8 Hour GA 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.

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

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 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)

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]

[3] § 1024.7 Good faith estimate

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

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

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

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.

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[8] § 1026.19(f)(3)(ii)(B)

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-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.

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.

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

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

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

- 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

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)

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

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

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’.”

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

[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

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 <u>Did Not Shop</u> 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

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

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)

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

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

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

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; <u>other costs</u>" rather than "Closing cost details; <u>loan costs</u>." 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

- 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

[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)

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)

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).

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:

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

- 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

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,

[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

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 <u>amount actually paid by the consumer</u> 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-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

[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

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

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

- 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

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]

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

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.

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

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/

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]

[51] See interpretation of Paragraph 9(c)(2). in Supplement I

[52] https://www.consumerfinance.gov/rules-policy/regulations/1002/9/#g

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

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

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.

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

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

[58] https://fhlbanks.com/

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

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.

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.

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.

[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

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

(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

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.

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

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

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.

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

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

[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

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

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:

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[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

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

"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.

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

- 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

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]

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[80] § 1010.311 or § 1021.311

[81] https://www.fincen.gov/sites/default/files/shared/Title_and_Escrow_508.pdf

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

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.

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

- 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

number is in the Do Not Call database. These violations are subject to civil penalties of up to $50,120 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

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

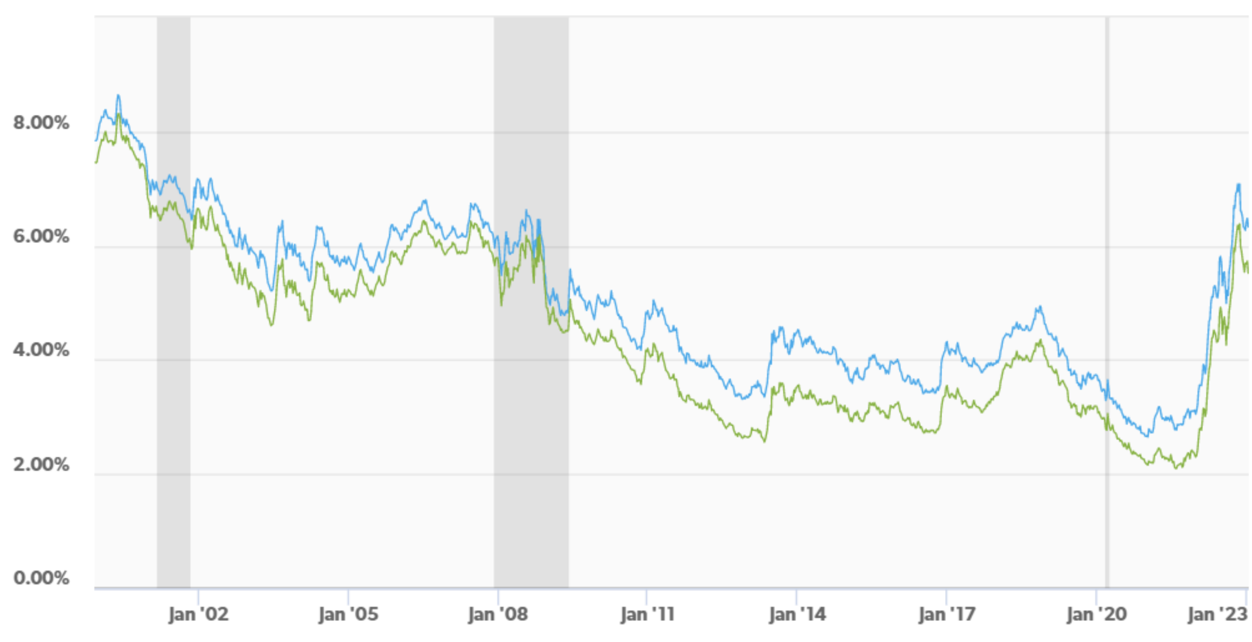
Module 3 – Non-Traditional

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 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

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.

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.

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 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

- 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 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

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 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 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/

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

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

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

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

- 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]

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[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

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.

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.

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

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

$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:

[(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.

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[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

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

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.

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.

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

[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

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

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

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

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 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?

Module 4 – Review of Georgia Mortgage Laws

LEARNING OBJECTIVES

- Identify definitions and terms
    - Know those exempt from licensing
    - Have knowledge of the following:
    - Registration, financials and bonds, education, disclosures, annual fees, advertisements, renewal of licenses, record maintenance and applying for licenses
- Understand the automated licensing system

INTRODUCTION

- The contents of this lesson are provided through the Georgia Residential Mortgage Act and the Georgia Mortgage Division Rules.
- The full text of these statutes is available within the resources area of this lesson. Students are strongly encouraged to download and print a copy for further review.
- The Official Codes of Georgia Annotated will be referenced throughout this text as O.C.G.A.

DEFINITIONS [O.C.G.A. §7-1-1000]

Considering there is a lot of jargon when it comes to regulations in the lending industry, it is important to review how some of the terminology used is defined. Section 7-1-1000 of the Official Codes of Georgia Annotated defines the following terminology:

(1) 'Affiliate' or **'person affiliated with'** means, when used with reference to a specified person, a person who directly, indirectly, or through one or more intermediaries controls, is controlled by, or is under common control with the person specified. Any beneficial owner of 10 percent or more of the securities of a person or any executive officer, director, trustee, joint venturer, or general partner of a person is an affiliate of such person unless the shareholder, executive officer, director, trustee, joint venturer, or general partner shall prove that he or she in fact does not control, is not controlled by, or is not under common control with such person.

(2) 'Audited financial statement' means the product of the examination of financial statements in accordance with generally accepted auditing standards by an independent certified public accountant, which product consists of an opinion on the financial statements indicating their conformity with generally accepted accounting principles.

(3) 'Commissioner' means the commissioner of banking and finance.

(4) 'Commitment' or 'commitment agreement' means a statement by a lender required to be licensed or registered under this article that sets forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

(5) 'Control,' including **'controlling,' 'controlled by,' and 'under common control with,'** means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.

(6) 'Department' means the Department of Banking and Finance.

(7) **'Depository institution'** has the same meaning as in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(c), and includes any credit union.

(8) **'Dwelling'** means a residential structure that contains one to four units, whether or not that structure is attached to real property pursuant to Regulation Z Section 226.2(a)(19). The term includes an individual condominium unit, cooperative unit, mobile home, and trailer if it is used as a residence.

(9) **'Executive officer'** means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization whether incorporated or unincorporated.

(10) **'Extortionate means'** means the use or the threat of violence or other criminal means to cause harm to the person, reputation of the person, or property of the person.

(11) **'Federal banking agencies'** means the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation. Such term shall also include the Board of Governors of the Federal Reserve System.

(12) **'Georgia Residential Mortgage Act'** means this article, which also includes certain provisions in order to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(13) '**Individual'** means a natural person.

(14) **'License'** means a license issued by the department under this article to act as a mortgage loan originator, mortgage lender, or mortgage broker.

(15) **'Loan processor or underwriter'** means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing. For purposes of this paragraph, 'clerical or support duties' may include, subsequent to the receipt of an application, the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms. An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(16) **'Lock-in agreement'** means a written agreement whereby a lender or a broker required to be licensed or registered under this article guarantees for a specified number of days or until a specified date the availability of a specified rate of interest for a mortgage loan, a specified formula by which the rate of interest will be determined, or a specific number of discount points if the mortgage loan is approved and closed within the stated period of time.

(17) **'Makes a mortgage loan'** means to advance funds, offer to advance funds, or make a commitment to advance funds to an applicant for a mortgage loan.

(18) **'Misrepresent**' means to make a false statement of a substantive fact. Misrepresent may also mean to intentionally engage in any conduct which leads to a false belief which is material to the transaction.

(19) **'Mortgage broker'** means any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others, or offers to solicit, process, place, or negotiate

mortgage loans for others or who closes mortgage loans which may be in the mortgage broker's own name with funds provided by others and which loans are assigned within 24 hours of the funding of the loans to the mortgage lenders providing the funding of such loans.

(20) **'Mortgage lender**' means any person who directly or indirectly makes, originates, underwrites, or purchases mortgage loans or who services mortgage loans.

(21) **'Mortgage loan'** means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, or other document representing a security interest or lien upon any interest in one-to- four family residential property located in Georgia, regardless of where made, including the renewal or refinancing of any such loan.

(22) **'Mortgage loan originator'** means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. Generally, this does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in paragraph

(5) of subsection (a) of Code Section 7-1-1002; a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Georgia law unless the person or entity is compensated by a mortgage lender, mortgage broker, or other mortgage loan originator or by any agent of such mortgage lender, mortgage broker, or other mortgage loan originator; and does not include a person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in 11 U.S.C. Section 101(53D).

(23) **'Nationwide Multistate Licensing System and Registry'** means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators, mortgage loan brokers, and mortgage loan lenders.

(24) **'Nontraditional mortgage product'** means any mortgage product other than a 30 year fixed rate mortgage.

(25) **'Person'** means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(26) **'Real estate brokerage activity'** means any activity that involves offering or providing real estate brokerage services to the public, including acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction; engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and offering to engage in any activity or act in any capacity described herein.

(27) **'Registered mortgage loan originator'** means any individual who meets the definition of mortgage loan originator, is registered with and maintains a unique identifier through the Nationwide Multistate Licensing System and Registry, and is an employee of:

   a. A depository institution;
   b. A subsidiary that is:
      i. Owned and controlled by a depository institution; and
      ii. Regulated by a federal banking agency; or

c. An institution regulated by the Farm Credit Administration.

(28) **'Registrant'** means any person required to register pursuant to Code Sections 7-1-1001 and 7-1-1003.2.

(29) **'Residential property'** means improved real property used or occupied, or intended to be used or occupied, as the primary residence of a natural person. Such term does not include rental property or second homes. A natural person can have only one primary residence.

(30) **'Residential mortgage loan'** means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in Section 103(v) of the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(31) **'Residential real estate'** means any real property located in Georgia upon which is constructed or intended to be constructed a dwelling.

(32) **'Service a mortgage loan'** means the collection or remittance for another or the right to collect or remit for another of payments of principal, interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

(33) **'Ultimate equitable owner'** means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation or any other form of business organization, regardless of whether such natural person owns or controls such ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint-stock companies, other entities or devices, or any combination thereof.

(34) **'Unique identifier'** means a number or other identifier assigned by protocols established by the Nationwide Multistate Licensing System and Registry.

Note: The Georgia State Legislature recently amended these definitions to include "Covered Employee" means any employee of a Mortgage Lender or Mortgage Broker who is involved in residential mortgage-related activities for property located in Georgia and includes, but is not limited to, an originator, mortgage loan processor or underwriter, or other employee who has access to information about the origination, processing or underwriting of residential mortgage loans.

The goal of this was to bring the more restrictive interpretation of Georgia state regulations in line with the national regulations established in the SAFE ACT.

DEFINITIONS [O.C.G.A. §7-6A-2]

In addition, Section 7-6A-2 defines the following terminology:

(1) **'Acceleration'** means a demand for immediate repayment of the entire balance of a home loan.

(2) **'Affiliate'** means any company that controls, is controlled by, or is under common control with another company, as set forth in 12 U.S.C. Section 1841, et seq.

(3) **'Annual percentage rate'** means the annual percentage rate for the loan calculated at closing according to the provisions of 15 U.S.C. Section 1606, the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System, and the Official Staff Commentary on Regulation Z published by the Board of Governors of the Federal Reserve

System.

(4) **'Bona fide discount points'** means loan discount points knowingly paid by the borrower for the express purpose of reducing, and which in fact do result in a bona fide reduction of, the interest rate applicable to the home loan; provided, however, that the undiscounted interest rate for the home loan does not exceed by more than one percentage point the required net yield for a 90 day standard mandatory delivery commitment for a home loan with a reasonably comparable term from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

(5) **'Borrower'** means any natural person obligated to repay the loan including a co-borrower or cosigner.

(6) '**Creditor'** means a person who both regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments and is a person to whom the debt arising from the home loan transaction is initially payable. Creditor shall also mean any person brokering a home loan, which shall include any person who directly or indirectly for compensation solicits, processes, places, or negotiates home loans for others or offers to solicit, process, place, or negotiate home loans for others or who closes home loans which may be in the person's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans, provided that creditor shall not include a person who is an attorney providing legal services in association with the closing of a home loan. A creditor shall not include: (A) a servicer; (B) an assignee;

(C) a purchaser; or (D) any state or local housing finance agency or any other state or local governmental or quasi-governmental entity.

(7) **'High-cost home loan'** means a home loan in which the terms of the loan meet or exceed one or more of the thresholds as defined in paragraph (17) of this Code section.

(8) **'Home loan'** means a loan, including an open-end credit plan where the principal amount does not exceed the conforming loan size limit for a single-family dwelling as established by the Federal National Mortgage Association and the loan is secured by a mortgage, security deed, or deed to secure debt on real estate located in this state upon which there is located or there is to be located a structure or structures, including a manufactured home, designed principally for occupancy of from one to four families and which is or will be occupied by a borrower as the borrower's principal dwelling, except that home loan shall not include:

A. A reverse mortgage transaction;
B. A loan that provides temporary financing for the acquisition of land by the borrower and initial construction of a borrower's dwelling thereon or the initial construction of a borrower's dwelling on land owned by the borrower;
C. A bridge loan made to a borrower pending the sale of the borrower's principal dwelling or a temporary loan made to a borrower and secured by the borrower's principal dwelling pending the borrower's obtaining permanent financing for such principal dwelling;
D. A loan secured by personal property including, but not limited to, a motor vehicle, motor home, boat, or watercraft and also secured by the borrower's principal dwelling to provide the borrower with potential income tax advantages when such personal property is the primary collateral for such loan;
E. A new loan secured by a borrower's principal dwelling as a result of a lien taken in connection with a debt previously contracted or incurred when the loan documents

for such new loan do not include a mortgage, security deed, or deed to secure debt expressly securing such new loan; or

F. A loan primarily for business, agricultural, or commercial purposes.

(9) **'Make' or 'makes'** means to originate a loan or to engage in brokering of a home loan including the soliciting, processing, placing, or negotiating of a home loan made or offered by a person brokering a home loan.

(10) **'Manufactured home'** means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. Such term does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located.

(11) **'Open-end credit plan' or 'open-end loan'** means a loan in which (A) a creditor reasonably contemplates repeated transactions; (B) the creditor may impose a finance charge from time to time on an outstanding balance; and (C) the amount of credit that may be extended to the borrower during the term of the loan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

(12) **'Points and fees'** means:

A. All items included in the definition of finance charge in 12 C.F.R. 1026.4(a) and 12 C.F.R. 1026.4(b) except interest or the time price differential. All items excluded under 12 C.F.R. 1026.4(c) are excluded from points and fees, provided that for items under 12 C.F.R. 1026.4(c)(7) the creditor does not receive direct or indirect compensation in connection with the charge and the charge is not paid to an affiliate of the creditor;

B. All compensation paid directly or indirectly to a mortgage broker from any source, including a broker that originates a loan in its own name in a table funded transaction, including but not limited to yield spread premiums, yield differentials, and service release fees, provided that the portion of any yield spread premium that is both disclosed to the borrower in writing and used to pay bona fide and reasonable fees to a person other than the creditor or an affiliate of the creditor for the following purposes is exempt from inclusion in points and fees: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspection performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions set forth in 12 C.F.R. 1026.4(d)(2) are met;

C. Premiums or other charges for credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance, debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan and premiums or other charges for life, accident, health, or loss-of- income insurance without regard to the identity of the ultimate beneficiary of such insurance. In determining points and fees for the purposes of this paragraph, premiums or other charges shall only include those payable at or before loan closing and are included whether they are paid in cash or financed and whether the amount represents the entire premium for the coverage or an initial payment.

D. The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents. Mortgage interest that may accrue in advance of payment in full of a loan made under a local, state, or federal government sponsored mortgage insurance or guaranty program, including a Federal Housing Administration program, shall not be considered to be a prepayment fee or penalty;
E. All prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor;
F. For open-end loans, points and fees are calculated in the same manner as for loans other than open-end loans, based on the minimum points and fees that a borrower would be required to pay in order to draw on the open-end loan an amount equal to the total credit line; and
G. Points and fees shall not include:
    i. Taxes, filing fees, recording, and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;
    ii. Bona fide and reasonable fees paid to a person other than the creditor or an affiliate of the creditor for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions in 12 C.F.R. 1026.4(d)(2) are met;
        iii. Bona fide fees paid to a federal or state government agency that insures payment of some portion of a home loan, including, but not limited to, the Federal Housing Administration, the Department of Veterans Affairs, the United States Department of Agriculture for rural development loans, or the Georgia Housing and Finance Authority; and
        iv. Notwithstanding any provision to the contrary in this chapter, compensation in the form of premiums, commissions, or similar charges paid to a creditor or any affiliate of a creditor for the sale of: (I) title insurance; or (II) insurance against loss of or damage to property or against liability arising out of the ownership or use of property, provided that the conditions in 12 C.F.R. 1026.4(d)(2) are met.

(13) 'Process,' 'processes,' or 'processing' means to act as a processor.
(14) 'Processor' means any person that prepares paperwork necessary for or associated with the closing of a home loan, including but not limited to promissory notes, disclosures, deeds, and closing statements, provided that processor shall not include persons on the grounds that they are engaged in data processing or statement generation services for home loans.
(15) 'Servicer' means the same as set forth in 12 C.F.R. 1024.2.
(16) 'Servicing' means the same as set forth in 12 C.F.R. 1024.2.
(17) '**Threshold'** means:
    A. Without regard to whether the loan transaction is or may be a 'residential mortgage

transaction' as that term is defined in 12 Section C.F.R. 1026.2(a)(24), the annual percentage rate of the loan is such that it equals or exceeds that set out in Section 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. Section 1602(bb), and the regulations adopted pursuant thereto by the Federal Reserve Board, including 12 C.F.R. Section 1026.32; or

B. The total points and fees payable in connection with the loan, excluding not more than two bona fide discount points, exceed: (i) 5 percent of the total loan amount if the total loan amount is $20,000.00 or more or (ii) the lesser of 8 percent of the total loan amount or $1,000.00 if the total loan amount is less than $20,000.00.

(18) **'Total loan amount'** means the amount calculated as set forth in 12 C.F.R. 1026.32(a) and under the Official Staff Commentary of the Board of Governors of the Federal Reserve System. For open-end loans, the total loan amount shall be calculated using the total credit line available under the terms of the home loan as the amount financed.

Now that we have reviewed relevant terminology, we should move on to determine what the law specifically states regarding registration and licensing.

Exemptions; Registration Requirements [O.C.G.A. §7-1-1001]

a. According to the law, the following persons shall not be required to obtain a mortgage loan originator, broker, or mortgage lender license. However, they may be subject to registration requirements, if registration of such persons is required by this article:

1. Any lender authorized to engage in business as a bank, credit card bank, savings institution, building and loan association, or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, the deposits of which are federally insured;
2. Any wholly owned subsidiary of any lender described in paragraph (1) of this Code section. Any subsidiary that violates any applicable law of this article may be subject to a cease and desist order as provided for in Code Section 7-1-1018;

2.1 Any wholly owned subsidiary of any bank holding company; provided, however, that such subsidiary shall be subject to registration requirements in order to facilitate the department's handling of consumer inquiries. Such requirements are contained in Code Section 7-1-1003.3;

3. Registered mortgage loan originators, when acting for an entity described in paragraphs (1) or (2) of this Code section. To qualify for this exemption, an individual shall be registered with and maintain a unique identifier through registration with the Nationwide Multistate Licensing System and Registry;
4. Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of such individual. For purposes of this exemption, the term 'immediate family member' means a spouse, child, sibling, parent, grandparent, or grandchild. Immediate family members shall include stepparents, stepchildren, stepsiblings, and adoptive relationships;
5. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any

agent of such lender, mortgage broker, or other mortgage loan originator;

6. A Georgia licensed real estate broker or real estate salesperson not actively engaged in the business of negotiating mortgage loans or a Georgia licensed real estate salesperson providing information to a lender or its agent related to an existing or potential short sale transaction in which a separate fee is not received by such real estate broker or real estate salesperson; provided, however, that such real estate broker or real estate salesperson who directly or indirectly negotiates, places, or finds a mortgage for others shall not be exempt from the provisions of this article;
7. Any person performing any act relating to mortgage loans under order of any court;
8. Any natural person or the estate of or trust created by a natural person making a mortgage loan with his or her own funds for his or her own investment, including those natural persons or the estates of or trusts created by such natural persons who make a purchase money mortgage for financing sales of their own property;
9. Any agency, division, or instrumentality of the federal government of the United States of America; the government of the State of Georgia; the government of any other state of the United States; or any county or municipal of the State of Georgia. This includes, but is not limited to the Georgia Housing and Finance Authority, the Georgia Development Authority, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), the United States Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Farmers Home Administration (FmHA), and the Farm Credit Administration and its chartered agricultural credit associations;
10. Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;
11. Any person who makes a mortgage loan to an employee of such person as an employment benefit;
12. Any licensee under Chapter 3 of this title, the "Georgia Installment Loan Act," provided that any mortgage loan made by such licensee is for $3,000.00 or less;
13. Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged.
14. A natural person employed by a licensed or registered mortgage broker, a licensed or registered mortgage lender, or any person exempted from the mortgage broker or mortgage lender licensing requirements of this article when acting within the scope of employment and under the supervision of the mortgage broker or mortgage lender or exempted person as an employee and not as an independent contractor, except those natural persons exempt from licensure as a mortgage broker or mortgage lender under paragraph (17) of this Code section. To be exempt from licensure as a mortgage broker or mortgage lender, a natural person shall be employed by only one such employer and shall be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004. Such natural person, who meets the definition of mortgage loan originator provided in paragraph (22) of Code Section 7-1-1000, shall be

    subject to mortgage loan originator licensing requirements. A natural person against whom a cease and desist order has become final shall not qualify for this exemption while under the employment time restrictions of subsection (o) of Code Section 7-1- 1004 if such order was based on a violation of Code Section 7-1-1002 or 7-1-1013 or whose license was revoked within five years of the date such person was hired;
15. Any person who purchases mortgage loans from a mortgage broker or mortgage lender solely as an investment and who is not in the business of brokering, making, purchasing, or

servicing mortgage loans;

16. Any natural person who makes five or fewer mortgage loans in any one calendar year. A person other than a natural person who makes five or fewer mortgage loans in any one calendar year shall not be exempt from the licensing requirements of this article; or
17. (A)

A natural person who is under an exclusive written independent contractor agreement with any person that is a licensed mortgage broker, so long as such licensed mortgage broker also meets the following requirements, subject to the review and approval of the department:

(i) The licensee continuously provides a surety bond as required by Code Section 7-1-1003.2 in the amount of $150,000.00 plus $50,000.00 per exempt natural person, not to exceed a maximum of $2 million to cover its activities as well as the activities of all of its natural persons exempted by this paragraph;

(ii) The licensee has applied for and been granted a mortgage broker license, consistent with the provisions of this article and renewable annually;

(iii) The licensee has paid applicable fees for this license, which license fees shall be the sum of the cost of the individual mortgage broker license fees if each exempt natural person received a mortgage broker license;

(iv) The licensee has full and direct financial responsibility for the mortgage activities of such natural person and full and direct responsibility for the proper education of such natural person, the handling of consumer complaints related to such natural person, and the supervision of the mortgage activities of such natural person. The licensee shall supervise such natural person on an ongoing and regular basis and shall be accountable for the mortgage activities of such natural person;

(v) The licensee or the parent company if the licensee is a wholly owned subsidiary:

(I) Files reports under Section 13(a) or 15(d) of the Securities Exchange Act of 1934;

(II) Has a market capitalization in excess of $4 billion at the time of the initial application for a mortgage broker license based on the number of outstanding shares at the end of the quarter as disclosed in the most recent Form 10-Q filed with the United States Securities and Exchange Commission; and

(III) Has equity securities that are listed on the New York Stock Exchange, the National Association of Securities Dealers Automated Quotations, or other stock market approved by the department in writing;

(vi) At the time of the initial application for a mortgage broker license, the licensee has never had a mortgage lender license or mortgage broker license revoked or suspended in Georgia or any other state;

(vii) The licensee, the parent company if the licensee is a wholly owned subsidiary, or an affiliate of the licensee if both the affiliate and licensee are wholly owned subsidiaries of the same parent company, is licensed by the office of the Commissioner of Insurance as an insurance company or is registered with the Secretary of State as a broker-dealer;

(viii) The licensee is licensed as a mortgage lender or mortgage broker in ten or more states; and

(ix) At the time of the initial application for a mortgage broker license, the licensee has received at least a satisfactory evaluation in the most recent examination conducted by the majority of the states in which it has a mortgage broker or mortgage lender license and has adequately addressed with the department any unsatisfactory evaluations in the most recent examination conducted by any state in which it has a mortgage broker or mortgage lender license.

(B) To maintain the exemption, a natural person shall:

(i) Solicit, process, place, or negotiate a mortgage loan to be brokered only by the licensee;
(ii) Be at all times in compliance with this article, including the provisions and prohibitions of Code Section 7-1-1013, the provisions and prohibitions applicable to employees under Code Section 7-1-1004, and the department's rules and regulations;
(iii) Be licensed as a mortgage loan originator in Georgia and work exclusively for the licensee, the parent company if the licensee is a wholly owned subsidiary, or an affiliate of the licensee if both the affiliate and licensee are wholly owned subsidiaries of the same parent company; and
(iv) Be licensed as an insurance agent with the office of the Commissioner of Insurance or registered as a broker-dealer agent with the Secretary of State on behalf of the licensee, the parent company of the licensee if the licensee is a wholly owned subsidiary of the parent company, or an affiliate of the licensee if both the affiliate and licensee are wholly owned subsidiaries of the same parent company.

18. (A) An employee of a bona fide nonprofit corporation who acts as a mortgage loan originator only with respect to his or her work duties with the bona fide nonprofit corporation and who acts as a mortgage loan originator only with respect to mortgage loans with terms that are favorable to the borrower shall be exempt from obtaining a mortgage loan originator license. In order for a corporation to be considered a bona fide nonprofit corporation under this paragraph, the department shall determine, under criteria and pursuant to processes established by the department, that the nonprofit corporation:

i. Has the status of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986;
ii. Promotes affordable housing;
iii. Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;
iv. Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;
v. Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;
vi. Provides or identifies for the borrower mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. In order for mortgage loans to have terms that are favorable to the borrower, the department shall determine that the terms are consistent with loan origination in a public or charitable context, rather than in a commercial context; and
vii. Satisfies the exemption from licensure set forth in paragraph (13) of this subsection.

(B) The department shall periodically examine the books and activities of an organization it has previously identified as a bona fide nonprofit corporation for purposes of this paragraph in order to determine if it continues to meet the criteria for such status under subparagraph (A) of this paragraph. In conducting such an examination, the department shall have all of the powers set forth in Code Section 7-1-1009. In the event the nonprofit corporation no longer qualifies for such status, then the employee exemption from having a mortgage loan originator license shall no longer be applicable; or

(19) Any person who purchases or holds closed mortgage loans for the sole purpose of securitization into a secondary market, provided that such person holds the individual loans for less than seven days.

b. Exemptions enumerated in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code section shall be exemptions from licensure as a mortgage broker or mortgage lender only. Nothing in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code section shall be intended to exempt natural persons from compliance with mortgage loan originator licensing requirements as set forth in this article and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Individuals that transact business as a mortgage loan originator, unless specifically exempted by paragraph (3), (4), (5), (6), (10), or (18) of subsection (a) of this Code section, shall obtain a mortgage loan originator license as required by Code Section 7-1-1002 whether they are employed by a mortgage broker, mortgage lender, or person exempted as a mortgage broker or lender as set forth in this subsection.
c. A licensed mortgage lender is authorized to engage in all activities that are authorized for a mortgage broker and, as a result, shall not be required to obtain a mortgage broker license.
d. Any violation of this article or the rules and regulations of the department by a natural person exempted pursuant to paragraph (17) of subsection (a) of this Code section shall be deemed to be a violation by both the licensee and the exempt natural person for purposes of the enforcement provisions of this article.

The above lists the type of people that are not legally required to obtain a license in order to do conduct their actives. Let's now turn to those which the law imposes a license requirement.

Requirements for MLO License [O.C.G.A. §7-1-1001.1]

To comply with the federal requirements contained in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act of 2008, it is now prohibited for any person to engage in the activities of a mortgage loan originator without first obtaining and maintaining a mortgage loan originator license.

The department has the broad administrative authority to administer, interpret, and enforce the SAFE Mortgage Licensing Act of 2008, and promulgate rules and regulations implementing it. The provisions in the SAFE Act apply to the activities of retail sellers of manufactured homes to the extent determined by the United States Department of Housing and Urban Development through written guidelines, rules, regulations, or interpretive letters.

Therefore, since one must be licensed in order to conduct mortgage loan originator duties, it is no surprise that the law goes on to state the following:

a. It shall be prohibited for any person to transact business in this state directly or indirectly as a mortgage broker, a mortgage lender, or a mortgage loan originator unless such person:
    1. Is licensed or registered as such by the department utilizing the Nationwide Multistate Licensing System and Registry;
    2. Is a person exempted from the licensing or registration requirements pursuant to Code Section 7-1-1001;
    3. In the case of an employee of a mortgage broker or mortgage lender, such person has qualified to be relieved of the necessity for a license under the employee exemption in paragraph (11) of subsection (a) of Code Section 7-1-1001;
    4. In the case of a mortgage loan originator, such person is supervised by a mortgage broker, mortgage lender, or exemptee on a daily basis while performing mortgage

functions; is employed by and works exclusively for only one mortgage broker, mortgage lender, or exemptee; and is paid on a W-2 basis by the employing mortgage broker, mortgage lender, or exemptee, except those natural persons exempt from licensure as a mortgage broker or mortgage lender under paragraph (17) of subsection
(a) of Code Section 7-1-1001. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the Nationwide Multistate Licensing System and Registry. For the purposes of implementing an orderly and efficient mortgage loan originator process, the department may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications; or

b. A loan processor or underwriter who is an independent contractor shall not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage broker or mortgage lender license. Each independent contractor loan processor or underwriter licensed as a mortgage broker or mortgage lender shall have and maintain a valid unique identifier issued by the Nationwide Multistate Licensing System and Registry.
c. It shall be prohibited for any person, as defined in Code Section 7-1-1000, to purchase, sell, or transfer one or more mortgage loans or loan applications from or to a mortgage loan originator, mortgage broker, or mortgage lender who is neither licensed nor exempt from the licensing or registration provisions of this article. Such a purchase shall not affect the obligation of the borrower under the terms of the mortgage loan. The department shall provide for distribution or availability of information regarding approved or revoked licenses.
d. Every person who directly or indirectly controls a person who violates subsection (a) or (b) of this Code section, every general partner, executive officer, joint venturer, or director of such person, and every person occupying a similar status or performing similar functions as such person violates with and to the same extent as such person, unless the person whose violation arises under this subsection sustains the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist.

As you can see, the law is very specific regarding who must be licensed and who is exempted from this requirement. It is crucial that a person understand what mortgage loan originator activities are in order to determine whether they must be licensed or registered to continue conducting certain activities or whether they are not required to be licensed or registered in order to continue doing what they are doing. If a person is caught conducting mortgage loan originator activities without a license, that person will subject to punishment by law.

Application for Licenses [O.C.G.A. §7-1-1003]

As mentioned previously, the department has authority to prescribe licenses. As such, they are responsible for reviewing applications. The law states that applications for licensure must include the following:

The legal name and address of the applicant and, if the applicant is a partnership, association, corporation, or other business entity, of every member, officer, and director thereof;

1. All names, including, but not limited to, website domain names (URLs), under which the applicant will conduct business in Georgia;
2. For mortgage brokers and mortgage lenders, the address of the main office or

principal place of business where books and records are located and any other locations at which the applicant will engage in any business activity covered by the provisions of this article, together with the mailing address where the department shall send all correspondence, orders, or notices. Any changes in this mailing address shall be delivered in writing to the department before the change is effective;

3. For mortgage brokers and mortgage lenders, the complete name and address of the applicant's initial registered agent and registered office for service of process in Georgia. If the applicant is a Georgia corporation, this registered agent shall be the same as the agent recorded with the Secretary of State. Any changes in the registered agent or registered office shall be delivered in writing to the department and the Secretary of State, if applicable, before the change is effective. The registered agent may, but is not required to, be an officer of the applicant, and the registered office shall be a Georgia location where the registered agent may be served;
4. For mortgage brokers and mortgage lenders, the general plan and character of the business;
5. For mortgage brokers and mortgage lenders, a financial statement of the applicant;
6. For mortgage brokers and mortgage lenders, such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, agents, or ultimate equitable owners of 10 percent or more of the applicant; and
7. For mortgage brokers and mortgage loan originators, evidence of satisfaction of experience or education requirements, as required by regulations of the department.

b. All applications filed under this Code section shall be filed together with:
   1. Investigation and supervision fees established by regulation;
   2. The items required by Code Section 7-1-1003.2;
   3. Other information as may be required by the department.

Financial Requirements; Bond Requirements [O.C.G.A. §7-1-1003.2]

The law imposes certain financial requirements on those that want to become licensed. The law states the following:

a. Each licensed or registered mortgage broker shall provide the department with a bond. The bond for a mortgage broker shall be in the principal sum of $150,000.00 or such greater sum as the department may require as set forth by regulation based on an amount that reflects the dollar amount of loans originated, and the bond shall meet the other requirements of subsection (d) of this Code section.
b. Except as otherwise provided in subsection (d) of this Code section, the department shall not license or register any mortgage lender unless the applicant or registrant provides the department with a bond. The bond for a mortgage lender shall be in the principal sum of

$250,000.00 or such greater sum as the department may require as set forth by regulation based on an amount that reflects the dollar amount of loans originated, and which bond shall meet the other requirements of subsection (d) of this Code section.

c. Each mortgage loan originator shall be covered by a surety bond of his or her sponsoring licensed or registered mortgage broker or lender. In the event that the mortgage loan originator is an employee of a licensed or registered mortgage broker or lender or under an exclusive written independent contractor agreement as described in paragraph (17) of Code Section 7-1- 1001, the surety bond of such licensed or registered mortgage broker or lender may be used in lieu of the mortgage loan originator's surety bond requirement.

d. General bond requirements:
    1. The bond requirements for mortgage loan originators, mortgage brokers, and mortgage lenders are continuous in nature and shall be maintained at all times as a condition of licensure;
    2. The corporate surety bond shall be for a term and in a form satisfactory to the department, shall be issued by a bonding company or insurance company authorized to do business in this state and approved by the department, and shall run to the State of Georgia for the benefit of any person damaged by noncompliance of a licensee with this article, the 'Georgia Residential Mortgage Act,' or with any condition of such bond. Damages under the bond shall include moneys owed to the department for fees, fines, or penalties. Such bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned upon the applicant or the licensee conducting his or her licensed business in conformity with this article and all applicable laws;
    3. When an action is commenced on a licensee's bond, the department may require the filing of a new bond; and
    4. Immediately upon recovery of any action on the bond, the licensee shall file a new bond.

e. Any person including the department who may be damaged by noncompliance of a licensee with any condition of a bond or this article, the 'Georgia Residential Mortgage Act,' may proceed on such bond against the principal or surety thereon, or both, to recover damages.

Application for Registration [O.C.G.A. §7-1-1003.3]

According to law, any application to register as a mortgage lender or broker must be made annually in writing, under oath, and on a form provided by the department. The application is subject to requirements specified by rules and regulations of the department.

Therefore, if you are already registered, you must apply to be registered yearly.

This process is different for those applying for licensure as mortgage loan originators, mortgage brokers, and mortgage lenders.

We will discuss the application and renewal process for mortgage loan originators, brokers, and lenders later. We will next review the extent of the authority given to the department by law with regards to licensing.

Automated Licensing System for MLOs, Mortgage Brokers and Mortgage Lenders

[O.C.G.A. §7-1-1003.5]

The law states that the department is authorized to do all of the following:

1. Participate in a Nationwide Multistate Licensing System and Registry established to

facilitate the sharing of information and standardization of the licensing and application processes for mortgage loan originators, mortgage brokers, and mortgage lenders by electronic or other means;

2. Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and other contracts necessary for the department's participation in the Nationwide Multistate Licensing System and Registry;
3. Request that the Nationwide Multistate Licensing System and Registry adopts an appropriate privacy, data security, and security breach notification policy that is in full compliance with existing state and federal law;
4. Disclose or cause to be disclosed without liability via the Nationwide Multistate Licensing System and Registry applicant and licensee information, including, but not limited to, violations of this article and enforcement actions, via the Nationwide Multistate Licensing System and Registry to facilitate regulatory oversight of mortgage loan originators, mortgage brokers, and mortgage lenders across state jurisdictional lines;
5. Establish and adopt, by rule or regulation, requirements for participation by applicants and licensees in the Nationwide Multistate Licensing System and Registry upon the department's determination that each new or amended requirement is consistent with both the public interest and the purposes of this article; and
6. Pay all fees received from licensees and applicants related to applications, licenses, and renewals to the Office of Treasury and Fiscal Services; provided, however, that the department may net such fees to recover the cost of participation in the Nationwide Multistate Licensing System and Registry; and
7.

As you can see, the department has a lot of power when it comes to the licensing of mortgage loan originators, brokers, and lenders. In fact, the law also makes clear how much power the department has by stating that regardless of the department's participation in NMLS&R, it retains full and exclusive determinations whether to grant, renew, suspend, or revoke licenses issued to mortgage loan originators, mortgage brokers, and mortgage lenders. Nothing in this section of Georgia law can reduce this authority.

Investigations; Education and Other Requirements [O.C.G.A. §7-1-1004]

The law also specifically provides the department with the authority to establish any requirements it deems necessary for the application for license or registration:

a. Upon receipt of an application for license or registration, the department shall conduct such investigation as it deems necessary to determine that the mortgage broker and mortgage lender applicant and the individuals who direct the affairs or establish policy for the mortgage broker and mortgage lender applicant, including the officers, directors, or the equivalent, are of good character and ethical reputation; that the mortgage broker and mortgage lender applicant is not disqualified for licensure as a result of adverse administrative civil or criminal findings in any jurisdiction; that the mortgage broker and mortgage lender applicant and such persons meet the requirements of subsection (h) of this Code section; that the mortgage broker and mortgage lender applicant and such persons demonstrate reasonable financial responsibility; that the mortgage broker and mortgage lender applicant has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly; and that the mortgage broker and mortgage lender applicant has and maintains a registered agent for service in this state.

b. The department shall not license or register any mortgage broker and mortgage lender applicant unless it is satisfied that the mortgage broker and mortgage lender applicant may be expected to operate its mortgage lending or brokerage activities in compliance with the laws of this state and in a manner which protects the contractual and property rights of the citizens of this state.
c. The department may establish by rule or regulation minimum education or experience requirements for an applicant for a mortgage broker license or renewal of such a license.
d. To this end, the law provides that the department must do whatever is necessary to determine that the applicant has completed all requirements for licensure. Once an application for a mortgage loan originator license is submitted, the department must make sure that the applicant:
   1. Has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;
   2. Has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court; provided, however, that any pardon of a conviction shall not be a conviction for purposes of this subsection;
   3. Has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this article;
   4. Has completed the pre-licensing education requirement described in subsection (e) of this Code section;
   5. Has passed a written test that meets the test requirement described in subsection (f) of this Code section; and
e. (1) An individual shall complete at least 20 hours of pre-licensing education courses reviewed and approved by the Nationwide Multistate Licensing System and Registry based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider. The 20 hours of pre-licensing education shall include at least:
      A. Three hours of federal law and regulations;
      B. Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
      C. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.
   2. Nothing in this subsection shall preclude any pre-licensing education course, as approved by the Nationwide Multistate Licensing System and Registry, that is provided by the employer of the mortgage loan originator applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.
   3. Pre-licensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Multistate Licensing System and Registry.
   4. The pre-licensing education requirements approved by the Nationwide Multistate

Licensing System and Registry in paragraph (1) of this Code section for any state shall be accepted as credit towards completion of pre-licensing education requirements in Georgia.

5. A person previously licensed under this article subsequent to January 1, 2010, applying to be licensed again shall prove that they have completed all of the continuing education requirements for the year in which the license was last held.
6. The department is authorized to enact rules and regulations related to the expiration of pre-licensing education

f.

1. In order to meet the written test requirement referred to in subsection (d) of this Code section for mortgage loan originators, an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Multistate Licensing System and Registry and administered by a test provider approved by the Nationwide Multistate Licensing System and Registry based upon reasonable standards.
2. A written test shall not be treated as a qualified written test for purposes of this subsection unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:
    A. Ethics;
    B. Federal law and regulation pertaining to mortgage origination;
    C. State law and regulation pertaining to mortgage origination; and
    D. Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.
3. Nothing in this subsection shall prohibit a test provider approved by the Nationwide Multistate Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.
4. (A) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.
    B. An individual may retake a test three consecutive times with each consecutive taking occurring at least 30 days after the preceding test.
    C. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.
    D. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

Uniform State Test (UST)

- The Uniform State Test (UST)
    - This is a section within the National Test
    - Georgia has a UST state test with only one exam for licensing

- Will include 25 questions
  - National Test with UST will contain 120 questions total
  - Grade is a total of all questions
- This material will test an applicant's knowledge of state-related content and CSBS/AARMR Model State Law (MSL)
- Replaces the state-specific test section for those states choosing to implement it
- A person who passes the National Test with UST content or the Stand-alone UST will have satisfied requirements for a license in that state

Points "d," "e," and "f"" list the requirements necessary in order to obtain a mortgage loan originator license. If the department finds that any of these requirements have not been met, then the department reserves the right to deny the application for licensure.

This section of the law also provides the requirements necessary to renew a license after having obtained one.

g. (1) In order to meet the annual continuing education requirements referred to in paragraph (2) of subsection (e) of Code Section 7-1-1005, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with paragraph (2) of this subsection which shall include at least:
   A. Three hours of federal law and regulations;
   B. Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
   C. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.
   2. For purposes of paragraph (1) of this subsection, continuing education courses shall be reviewed and approved by the Nationwide Multistate Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.
   3. Nothing in this subsection shall preclude any education course from approval by the Nationwide Multistate Licensing System and Registry that is provided by the employer of the mortgage loan originator or any entity which is affiliated with the mortgage loan originator by an agency contact, or any subsidiary or affiliate of such employer or entity.
   4. Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Multistate Licensing System and Registry.
   5. A licensed mortgage loan originator, except for as provided for in paragraph (9) of this subsection and subsection (f) of Code Section 7-1-1005, shall only receive credit for a continuing education course in the year in which the course is taken and shall not take the same approved course in the same or successive years to meet the annual requirements for continuing education.
   6. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours of credit for every one hour taught.
   7. An individual having successfully completed the education requirements approved by the Nationwide Multistate Licensing System and Registry in paragraph (1) of this subsection for any state shall be accepted as credit towards completion of

continuing education requirements in Georgia.
8. A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.
9. An individual meeting the requirements of subsection (e) of Code Section 7-1-1005 may make up any deficiency in continuing education as established by rule or regulation of the department.

h. The department shall not issue or may revoke a license or registration if it finds that the mortgage loan originator, mortgage broker, or mortgage lender applicant or licensee, or any person who is a director, officer, partner, covered employee, or ultimate equitable owner of 10 percent or more of the mortgage broker or mortgage lender applicant, registrant, or licensee or any individual who directs the affairs or establishes policy for the mortgage broker or mortgage lender applicant, registrant, or licensee, has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state.

i. Fees for background checks that the department administers shall be sent to the department by applicants and licensees together with the fingerprints. Mortgage broker and mortgage lender applicants, licensees, and registrants shall have the primary responsibility for obtaining background checks of covered employees which are defined as employees who work in this state and also have the authority to enter, delete, or verify any information on any mortgage loan application form or document. The department shall, however, retain the right to obtain conviction data on covered employees.

j. In connection with an application for licensing with respect to any mortgage loan originator applicant, mortgage broker, or lender applicant, at the direction of the department, the applicant shall at a minimum, furnish to the Nationwide Multistate Licensing System and Registry information concerning the applicant's identity, including:
   1. Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check; and
   2. Personal history and experience in a form prescribed by the Nationwide Multistate Licensing System and Registry, including the submission of authorization for the Nationwide Multistate Licensing System and Registry and the department to obtain;
      A. An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f); and
      B. Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.
   3. For the purposes set forth in this subsection and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of such section, the department may use the Nationwide Multistate Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency; and
   4. For the purposes of this subsection and in order to reduce the points of contact which the department may have to maintain for purposes of such subsection, the department may use the Nationwide Multistate Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the department.

k. Every mortgage broker and mortgage lender licensee, registrant, and applicant shall be authorized and required to obtain background checks on covered employees. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Licensees, registrants, and applicants shall be responsible for any applicable fees charged by the center. A background check shall be initiated for a person in the employ of a licensee, registrant, or applicant within ten days of the date of initial hire and be completed with satisfactory results within the first 90 days of employment. This provision shall not apply to directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons who direct the company's affairs or establish policy, whose background shall have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprints of such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (i) of this Code section.

l. Upon receipt of fingerprints, fees, and other required information, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department or by the applicant, registrant, or licensee shall be used by the party requesting such data for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. The department shall be entitled to review any applicant's, registrant's, or licensee's files to determine whether the required background checks have been run and whether all covered employees are qualified. The department shall be authorized to discuss the status of employee background checks with licensees. All such records shall be maintained by the department and the applicant or licensee or registrant pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, "conviction data" means a record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought, subject to the conditions set forth in subsection (h) of this Code section. Violation of this Code section may subject a licensee or registrant to the revocation of its license or registration.

m. In connection with an application for licensing or registration under this Code section, the department may use the Nationwide Multistate Licensing System and Registry, when such service is available, as a channeling agent for the submission of fingerprints to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check. The department is authorized to set forth rules and regulations in order to implement the provisions of this subsection.

n. The department may deny or revoke a license or registration or otherwise restrict a license or registration if it finds that the mortgage broker or mortgage lender applicant or any person who is a director, officer, partner, or ultimate equitable owner of 10 percent or more or person who directs the company's affairs or who establishes policy of the applicant has been in one or more of these roles as a mortgage lender, broker, or registrant whose license or registration has been denied, revoked, or suspended within five years of the date of the application.

o. The department shall not issue a license or registration to and may revoke a license or registration from a mortgage broker or mortgage lender applicant, licensee, or registrant if such person:
    1. Has been the recipient of a final cease and desist order issued within the preceding five years if such order was based on a violation of subsection (h) of this Code section or Code Section 7-1-1002 or 7-1-1013;
    2. Employs any other person against whom a final cease and desist order has been issued within the preceding five years if such order was based on a violation of subsection (h) of this Code section or Code Section 7-1-1002 or 7-1-1013; or
    3. Has had his or her license revoked within five years of the date such person was hired or employs any other person who has had his or her license revoked within five years of the date such person was hired.

p. Each mortgage broker and mortgage lender applicant, licensee, and registrant shall, before hiring an employee, examine the department's public records to determine that such employee is not subject to the type of cease and desist order described of this Code section.

q. Within 90 days after receipt of a completed application and payment of licensing fees prescribed by this article, the department shall either grant or deny the request for license or registration.

r. A person shall not be indemnified for any act covered by this article or for any fine or penalty incurred pursuant to this article as a result of any violation of the law or regulations contained in this article, due to the legal form, corporate structure, or choice of organization of such person, including, but not limited to, a limited liability company.

So there you have it, folks! What we just went over spells out the specific requirements to obtain a license and retain one as a mortgage loan originator, mortgage broker, or mortgage lender. For the purposes of doing so, the department is granted full authority in the decision making of granting, renewing, or revoking licensure.

Of course, the Nationwide Multistate Licensing System and Registry is in place for a reason and the law does place responsibilities on brokers and lenders to provide certain things to the NMLS&R. For example, the law requires that Each mortgage broker and mortgage lender shall submit to the Nationwide Multistate Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the department and the Nationwide Multistate Licensing System and Registry may require. **[O.C.G.A. §7-1-1004.1]**

The law also places responsibility on the department to establish a process whereby licensees may challenge information that is entered in the Nationwide Multistate Licensing System and Registry by the department. **[O.C.G.A. §7-1-1004.2]**

For the purposes of ensuring that accountability is met and in order to make the NMLS&R function as it is intended, it is important that the unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards, websites, and any other documents as established by rule, regulation, or order of the department. **[O.C.G.A. §7-1-1004.3]**

We already discussed some of the requirements purported by law for the renewal of a license or registration. However, the law does pose additional requirements regarding the timeframe for renewal. We will review this next.

<u>Renewal of Licenses and Registrations</u> [O.C.G.A. 7-1-1005]

a. All licenses and registrations issued pursuant to this article shall expire on December 31 of each year, and application for renewal shall be made annually on or before December 1 of each year.
b. Any licensee or registrant making proper application on or before December 1 for the renewal of a license or registration for the following calendar year shall be permitted to continue to operate pending final approval or disapproval of the application if the application for the license or registration is not acted upon prior to January 1. For purposes of this subsection, a 'proper application' shall include a requirement that all documentation requesting a renewal has been completed, the requisite continuing education has been successfully obtained, and payment has been made of all outstanding fines and applicable fees required by this article.
c. No investigation fee shall be payable in connection with the renewal application, but an annual license or registration fee established by regulation of the department to defray the cost of supervision shall be paid with each renewal application, which fee shall not be refunded.
d. Any person holding a license or registration pursuant to this article who fails to file a proper application for a license or registration renewal for the following license year, including the proper fee accompanying the application, on or before December 1 and who files an application after December 1 may be required to pay, in addition to the license or registration fees, a fine in an amount to be established by regulations promulgated by the department.
e. The minimum standards for license renewal for mortgage loan originators shall include:
    1. The mortgage loan originator continues to meet the minimum standards for license issuance;
    2. The mortgage loan originator has satisfied the annual continuing education requirements; and
    3. The mortgage loan originator has paid all required fees for renewal of the license;
    4. The mortgage loan originator is in compliance with any and all written orders issued by the department.
f. A mortgage loan originator license shall become inactive in the event that the mortgage loan originator is no longer sponsored by a mortgage lender or mortgage broker that is licensed. A mortgage loan originator shall not act as a mortgage loan originator in this state while the license is inactive. A mortgage loan originator license shall remain in inactive status until the license expires pursuant to subsection (a) of this Code section, the licensee surrenders the license, the license is revoked or suspended, or the licensee obtains sponsorship.
g. The department may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Multistate Licensing System

and Registry.

We now know the necessary requirements for license renewal. Let's move on to discussing some of the responsibilities licensees have once they have obtained their license.

Contents of License; Posting of License; etc. [O.C.G.A. §7-1-1006]

a. Each license issued under this article shall state the name of the licensee.
b. A licensee shall post a copy of such license in a conspicuous place in each place of business of the licensee.
c. A license shall not be transferred or assigned.
d. No licensee shall transact business under any name or names other than those designated in the records of the department.
e. For mortgage brokers and mortgage lenders, each licensee shall notify the department in writing of any change in the address of the principal place of business or of any additional location of business in Georgia, any change in registered agent or registered office, any change of executive officer or contact person for consumer complaints, or of any material change in the licensee's financial statement. Notice of changes shall be received by the department no later than 30 business days after the change is effective.
f. without prior approval of the department. Applications for such additional office shall be made in writing on a form prescribed by the department and shall be accompanied by payment of a $350.00 nonrefundable application fee. The application shall be approved unless the department finds that the applicant has not conducted business under this article efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the department to the applicant within 45 days of the date the application is received by the department.
g. All branch managers in Georgia shall be approved by the department. A mortgage broker or mortgage lender may place a new branch manager subject to the department's approval but shall file for approval within 15 days of the placement and shall remove the person immediately should the department deny approval.

Licensee To Give Notice of Certain Actions [O.C.G.A. §7-1-1007]

Additionally, the law requires licensees to provide notice to the department of certain actions

For example, a licensee must give written notice to the department of any action which may be brought against it by any creditor or borrower where such action is brought under this article, involves a claim against the bond filed with the department for the purposes of compliance with Code Section 7-1-1003.2 or 7-1-1004, or involves a claim for damages in excess of $25,000.00 for a mortgage broker or mortgage loan originator and $250,000.00 for a lender and of any judgment which may be entered against it by any creditor or any borrower or prospective borrower, with details sufficient to identify the action or judgment, within 30 days after the commencement of any such action or the entry of any such judgment.

The same is the case for a corporate surety. A corporate surety shall, within ten days after it pays any claim to any claimant, give written notice to the department of such payment with details sufficient to identify the claimant and the claim or judgment so paid. Whenever the principal sum of such bond is reduced by one or more recoveries or payments thereon, the mortgage loan originator, mortgage broker, or mortgage lender shall furnish a new or additional bond so that the total or aggregate principal sum of such bond or bonds shall equal the sum required under Code Section 7-1-1003.2 or 7-1-1004 or shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum thereof.

Also, if a bond filed must be canceled by either the mortgage loan originator, mortgage broker, or mortgage lender or the corporate surety, the department must be notified before doing so. The department must be notified electronically through the Nationwide Multistate Licensing System and Registry, the cancellation to be effective not less than 30 days after receipt by the department of such notice and only with respect to any breach of condition occurring after the effective date of such cancellation.

Additionally, the law states that:

a. A licensee or registrant shall, within ten days after knowledge of the event, report in writing to the department:
    1. Any knowledge or discovery of an act prohibited by Code Section 7-1-1013;
    2. The discharge of any employee for dishonest or fraudulent acts; and
    3. Any administrative, civil, or criminal action initiated against the licensee, registrant, or any of its control persons by any government entity.

    Any person reporting such an event shall be protected from civil liability as provided in Code Section 7-1-1009.

<u>Record Maintenance</u> [O.C.G.A. §7-1-1009]

As you know, there are certain record keeping requirements for licensees. This section of the law states the following regarding record maintenance:

a. Mortgage brokers and mortgage lenders required to be licensed or registered under this article shall maintain at their offices or such other location as the department shall permit such books, accounts, and records as the department may reasonably require in order to determine whether such mortgage brokers and mortgage lenders are complying with the provisions of this article and rules and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained separately and distinctly from any other personal or unrelated business matters in which the mortgage brokers and mortgage lenders are involved.
b. The department may, by its designated officers and employees, as often as it deems necessary, but at least once every 24 months, investigate and examine the affairs, business, premises, and records of any mortgage broker or mortgage lender required to be licensed or registered under this article insofar as such affairs, business, premises, and records pertain to any business for which a license or registration is required by this article. Notwithstanding the provisions of this subsection, the department has the discretion to examine a mortgage broker or mortgage lender less frequently, provided that its record of complaints, comments, or other information demonstrates that mortgage broker's or mortgage lender's ability to meet the standards of Code Sections 7-1-1003, 7-1-1003.2, and 7-1-1004. In the case of registrants, the department shall not be required to conduct such examinations if it determines that the registrant has been adequately examined by another bank regulatory agency. In order to avoid unnecessary duplication of examinations, the department may accept examination reports performed and produced by other state or

federal agencies, unless the department determines that the examinations are not available or do not provide information necessary to fulfill the responsibilities of the department under this article.

c. In addition to any authority allowed under this article, the department shall be authorized to conduct investigations and examinations of mortgage loan originators as follows:
    1. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this article, the department shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:
        A. Criminal, civil, and administrative history information, including nonconviction data;
        B. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f); and
        C. Any other documents, information, or evidence the department deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence;
    2. For the purposes of investigating violations or complaints, or for the purposes of examination, the department may review, investigate, or examine any mortgage loan originator licensee, individual, or person subject to this article as often as necessary in order to carry out the purposes of this article. The department may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the department deems relevant to the inquiry;
    3. Each mortgage loan originator licensee, individual, or person subject to this article shall make available to the department upon request the books and records relating to the activities of a mortgage loan originator;
    4. Each mortgage loan originator subject to this article shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this subsection, including, but not limited to:
        A. Accounting compilations;
        B. Information lists and data concerning loan transactions in a format prescribed by the department; or
        C. Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a mortgage loan originator;
    5. In making any examination or investigation authorized by this article, the department may control access to any documents and records of the licensee or person under investigation. In order to carry out the purposes of this Code section, the department may:
        A. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this Code section;

        B. Accept and rely on examination or investigation reports made by other government officials, within or without this state; and
        C. Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation, or other writing of the department;
    6. The authority to investigate provided for in this subsection shall remain in effect whether such licensee, individual, or person subject to this article acts or claims to act under any licensing or registration law of this state or claims to act without such authority; and
    7. No mortgage loan originator licensee, individual, or person subject to investigation or examination under this article shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.
- d. The department, at its discretion, may:
    1. Make such public or private investigations within or outside of this state as it deems necessary to determine whether any person has violated or is about to violate this article or any rule, regulation, or order under this article, to aid in the enforcement of this article, or to assist in the prescribing of rules and regulations pursuant to this article;
    2. Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated;
    3. Disclose information concerning any violation of this article or any rule, regulation, or order under this article, provided the information is derived from a final order of the department;
    4. Disclose the imposition of an administrative fine or penalty under this article; and
    5. Conduct an on-site examination without prior notice, with the licensee or registrant to pay the reasonably incurred costs for such examination, including out-of-state travel expenses, and the department shall be authorized to net such out-of-state expenses against the payments from the licensee or registrant.
- e.
    1. For the purpose of conducting any investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such investigations, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes, the department is authorized to issue a subpoena for any witness or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address, by examiners appointed by the department, or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or paper resides or is found. The required fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the department in the same manner that other expenses of the department are paid.
    2. The department may issue and apply to enforce subpoenas in this state at the request of a government agency regulating mortgage lenders or brokers of another state if the activities constituting the alleged violation for which the information is sought would be a violation of this article if the activities had occurred in this state.

f. In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.
g. Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70 and in paragraphs (3) and (4) of subsection (d) of this Code section, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such limited information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department which is not confidential and may be made available to the public either on the department's website, upon receipt by the department of a written request, or in the Nationwide Multistate Licensing System and Registry shall include:
    1. For mortgage brokers and mortgage lenders, the name, business address, and telephone, facsimile, and unique identifier of a licensee or registrant;
    2. For mortgage brokers and mortgage lenders, the names and titles of the principal officers;
    3. For mortgage brokers and mortgage lenders, the name of the owner or owners thereof;
    4. For mortgage brokers and mortgage lenders, the business address of a licensee's or registrant's agent for service; and
    5. The terms of or a copy of any bond filed by a licensee or registrant.
h. In the absence of malice, fraud, or bad faith, a person shall not be subject to civil liability arising from the filing of a complaint with the department or furnishing other information required by this Code section or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:
    1. For any information relating to suspected prohibited acts furnished to or received from law enforcement officials, their agents, or employees or to or from other regulatory or licensing authorities;
    2. For any such information furnished to or received from other persons subject to the provisions of this title; or
    3. For any such information furnished in complaints filed with the department.
i. The commissioner or any employee or agent shall not be subject to civil liability, and no civil cause of action of any nature exists against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section.

Annual Financial Statements [O.C.G.A. §7-1-1010]

In addition to having to keep certain records in case of investigation, certain records must be created and kept for delivery to the department.

For example:

a. If a mortgage broker is a United States Department of Housing and Urban Development loan correspondent, such broker shall also submit to the department the audit that is required for the United States Department of Housing and Urban Development. The department may require the mortgage broker to have made an audit of the books and affairs of the licensed or registered business and submit to the department an audited financial statement if the department finds that such an audit is necessary to determine whether the mortgage broker is complying with the provisions of this article and the rules and regulations adopted in furtherance of this article.
b. Each mortgage lender licensed or registered under this article shall at least once each year have made an audit of the books and affairs of the licensed or registered business and submit to the department at renewal an audited financial statement, except that a mortgage lender licensed or registered under this article which is a subsidiary shall comply with this provision by annually providing a consolidated audited financial statement of its parent company and a financial statement, which may be unaudited, of the licensee or registrant which is prepared in

   accordance with generally accepted accounting principles. A lender who utilizes a bond in lieu of an audit need not supply such audit, unless specially required by the department. An audit shall be less than 15 months old to be acceptable. The department may by regulation establish additional minimum standards for audits and reports under this Code section.

Annual Fees [O.C.G.A. §7-1-1011]

As with everything, obtaining, retaining, and using a license does come with certain financial obligations.

The law enables the department to prescribe annual fees to be paid by licensees and registrants, which fees shall be set at levels necessary to defray costs and expenses incurred by the state in providing the examinations and supervision required by this article and its federally mandated participation in the Nationwide Multistate Licensing System and Registry.

The law also imposes certain fees to the borrower instead of the mortgage loan originator, broker, or lender:

The law imposes a fee on the borrower during the closing of every mortgage loan subject to regulation under this article which, as defined in Code Section 7-1-1000, includes all mortgage loans, whether or not closed by a mortgage broker or mortgage lender licensee or registrant, a fee of

$10.00. The fee shall be paid by the borrower to the collecting agent at the time of closing of the mortgage loan transaction. The collecting agent shall remit the fee to the department at the time and in the manner specified by regulation of the department. Revenue collected by the department pursuant to this subsection shall be deposited in the general fund of the state.

- As used in this subsection, the term "collecting agent" means the person listed as the secured party on a security deed or other loan document that establishes a lien on the residential real property taken as collateral at the time of the closing of the mortgage loan transaction.
- The fee mentioned above included in the closing of a loan is meant to be a debt from the borrower to the collecting agent until such assessment is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. Any collecting agent

who neglects, fails, or refuses to collect the fee imposed by this subsection shall be liable for the payment of the fee.

<u>Disclosure Requirements</u> [O.C.G.A. §7-1-1014]

Aside from other rules, regulations, and policies that the department may promulgate to effectuate the purpose of this article, the department can also promulgate regulations governing the disclosures that must be provided for applicants for mortgage loans, including the following requirements:

1. Any person required to be licensed or registered under this article shall provide to each applicant for a mortgage loan prior to accepting an application fee or any third-party fee such as a property appraisal fee, credit report fee, or any other similar fee a disclosure of the fees payable and the conditions under which such fees may be refundable;
2. Any mortgage lender required to be licensed or registered under this article shall make available to each applicant for a mortgage loan at or before the time a commitment to make a mortgage loan is given a written disclosure of the fees to be paid in connection with the commitment and the loan, or the manner in which such fees shall be determined and the conditions under which such fees may be refundable; and
3. Any mortgage lender required to be licensed or registered under this article shall disclose to each borrower of a mortgage loan that failure to meet every condition of the mortgage loan may result in the loss of the borrower's property through foreclosure. The borrower shall be required to sign the disclosure at or before the time of the closing of the mortgage loan.

The department may prescribe standards regarding the accuracy of required disclosures and may provide for applicable administrative or civil penalties or fines for failure to provide the disclosures or to meet the prescribed standards.

<u>Regulations Relative to Advertising</u> [O.C.G.A. §7-1-1016]

There are also specific provisions regarding advertising that the department has the authority to create and enforce. The department shall prescribe regulations governing the advertising of mortgage loans, including, without limitation, the following requirements:

1. (A) Advertisements for loans regulated under this article shall not be false, misleading, or deceptive. No person whose activities are regulated under this article shall advertise in any manner so as to indicate or imply that its interest rates or charges for loans are in any way recommended,' 'approved,' 'set,' or 'established' by the state or this article.

   B. An advertisement shall not include an individual's loan number, loan amount, or other publicly available information unless it is clearly and conspicuously stated in boldface type at the beginning of the advertisement that the person disseminating it is not authorized by, in sponsorship with, or otherwise affiliated with the individual's lender, which shall be identified by name. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient's lender;

2. All advertisements, including websites, disseminated by a licensee or a registrant in this state by any means shall contain the name, license number, Nationwide Multistate Licensing System and Registry unique identifier, and an office address of such licensee or registrant, which shall conform to a name and address on record with the department; and

Advertising Requirements

[Georgia Department of Banking and Finance-Mortgage Division Rules 80-11-1-.02]

There is a lot of advertising involved in the lending industry, therefore making it crucial for proper consumer protection laws to be available and easily enforced. These provisions exist on the federal level. With regards to provisions in the state of Georgia, the following provisions are in place in an effort to protect the consumer:

a. Advertisements for mortgage loans shall not be false, misleading, or deceptive.
b. Advertisements for mortgage loans shall not indicate in any manner that the interest rates or charges for loans are in any way recommended, approved, set or established by the state or by any law of the state.
c. All solicitations or advertisements, including business cards and websites, for mortgage loans disseminated in this state by persons required to be licensed or registered under O.C.G.A. Title 7, Chapter 1, Article 13 shall contain the name, license number, valid unique Nationwide Multistate Licensing System and Registry (NMLSR) identifier, and an office address of the licensee or registrant advertising the mortgage loan, which name, address, and license number shall conform with the name, license number, valid unique NMLSR identifier and office address on record with the Department of Banking and Finance.
d. All advertisements disseminated in this state by persons required to be licensed under O.C.G.A. Title 7, Chapter 1, Article 13 in any media, whether print or electronic, shall contain the words "Georgia Residential Mortgage Licensee" or, if an entity is licensed in more than one state, the licensee's advertisement may list Georgia as a state in which the licensee is licensed.
e. All advertisements for mortgage loans shall comply with all applicable federal and state laws.
f. For purposes of this Rule, "advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. Such term shall include any printed or published material, audio or visual material, website, or descriptive literature concerning a mortgage loan subject to regulation under O.C.G.A. Title 7, Chapter 1, Article 13 whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic, billboard or similar display. The term advertisement shall not include promotional materials containing fifteen words or fewer relating to the mortgage business of the entity which material does not contain references to a specific rate or product, such as balloons, hats, pencils or pens, and calendars.
g. Every mortgage broker or mortgage lender required to be licensed or registered shall maintain a record of samples of its advertisements (including commercial scripts of all radio and television broadcasts) for examination by the Department of Banking and Finance.
h. An advertisement shall not include an individual's loan number, loan amount, or other publicly available information unless it is clearly and conspicuously stated in bold-faced type at the beginning of the advertisement that the person disseminating it is not authorized by, acting on behalf of, or otherwise affiliated with the individual's lender, which shall be identified by name. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient's lender.