Licensing System and Registry Rules of Conduct.

(2) If the office finds a person in violation of any act specified in this section, it may enter an order imposing one or more of the following penalties:

(a) Issuance of a reprimand.

(b) Suspension of a license, subject to reinstatement upon satisfying all reasonable conditions imposed by the office.

(c) Revocation of a license.

(d) Denial of a license.

(e) Imposition of a fine in an amount up to $25,000 for each count or separate offense.

(f) An administrative fine of up to $1,000 per day, but not to exceed $25,000 cumulatively, for each day that:

1. A mortgage broker or mortgage lender conducts business at an unlicensed branch office.
2. An unlicensed person acts as a loan originator, a mortgage broker, or a mortgage lender.

(3) A mortgage broker or mortgage lender, as applicable, is subject to the disciplinary actions specified in subsection (2) for a violation of subsection (1) by:

(a) A control person of the mortgage broker or mortgage lender;

(b) A loan originator employed by or contracting with the mortgage broker or mortgage lender; or

(c) An in-house loan processor who is an employee of the mortgage broker or mortgage lender.

(4) A principal loan originator of a mortgage broker is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with the mortgage broker if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the principal loan originator has knowledge of the violations.

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(5) A principal loan originator of a mortgage lender is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with a mortgage lender if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the principal loan originator has knowledge of the violations.

(6) A branch manager is subject to the disciplinary actions specified in subsection (2) for violations of subsection (1) by a loan originator or an in-house loan processor in the course of an association with the mortgage broker or mortgage lender if there is a pattern of repeated violations by the loan originator or in-house loan processor or if the branch manager has knowledge of the violations.

(7) An individual who is associated with a mortgage broker is subject to the disciplinary actions specified in subsection (2) for a violation of subsection (1) with respect to an action in which such person was involved.

(8) Pursuant to s. 120.60(6), the office may summarily suspend the license of a loan originator, mortgage broker, or mortgage lender if the office has reason to believe that a licensee poses an immediate, serious danger to the public's health, safety, or welfare. The arrest of the licensee, or the mortgage broker or the mortgage lender's control person, for any felony or any crime involving fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude is deemed sufficient to constitute an immediate danger to the public's health, safety, or welfare. Any proceeding for the summary suspension of a license must be conducted by the commissioner of the office, or designee, who shall issue the final summary order.

(9) The office may deny any request to terminate or withdraw any license application or license if the office believes that an act that would be a ground for license denial, suspension, restriction, or revocation under this chapter has been committed.

Enforcement

Administrative Procedures Act Chapter 120

120.515 **Declaration of policy.** This chapter provides uniform procedures for the exercise of specified authority. This chapter does not limit or impinge upon the assignment of executive power under Article IV of the State Constitution or the legal authority of an appointing authority to direct and supervise those appointees serving at the pleasure of the appointing authority. For purposes of this chapter, adherence to the direction and supervision of an appointing authority does not constitute delegation or transfer of statutory authority assigned to the appointee.[117]

120.536 Rulemaking authority; repeal; challenge

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing

[117] http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0120/0120.html

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the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

(2) Unless otherwise expressly provided by law:

(a) The repeal of one or more provisions of law implemented by a rule that on its face implements only the provision or provisions repealed and no other provision of law nullifies the rule. Whenever notice of the nullification of a rule under this subsection is received from the committee or otherwise, the Department of State shall remove the rule from the Florida Administrative Code as of the effective date of the law effecting the nullification and update the historical notes for the code to show the rule repealed by operation of law.

(b) The repeal of one or more provisions of law implemented by a rule that on its face implements the provision or provisions repealed and one or more other provisions of law nullifies the rule or applicable portion of the rule to the extent that it implements the repealed law. The agency having authority to repeal or amend the rule shall, within 180 days after the effective date of the repealing law, publish a notice of rule development identifying all portions of rules affected by the repealing law, and if no notice is timely published the operation of each rule implementing a repealed provision of law shall be suspended until such notice is published.

(c) The repeal of one or more provisions of law that, other than as provided in paragraph (a) or paragraph (b), causes a rule or portion of a rule to be of uncertain enforceability requires the Department of State to treat the rule as provided by s. 120.555. A rule shall be considered to be of uncertain enforceability under this paragraph if the division notifies the Department of State that a rule or a portion of the rule has been invalidated in a division proceeding based upon a repeal of law, or the committee gives written notification to the Department of State and the agency having power to amend or repeal the rule that a law has been repealed creating doubt about whether the rule is still in full force and effect.

(3) The Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency shall initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

(4) Nothing in this section shall be construed to change the legal status of a rule that has otherwise been judicially or administratively determined to be invalid.

Investigation of Violations and Unsafe Practices; Remedial Action

494.00125 Public records exemptions

(1) INVESTIGATIONS OR EXAMINATIONS

(a) Except as otherwise provided by this subsection, information relative to an investigation or examination by the office pursuant to this chapter, including any consumer complaint received by the office or the Department of Financial Services, is confidential and exempt from s. 119.07(1) until the investigation or examination is completed or ceases to be active. For purposes of this subsection, an investigation or examination is considered active if the office or any law enforcement or administrative agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license.

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(b) This subsection does not prohibit the disclosure of information that is filed with the office as a normal condition of licensure and which, but for the investigation or examination, would be subject to s. 119.07(1).

(c) Except as necessary for the office to enforce the provisions of this chapter, a consumer complaint and other information relative to an investigation or examination shall remain confidential and exempt from s. 119.07(1) after the investigation or examination is completed or ceases to be active to the extent disclosure would:

1. Jeopardize the integrity of another active investigation or examination.

2. Reveal the name, address, telephone number, social security number, or any other identifying number or information of any complainant, customer, or account holder.

3. Disclose the identity of a confidential source.

4. Disclose investigative techniques or procedures.

5. Reveal a trade secret as defined in s. 688.002.

(d) If office personnel are or have been involved in an investigation or examination of such nature as to endanger their lives or physical safety or that of their families, the home addresses, telephone numbers, places of employment, and photographs of such personnel, together with the home addresses, telephone numbers, photographs, and places of employment of spouses and children of such personnel and the names and locations of schools and day care facilities attended by the children of such personnel are confidential and exempt from s. 119.07(1).

(e) This subsection does not prohibit the office from providing confidential and exempt information to any law enforcement or administrative agency. Any law enforcement or administrative agency receiving confidential and exempt information in connection with its official duties shall maintain the confidentiality of the information if it would otherwise be confidential.

(f) All information obtained by the office from any person which is only made available to the office on a confidential or similarly restricted basis shall be confidential and exempt from s. 119.07(1).

(g) If information subject to this subsection is offered in evidence in any administrative, civil, or criminal proceeding, the presiding officer may prevent the disclosure of information that would be confidential pursuant to paragraph (c).

(h) A privilege against civil liability is granted to a person who furnishes information or evidence to the office, unless such person acts in bad faith or with malice in providing such information or evidence.

(2) FINANCIAL STATEMENTS. All audited financial statements submitted pursuant to this chapter are confidential and exempt from the requirements of s. 119.07(1), except that office employees may have access to such information in the administration and enforcement of this chapter and such information may be used by office personnel in the prosecution of violations under this chapter.

(3) CREDIT INFORMATION.

(a) Credit history information and credit scores held by the office and related to licensing under this chapter are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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(b) Credit history information and credit scores made confidential and exempt pursuant to paragraph (a) may be provided by the office to another governmental entity having oversight or regulatory or law enforcement authority.

(c) This subsection does not apply to information that is otherwise publicly available.

Disciplinary and Other Actions

69V-40.111 Disciplinary Guidelines.

(1) Pursuant to Section 494.00255, F.S., Disciplinary Guidelines for Mortgage Loan Originators and Mortgage Entities, Form OFR-494-14, effective 11/30/2015, available on the Office's website at www.flofr.com and available at www.flrules.org/Gateway/reference.asp?No=Ref-06055, are applicable to each ground for disciplinary action that may be imposed by the Office against a person for a violation of chapter 494, F.S. For purposes of this rule, the order of penalties, ranging from lowest to highest is: notice of noncompliance, reprimand, fine, suspension, and revocation. In determining an appropriate penalty within the range of penalties prescribed in this rule for each citation as based upon the violation, the Office shall consider the circumstances set forth in subsection (3). The third column of the guidelines provides a summary of the statutory violations solely for the purpose of ease of reference. Persons subject to the rule should review the full text of the Florida Statute cited in the second column of the guidelines for the complete description of the violation. For purposes of this rule, the term "citation" means any final order docketed by the agency that specifies a violation of chapter 494, F.S., or any rule promulgated under that chapter.[118]

(2) In accordance with this rule:

(a) Depending on the severity and repetition of specific violations, the Office may impose an administrative fine, suspension of a person, or revocation of a person or any combination thereof;

(b) The Office may impose a cease and desist order, a suspension, or both in conjunction with and in addition to any of the designated sanctions set forth in this rule when appropriate under the circumstances; and,

(c) The Office will consider the person's disciplinary history for the past 5 years in determining an appropriate penalty and may impose a more severe penalty when the disciplinary history includes past violations.

(3) In accordance with section 494.00255, F.S., the Office shall consider the following circumstances in determining an appropriate penalty within the range of penalties prescribed in this rule for each violation. The Office also shall consider these circumstances when determining whether a deviation from the range of sanctions prescribed in the disciplinary guidelines is warranted:

(a) The following circumstances are considered mitigating factors:

1. If the violation rate is less than 5% when compared to the overall sample size reviewed;

2. No prior administrative actions by the Office against the licensee or control person within the past 10 years;

3. If the licensee detected and voluntarily instituted corrective responses or measures to avoid the recurrence of a violation prior to detection and intervention by the Office;

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[118] https://www.flrules.org/gateway/RuleNo.asp?ID=69V-40.111

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4. If the violation is attributable to a single control person or employee, and if the licensee removed or otherwise disciplined the individual prior to detection or intervention by the Office;

5. If the licensee is responsive to the Office's requests or inquiries or made no attempt to impede or delay the Office in its examination or investigation of the underlying misconduct; or

6. Other control, case-specific circumstances.

(b) The following circumstances are considered aggravating factors:

1. If the violation rate is more than 95% when compared to the overall sample size reviewed (sample size must be equal to or greater than 25 transactions and cover a date range of at least 6 months);

2. The potential for harm to the customers or the public is significant;

3. Prior administrative action by the Office against the licensee or an affiliated party of the licensee within the past 5 years;

4. If the licensee's violation was the result of willful misconduct or recklessness;

5. The licensee attempted to conceal the violation or mislead or deceive the Office; or

6. Other control relevant, case-specific circumstances.

(4) The list of violations cited in this rule is intended to be comprehensive, but the omission of a violation from the list does not preclude the Office from taking any action authorized by section 494.00255, F.S.

(5) The ranges for administrative fines imposed by this rule are $1,000 to $3,500 for an "A" level fine; $3,500 to $7,500 for a "B" level fine; and $7,500 to $10,000 for a "C" level fine.

(6) The ranges for suspensions imposed by this rule are 3 to 10 days for an "A" level suspension; 10 to 20 days for a "B" level suspension; 20 to 30 days for a "C" level suspension; and up to 90 days for a "D" level suspension. A "D" level suspension may be terminated early if licensee cures the violation.

Prohibited Acts; Penalties

494.0018 Penalties

(1) Whoever knowingly violates any provision of s. 494.00255(1)(a), (b), or (c) or s. 494.0025(1), (2), (3), (4), or (5), except as provided in subsection (2) of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each such violation constitutes a separate offense.

(2) Any person who violates any provision of this chapter, in which the total value of money and property unlawfully obtained exceeds $50,000 and there are five or more victims, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Note.—Section 4, ch. 2018-61, reenacted s. 494.0018, effective July 1, 2019.

494.0025 Prohibited practices. It is unlawful for any person:

(1) To act as a loan originator in this state without a current, active license issued by the office pursuant to part II of this chapter.

(2) To act as a mortgage broker in this state without a current, active license issued by the office pursuant to part II of this chapter.

(3) To act as a mortgage lender in this state without a current, active license issued by the office pursuant to part III of this chapter.

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(4) In any practice or transaction or course of business relating to the sale, purchase, negotiation, promotion, advertisement, or hypothecation of mortgage loan transactions, directly or indirectly:

(a) To knowingly or willingly employ any device, scheme, or artifice to defraud;

(b) To engage in any transaction, practice, or course of business which operates as a fraud upon any person in connection with the purchase or sale of any mortgage loan; or

(c) To obtain property by fraud, willful misrepresentation of a future act, or false promise.

(5) In any matter within the jurisdiction of the office, to knowingly and willfully falsify, conceal, or cover up by a trick, scheme, or device a material fact, make any false or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false or fraudulent statement or entry.

(6) To violate s. 655.922(2), subject to this chapter.

(7) To pay a fee or commission in any mortgage loan transaction to any person or entity other than a licensed mortgage broker or mortgage lender, or a person exempt from licensure under this chapter.

(8) To record a mortgage broker agreement or any other document, not rendered by a court of competent jurisdiction, which purports to enforce the terms of the agreement.

(9) To use the name or logo of a financial institution, as defined in s. 655.005(1), or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without the written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of the financial institution or its affiliates or subsidiaries.

(10) Subject to investigation or examination under this chapter, to knowingly alter, withhold, conceal, or destroy any books, records, computer records, or other information relating to a person's activities which subject the person to the jurisdiction of this chapter.

Note.—Section 3, ch. 2018-61, amended subsection (4), effective July 1, 2019, to read:

(4) In any practice or transaction or course of business relating to the sale, purchase, negotiation, promotion, advertisement, or hypothecation of mortgage loan transactions, directly or indirectly:

(a) To knowingly or willingly employ any device, scheme, or artifice to defraud;

(b) To engage in any transaction, practice, or course of business which operates as a fraud upon any person in connection with the purchase or sale of any mortgage loan;

(c) To obtain property by fraud, willful misrepresentation of a future act, or false promise; or

(d) To misrepresent a residential mortgage loan, as described in s. 494.001(25)(a), as a business purpose loan.

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