8 Hour SC-BFI SAFE Comprehensive: Compliance for 2023

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Date of Course Content: 5/10/23
Date of Course Approval:

Provider ID: 140003

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Module 1 Federal Laws

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

Other abbreviations include:

"MMC" – Multi-State Mortgage Committee

"CSBS" – Conference of State Bank Supervisors

"AARMR" – American Association of Residential Mortgage Regulators

"CFPB" – Consumer Financial Protection Bureau

"MME" – Multi-State Mortgage Entities

"NMLS" – Nationwide Mortgage Licensing System

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

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

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

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MMC Influences

Licensee Oversight Authority

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

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

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

Multi-State Mortgage Committee

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

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

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

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MMC Mortgage Examination Manual

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

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

Federal and State Agencies

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

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

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

MMC Examination Influence on License Topics

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

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

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

RESPA Compliance

Charging Advanced Fee

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

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

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

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

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[2] RESPA 12 C.F.R. §1024.7(a)(4)

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

Initial Application Disclosure

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

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

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

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

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

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[3] § 1024.7 Good faith estimate

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

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Lender Bound by Fees Disclosed

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

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

TILA Intent to Proceed

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

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

Truth-in-Lending Compliance

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

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

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

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

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

Third Party Average Charges

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

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

Official Interpretation of Third-Party Average Charges

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

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

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

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

For example:

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

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

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

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

[8] § 1026.19(f)(3)(ii)(B)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Average Charge Prohibited Fees

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

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

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

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

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

Average Charge Retention Period

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

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

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

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

TILA HPML Compliance

Regulation Z is a consumer protection law that provides safeguards for unsuspecting financing consumers. One of the safeguards in place is Section 35 of TILA, Higher-Priced Mortgage Loans. It states a creditor cannot extend a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals with required analysis, if the seller acquired the property:

- Ninety or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10%, or
- 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20%.[11]

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

- The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the purchase agreement to acquire the property from the seller.
- Changes in market conditions between the date the seller acquired the property and the date of the purchase agreement to acquire the property; and

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

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

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

Official Interpretation HPML Appraisal Compliance

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

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

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

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

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

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

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

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

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

TILA – Loan Estimate Compliance

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

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

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

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

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

Official Interpretation of Late Payment

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

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

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

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

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

TILA Closing Disclosure Summary of Required Content

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

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

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

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

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

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

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

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

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

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Closing Disclosure Accurate Information

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

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

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

Closing Cost Details & Loan Costs Sections

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

Official Interpretation of Closing Cost Details

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

Origination Charges Section

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

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

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

Official Interpretation of Origination Charges

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

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

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

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

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

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

Services Borrower Did Not Shop for Section

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

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

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

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

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

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

Official Interpretation of Services You Cannot Shop for

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

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

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

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

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

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

Examples of Title Terms:

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

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

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

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

Services the Borrower Did Shop for

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

Official Interpretation for Services Borrower Did Shop for

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

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

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

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

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

Official Interpretation of Other Charges

Owner's Title Insurance Policy Rate

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

Simultaneous Title Insurance Premium Rate in Purchase Transactions

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

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

Designation of Optional Items

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

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

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

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

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

Official Interpretations of Regulation Z States "Prepaids"

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

For example, periodic charges that are disclosed include:

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

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- Homeowner's insurance premiums[31]

TILA – Disclosure of Liability after Foreclosure & Content Table Completion

"Other Disclosures" Section of Closing Disclosure

Official Interpretations of Regulation Z State Liability After Foreclosure

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

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

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

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

Official Interpretation of State Law Liability After Foreclosure

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

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

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

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

Official Interpretation of Contact Information

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

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

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

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[33] § 1026.38(p)(3)

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

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

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

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

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

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

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

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

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

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

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

TILA/RESPA Exceptions to Form H-25 Disclosure

Separation of Consumer and Seller Information

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

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

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

Official Interpretation of Separation of Consumer and Seller Information

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

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

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

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

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

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TILA Corrected Closing Disclosure

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

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

Official Interpretation of Changes to CD after Consummation

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

The following examples illustrate this requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For example:

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

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

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

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

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

ECOA Notice of Action Taken Compliance

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

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

- of action taken, in accordance with Regulations; or

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

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

Content of Notification When Adverse Action is Taken

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

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

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

ECOA Notice Requirements

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

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

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

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

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

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

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

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

ECOA Disclosure Provided in Timely Manner

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

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

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

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Notification of Action Taken Timing

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

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

Official Interpretation of Credit Decision Notification

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

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

Timing of Notice - When an Application is Complete

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

Incomplete Application - Denial for Incompleteness

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

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

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

Incomplete Application - Denial for Reasons Other than Incompleteness

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

Counter Offers

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

Length of Counteroffer

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

Denial of a Telephone Application

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

Official Interpretation Preapprovals

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

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[49] See interpretation of Paragraph 9(a)(1). in Supplement I

[50] https://www.consumerfinance.gov/rules-policy/regulations/1002/9/

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Official Interpretation Additional Adverse Action Requirement

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

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

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

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

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

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

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Module 2 - Ethics

Ethics Module Objective:

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

Ethics

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

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

Definitions

Ethics

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

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

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Morals

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

Integrity

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

Misrepresentation

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

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

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

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

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

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Mistakes

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

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

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

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

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

Fraud

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

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

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

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Ethical Federal Laws

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

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

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

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

Ability to Repay Regulations

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

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

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

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

Gramm-Leach-Bliley Act

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

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

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

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

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[58] https://fhlbanks.com/

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

Customer Relationships and Loans

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

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

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

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

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

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

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

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

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

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

GLB Prohibition

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

Nonpublic Information In-depth Review

GLB defines Nonpublic Information (NPI) as:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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GLB Terms Defined

Nonaffiliated third party

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

Affiliate

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

Joint agreement

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

GLB Disclosure

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

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

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

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

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

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

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

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

Identity Theft Issues

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

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

The Fair Credit Reporting Act

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

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

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

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

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

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

Identity Theft Program

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

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

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

[64] 16 CFR Part 681, RIN 3084–AA9

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These “red flags” fall into these categories:

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

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

Current Identity Theft Issues

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

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

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

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

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

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

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

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

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

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

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

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

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

Red Flag Rules

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

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

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

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

Experian Fraud Tip Sheet-The Fraud Balancing Act

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

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

These are the suggestions Experian provides to balance fraud.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Anti-Money Laundering Issues in Mortgage Lending

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

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

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

Money laundering involves transactions intended to:

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

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

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

Bank Secrecy Act

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

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

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

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

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

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

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

Anti-Money Laundering Program ("AML")

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

AML is applicable to:

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

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

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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

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

Money Laundering Risks in the Real Estate Sector

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

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

Corruption and Residential Real Estate

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

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

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

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

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

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

Suspicious Activity Red Flags

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

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

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

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

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

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

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

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

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

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

Suspicious Activity Reports

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

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

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

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

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

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

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

Voluntary Reporting of Suspicious Activity

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

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

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

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

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

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

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

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

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

Shell Companies Decreases Transparency

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

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

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

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

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

"All-Cash" Real Estate Purchases Further Decreases Transparency

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

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

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BSA Penalties

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

Telemarketing and Consumer Fraud and Abuse Prevention Act (TCPA)

Telemarketing Sales Rule

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

The TSR:

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

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

TSR Prohibitions

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

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

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

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

Do Not Call Provision

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

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

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

Prompt Oral Disclosures in Outbound Sales Calls and Upselling Transactions

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

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

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

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

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

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

TSR Violations and Fines

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

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

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

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

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

Scenarios of Predatory Acts

Examples of senior predatory lending:

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

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

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

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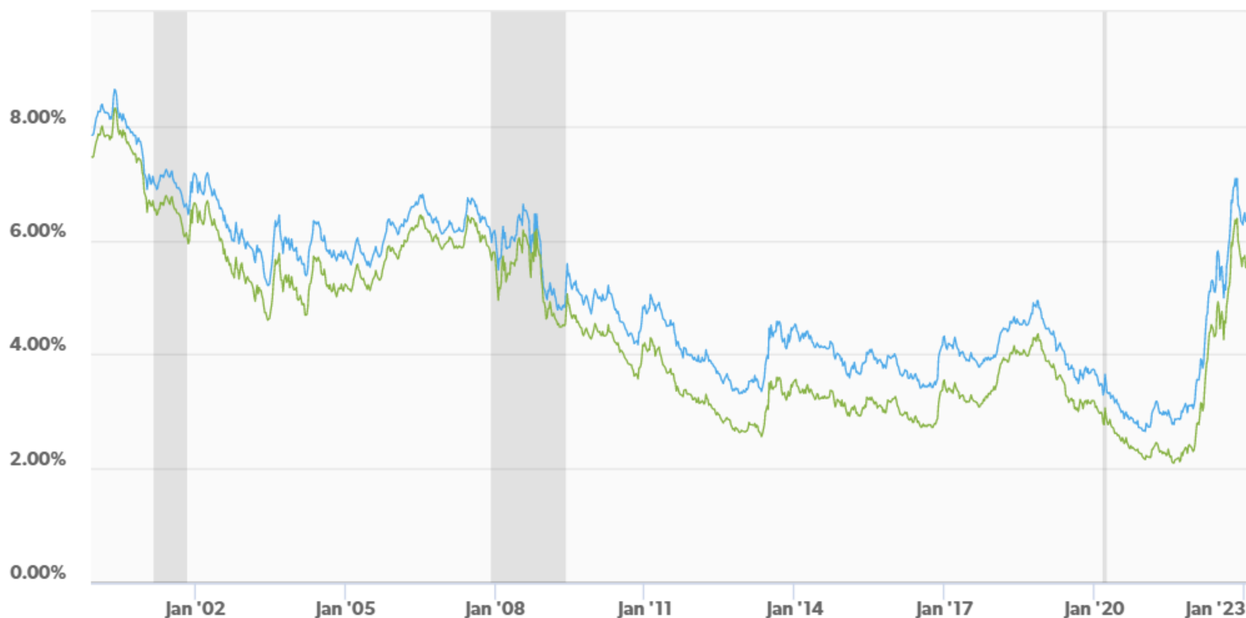
Module 3 – Non-Traditional

Non-traditional Module Objective:

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

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

Mortgage Interest Rates from 2002 to 2023



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

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

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

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

2-1 Buydowns

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

Buydowns vs. Discount Points

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

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

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

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

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

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

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

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

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

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

What if the borrower used their funds for discount points?

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

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

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

How do you know which to choose?

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

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Buy-down Benefits

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

Discount Points Benefits

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

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

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Prepayment Penalty Benefit

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

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

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

Assumable Loans

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

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

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

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

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

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

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

Potential assumption benefits:

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

Considerations:

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

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

FHA Assumptions

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

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

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

VA Assumption

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

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

What Happens to the Veteran Seller's VA Eligibility?

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

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

Can the Veteran Use Partial Eligibility to Purchase another Home?

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

USDA Assumptions

USDA loans are assumable in two ways:

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

Mortgage Assumption after Death and Divorce

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

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

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Are Conventional Loans Assumable?

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

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

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

Illegal Assumption

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

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

Source of Down Payment

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

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

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

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

What is a Blended Rate?

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

Blended Rate Example

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

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

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

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

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

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

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

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

Type of Assumptions

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

Simple Assumption

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

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

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Novation Assumption

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

Adjustable-Rate Mortgages

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

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

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

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

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Components of ARMs

Index

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

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

Commonly used adjustable-rate mortgage indices include:

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

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

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

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

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

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

Margin

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

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

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

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

For Example, fully indexed rate:

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

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

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6.875%   Fully Indexed Rate

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

Teaser Rates

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

Rate Adjustment Period

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

Per Adjustment Rate Cap and Floor Interest Rate

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

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

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

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

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

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

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

Conversion Option

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

Adjustable-Rate Loan Program Differences

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

Review of Conventional ARMS

Conforming key ARM features.[98]

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

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

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

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

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

Review of FHA 251 ARM Program

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

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

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

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

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

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

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

Review of VA ARMS

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

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

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

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

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

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

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

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

MCC Tax Credits

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

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

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

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

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

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

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

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

MCC Eligibility and Benefits

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

Qualifying with MCC

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

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

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

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

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

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

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

FHA Home Loans MCC Eligibility Requirements

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

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

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

VA Home Loans MCC Eligibility Requirements

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

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

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

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

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

Conventional Loan MCC Eligibility Requirements

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

Use the following calculation when determining the available income:

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

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

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

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

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

FHA Mortgage Updates

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

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

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

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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

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

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

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

Required Documentation

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

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

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

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

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

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

A Property is not eligible for FHA insurance if:

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

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

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

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

Eligible Properties

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

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

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

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Requirements for PFI

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

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

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

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

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

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

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

Mortgagee Letter 2022-11-Revised Appraisal Validity Periods

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

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

VA Mortgage Updates

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

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

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

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

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

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

[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

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

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

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

Conforming Loan – 2023 Cash Out and LLPA Changes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Module 4 – South Carolina State Content

South Carolina Department of Consumer Affairs and South Carolina Board of Financial Institutions

OVERVIEW

In this lesson students will learn about the South Carolina Department of Consumer Affairs, the South Carolina State Board of Financial Institutions, as well as some of the laws and regulation definitions pertaining to mortgage lending. Students will have an understanding of the importance of and be well versed in the responsibilities, limitations, and structure of both the South Carolina Department of Consumer Affairs and the South Carolina State Board of Financial Institutions. Additionally, students will become familiar with some of the more important laws and regulation definitions relating to mortgage lending in South Carolina, including the South Carolina Mortgage Lending Act and the High Cost Consumer Protection Code, as well as provision in Chapter 3 and Chapter 10 of Title 37 in the South Carolina Code of Law.

Learning Objectives

After reviewing this lesson, students should:

- Be able to discuss the authority, structure, and responsibilities of the South Carolina Department of Consumer Affairs and the South Carolina State Board of Financial Institutions
- Understand different definitions included in the state laws and regulations
- Know some of South Carolina Laws and Regulations as they pertain to mortgage loan originators

South Carolina Department of Consumer Affairs

There are two very important regulatory offices in South Carolina that, among other things, pertain to mortgage lending and licensing; the South Carolina Department of Consumer Affairs and the South Carolina State Board of Financial Institutions. We will first start by discussing the South Carolina Department of Consumer affairs and later move on to discussing the South Carolina State Board of Financial Institutions.

In 1974, the South Carolina Consumer Protection Code [Title 37] established the South Carolina Department of Consumer Affairs (SCDCA or Department for short). The Department of Consumer Affairs is meant to administer and enforce the Consumer Protection Code. As South Carolina's consumer protection agency, the Department is also entrusted to enforce Title 37 as well as other regulatory statutes. The Department's goal is to protect consumers in South Carolina.

The South Carolina Department of Consumer Affairs website, http://www.consumer.sc.gov/, has a lot of useful information regarding its purpose, structure, and responsibilities. We will go over some of this information below.

The South Carolina Department of Consumer Affairs helps:

- Formulate and modify consumer laws, policies and regulations
- Regulate the consumer credit marketplace
- Resolve complaints arising out of the production, promotion, and sale of consumer goods and services in the state (whether or not credit is involved)
- Promote a healthy competitive business climate with mutual confidence between buyers and sellers.

The Consumer Protection Code authorizes the South Carolina Department of Consumer Affairs to do the following:

- Analyze and mediate individual complaints
- Investigate business practices if a pattern of fraud is suspected
- Inform about complaints filed against a business

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- Educate consumers about unfair and deceptive practices
- Take legal action to prevent persons from violating the Code and prohibit unconscionable conduct.

However, the Consumer Protection Code does **not** authorize the Department to:

- Advise a consumer of whether a particular business is reputable
- Recommend a company with which a consumer should do business
- Handle complaints against a state agency

In order for the Department to do what the Code has authorized it to do, it has had to be structured in a specific way. The Commission on Consumer Affairs governs the South Carolina Department of Consumer Affairs as well as appoints the Administrator and the Department itself is structured into six different parts, each with different and specific responsibilities:

- Administration – This division includes:
    - The resources necessary to support the operation of the Department.
    - The appointed person who is the Administrator. The Administrator runs the daily operations of the Department and is entrusted with advising the legislature and Governor on consumer issues and the state of credit in South Carolina.
    - Procurement, human resources, accounting and information technology.
- Consumer Services
    - The consumer services division handles consumer complaints that are made regarding the businesses that are regulated by the Department as well as complaints that are unregulated. Complaints against businesses that are not regulated by the Department are referred to the appropriate jurisdiction.
    - The division's mediation process helps alleviate the courts' workload and saves consumers and businesses money as going through the courts usually entails a larger cost.
- Consumer Advocacy
    - The consumer advocacy division specifically deals with the insurance interests of consumers. To do so, the division reviews insurance rate requests that are filed with the Department of Insurance with the goal of generating savings for both consumers and businesses.
    - The division has regulatory responsibility over various different organizations as denoted in many acts:
        - Continuing Care Retirement Communities (Act 97 of 1989),
        - Discount Medical Plan Organizations (Act 377 of 2006),
        - Professional Employer Organizations (Act 169 of 1933), and
        - The regulation of the sale of cosmetic contact lens without a prescription from an authorized dispenser.
- Public Information and Education
    - The public information and education division's sole purpose is to provide the consumer, businesses and media with education and educational resources. This division provides information on consumer rights and responsibilities and provides presentations, webinars, and other resources helpful to the consumer.

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- A few of the helpful webinar topics covered by the division and available to consumers include webinars on:
  - Identity theft
  - Debt collection
  - Foreclosures
  - Credit
- The division also takes calls from consumers regarding consumer scams and laws and provides press releases and consumer education brochures.

- Identity Theft Unit
  - The identity theft division handles the administration and enforcement of the South Carolina's Financial Identity Fraud and identity Theft Protection Act as well as other state acts pertaining to identity theft and the protection of consumers.
  - The identity theft division also provides education and outreach for consumers. However, the division's main focus is on identity theft.
  - The division also provides warnings to the public regarding new scams.
  - Additionally, the division provides step-by-step guidance on what to do if a consumer is a victim of identity theft.
- Legal Division
  - The legal division administers and enforces the law governing consumer credit transactions.
  - The legal division also has regulatory responsibility over other industries:
    - Motor Clubs (Act 400 of 1984),
    - Rent-to-own businesses (Act 121 of 1985),
    - Physical Fitness Services (Act 165 of 1985),
    - Pawnbrokers (Act 491 of 1988),
    - Mortgage Loan Brokers (Act 544 of 1988),
    - Telephone Solicitations (Act 656 of 1988),
    - Express Warranties on Motor Vehicles (Act 142 of 1989),
    - Athlete Agents (Act 456 of 1990; Act No. 300 of 2004),
    - Motor Vehicle Subleasing (Act 131 of 1991),
    - Loan Brokers (Act 452 of 1992),
    - Motor Fuel Pricing (Act 161 of 1993),
    - Prize Promotions (Act 483 of 1994),
    - Prepaid Legal Services (Act 328 of 2000),
    - Consumer Credit Counseling (Act 111 of 2005)
  - The division also provides consumer law guidance to the financial industry, magistrates, attorneys, and law enforcement agencies, and serves as the legal counsel for the Board of Financial Institution's Consumer Finance Division, of which we will discuss later on in this lesson.

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As you can see, the South Carolina Department of Consumer Affairs has many responsibilities and handles various different aspects pertaining to the financial sector in an effort to protect South Carolina's consumers. Another important regulatory office is that of the South Carolina State Board of Financial Institutions. We will review its responsibilities and structure next.

South Carolina State Board of Financial Institutions

The South Carolina State Board of Financial Institutions (the Board) is another important office in South Carolina pertaining to consumer protection. According to their website, the South Carolina Board of Financial Institutions' mission is to serve the people of South Carolina by preserving a sound financial community and protecting the borrowing public by ensuring that the state banking and consumer finance laws and regulations are followed. The State Board is responsible for the supervision, licensing, and examination of:

- All State chartered banks
- Savings and loans associations
- Savings banks
- Credit unions
- Trust companies
- Development corporations
- Consumer finance companies
- Deferred presentment companies
- Check cashing companies

Title 34 of South Carolina's Code of Laws establishes the South Carolina State Board of Financial Institutions. Title 34 Section 34-1-20 details the structure of the Board.

- The Board is composed of eleven members.
- Members of the Board cannot serve more than two consecutive four-year terms.
- The code denotes requirements that must be met in order to be appointed to the board:
    - One of the members is the State Treasurer who also is the chairman of the Board.
    - The rest of the members of the Board are appointed by the Governor with the advice and consent of the Senate.
    - Four of the members must be involved in banking and recommended by the South Carolina Bankers Association.
    - One of the members must be recommended by the association of supervised lenders.
    - One of the members must be engaged in the mortgage lending business and recommended by the Mortgage Banker Associations of the Carolinas.
    - One of the members must be engaged in the licensed consumer finance business as a restricted lender or a supervised lender and recommended by the Independent Consumer Finance Association.
    - Two of the members must be engaged in the cooperative credit union business and recommended by the State Cooperative Credit Union League.
    - One of the members must not be affiliated with a financial organization and serve as a representative of the consumers in the South Carolina.

Title 34, Chapter 1, entitled State Board of Financial Institutions, refers to the Board and states that it has the power to supervise all banks and building and loan associations and provide regulations and instructions for

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the direction, control and protection of all such institutions, the conservation of their assets and the liquidation thereof [§34-1-60].

Additionally, no bank, building and loan association, savings and loan association or savings bank can be granted a charter of be established without the written approval of the Board [§34-1-70].

If a bank, building and loan association, savings and loan association, or savings bank wants to become established, it is up to the Board to commence an investigation and determine whether the applicant is qualified to operate the institution, has complied with the law, and whether they would serve the public interest. Furthermore, the Board must conduct an annual study regarding the capital reserve position of all financial institutions and intermediaries subject to its supervision and report its findings to the General Assembly. The Board must include any recommended legislation within the report to the General Assembly [§34-1-130].

Title 34 also denotes that the Board must have an examining department. The Board must appoint a Commissioner of Banking that will be in charge of the examining department. It is the Commissioner of Banking that reports criminal violations to the Board [§34-1-90].

If anyone is deemed guilty of obstructing the Commissioner of Banking or his assistants, he or she will be subject to imprisonment for no more than one year, or fined no more than one thousand dollars, or both, in the discretion of the court [§34-1-120].

It is the South Carolina State Board of Financial Institutions that legally permits mortgage lenders and loan originators operating pursuant to a license to make mortgage loans, to engage in a mortgage lending activity authorized for licensed mortgage lender and loan originators by law or by regulation of an agency given supervisory authority over those institutions [§34-1-110 (A)(5)].

In fact, the Board is given a lot of legal power to permit various financing related activity. The Board, by law, may permit all of the following: [§34-1-110 (A)(1)(2)(3)(4)(5)(B)]

- State-chartered banks to engage in any activity authorized for national banks and by federal law or regulation of the Comptroller of the Currency or for state-chartered savings and loan associations by this title [34] or regulation or operational instruction of the State Board of Financial Institutions
- State-chartered savings and loan associations to engage in any activity authorized by federally chartered savings and loan associations by federal law or regulation of the Office of Thrift Supervisions or for the state-chartered banks by this title [34] or regulation or operational instruction of the State Board of Financial Institutions
- Cooperative credit unions to engage in any activity authorized for federally chartered credit unions by federal law or by regulation of the National Credit Union Administration
- Consumer finance companies operating pursuant to a license to make supervised loans as provided in Part 5, Chapter 3, Title 37, to engage in any lending activity authorized for supervised financial organizations by law or by regulation of any agency given supervisory authority over those institutions, except where otherwise restricted by statute
- The Board permits mortgage lenders and loan originators operating pursuant to a license to make mortgage loans as provided in Chapter 22, Title 37, to engage in a mortgage lending activity authorized for licensed mortgage lenders and loan originators by law or an agency given supervisory authority over those institutions, except where otherwise restricted by statute.

As you can see, the South Carolina State Board of Financial Institutions is entrusted with a lot of responsibility. In order to oversee and complete all that the Board is responsible for, the Board is efficiently divided into two parts. The Boards website (www.bofi.sc.gov) summarizes the division as follows:

- The Banking Division - supervises and regulates State chartered banks, trust companies, savings banks, and credit unions.

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- The Consumer Finance Division - is responsible for regulating licensing and compliance examination for non-depository consumer lending, deferred presentments services, check cashing, mortgage lending, mortgage servicing and all of their employees doing loan originating or loan modification activity.
  - The following must be licensed by the Consumer Finance Division:
    - Consumer loans made by non-bank/depository institutions with interest rates exceeding 12% APR
    - A person engaging in the business of deferred resentment services (payday lending)
    - Non-depository entities performing check cashing activities where fees are charged or other consideration is made
    - Mortgage lending or servicing by non-depository entities
    - Subsidiaries of depository institutions that are not entirely owned and regulated by one of the federal banking agencies
    - Loan originators employed by licensed lenders/servicers

The Board, just as the Department, plays a large role in matters pertaining to mortgage lending and licensing in the state of South Carolina. Both of these institutions are responsible for various aspects of the process of receiving and keeping a mortgage loan originator license.

Officially, the South Carolina State Board of Financial Institutions regulates mortgage lender or servicers and mortgage loan originators. The South Carolina Department of Consumer Affairs regulates mortgage brokers, including table funding and loan correspondents, and it regulates mortgage broker loan originators.

It depends on the type of business operations which licensing jurisdiction, whether the Department of Consumer Affairs or the State Board of Financial Institutions, the individual will belong to.

We will delve into what these regulations look like with regards to applying for, obtaining, and maintaining a license as a mortgage loan originator later in the course. For now, we will go over the various Acts enacted that provide the requirements that both of these offices enforce and monitor when it comes to mortgage lending, licensing, and overall consumer protection. We will turn to these laws next.

South Carolina Law and Regulation Definitions - The South Carolina Mortgage Lending Act

The South Carolina Mortgage Lending Act is now part of the South Carolina Consumer Protection Code, or Title 37. Chapter 22 of Title 37 contains the regulations pertaining to Mortgage Lending. We will discuss these here. If you would like to access the law itself, it can be accessed through the South Carolina Legislature website: www.scstatehouse.gov.

Before we get into what the law states about mortgage lending and licensing itself in South Carolina, we should review some of the terminology and its legal definitions that we will encounter while discussing this law and many other laws pertaining to mortgage lending. These definitions can be found in Chapter 22 of the Consumer Protection Code. The following provides the legal definition to terminology that is most commonly used in the mortgage industry as it is intended to be defined in the state of South Carolina.

For the purposes of South Carolina law regarding mortgage lending:

- *"Act as a mortgage broker"* means to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by:
  - (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution,
  - (ii) engaging in table funding of a mortgage loan, or
  - (iii) acting as a loan correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. "Act as a mortgage

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broker" also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service as described in 12 U.S.C. 2602(3) and 24 C.F.R. Part 3500.2(b). [§37-22-110(1)]

- "*Act as a mortgage lender*" means to engage in the business of making or servicing a mortgage loan for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, including soliciting, processing, placing, or negotiating a mortgage loan. [§37-22-110 (2)]
- "Board" means the State Board of Financial Institutions [[§37-22-110(6)].
- "Borrower" means a natural person in whose dwelling a security interest is or is intended to be retained or acquired if that person's ownership interest in the dwelling is or is to be subject to the security interest [§37-22-110(7)].
- "Branch manager" means the natural person who is in charge of and who is responsible for the business operations of a branch office of a licensee
[§37-22-110(8)].
- "Branch office" means an office of the licensee that is separate and distinct from the licensee's principal office [§37-22-110(9)].
- "Clerical or support duties" mean administrative functions after the receipt of an application by a licensed mortgage originator or lender, such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include [§37-22-110(10)(a)(b)]:
  - the receipt, collection, and distribution common for the processing or underwriting of a residential mortgage loan; or
  - any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include taking a residential mortgage loan application, offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
- "Commissioner" means the designee of the State Board of Financial Institutions for the purposes of licensing and regulation of mortgage lenders and mortgage loan originators pursuant to this chapter [§37-22-110(11)].
- "Employee" means a natural person who has an employment relationship, acknowledged by both the natural person and the mortgage lender, and is treated like an employee for purposes of compliance with the federal income tax laws
[§37-22-110(15)].
- "Exempt person" means: [§37-22-110(18)(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)]
  - an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;
  - a depository institution or subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;
  - an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when actin gin the scope of employment for the exempt person;
  - a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;
  - an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person's residence;

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- an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;
- an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts;
- a retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee:

  (i) does not receive compensation or other gain for engaging in activities described in item (1), (2), or (26) in excess of any compensation or gain received in a comparable cash transaction;

  (ii) discloses in writing to the consumer any corporate affiliation with any creditor and, if a corporate affiliation exists, the identity of at least one unaffiliated creditor; and

  (iii) does not directly negotiate with the consumer or lender on loan terms including, but not limited to, rates, fees, and other costs; or
- any other person deemed exempt pursuant to the Secure and Fair Enforcement Licensing Act (SAFE Act), Section 1508, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and any regulations promulgated thereunder.

- "Individual servicing a mortgage loan" means an employee of a mortgage lender licensed in South Carolina that: [§37-22-110(22)(a)(b)(c)]
  - collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed mortgage lender for a mortgage;
  - works with the borrower and the licensed mortgage lender, collects data, and makes decisions necessary to modify, either temporarily or permanently, certain terms of those obligations; or
  - otherwise finalizes collection through the foreclosure process.
- "Licensee" means a person who is licensed pursuant to this chapter [§37-22-110(23)].
- "Loan correspondent" means a person engaged in the business of making mortgage loans as a third party originator and who does not engage in all three of the following activities with respect to each mortgage loan: [§37-22-110 (25(a)(b)(c)]
  - underwrite the mortgage loan written by their employees;
  - approve the mortgage loan; and
  - fund the mortgage loan utilizing an unrestricted warehouse or credit line
  - A loan correspondent is not a mortgage lender

    (This particular definition was added to this chapter after the Mortgage Lending Act was amended)
- "Loan originator" means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan.
  - The definition of "loan originator" does not include an exempt person described in item (18) or a person solely involved in extensions of credit relating to timeshare plants, as that term is defined in Section 101(53D) of Title 11, United States Code.

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- The definition of loan originator does not apply to an individual servicing a mortgage loan as that term is defined in this chapter until July 31, 2011, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines before that time that those individuals servicing mortgage loans are "loan originators" as that term is defined in the SAFE ACT pursuant to Section 1508 of Title V of the housing and Economic Recovery Act of 2008, Public Law 110-289. Solely acquiring and reviewing a credit report does not constitute acting as a loan originator. [§37-22-110 (26)]

- "Mortgage broker" means a person who acts as a mortgage broker, as that term is defined in time (1)" [§37-22-110].
- "Registered loan originator" means a natural person who meets the definition of loan originator and is an employee of a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by the federal banking agency or an institution regulated by the Farm Credit Administration and is registered with and maintains a unique identifier through the National Mortgage Licensing System and Registry. [§37-22-110(36)]

The definitions that we just reviewed, which are included in the South Carolina Mortgage Lending Act, are important for the understanding of certain laws and regulations that pertain to mortgage lending in South Carolina.

The South Carolina Mortgage Lending Act of 2009 not only provides definitions to some of the more important terms in the mortgage lending industry, it also provides the requisites to become a licensed mortgage lender, loan originator, or someone acting as a mortgage lender.

The South Carolina Mortgage Lending Act explains that it is unlawful for a person, other than an exempt person, doing business in South Carolina to: [§37-22-120A(1)(2)]

- act as a mortgage lender or, directly or indirectly, engage in the business of a mortgage lender under any name or title; or
- circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activity within the scope of this chapter

The law also states that it is unlawful for a person to employ, compensate, or appoint as its agent a loan originator unless the loan originator is licensed as a loan originator pursuant to this chapter. An exempt person is not subject to this subsection. [§37-22-120(B)]

The license of a loan originator is not effective during a period that the person is not employed by a mortgage lender licensed pursuant to this chapter. [§37-22-120(C)]

If a loan originator ceases to be employed by a mortgage lender licensed pursuant to this chapter, the loan originator and the mortgage lender by whom that person is employed promptly shall notify the commissioner in writing. The mortgage lender's notice must include a statement of the specific reason or reasons for the termination of the loan originator's employment. The reason for termination is confidential information and must not be released to the public. [§37-22-120(D)]

A loan originator must not be employed simultaneously by more than one mortgage lender licensed pursuant to this chapter. [§37-22-120(E)]

Independent contractors, except for exempt persons, must be licensed separately. Processors and underwriters who are independent contractors must be licensed as provided in section 37-22-110(34)(c). [§37-22-120(F)]

Aside from providing definitions to important terminology and the requirements for licensing of a mortgage lender or loan originator, the law also delineates reasons for revocation suspension, and termination of a license.

The South Carolina Mortgage Lending Act also provides a list of prohibited activities and demands participation in the national mortgage registry.

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It also specifies that the act can be enforced by the commissioner of the Consumer Finance Division of the Board of Financial Institutions. On May 19, 2017, amendments were made to the South Carolina Mortgage Lending Act, which went into effect on September 1, 2017. The amendments include, among others,

- the addition of the definition of "loan correspondent" to the list of defined terminology in the act;
- updated the pre-licensing and continuing education requirements for mortgage loan originators;
- placed new requirements on surety bond amounts;
- enabled a mortgage loan originator's residence be deemed a branch office, and
- reconciled the term "exempt person" with persons deemed exempt in the federal SAFE Act.

It was this amendment that added the requirement for South Carolina Law content in both pre-licensing and continuing education for mortgage loan originators.

We will be delving into the details the South Carolina Mortgage Lending Act provides for mortgage loan originator license requirements, qualifications, and the application process later in the course.

South Carolina Law and Regulation Definitions - The High Cost and Consumer Home Loan Act

Another important act in South Carolina pertaining to mortgage lending is the High Cost and Consumer Home Loan Act.

- The Act was added to the Consumer Protection Code, or Title 37, under Chapter 23 in 2003.
- The Act sets up protections for South Carolina homeowners and creates a category for high cost home mortgages with a threshold.
- The Act also provides definitions for relevant terminology. We will review some of these terms first and then discuss the provisions of the Act.

According to the High Cost and Consumer Home Loans Act: [§37-23-20]:

- "Affiliate" means a company that controls, is controlled by, or is under common control with another company, as described in the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841, et seq.), as amended [§37-23-20(1)].
- "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the federal Truth in Lending Act (15 U.S.C. Section 1601, et seq.) and the regulations promulgated under it by the Federal Reserve Board, both as amended [§37-23-20(2)].
- "Broker" or "mortgage broker" means a person or organization in the business of soliciting, processing, placing, or negotiating mortgage loans for others or offering to process, place, or negotiate mortgage loans for others. A broker or mortgage broker also includes a person or organization who brings borrowers or lenders together to obtain mortgage loans or renders a settlement services. [§37-23-20(3)]
- "Consumer home loan" means a loan in which: [§37-23-20(4)(a)(b)(c)]
    - the borrower is a natural person;
    - the debt is incurred by the borrower primarily for personal, family, or household purposes; and
    - the loan is secured by a mortgage on real estate upon which is located or is to be located a structure designed principally for occupancy of from one to four families and that is or is to be occupied by the borrower as the borrower's principal dwelling.
- "Conventional conforming discount points" means loan discount points knowingly paid by the borrower for the purposes of reducing, and which in fact result in a bona fide reduction of, the interest rate applicable to the loan, so long as the home loan has an annual percentage rate that does not exceed the conventional mortgage rate by more than one percentage point [§37-23-20(5)]

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- “Conventional mortgage rate” means the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater [§37-23-20(6)]
- “Conventional prepayment penalty” means a prepayment penalty or fee that may be collected or charged in a home loan and that is authorized by law other than by this chapter, provided the home loan (a)does not have an annual percentage rate that exceeds the conventional mortgage rate by more than two percentage points; and
  (b) does not permit prepayment fees or penalties that exceed two percent of the amount prepaid [§37-23-20(7)]
- “Flipping” a consumer home loan means the making of a consumer home loan that refinances within forty-two months an existing consumer home loan of the borrower when the new loan does not have a reasonable, tangible net benefit to the borrower, considering all the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower’s circumstances. [§37-23-30(8)].
- “High-cost home loan” means: [§37-23-20(9)(a)(i)(ii)(iii)(iv)(v)(b)]
  - a loan, other than an open-end credit plan or a reverse mortgage transaction, in which the:
    - principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association;
    - borrower is a natural person;
    - debt is incurred by the borrower primarily for personal, family, or household purposes;
    - loan is secured by either a security interest in a residential manufactured home, as defined in Section 37-1-201(24) which is to be occupied by the borrower as the borrower’s principal dwelling, or a mortgage on real estate upon which there is located or there is to be located a structure designed principally for occupancy from one to four families and which is or is to be occupied by the borrower as the borrower’s principal dwelling; and
    - terms of the loan exceed one or more of the thresholds as defined in item (15); or
    - be an adjustable rate mortgage at the fully indexed rate assuming a fully amortizing repayment schedule that would exceed one more of the thresholds as defined in item (15)
- “Obligor” means each borrower, co-borrower, cosigner, or guarantor obligated to repay the loan [§37-23-20(11)]
- “points and fees” means: [§37-23-20 (13)(a)(b)(c)(d)]
  - items required to be disclosed pursuant to Sections 226.4(a) and 226.4(b) of Title 12 of Code of Federal Regulations, as amended, except interest or the time-price differential;
  - charges for items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase “points and fees”;
  - compensation paid directly by the borrower to a mortgage broker not otherwise included in the subitem (a) or (b);
  - the maximum prepayment fees and penalties that may be charged or collected pursuant to the terms of the loan documents. 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

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program, including a Federal Housing Administration program, is not considered a prepayment fee or penalty

- "Threshold" means either (A) or (B) in a loan transaction, whichever is applicable: [§37-23-20(15)(A)(B)(i)(ii)(iii)(C)(i)(ii)(iii)]
    - *(A)* Without regard to whether the loan transaction is a "residential mortgage transaction" as the term "residential mortgage transaction" is defined in Section 226.2 (a)(24 of Title 12 of the Code of Federal Regulations, as amended, the annual percentage rate of the loan at the time the loan is consummated is such a rate that the loan is considered to be a "mortgage" pursuant to Section 152 of the Home Ownership and Equity Protection Act of 1994, as amended, and regulations adopted pursuant to it by the Federal Reserve Board, including Section 226.32 of Title 12 of the Code of Federal Regulations, as amended, except with regard to a mortgage or loan secured by a nonreal estate manufactured housing lien, the term "threshold" means the annual percentage rate of the nonreal estate secured manufactured housing line at the time the mortgage or loan is consummated exceeds by more than ten percentage points the yield on United States Treasury securities having comparable periods of maturity as of the fifteenth day of the month immediately preceding the month in which the application of extension of credit is received by the lender;
    - *(B)* the total points and fees payable by the borrower at or before the loan closing exceed:
        - five percent of the total loan amount if the total loan amount is twenty thousand dollars or more;
        - the lesser of eight percent of the total loan amount or one thousand dollars if the total loan amount is less than twenty thousand dollars; or
        - three percent of the total loan amount for nonreal estate secured manufactured housing transactions if the total loan amount in the nonreal estate secured housing transaction is twenty thousand dollars or more;
    - *(C)* Except that the following discount points and prepayment fees and penalties are excluded from the calculation of the total points and fees payable to the borrower:
        - up to and including two conventional conforming discount points payable by the borrower in connection with the loan transaction but only if the interest rate from which the loan's interest rate is discounted does not exceed by more than one parentage point the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, which is greater; or
        - up to and including one conventional conforming discount point payable by the borrower in connection with the loan transaction, but only fi the interest from which the loan's interest rate is discounted does not exceed by more than two percentage points the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal national Mortgage Association or Federal Home Loan Mortgage Corporation, whichever is greater;
        - a conventional prepayment penalty.

The above terminology is important in order to understand what the High-Cost and Consumer Home Loan Act provides for the mortgage lending industry in South Carolina. Section 37-23-30 of the High-Cost and Consumer Home Loan Act denotes what a high-cost home loan agreement should and should not contain. A high-cost home loan agreement may **not** contain:

- a provision that allows the lender to call a loan at his or her discretion [§37-23-30(1)]
- a balloon payment [§37-23-30(2)]

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- negative amortization [§37-23-30(3)]
- an increase in the rate after default [§37-23-30(4)]
- requirements of more than two periodic payments to the loan to be paid in advance from the loan proceeds provided to the borrower [§37-23-30(5)]
- a charge to the consumer for fees to modify, renew, extend, or amend a high-cost home loan [§37-23-30(6)]
- provide the consumer with a choice of law provisions to avoid South Carolina law [§37-23-30(7)]

The Act also provides limitations on lenders of high-cost home loans. The lender of a high-cost home loan may not:

- make a high-cost home loan without first receiving written certification from a counselor approved by the State Housing Finance and Development Authority that the borrower has received counseling on the advisability of the loan transaction
[§37-23-40(1)]
- provide a high-cost home loan without determining first whether the consumer can repay the loan [§37-23-40(2)]
- finance, directly or indirectly, prepayment penalties [§37-23-40(3)(a)]
- finance, directly or indirectly, more than 2.5 percent in points or fees [§37-23-40(3)(b)]
- charge fees or points to refinance a loan made by the lender [§37-23-40(4)]
- pay a contractor for a home improvement loan from the proceeds of a high-cost home loan [§37-23-40(5)]
  - the check must be payable jointly to the borrower and contractor
[§37-23-40(5)(a)] or
  - through a third party escrow agent [§37-23-40(5)(b)]

Additionally, the High Cost and Consumer Home Loan Act protects consumer home loans by listing prohibited acts. According to section 37-23-70:

- A lender may not engage knowingly or intentionally in the unfair act or practice of "flipping" a consumer loan [§37-23-70(A)]
- Al lender may not finance directly or indirectly credit life, disability, debt cancellation, or unemployment insurance, or other life or health insurance premiums, except that insurance premiums calculated and paid on a monthly basis are not considered to be financed by the lender [§37-23-70(B)]
- A lender may not recommend or encourage default on an existing loan or other debt before and in connection with the closing planned or closing of a consumer home loan that refinances all or a portion of the existing loan or debt [§37-23-70(C)]
- At the time of application, the loan originator or mortgage broker must provide the consumer with information as to where the consumer can file a complaint
[§37-23-70(D)]

If a lender violates this section and is found to have committed one of the prohibited acts discussed above, he or she is subject to actual damages and a penalty in an amount determined by the court of no less than $1,500 and no more than $7,500 for each transaction. However, there is a statute of limitations of 6 years, after which the borrower may no longer bring action to the lender for the violation [§37-23-70(F)].

The Act also specifies the types of disclosures consumers must have access to during the lending process. These disclosures will help educate the consumer of what is occurring during the lending process.

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At the time when the borrower receives the Loan Estimate (LE) and prior to the loan closing, the broker or mortgage broker must disclose in writing the amount being earned on the loan. The Department of Consumer Affairs shall provide a disclosure form that includes the following: [§37-23-75 (A)(1)(2)(3)(4)]

- The dollar amount of the yield spread premium and the percentage yield spread premium in relation to the loan amount;
- An itemization of the dollar amounts for points, fees, and commissions with a combined total given
- Dollar amount total of both of the item above
- If the loan is an adjustable rate mortgage, the listing of the schedule for when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract.

The disclosure form must include a signature line for the borrower to acknowledge that he has received the disclosures and that they have been explained to him or her
[§37-23-75(B)].

Together, the above provisions help protect South Carolina consumers with regards to their mortgage loans.

Chapter 3 and Chapter 10 of the South Carolina Consumer Protection Code also add other provisions that enable the protection of consumers and their mortgage loans. We will turn to these next.

South Carolina Law and Regulation Definitions - Consumer Protection Code, Chapter 3 and Chapter 10

Chapter 3

Chapter 3 of South Carolina's Consumer Protection Code, or Title 37, focuses on loans. As such, it provides definitions of terminology having to do with loans.

According to Chapter 3 a "consumer loan" is:

- A loan made by a person regularly engaged in the business of making loans which: [§37-3-104(a)(b)(c)(d)]
  - A debtor is a person other than an organization;
  - The debt is incurred primarily for a personal, family, or household purpose;
  - Either the debt is payable in installments or a loan finance charge is made; and
  - Either the principal does not exceed twenty-five thousand dollars or the debt is secured by an interest in land.
- A consumer loan does not include a loan secured by a first lien or equivalent security interest in real estate [§37-3-105]

Chapter 3 defines "loan" to include:

- The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;
- The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;
- The creation of debt pursuant to a lender credit card or similar arrangement; and
- The forbearance of debt arising from a loan. [§37-3-106]

Chapter 3 defines "Lender" to include an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment [§37-3-107(1)].

The chapter defines "principal" as the total of: [§37-3-107(3)(a)(b)(c)(i)(ii)]

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- The net amount paid to, receivable by, or paid or payable for the account of the debtor;
- The amount of any discount excluded from the loan finance charge; and
- To the extent that payment is deferred:
    - Amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in the net amount paid; and
    - Additional charges permitted by Chapter 3

Chapter 3 defines a "finance charge" as the sum of: [§37-3-109 (1)(a)(b)]

- all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including interest or any amount payable under a point, discount or other system of charges, premium or other charge for any guarantee or insurance protecting the lender against the debtor's default or other credit loss
- charges incurred for investigating the collateral or creditworthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made but excluding fees and charges paid to persons registered as mortgage loan brokers.

The above definitions provide clarity regarding certain aspects pertaining to different loans, but Chapter 3 also includes provisions that allow lenders to do certain things during the lending process.

- Chapter 3 enables the lender to collect closing costs, including fees or premiums for title, appraisals, insurances, and fees and charges to persons registered as mortgage loan brokers. [§37-3-202(d)(i)(ii)(iii)(iv)(v)(e)(f)(2)].
- The chapter also enables a lender to refinance a borrower's loan, or "unpaid balance" and charge a finance charge for doing so. [§37-3-205].
- If a loan requires a rate schedule, it must designate the rate as a variable rate and disclose the index for calculating changes in the rate and the cap or other limitation, if any, on any increases or decreases in the rate [§37-3-305(2)]

Aside from allowing lenders to conduct themselves a certain way and providing clarity regarding some of the terminology important to the world of consumer loans, this Chapter includes other provisions that add accountability to those involved in mortgage lending.

Chapter 3 grants the State Board of Financial Institutions the authority to examine periodically the loans, businesses, and records of every licensee [§37-3-506(1)].

This means that at any point the South Carolina State Board of Financial Institutions can demand access to the offices, places of business, and records of any lender in order to determine whether the lender has acted in accordance to the law. Knowing that this is the case further motivates licensees to behave in accordance to South Carolina and Federal law.

Furthermore, Chapter 3 states that any provisions that conflict with the SAFE Act must be changed in order for them to be interpreted as those in the SAFE Act and that all disclosures and advertisements must be in compliance with the Truth-in-Lending Act [37-3-301, 304].

<u>Chapter 10</u>

Chapter 10 of the Consumer Protection Code deals with "miscellaneous loan provisions." This Chapter contains additional provisions regarding loans that were not covered in Chapter 3 and other chapters in Title 37.

Chapter 10 states that prior to closing a loan, the creditor must know the borrower's preference for an attorney that will represent him or her in the closing of the loan. The creditor must do the same regarding the

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borrower's insurance agent for both hazard and flood insurance. [§37-10-102(a)] In order to comply with such, the creditor has the following options:

- He or she can include the preference information on the credit application [§37-10-102(1)]
- Provide written notice to the borrower with the information when the notice is being delivered no later than 3 days after the application is received [§37-10-102(2)]

This provision enables the consumer to be in charge of decision-making regarding the costs associated with representation in both the loan itself and the home. The consumer has the right to shop around for these services and does not need the permission of the creditor to pick his or her attorney or insurance agent.

Furthermore, a consumer is not punished for paying his or her debt in full. Chapter 10 states that for loans of 150,000 dollars or less, a debtor can prepay in full the debt without incurring any penalty as long as the debt is represented by a personal, family, or household purpose loan agreement that is secured in whole or in party by a first or junior lien on real estate and the aggregate of all sums advanced does not exceed 150,000 dollars.
[§37-10-103]

If a loan is agricultural in its purpose or under 25,000 dollars, and the debtor wants to prepay in full, the maximum loan finance charge that is allowed is 18% per annum, calculated according to the actuarial method. [§37-10-104]

This chapter also provides an additional protection to the consumer by denoting that the maximum rate of interest per year is 6%, except upon written contracts wherein, by express agreement, any interest may be charged.

The chapter also defines both the terms legal rate of interest and lawful rate of interest. Whenever the term legal rate of interest is used or lawful rate of interest in used in a contract it is meant to mean the rate specified in Section 34-31-20, which states that in all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum. [§34-31-20(A), §37-10-106(1)(2)]

If the provisions discussed above are in some way violated, the person violating the chapter can incur a penalty determined by the court of no less than $1,500 and no more than $7,000. The statute of limitations for the violation is 3 years. [§37-10-105]

Chapter 3 and Chapter 10 of the South Carolina Consumer Protection Code add to the protection of consumers by including provisions having to do with consumer loans that give more power to the consumer and add a level of accountability for mortgage lenders and brokers.

We have discussed different South Carolina laws pertaining to consumer protection. Next, we will discuss in more detail some of the provisions found in the Mortgage Lending Act and in South Carolina's Consumer Protection Code that pertains specifically to mortgage loan originators.

South Carolina License Law and Regulation

OVERVIEW

In this lesson we will review details on South Carolina laws and regulations pertaining to licensing. We will go over what activities the law states require a license, what is required of persons wanting to become licensed as mortgage loan originators or mortgage lenders, what makes a person qualified for a mortgage loan originator license as well what the application process to get a license is like in South Carolina. Additionally, we will review what the law states regarding maintaining a mortgage loan originator license once one is obtained. And finally, we will also go over what the laws and regulations state are the grounds for denying a license.

Learning Objectives

After reviewing this lesson, students should be able to:

- Know what activities require a mortgage loan originator license

- Understand what the law requires of persons wanting to become licensed as mortgage loan originators and what the application process is like for a license
- Know the requisites to maintain a mortgage loan originator license as well as the reasons for the denying of a license

South Carolina License Law and Regulation

Before we begin this lesson, it is important to understand that there are two main titles and chapters in the South Carolina Code of Laws that pertain to mortgage lending: Title 37, Chapter 22, and Title 40, Chapter 58. What we will be predominantly reviewing below is what the law denotes in Title 37, Chapter 22, which is the Mortgage Lending Act. However, Title 40, Chapter 58, or the Licensing of Mortgage Brokers Act is also relevant. Title 40, Chapter 58 contains provisions that are almost identical to those provisions in Title 37, Chapter 22.

Their main difference, however, is the fact that Chapter 22 places regulatory authority on the Commissioner of the Consumer Finance Division of the State Board of Financial Institutions and Chapter 58 places regulatory authority on the Administrator of the Department of Consumer Affairs.

As you will recall, from the last section, both of these offices are South Carolina's regulatory authority for mortgage lending in the state. The South Carolina State Board of Financial Institutions regulates mortgage lender or servicers and mortgage loan originators, while the Department of Consumer Affairs regulates mortgage brokers, including table funding and loan correspondents, and mortgage broker loan originators.

South Carolina provides specific laws and regulations pertaining to mortgage loan originators. These laws and regulations include activities that require licensure. Before we move on to discuss these, let's reacquaint ourselves with what South Carolina law defines as a mortgage loan originator.

According to Chapter 22 of Title 37, also known as the Mortgage Lending Act, a loan originator means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition "loan originator" does not include an exempt person or a person solely involved in extensions of credit relating to timeshare plans. [§37-22-26]

This same chapter defines "act as a mortgage broker" to mean to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by:

(i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution,

(ii) engaging in table funding of a mortgage loan, or

(iii) acting as a loan correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.

"Act as a mortgage broker" also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service. [§37-22-1].

Since we will be discussing what must occur in order to obtain a license in this lesson it is convenient that Chapter 22 also defines what a licensee means. A "licensee" is defined as someone who is licensed pursuant to Chapter 22.

Title 37, Chapter 22, Section 260 gives the commissioner of the South Carolina State Board of Financial Institutions the regulatory authority to create new provisions necessary to put into effect the purpose of the chapter. Using this regulatory authority in order to comply with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and with HUD rules, the South Carolina State Board of Financial Institutions added Article 4, regulations 15-64. The addition of these regulations to previous lending law were meant to clarify

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existing provisions in Chapter 22 as well as to ensure that the provisions were in line with federal laws. To that end, these regulations also define some relevant terminology: [Article 4 §15-64 (A)(2)(3)(4)(5)]

- Day - means all calendar days including Saturdays, Sundays and legal public holidays
- Employee for the purposes of compliance with the federal tax laws- means a natural person whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.
- Notice - means written notification received by the Commissioner within (7) days of any change except as defined in Section 37-22-180 (A), which states that a licensee shall report to the commissioner a change of address of the principal place of business or branch office at least 7 days before the change. (We will go over this section later in the lesson.)
- Prior Written Consent - means written consent given by the Commissioner authorizing a change of control prior to that change of control taking place. To request authorization from the Commissioner, all information regarding acquisition via stock purchase or other device must be sent to the Commissioner at least 30 days prior to the change of control.

The definitions above are important to understand what Chapter 22 states are activities that require a license as well as what the requisites are for becoming licensed and remaining licensed in South Carolina. We will now turn to the chapter's provisions regarding licensing.

Persons Required to be Licensed

There are certain activities that persons cannot participate in if they are not licensed pursuant to Chapter 22. In the state of South Carolina, if you want to participate in the following activities, you must be a licensee [§37-22-120(A)(1)(2)(B)(C)]

- Act as a mortgage lender or, directly or indirectly engage in the business of a mortgage lender under any name or title
- Circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activity within the scope of Chapter 22
- Employ, compensate, or appoint as its agent a loan originator unless the loan originator is licensed as a loan originator pursuant to Chapter 22
- Continue to conduct activities of a licensee if you are not employed by a mortgage lender that is licensed pursuant to Chapter 22

Thus, in accordance to state law, you must be a licensee if you want to participate in activities as a mortgage broker or lender. This includes advertising for any lending activity.

> It is important to note that if you do obtain a license as a mortgage loan originator, but are not employed by a mortgage lender, you cannot practice mortgage origination activities. Additionally, Chapter 22 states that if you are licensed as a mortgage loan originator, but are not employed by a mortgage lender, you and the mortgage lender must notify the commissioner of the State Board of Financial Institutions in writing with a statement that explains the reasons for termination. [§37-22-120(D)] And, a loan originator must not be employed simultaneously by more than one mortgage lender that is licensed pursuant to Chapter 22. [§37-22-120(E)]

There are some exemptions to the above. Exempt persons are not required to have a license. In the last lesson, we reviewed what an "exempt person" means according to Chapter 22. Let's quickly review this again:

> "Exempt person" means: [§37-22-110(18)(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)]

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- an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;
- a depository institution or subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;
- an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when actin gin the scope of employment for the exempt person;
- a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;
- an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person's residence;
- an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;
- an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts;
- a retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee:

  (i) does not receive compensation or other gain for engaging in activities described in item (1), (2), or (26) in excess of any compensation or gain received in a comparable cash transaction;

  (ii) discloses in writing to the consumer any corporate affiliation with any creditor and, if a corporate affiliation exists, the identity of at least one unaffiliated creditor; and

  (iii) does not directly negotiate with the consumer or lender on loan terms including, but not limited to, rates, fees, and other costs; or
- any other person deemed exempt pursuant to the Secure and Fair Enforcement Licensing Act (SAFE Act), Section 1508, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and any regulations promulgated thereunder.

The persons and activities mentioned above are not required to have a mortgage lending license or a loan originator license. However, aside from those deemed exempt, anyone wanting to engage in mortgage broker activities as well as those activities mentioned at the beginning of this lesson must have a license in order to do so in the state of South Carolina.

In order to obtain a license to participate in these activities, you must go through the license application process. Next, we will discuss what this entails.

Licensee Qualifications and Application Process

In order to obtain a mortgage loan originator license, an application for licensure must be filed with the commissioner of the Consumer Finance Division of the South Carolina State Board of Financial Institutions, on forms approved by the commissioner.

The Consumer Finance Division of the State Board of Financial Institutions focuses on regulating licensing and compliance examination for non-depository consumer lending, deferred presentment services, check cashing, mortgage lending, mortgage servicing and all of their employees doing loan originating or loan modifications. Thus, it is no surprise, that it is the commissioner of the Consumer Finance Division that is given a lot of

authority in Chapter 22 when it comes to licensing in South Carolina; starting with the fact that applicants for licensure must submit their applications to him or her.

The application itself must include information that the commissioner considers necessary.

The following is information deemed necessary for the application of a license: [§37-22-140(A)(1)(2)(3)(4)(i)(ii)(iii)(5)(6)(i)(ii)(iii)]

- name, address, and social security number or, if applicant, Employer Identification Number (EIN);
- form and place of organization, if applicable;
- proposed method of and locations for doing business, if applicable;
- qualification and business history and, if applicable, the business history of any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant, including:
    - a description of any injunction or administrative order by a state or federal authority to which the person is or has been subject, including denial, suspension, or revocation of a financial services or financial services related license or registration;
    - a conviction, or plea of guilty or nolo contendere to a misdemeanor within the last ten years involving financial services or a financial services related business or any fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, money laundering, breach of trust, or a conspiracy to commit any of these offenses; and
    - a conviction of, or plea of guilty or nolo contendere to a felony;
- financial condition, credit history, and business history, with respect to an application for licensing as a mortgage lender; and credit history and business history, with respect to the application for licensing as a loan originator; and
- consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submission of a set of the applicant's fingerprints in a form acceptable to the commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each natural person who has control of the applicant or who is the managing principle or a branch manager shall consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submit a set of that natural person's fingerprints pursuant to this item. Refusal to consent to a criminal history record check constitutes grounds for the commissioner to deny licensure to the applicant as well as to any entity:
    - by whom or by which the applicant is employed;
    - over which the applicant has control; or
    - as to which the applicant is the current or proposed managing principal or a current or proposed branch manager.

As stated above, along with the rest of the requisites, the applicant for licensure must undergo a national criminal record check, supported by fingerprints, by the FBI. The law states that the results of the checks must be reported to the commissioner and the Nationwide Mortgage Licensing System and Registry is authorized to retain the fingerprints for certification purposes and for notification of the commissioner regarding subsequent criminal charges. The information gathered will be kept by the commissioner in accordance with applicable state and federal guidelines. [§37-22-240]

In addition to the above requirements, South Carolina law also requires that a person applying for licensure as a mortgage loan originator: [§37-22-140(B)(1)(2)(3)(4)(5)]

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- have attained the age of at least 18 years;
- work for licensed mortgage lender;
- have satisfactorily completed pre-licensing education of at least twenty hours, which shall include at least three hours on South Carolina laws and regulations, and the National Test Component with Uniform State Content;
    - an applicant must pass the national test
    - if the applicant fails the test the applicant can retake the test as follows
        - After initial fail, applicant must wait 30 days before retaking the exam
        - After second attempt, applicant must wait 30 days before retaking the exam
        - After third attempt, the applicant must wait 180 days prior to retaking the exam
- have never had a loan originator license revoked in any governmental jurisdiction; and
- have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten-year period preceding the date of the application of licensing, or (ii) at any time, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

So long as the applicant meets the legal requirements above, he or she should have no impediment in obtaining a license as a mortgage loan originator.

If the applicant is applying for licensure as a mortgage lender, the applicant must comply with the following at the time of application and all times after that:
[§37-22-140(C)(1)(2)(3)(4)(5)]

- If the applicant is a sole proprietor, the applicant shall have at least three years of experience in financial services or financial services related business or other experience or competency requirements as the commissioner may impose.
- If the applicant is a general or limited partnership, at least one of its general partners shall have the experience described above
- If the applicant is a corporation, at least one of its principal officers shall have the experience described above
- If the applicant is a limited liability company, at least one of its members or managers shall have the experience described above
- Instead of showing three years experience, an applicant may show proof of three years employment with a federally insured depository institution or a VA-, FHA-, or HUD-approved mortgagee.

These applicants must also identify one person meeting the above requirements to serve as their managing principal [§37-22-140(D)].

Though we have already reviewed a lot of the legal requisites for licensure, we have yet to mention some of the financial requirements posited by law on those that want to become licensed. Applying for a license does come with certain financial requisites and responsibilities.

When applying for licensure, whether as a mortgage lender or a mortgage loan originator, each applicant must pay a filling fee. [§37-22-140(E)]

- If the application is for licensure as a mortgage lender, the filing fee is set at $1,000.00
- If the application is for a mortgage loan originator, the filing fee is $50.00
    - These filing fees are in addition to the cost associated with obtaining credit reports and national fingerprint-based criminal history record checks.
    - And, if a loan originator changes employment a new license must be issued for a fee of $25.00

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Aside from a filing fee, there are also surety bond requisites mandated by the law. A surety bond is a legally binding contract that ensures the parties involved will meet their obligations. The surety bond is usually a three-way agreement between the principal, person who needs the bond, an obligee, person who requires the bond, and a surety company that sells the bond. The bond is meant to serve as a guarantee that the principal will do as required. If the principal does not, the bond will cover the outcome. A mortgage lender must post and maintain a surety bond in the amount determined by the commissioner of the South Carolina State Board of Financial Institutions. The amount is based on the total dollar amount of a mortgage loan subject to regulation by the commissioner in a calendar year pursuant to the following: [§37-22-140(F)]

- Dollar volume of mortgage loans from $0-$49,999,999, surety bond of $50,000
- Dollar volume of mortgage loans from $50,000,000 to $249,999,999, surety bond of $100,000
- Dollar volume of mortgage loans greater than $250,000,000 surety bond of $150,000

According to state law the surety bond of a mortgage lender can never be less than $50,000. The surety bond itself must be executed by a surety company authorized by South Carolina state law. The surety bond must also be executed to the commissioner and must be for the use of the State for the recovery expenses, fines, and fees, or any of them, levied pursuant to Chapter 22 and for consumers who have losses or damages as a result of noncompliance with Chapter 22 by the mortgage lender. The full amount of the surety bond must be in effect at all times. Unless a new bond is filed with the surety company prior to the termination of the previous surety bond, the licensee's license is considered terminated. If the licensees license expires based on bond termination, all licensed activity must stop, and the person must apply for a license again.

Additionally, any sole proprietor, general partner, member or manager of a limited liability company, or officer of a corporation who meets individually the requirements to obtain a license, upon payment of the applicable fee, meets the qualifications necessary to obtain a license as a loan originator. [§37-22-140(G)]

With regards to licensed mortgage lenders, each principal office and individual branch offices must be licensed pursuant to Chapter 22 and have individual licenses issued. A licensed mortgage lender must file an application form with the commissioner that identifies the address of the principal office and each branch office as well as the offices' branch managers. If necessary, the commissioner can license a personal residence of a loan originator as a branch office if it is located more than 70 miles from a commercial branch office location. The licensee fee for each branch office is $150.00. [§37-22-140(H)]

We have so far mentioned the need for a license as a mortgage loan originator as well as a license for a mortgage lender, but what of those persons that act as both? The law states that a person who obtains a license as a mortgage lender, upon notice of the commissioner on a form prescribed by the commissioner, may act as a mortgage broker. However, there are times where mortgage lenders will act as mortgage brokers. The law states that a mortgage lender that also acts as a mortgage broker is not required to obtain a license as a mortgage broker, unless the person acts as a mortgage broker with regard to the majority of the mortgage loans reported on their Mortgage Call Report filed during the previous two quarters. [§37-22-140(K)]. Thus, if a mortgage lender predominantly acts as a mortgage broker, he or she needs a license as a broker. Furthermore, a mortgage lender acting as a mortgage broker must comply with the South Carolina Licensing of Mortgage Brokers Act, which states the different prohibited activities for someone who is a licensed mortgage broker and provides details as to how a mortgage broker should conduct themselves and their business. We will delve into the provisions of the Licensing of Mortgage Brokers Act (or Title 40, Chapter 58 of the South Carolina Code of Law) in the next lesson.

So as to keep distance from what an individual does while licensed versus what the government officially approves of or does not approve of, one of the provisions in Chapter 22 makes it a point to state that the fact that a licensee has been issued a license pursuant to the laws of the state does not mean that his or her services are approved by the State or state agency [§37-22-140(J)].

> It is important to note that when completing and submitting your application along with other documentation, if any of the information provided and filed with the commissioner becomes inaccurate or incomplete, the licensee must promptly file a correcting amendment to the information contained in the document. [§37-22-140(M)]

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Overall, the law denotes that if the commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and warrant belief that the business is to be operated honestly, fairly and efficiently, the commissioner can issue a license to the applicant. However, if the commissioner does not believe this to be the case in part or it its entirety, the commissioner can refuse to license the applicant and must notify him or her of the denial. [§37-22-140(I)] Therefore, the law really does leave it up to the commissioner to decide whether he or she believes an applicant should be licensed or not. Later in this lesson we will go into detail about what constitutes grounds for denying a license. Let's first discuss what the law states is necessary in order to maintain a license.

License Maintenance

Aside from the financial responsibility of the application fee and the surety bond when qualifying or applying for licensure as a mortgage loan originator or mortgage lender, there are also other financial responsibilities and other requirements that the applicant or licensee must meet in order to maintain their license. We will turn to these next.

Chapter 22 explains that all licenses issued by the commissioner of the South Carolina State Board of Financial Institutions expire annually on the thirty-first day of December or on another date that the commissioner determines. This means that licensees must renew their license every year if they want to continue to practice mortgage loan originator activities that require a license in the state of South Carolina. The renewal period for licensees is from November first through December thirty-first annually or it can be another date that the commissioner sets. A licensee that wants to renew his or her license must submit an application to the commissioner in order to do so. Applications that are received after the renewal due date are considered late and subject to a late fee.
[§37-22-150(A)(1)(2)]

According to Chapter 22, licenses can be renewed by paying to the commissioner a renewal fee as prescribed by the Board for each of the following:

- For a licensed mortgage lender, an annual renewal fee of no more than $800 and no more than $150 for each branch office
- For a licensed loan originator, the renewal fee is no more than $50.00

If a license for a licensed mortgage lender is not renewed by the renewal date, a late fee of no more than $500 as prescribed to the Board must be assessed. If a license for a licensed mortgage loan originator is not renewed during the renewal period, a late fee of no more that $100 as prescribed by the Board must be assessed as a late fee. However, if the licensee fails to renew his or her license within 30 days after the date the license expires or fails to maintain a valid license, the commissioner will require that the licensee comply with the requirements denoted by law for obtaining an initial license as well as pay the fee that has accrued. [§37-22-150(B)]

A good rule of thumb: always renew your license on time every year in order to avoid paying a fee or eventually having to go through the license application process all over again.

The law also states that at any time, the commissioner can require each person with a license to furnish a national fingerprint-based criminal history check and a set of fingerprints in a form acceptable to the commissioner. If a person refuses to do so, it could constitute grounds for the commissioner to deny the licensee's license renewal as well as to refuse the renewal of the license of the person by which he or she is employed, over which he or she has control, or which he or she is the current or proposed managing principal or branch manager. [§37-22-150(C)]

Aside from a renewal fee, in order to renew a license as a mortgage loan originator there are yearly requirements the licensee must meet. To renew a license:
[§37-22-160(A)(B)(C)(D)]

- A licensee must complete at least 8 hours of continuing professional education every year

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    - Continuing education must include at least 1 hour of South Carolina Laws and Regulations
    - The completion of the continuing professional education must be reported to the commissioner every year
    - Licensees must maintain documentation of all courses completed
    - Documentation of the courses completed is subject to inspection by the commissioner for up to two years after the date of course completion
- Continuing education credit may be granted only for the year in which the class is taken and may not be granted for the same course in successive years.
- If a licensee fails to complete the continuing professional education before the license expiration date, his or her license expires and he or she will have to pay a penalty of no more than $100.00 in addition to other fees that may have accrued.

It is important to note that all pre-licensing education, continuing education, and written examinations must be approved through the Nationwide Mortgage Licensing System and Registry before credit can be given to applicants or licensees. Applicants and licensees that successfully complete education or testing approved through the NMLS fulfill requirements of this State.

The law also imposes other responsibilities on licensees in order to maintain a license in good standing. For example: there are certain records that licensees must keep and certain information they must report while conducting everyday loan originating activities. A licensee must make and keep accounts, correspondence, memoranda, papers, books, and other records prescribed by the commissioner. [§37-22-210(C)(D), §40-58-65 (A)]

Licensees must preserve their records for at least 3 years, unless the commissioner says otherwise. These records are important and must be safely maintained. A licensee should develop, maintain, and test disaster recovery plans for all records that are maintained. If the records are somehow misplaced, incomplete or destroyed, the licensee could be subject to disciplinary action.

State law states that if a licensee chooses to maintain their records electronically, they can do so as long as these electronic records can be readily accessible for examination by the commissioner at any time. [§37-22-210(C)(1)(2)(D)].

In addition to the maintenance of the records just mentioned, licensees must also keep records in the form of a Mortgage Log. The Mortgage Log must contain the following information:

- Credit score of borrower
- Adjustable or fixed type of loan
- Term of loan
- Annual percentage rate of the loan
- Appraised value of the collateral

On the 31st of March of each year, each licensee must submit their mortgage log to the commissioner. If the licensee is late in their submission or the submission is incomplete, they are responsible for paying a fine of $100.00 per day it is late or remains incomplete. The compilation of data received by the commissioner will then be organized and submitted to the Department where it will be prepared and made available to the public. This report will become available on June 13 of every year. A licensee must submit a correcting amendment to the information given to the commissioner if the information becomes incomplete or inaccurate.

As stated in the beginning of the lesson, the State Board of Financial Institutions put into place Article 4 Regulations 15-64 in an effort to add and clarify some of the provisions in Chapter 22. Pursuant to Section 37-22-210, regulations in Article 4 state that the Mortgage Log required of licensees must: [Article 4 Reg.15-64(D)(1)(a)(b)]

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- Be completed electronically as required by the Consumer Finance Division. The Licensee is responsible for the costs associated with doing so.
- Include all mortgage loans or applications where a credit report is requested, regardless of whether a mortgage loan is originated or modified.

Additionally, Section 37-22-220 states that licensees must maintain records in a way that helps the commissioner determine whether the licensee is complying with the provisions of Chapter 22 and with federal laws. The recordkeeping system of a licensee will be deemed sufficient so long as the required information is available. These records do not need to be kept in the place of business where loans are made if the commissioner is given free and full access to the records wherever they may be. By March 31st of each year, licensees must file an annual report relating to all the mortgage loans made, serviced, or brokered. The report should include the following information:

- First and subordinate lien loans originated by licensee and closed in the name of another party;
- First and subordinate line loans originated by another party and closed in the name of licensee;
- First and subordinate lien loans originated by and closed in the name of licensee;
- First and subordinate lien loans originated by and closed in the name of another party but funded by licensee;
- Loans purchased by licensee;
- First and subordinate lien loans serviced by licensee;
- Loans owned with and without servicing rights;
- Loans sold with and without servicing rights;
- Loans paid off before and at maturity;
- Unpaid loans at the beginning and end of the reporting year;
- Delinquent loans that are 30-59, 60-89, and ninety days or more delinquent, of all the loans the licensee owned as of December 31st
- Loans in foreclosure as of December 31st and foreclosed in the previous calendar year by licensee;
- Mortgage loans charged against reserve for loan losses as a result of foreclosures during the reporting year; and
- Loans repurchased during the previous calendar year

The annual report must also include the total gross revenue earned in the State under the license, the total dollar amount of points paid to the licensee by borrowers first and subordinate lien mortgage loans, total dollar amount of points paid to brokers by the licensee on first and subordinate lien mortgage loans, including yield spread premiums, and the lending institution, maximum amount available, outstanding balance, and expiration date of licensee's four largest warehouse lines of credit during the previous calendar year. [§37-22-220 (A)(B)(C)(1)(2)(3)(4)(5)(6)(7)(7)(9)(10)(11)(12)(13)(14)(D)].

The State Board of Financial Institutions' Article 4, Regulations 15-64 adds to this section of Chapter 22 the following:

- The annual report required by §37-22-220 must include a Mortgage Call Report that includes: [Article Reg.15-64(D)(2)(a)(b)]
  - A loan activity report submitted electronically on a quarterly basis as required by the Nationwide Mortgage Licensing System and Registry by the mortgage lender or servicer for all locations and loan originators
  - A corresponding financial condition report submitted electronically as required by the Nationwide Mortgage Licensing System and Registry.

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As already noted earlier, Section 37-22-140(M) states that if any information contained in a document submitted to the commissioner becomes inaccurate or incomplete, the licensee must promptly file a correcting amendment with the commissioner. Article 4 states that, pursuant to this provision, the applicant must supply the required information to the Consumer Finance Division of the South Carolina State Board of Financial Institutions within 120 days of the initial submission or the application will be abandoned as incomplete. [Article 4 Reg.15-64(E)]. Thus, "promptly" in this case means that the correcting amendment must be filed with the commissioner within 120 days of the original submission.

In addition to keeping records of their activity and in an effort for licensees to be held accountable for their actions and to reduce the incidence of mortgage fraud, the law also mandates that licensees must always clearly display the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry on all mortgage loan forms, solicitations, or advertisements including business cards or websites and any other documents furnished in connection with a mortgage loan transaction. [§37-22-210(F)] By doing so, it is easy for consumers to look up the licensee's activity history as well as enabling the records of their transactions to be tracked down. Overall, this requirement on licensees is intended to bring a new level of security to the prevention of fraud in the mortgage industry.

Article 4, Regulations 15-64 adds that The Nationwide Mortgage Licensing System and Registry unique identifier for licensed mortgage lenders or servicers, licensed branch offices, and licensed mortgage loan originators must be displayed on all mortgage loan applications. However, only the unique identifier of the licensed mortgage lender or servicer is required to be displayed on all other mortgage loan forms. The unique identifier of a licensed mortgage lender or servicer or licensed mortgage loan originator must also be used in all advertising. [Article 4 Reg.15-64 (B)(1)(2)]

It is important to remember that it is also the responsibility of the licensee to report any changes that may occur to the commissioner. A licensee must report to the commissioner a change of address of the principal place of business or a branch office at least seven days before the change. Change of address notification of a licensed location must be accompanied by a fee of $25.00. A mortgage lender licensed pursuant to Chapter 22 must display in plain view in its principal office and in each branch the license issued by the commissioner. A loan originator licensed pursuant to Chapter 22 must display in each branch office in which mortgage loans are originated a copy of the license issued by the commissioner. [37-22-180(A)(B)]

Important to note is the fact that included in the notification, should be a plan of withdrawal with timetables for the disposition of the business, the location of the books, records, and accounts until the end of the retention period, and certification of the proper disposal of those records after that. [§37-22-210(G)].

So far what we have discussed has had to do with requirements for a person to obtain a mortgage license as well as what a licensee must do in order to maintain their license once they have obtained one.

Let us now move on to determining what may prevent an applicant from obtaining a license or what may force someone who already has a license to either lose or suspend his or her license.

Grounds for Denying a License

Aside from having the power to issue a license, the commissioner of the South Carolina State Board of Financial Institutions also has the power to deny, suspend, revoke, or refuse to issue or renew a license. We will now discuss the powers the commissioner has in South Carolina regarding the denial, suspension, revocation, or refusal to issue a license. As you will see, the commissioner can do various different things to licensees if he or she deems it necessary.

The commissioner may deny, suspend, revoke or refuse to issue a license if he or she finds that both: [§37-22-200(A)(1)(2)(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)]

- The order is in the public interest; and
- The applicant, licensee, or any partner, member, manager, officer, director, loan originator, managing principal, or other person occupying a similar status or performing similar functions or a person directly or indirectly controlling the applicant or licensee:

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- Has filed an application for license that, as of its effective date or as of a date after filing, contained a statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact;
- Has violated or failed to comply with a provision of this chapter or order of the commissioner;
- Within the past ten years has been convicted of, or pled guilty or nolo contendere to, a misdemeanor involving financial services or financial services related business or an offense involving breach of trust or fraudulent or dishonest dealing, or money laundering or has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court.
- A permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing conduct or practice involving financial services or financial services related business;
- Is the subject of an order of the commissioner denying, suspending, or revoking that person's license;
- Is subject of an order entered by the authority of a governmental entity with jurisdiction over the financial services or financial services related industry denying or revoking that person's license;
- Does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or a bond or capital requirements, pursuant to Chapter 22
- Has been the executive officer or controlling shareholder or owned a controlling interest in a financial service or financial services related business that has been subject to an order or injunction described above
- Has failed to pay the proper filling or renewal fee pursuant to Chapter 22 or a fine, penalty, or fee imposed by any governmental entity. However, the commissioner may enter only a denial order, and the commissioner shall vacate the order when the deficiency is corrected; or
- Has falsely certified attendance or completion of hours at an approved education course.

- Furthermore, the commissioner may postpone or suspend the license of a licensee pending final determination of a proceeding. Once the commissioner enters the order to postpone or suspend a license, he or she must notify the applicant or licensee promptly that the order has been entered and provide the licensee an explanation as to why it was entered in the first place. The commissioner must also explain in the notice the procedure for requesting a hearing before the Administrative Law Court. If both the licensee does not request a hearing and if the commissioner does not request a hearing, the order remains in effect until it is modified or vacated by the commissioner. [§37-22-200(B)]
- The commissioner may also impose an administrative penalty on a licensee, or any member, partner, officer, director, or other person occupying similar status or performing similar functions on behalf of a licensee for violation of Chapter 22. The administrative penalty, whether for the licensee or any other person, cannot exceed $10,000.00 for each violation of the chapter by a licensee. [§37-22-200(C)]
- Additionally, the commissioner can order a person to cease from a prohibited action. If the person who has been ordered to cease from the prohibited action fails to request a contested case hearing, or if the person requests a hearing and it is denied or dismissed and the person continues to engage in the action, the person is subject to an administrative penalty that cannot exceed $20,000.00 for each violation of the commissioner's order. [§37-22-200(D)]

If a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, the licensee, with the consent and approval of the commissioner, may surrender his or her license and the rights and privileges that come with it and is no longer eligible to receive, or submit an application for, licensure for a period of time established by the commissioner. [§37-22-200(F)]

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If the commissioner believes that the licensee or another person has violated Chapter 22 or that facts exist that would be the basis for an order against a licensee or other person, the commissioner can investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of the licensee or other person relating to the complaint or matter under investigation. In other words, if a licensee seems to have violated a provision in this chapter, the commissioner has the right to do what he or she must do in order to uncover evidence of the violation. Whatever the cost may be for investigating or examining, as long as it is "reasonable," will be charged to the licensee. The commissioner may also require the licensee or other person to submit a national and state fingerprint-based criminal record check and a set of fingerprints in connection to the investigation or examination. If the licensee or other person refuses to do so, they will be subject to disciplinary action. [§37-22-200(G)]

The commissioner may also subpoena documents and witnesses and compel their production and attendance, to examine under oath all persons whose testimony the commissioner considers relative to the person's business and require the production of books, papers, or other materials. At the licensee's expense, the commissioner may also conduct routine examinations of the books and records of a licensee to determine their compliance to Chapter 22. The commissioner can cooperate and share information with an agency of this State, or other states, or with the federal government concerning behavior that is regulated by Chapter 22. He or she can also participate in examinations with these agencies. [§37-22-200(G)(H)(I)(J)]

If the commissioner finds that the managing principal, branch manager, or loan originator of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in an activity that results in the entry of an order suspending or withdrawing the license of a licensee, the commissioner can prohibit the branch manager, managing principal, or loan originator from serving as a branch manager, managing principal, or loan originator for a time of his choosing. The commissioner can also require a person to pay to a borrower or other natural person amounts received by the person or its employees in violation of Chapter 22. [§37-22-200(K)(L)]

As reviewed, the commissioner of the Consumer Finance Division of the South Carolina State Board of Financial Institutions has a lot of discretion with regards to licensing. However, one should note that this does not mean that he or she is not held accountable. The commissioner must still report information to the Board as well as the Nationwide Mortgage Licensing System and Registry. In fact, any order issued by the commissioner regarding Chapter 22, must be reported to the Nationwide Mortgage Licensing System and Registry. [§37-22-200(M)].

It is important to state that if any of the provisions we have mentioned thus far are violated, state law imposes disciplinary action on the violator. A person who violates any of the provisions we have discussed and found in Chapter 22 of Title 37 of the South Caroline Code of Law, is guilty of a misdemeanor and, upon conviction, must be fined not more than $500.00 or imprisoned not more than 6 months, or both, for each violation. Each transaction involving the unlawful making or servicing of a mortgage loan is a separate offense. [§37-22-230]

Conclusion

After reviewing this lesson, you should now be familiar with what the law requires you to do if you would like to apply to become a mortgage loan originator as well as what is required of you once you have obtained your license.

Compliance and Disciplinary Action

OVERVIEW

In this lesson we will review South Carolina law as it pertains to licensee behavior. We will go over what the law denotes as prohibited conduct and practices as well as what the law states is required conduct for licensees. We will also review fees and charges associated with being a licensee and the disclosures and agreements licensees will come across in their daily originating activities. Furthermore, we will go over how to advertise in the mortgage lending industry in accordance to state law. Lastly, we will discuss what South Carolina law states about disciplinary action, including notifications, hearings, and appeals; the suspension, revocation and rescissions of licenses; penalties and fines; and civil and criminal liability.

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Learning Objectives

After reviewing this lesson, students should be able to:

- Recognize prohibited conduct and practices for licensees
- Know the different disclosures and agreements licensees encounter in their activities as mortgage loan originators
- Know how what is required of licensees if they want to advertise for business
- Understand what state law states disciplinary action should be for licensees that violate state provisions

Compliance

As mentioned previously, there are two main titles and chapters in the South Carolina Code of Laws that pertain to mortgage lending and licensing: Title 37, Chapter 22, and Title 40, Chapter 58. What we will be predominantly reviewing below is what the law denotes in Title 37, Chapter 22, which is the Mortgage Lending Act. However, we will also be covering some of the provisions in Title 40, Chapter 58, or the Licensing of Mortgage Brokers Act. Title 40, Chapter 58 contains provisions that are almost identical to those provisions in Title 37, Chapter 22.

Their main difference, however, is the fact that Chapter 22 places regulatory authority on the Commissioner of the Consumer Finance Division of the State Board of Financial Institutions and Chapter 58 places regulatory authority on the Administrator of the Department of Consumer Affairs. As you will recall, from a previous section, both of these offices are South Carolina's regulatory authority for matters relating to mortgage lending services in the state. The South Carolina State Board of Financial Institutions regulates mortgage lender or servicers and mortgage loan originators, while the Department of Consumer Affairs regulates mortgage brokers, including table funding and loan correspondents, and mortgage broker loan originators.

Prohibited Conduct and Practices; Required Conduct

So far, we have focused on what one must do in order to apply for a mortgage lending license or mortgage loan originator license in the state of South Carolina as well as what one must do in order to maintain a license once it has been obtained.

We will now turn to what the law provides regarding conduct and behavior for those who have obtained a license.

Below we will review what the law states are prohibited practices and conduct of a person that is licensed as a mortgage loan originator.

Title 37, Chapter 22 states that the following are prohibited activities that are a violation of state and federal law.
[§37-22-190(A)(1)(2)(3)(4)(5)(6)(7)(8)(9)(a)(b)(10)(a)(b)(c)(11)(12)(13)(14)(15)(16)(17)(B)]

(Section 40-58-70 also lists prohibited activities, most of which match those below):

- In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person licensed pursuant to Chapter 22, in the course of a mortgage loan origination, to:
    - Misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise;
    - To refuse improperly or fail to issue a satisfaction of a mortgage pursuant to Section 29-3-310;
    - Fail to account for or deliver to a person entitled to receive funds, documents, or other things of value obtained in connection with a mortgage loan including money provided by a borrower for a real estate appraisal or credit report, which the mortgage lender or loan originator is not entitled to retain under the circumstances;

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- Pay, receive or collect in whole or in part any commission, fee, or other compensation for a mortgage loan origination in violation of this chapter including any unlicensed person other than an exempt person;
- Charge or collect a fee or rate of interest or to make or service a mortgage loan with terms or conditions or in a manner contrary to the provisions of this chapter
- Advertise mortgage loans including rates, margins, discounts, points, fees, commissions, or other material information including material limitations on the loans, unless the person is able to make the mortgage loans available as advertised to qualified applicants;
- Fail to disburse funds in good faith and in accordance with a written commitment or agreement to make a mortgage loan that has been accepted by the borrower;
- Engage in a transaction, practice, or course of business in connection with the making or servicing of, or purchase or sale of a mortgage loan that is not in good faith or fair dealing, that is unconscionable, as set forth in Section 37-5-108, or that constitutes a fraud upon a person;
- Fail to pay reasonable fees within a reasonable time to a licensed third party for services that are:
  - Requested from the third party in writing by the mortgage lender or an employee of the mortgage lender; and
  - Performed by the third party in connection with the origination or closing of a mortgage loan for a customer or mortgage lender
- Influence or attempt to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. This item does not prohibit a mortgage lender or servicer from asking the appraiser to do one or more of the following:
  - Consider additional appropriate property information
  - Provide further detail, substantiation, or explaining for the appraiser's value conclusion; or
  - Correct errors in the appraisal report;
- Fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act and regulations adopted pursuant to them and the state law;
- Fail to provide within a reasonable time, upon written request of a borrower, a payment history statement in a form easily understood by the borrower including payment dates and amounts and charges within the twelve months preceding the month which the request is received and the total amount unpaid as of the end of the period covered by the statement;
- Take a security interest in a borrower's principal dwelling where the amount of the mortgage loan is less than five thousand dollars;
- Fail to provide disclosures as required by the state or federal law or collect any fee before providing required disclosures;
- Fail to comply with Chapter 22 or other state or federal law including rules and regulations applicable to business regulated by this chapter;
- Falsely advertise or misuse names in violation of 18 U.S.C. Section 709
  (False advertising or misuse of names to indicate Federal Agency) or state law; or
- Use any trade name or insignia of membership in an organization of which the licensee is not a member or advertise falsely through any material including, but not limited to, business card, stationery, or signage concerning a designation or certification of special education, credentials, trade organization membership, or business.

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    - Charge fees for services rendered as a mortgage broker without disclosing these fees to the applicant as required by federal and state law [§40-58-75(C)].
- A violation of state or federal law applicable to a business covered by Chapter 22 is a violation of this chapter and may be enforced by the commissioner.

As you can see, there are various different ways a licensee's conduct and behavior can violate the law.

It is important to note that licensees should behave ethically and in accordance to the law in order to maintain their license in good standing.

If a licensee is involved in any of the mentioned prohibited actions, it means that the licensee is not behaving ethically and is breaking the law.

By doing so, the licensee is subject to disciplinary action, which we will discuss later in this lesson.

Fees and Charges

When working as a mortgage lender or mortgage loan originator, you will have clients that will be making one of the biggest financial decisions and commitments of their lives.

Though this commitment is one of the biggest, the majority of consumers know very little about the transaction itself. Part of the large commitment includes different fees and charges that lenders add to the transaction costs aside from the cost of the property. Consumers are not necessarily knowledgeable about these specific costs.

Due to the lack of knowledge on behalf of the consumer, state law has created provisions regarding disclosures about these fees and charges in the hopes of protecting the consumer. We will review these provisions now.

Section 75 of Chapter 58, Title 40, also known as the Licensing and Mortgage Brokers Act, deals with mortgage broker fees and agreement disclosing charges.

The law states that within three business days of receiving an application for a mortgage loan, the broker must provide a mortgage broker fee agreement. The mortgage broker fee agreement discloses the estimated charges to the borrower for the mortgage loan and itemizes the charges provided if required under, federal or state law. This particular disclosure is considered delivered when deposited with the United States Postal Service for first class delivery. [§40-58-75(A)]

The law also makes it clear that a person may not earn, charge, or collect a mortgage broker or processing fee unless the person meets the requirements of Chapter 40, is authorized to conduct mortgage brokerage services by this chapter, or is exempt from the requirements of this chapter. [§40-58-75(B)]

Whatever fees might be charged must be made known to the borrower ahead of time. In other words, all fees earned for services rendered as a mortgage broker must be disclosed to the applicant by the mortgage broker as is required by federal or state law. [§40-58-75(C)]

As mentioned above, the mandatory mortgage broker fee agreement must be in writing and given to the borrower within 3 days of the borrower's application.

The mortgage broker fee agreement must include the following information:

- Current name
- Address
- Telephone number of the mortgage broker's branch office
- Account number, if any
- Date of agreement
- Name of the borrower or proposed borrower
- Signature of borrower and mortgage broker

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- Amount of any fees
- Nature of services provided to the borrower

A copy of the completed mortgage broker fee agreement must be given to the borrower and this disclosure must be signed by the borrower acknowledging that he or she received the document. If the loan could be co-brokered, the agreement must have a statement saying so. If that is the case, the mortgage broker must provide written notice of co-brokering within three days of making the final decision to co-broker. The notice must include the name and street and mailing address of the co-broker as well as which broker should be contacted regarding the progress of the services provided. Each co-broker must be licensed with the administrator. [§40-58-75 (D)]

There are also other fee and charges disclosures that are mandated and regulated by state law aside from the mortgage broker fee agreement.

Section 102 of Chapter 10, Title 37 deals with fees and other charges on mortgage loans for personal, family or household purposes. This section of the law states that whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for personal, family or household purpose:

- The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction.
    - The creditor may require the attorney or agent to provide mortgage title insurance
    - Any legal fees other than for examination and certification of the title, the preparation of all required documents, and the closing of the transaction required or incurred by the creditor in connection with the transaction is the responsibility of the creditor, regardless of who pays for the title work, document preparation, and closing
    - The creditor may contract and receive the following additional charges in a transaction:
        - The charge of any credit report
        - A nonrefundable assumption fee in an amount not exceeding the lesser of $400.00 or 1% of the unpaid balance of the loan
        - Section 202 of Chapter 3 of Title 37 authorizes the following charges: [37-3-202(1)(a)(b)(c)(i)(ii)(d)(i)(ii)(iii)(iv)(v)(e)(f)(2)(a)(b)]
            - Loan finance charge
            - Official fees and taxes
            - Charges for insurance
            - Closing costs
                - Fees or premiums for title examinations, abstract of title, title insurance, surveys, or similar purposes
                - Fess for preparation of deed, settlement statement, or other documents
                - Escrows for future payments of taxes, insurance, water, sewer, land rents, assessments for improvements
                - Fees for notarizing deeds and other documents
                - Fees for appraising real estate that is collateral for the loan
                - Charges for other benefits conferred to the debtor
                - Fees and charges paid to persons registered as mortgage loan brokers pursuant to Chapter 58, Title 40

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- Insurance against loss or damage to property, or against liability
- Insurance written in connection to the loan

The above provisions enable mortgage loan originators and mortgage lenders to collect the various different charges and fees relating to the closing of a mortgage loan transaction aside from the cost of the property. There are many moving parts in closing a mortgage loan. These provisions help protect the consumer from being charged additional fees that should not be included in the closing process. These provisions also help make the process simpler as all money relating to the closing can be collected at once and distributed by one person.

Charges and fees are not the only matters in a mortgage loan transaction that federal and state law includes in its provisions.

Providing proper disclosures regarding all fees and the mortgage loan itself during a mortgage loan transaction is also mandated by federal and state law. We will turn to these next.

Disclosures and Agreements

Federal law requires mortgage loan originators provide many different disclosures to consumers. State law also specifies certain disclosures, some of which we have already discussed, that must be provided to consumers during a mortgage loan transaction.

Section 78 of Chapter 58, Title 40 denotes the requirements for certain disclosures.

The mortgage broker fee agreement, which as discussed earlier, must be provided to the borrower three days after their application is submitted, must contain the following statements: [§40-58-78(A)(1)(2)(3)(4)]

- The mortgage broker or loan originator is acting as the agent of the borrower in providing brokerage services to the borrower;
- When acting as agent of the borrower, it owes to that borrower a duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the mortgage broker or loan originator is authorized to act as an agent for any other person, the mortgage broker fee agreement must contain a statement of that fact and identification of the person;
- A detailed description of the services the mortgage broker or loan originator agrees to perform for the borrower, and a good faith estimate of any fees the mortgage broker or loan originator will receive for those services, whether paid by the borrower, the institutional lender, or both; and
- A clear and conspicuous statement of the conditions under which the borrower is obligated to pay for the services rendered under the agreement.

Additionally, at the time of application for a mortgage loan, the mortgage broker or originator or employee must provide the borrower with a document that specifies the agency designated to receive complaints or inquiries about the origination and making of the loan.

The document should include the telephone number and address of the agency. The consumer must sign a copy of the document acknowledging receipt of the disclosure and the copy must be maintained in the files of the mortgage broker or originator.
[§37-23-70] This particular disclosure protects the consumer by making him or her aware of the fact that they do have a way of reporting any wrongdoing during the transaction.

The law also demands that at the time the borrower receives the Loan Estimate and before the scheduled closing of the loan, the broker or mortgage broker of a loan must disclose in writing the amount being earned on the loan. The Department of Consumer Affairs provides a disclosure form that, as required by state law, includes the following:
[§37-23-75(A)(1)(2)(3)(4)(B)]

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- The dollar amount of the yield spread premium and the percentage of the yield spread premium in relation to the loan amount
- An itemization of dollar amounts for points, fees, and commissions with a combined total given. A percentage of the combined total should be specified in relation to the loan amount;
- A dollar amount total of these two items and a percentage of the total specified in relation to the total amount of the loan; and
- For an adjustable rate mortgage, a listing of the schedule when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract. If the consumer escrows the insurance and taxes with each monthly payment, it must be reflected in the payment listed.
- The form must include a signature line for the borrower to acknowledge that they have received these disclosures and that they have been explained and he or she understands them and wants to enter into the loan transaction voluntarily.

Together with the disclosures mandated by federal law, the above are state specific disclosures that must be provided to the borrower when involved in a mortgage loan transaction. If any of these disclosures are not provided to the borrower, the licensee will be subject to disciplinary action.

Advertising

Aside from licensee conduct during a mortgage loan transaction, state law also provides regulation on how a licensee should behave when conducting other activities. Licensees may want to advertise in order to obtain more business. Federal law has a lot to say about what is the correct way to advertise as a licensed mortgage loan originator. State law also has stipulations regarding advertisements.

First, advertising, for the sake of state law, is defined in the definitions portion of Chapter 22, Title 37. The law states that advertising is a commercial message in a medium that promotes, either directly or indirectly, a mortgage loan transaction. [§37-22-110(4)]

Without first obtaining a license, a person may not circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activities reserved for mortgage loan originators. [§37-22-120(A)(2)].

Thus, unless you are a licensee, you cannot advertise for anything relating to activities that require a license. If you were to advertise without a license, this behavior could be deemed fraudulent, and therefore illegal.

With the above in mind, it is no surprise that state law also states that a person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationary, brochures, signs, rate lists, or other promotional items that the person may or will perform any of the activities of a loan originator. [§37-22-110(35)(b)]. Again, you have to be licensed in order to advertise mortgage loan origination activities and both underwriters and loan processors are not licensed as mortgage brokers or loan originators.

State law also expresses that if you are a licensee licensed through the Nationwide Mortgage Licensing System and Registry, the law requires you to use your unique identifier assigned by the Nationwide Mortgage Licensing System & Registry in all advertising and on all mortgage loan documents [§37-22-270 (D)]. Thus, whenever promoting yourself or your business as it relates to mortgage lending activities and whenever working with a client on a mortgage loan, you must include your unique identifier as proof of your licensure and as a mode of accountability.

For all other advertising provisions, Chapter 3, Title 22 specifies compliance with the Federal Truth in Lending Act
[§37-3-301].

So far, we have discussed what state law mentions regarding proper conduct for licensees in the state of South Carolina.

We will now turn to what state law depicts is proper disciplinary action for licensees who violate the provisions in state law we have gone over.

Disciplinary Action

Notifications, Hearings, and Appeals

As we have reviewed before, the commissioner and administrator has a lot of authority when it comes to licensing in South Carolina. They also have a lot of discretion when it comes to imposing disciplinary action on those accused of violating state provisions.

However, the law does also specify ways in which a licensee accused of violating state provisions can defend himself or herself in a situation where the commissioner or administrator has requested an administrative order against the licensee. Of this, the laws say the following:

> A person aggrieved by an administrative order issued by the commissioner may request a contested case hearing before the Administrative Law Court in accordance with the court's rules and procedures. According to state law, a contested case is defined as a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency or Administrative Law Court after an opportunity hearing [§1-23-505(3)].
>
> The Administrative Law Court, which was established by Chapter 23, Title 1 of the South Carolina Code of Law, is an agency and a court of record within the executive branch of the government of South Carolina. It consists of 6 administrative law judges. [§1-23-500] If the person aggrieved by the administrative order issued fails to request a contested case hearing, within the time provided in the court's rules of procedure, the administrative order becomes final and the commissioner may ring action to enforce its order pursuant to Chapter 23, Title 1. [§37-22-130(A), §40-58-90(A)]

Contested case proceedings are instituted by filling a request for a contested case hearing with the Administrative Law Court according to the rules of procedure of the Administrative Law Court. Copies of the request for a contested case hearing must be saved upon the commissioner and all parties of record.

The final decision of the administrative law judge may be appealed as provided in Section 1-23-380, Section 1-23-610, or Chapter 23, Title 1. [§37-22-130(B), §40-58-90(B)]

Please note that all actions and hearings pursuant to Chapter 22. Title 37 are governed by Chapter 23, Title 1. [§37-22-200(E)] Chapter 23, Title 1 includes specific provisions on state agency rule making and the adjudication of contested cases in South Carolina.

The law provides with the above the tools necessary for a licensee to defend him or herself against action taken on him or her by the commissioner or administrator. Let's discuss some of the possible actions that can be taken against licensees.

Suspension, Revocation, and Rescission of Licenses

As we discussed in the last section on applying for, obtaining, and maintaining a license, the commissioner or administrator has full discretion to determine whether an applicant or licensee should obtain a license or have his or her license suspended, denied, or revoked.

The commissioner, by order, may deny suspend, revoke, or refuse to issue or renew a license of a licensee or applicant or may restrict or limit the activities relating to mortgage loans of a licensee or person who owns an interest in or participated in the business of the licensee, if the commissioner finds that both the order is in the public interest; and:
[§37-22-200(A)(1)(a-j)]

- The applicant or licensee has filed an application for license that contained a statement that is false or misleading with respect to a material fact;
- Has violated or failed to comply with a provision in Chapter 22 or order of the commissioner;

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- Within the past 10 years been convicted of, or pled guilty or nolo contendere to, a misdemeanor involving financial services or financial services related to business or an offense involving a breach of trust or fraudulent or dishonest dealing, or money laundering or has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court;
- Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing conduct or practices involving financial services or financial services related business;
- Is subject of an order of the commissioner denying, suspending, or revoking that person's license;
- Is the subject of an order entered by the authority of a governmental entity with jurisdiction over the financial services or financial services related industry denying or revoking that person's license;
- Does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or a bond or capital requirements;
- Has been the executive officer or controlling shareholder or owned a controlling interest in a financial services or financial services related business that has been subject to an order or injunction;
- Has failed to pay the proper filling fee or renewal fee or fine, penalty or fee imposed by any government entity. (However, if this is the case, the commissioner may only enter a denial order and the commissioner will vacate the order once the deficiency has been corrected);
- Has falsely certified his or her attendance or completion of the hours of an approved education course.

The commissioner can also: [§37-22-200(B)(C)(D)(E)(F)(G)(H)(I)(J)(K)(L)]

- postpone or suspend a license of a licensee pending final determination of a proceeding
- impose an administrative penalty on a licensee or other person occupying similar status or performing similar functions
- order a person to cease from a prohibited action
- investigate and examine licensees' books, records, accounts, files, etc, if he or she believes a violation of a provision has occurred
- subpoena documents and witnesses and compel production and attendance to examine under oath all persons whose testimony the commissioner considers relevant
- require a licensee pay to a borrower or other person amounts received by the person or its employees in violation of the provisions of Chapter 22

It is important to note that when a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, the licensee with the consent and approval of the commissioner or administrator, may surrender the license and the rights and privileges pertaining to it and is not eligible to receive, or to submit an application for, licensure for a period of time established by the administrator or commissioner.
[§40-58-80(F)]

As you can see, there are various ways in which the commissioner or administrator can punish a licensee for his or her behavior. The above is disciplinary action that the commissioner or administrator can impose against a licensee for having violated the provisions included in the South Carolina Code of Law.

State law also includes other disciplinary action provisions that are more specific with regards to the type of licensee behavior. We will turn to these next.

Penalties/Fines

What happens if a licensee does not disclose a charge or fee during a mortgage loan transaction? If a mortgage broker or loan originator violates the provisions regarding disclosures, charges and fees, the borrower can recover from the mortgage broker or loan originator charged with the violation: [§40-58-78(B)(1)(2)(3)]

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- A penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars for each loan transaction;
- Fees paid by the borrower to the mortgage broker or loan originator for services rendered by the agreement; and
- Actual costs, including attorney's fees, for enforcing the borrower's rights under the agreements.

However, if the mortgage broker or loan originator can show evidence that the violation he is accused of was not intentional and resulted from a bona fide error, he or she will not be held liable. [§40-58-78(C)]. In other words, if the mortgage loan originator can show with evidence that he or she unintentionally forgot to provide the borrower with a particular disclosure regarding fees or charges, he or she will not be charged with disciplinary action.

That said, if a loan originator is found to have intentionally disregarded the law, whether by ignoring a disclosure or any other provision included in the Mortgage Lending Act, he or she will be subject to disciplinary action. The law states that a person that is found to willfully violate the provisions in Chapter 22, Title 37 will be considered guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both, for each violation. Each transaction involving unlawful making or servicing of a mortgage loan is a separate offence.
[§37-22-230].

With regards to the enforceability of an agreement or transaction, Chapter 5, Title 37 explains that if a transaction or an agreement is found to have been made unconscionably at the time it was made, the court may refuse to enforce the agreement or transaction. [§37-5-108]

Additionally, if the court believes a person is engaging or is likely to engage in unconscionable conduct in collecting a debt arising from the transaction, the court can grant an injunction and a consumer can recover actual damages from the person violating the law. [§37-5-108]. Thus, if the person found violating the law is a licensee, then the court can find that the licensee owes the consumer actual damages.

Chapter 5 also refers to what the lender can do in the case of consumer default. The law states the following:

An agreement of the parties to a consumer credit transaction with respect to default on the part of the consumer is enforceable to the extent that: [§37-5-109, §37-5-110]

- The consumer fails to make a payment as required by agreement
- The prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

After a consumer has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of goods that are collateral, a creditor may give the consumer a notice. The notice is considered delivered when the creditor delivers it to the consumer or mails it to the consumer's residence. The notice must be in writing state the following:

- Name, address and telephone number of creditor whom payment is to be made
- Brief identification of the credit transaction
- Consumer's right to cure the default
- Amount of payment
- Date by which payment must be made to cure default

The chapter provides an example of what this notice should say:

"(name, address and telephone number of creditor), (account number, if any),
(brief identification of credit transaction)

______________________________________(date is the LAST DAY FOR PAYMENT

______________________________________(amount) is the AMOUNT NOW DUE

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You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by that date, we may exercise our rights under the law. These rights include the right to repossess any property held as collateral for this transaction and the right, in many instances, to hold you personally responsible for any difference between the amount the property brings in a sale and the balance due us on the credit transaction in question. If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly."

After the notice of the consumer's right to cure is delivered, the creditor cannot proceed enforcing a security interest in goods that are collateral until 20 days after the delivery of the notice. It is important to note that cure restores the consumer to his rights under the agreement as though the defaults did not occur. [§37-5-111]

With regards to the location where an action is brought, chapter 5 denotes that if the action is brought to enforce an interest in land securing the consumer's obligation, the action can be brought in the county in which the land or a part thereof is located. If the current residency of the consumer is not in South Carolina, the action can be brought to the county where the loan or sale was made. [§37-5-113]

With regards to action brought by a creditor against a consumer, the complaint must allege the facts of the consumer's default, the amount the creditor is owed, and how that amount was determined, and whether the notice of cure has been delivered or is not required. A default judgment will only be entered into action if the default has been verified by the creditor or a sworn testimony, by affidavit or otherwise, showing that the creditor is entitled to the relief demand.
[§37-5-114]

These provisions enable the creditor to take legal recourse for a fault on the part of the consumer. Let's go back to reviewing provisions that enable a consumer to take legal recourse against a licensee. We will now review what state law says of the civil and criminal liability of a licensee.

Civil and Criminal Liability

Civil Penalties:

For the purposes of the following provisions we will review, the term creditor means:

> *A person who in the ordinary course of business regularly extends or arranges for the extension of credit or offers to arrange for the extension of credit. [§37-5-203(6)]*

A creditor who, in violation of the provisions of the Federal Truth in Lending Act or Section 37-2-309 or 37-3-308, fails to disclose information to a person entitled to information regarding a mortgage, is liable to that person in an amount equal to the sum of:
[§37-5-203(1)(a)(b)]

- Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this item must be not less than $100.00 or more than $1000.00; and
- In the case of a successful action to enforce the liability, the cost of the action together with reasonable attorney's fees as determined by the court.

With respect to disclosures mandated by the Federal Truth in Lending Act and state law regarding advertising, a creditor has no liability if within 60 days after discovering an error, and before the institution of an action or receipt of written notice of the error, the creditor notifies the person of the error and makes necessary adjustments in the appropriate account to assure that the person is not required to pay a finance charge in excess of the amount of percentage rate actually disclosed. [§37-5-203(2)]

As mentioned earlier, the law denotes that for any of the provisions violated, if the creditor can show with preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, he or she is not held liable. [§37-5-203(3)]

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No action, as those described above can be brought more than 1 year after the occurrence of the violation. Additionally, the liability of the creditor with regards to the above provisions is meant to be in lieu of and not in addition to his or her liability under the Federal Truth in Lending Act. [§37-5-203(5)(8)].

Criminal Penalties:

A lender who willfully makes charges in excess of those permitted by law is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $5,000.00, or to imprisonment not exceeding 1 year. [§37-5-301(1)]

A person, other than a supervised financial organization, who willfully engages in the business of making loans without a license where a license is required, is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $5,000, or imprisonment not exceeding 1 year, or both. [§37-5-301(2)]

A person is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not exceeding $500.00, or to imprisonment not exceeding one year, or both, if he willfully and knowingly: [§37-5-302(1)(2)(3)]

- Gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of the Federal Truth in Lending Act,
- Uses any rate table or chart, the use of which is authorized by the provisions of the Federal Truth in lending Act, in a manner which consistently understates the annual percentage rate determined according to those provisions; or
- Otherwise fails to comply with any requirement of the provisions on disclosure of the Federal Truth and Lending Act

The criminal liability of a person is in lieu of and not in addition to his criminal liability under the Federal Truth in Lending Act; no prosecution of a person with respect to the same violation may be maintained pursuant to both South Carolina law and the Federal Truth in Lending Act.

Conclusion

In this lesson we reviewed what state law specifically states is prohibited conduct and practice, proper conduct as well as what constitutes disciplinary action for those who obtain a license and violate state law provisions.

You should now have a better understanding of what is expected of a licensee, what licensees should not do, and what can happen if a licensee is accused or found guilty of violating state provisions.

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