Mortgage Origination

Exam Date:	[Click&type]
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These Mortgage Origination Examination Procedures (Procedures) consist of modules covering the various elements of the mortgage origination process; each module identifies specific matters for review. Examiners will use the Procedures in examinations of mortgage brokers and mortgage lenders. Before using the Procedures, examiners should complete a risk assessment and examination scope memorandum in accordance with general CFPB procedures. After completing the risk assessment and examination scoping in accordance with CFPB-approved mortgage originations strategy, examiners are to use these procedures to conduct a mortgage origination examination.

These procedures include guidance for examination of all aspects of mortgage origination. The examination procedures include a series of modules that group similar requirements together. Depending on the scope of the examination, and in conjunction with the compliance management system review, including consumer complaint review, each examination will cover one or more of the following modules. Module 8 – Examiner Conclusions and Wrap-Up is a required module and must be completed. The modules are as follows:

Module 1 Company Business Model

Module 2 Advertising and Marketing

Module 3 Loan Originators

Module 4 Loan Disclosures and Terms - Closed-End Residential Mortgage Loans

Module 5 Loan Disclosures and Terms - Other Residential Mortgage Loans

Module 6 Appraisals

Module 7 Underwriting

Module 8 Examiner Conclusions and Wrap-Up

Examination Objectives

1. To assess the quality of a supervised entity's compliance management systems in its mortgage origination business.
2. To identify acts or practices that materially increase the risk of violations of Federal consumer financial law, and associated harm to consumers, in connection with mortgage origination.
3. To gather facts that help determine whether a supervised entity engages in acts or practices that are likely to violate Federal consumer financial law in connection with mortgage origination.
4. To determine, in accordance with CFPB internal consultation requirements, whether a violation of a federal consumer financial law has occurred and whether further supervisory or enforcement actions are appropriate.

Background

This section of the Procedures provides background on the mortgage business and the federal consumer financial law requirements that apply.

1. Mortgage Types

Residential mortgage loans have a variety of features to meet differing consumer needs. The length of a mortgage is usually 30 years or less, but can vary from one year to 50 years. Interest rates can be fixed or adjustable. Some adjustable rate mortgage loans (ARMs) are "hybrid," having a fixed interest rate for a certain period of time and then changing to an adjustable rate. Hybrid ARMs often are identified informally using two numbers, such as 5/1. The first number identifies the number of years the interest rate will be fixed, and the second number identifies the frequency with which the interest rate will adjust after the fixed interest rate period ends. A "5/1" loan would have a fixed interest rate for five years, and then the interest rate would adjust one time per year. Alternatively, the second number can denote the number of years the loan will have an adjustable rate: in a "2/28 loan," the loan would have a fixed interest rate for two years, and after the two-year fixed interest rate period, then the interest rate would adjust periodically over the subsequent 28 years based on an index plus a margin. Typically, the initial two-year rate is low, but the adjustable rate can rise based on rate fluctuations in the marketplace.

Most, but not all, loans are "fully amortizing," meaning that the borrower pays down part of the principal and the full amount of interest that is due each month so that at the end of the loan term, the principal is paid off. Other loans might not amortize fully over their terms. One type of loan that does not fully amortize over its term is a balloon payment mortgage where payments may be made for a period of time, with the remaining balance due in one lump sum, or "balloon." Another type is an "interest-only" (I-O) loan, in which only the interest is paid for a certain time period at the beginning of the loan; after the initial period, the borrower either makes increased principal and interest payments to amortize the principal over the remaining term, or pays a large "balloon" payment, usually at the end of the term. These loans can have a fixed or adjustable rate. In addition, for a period of time, payment option adjustable rate mortgages (Pay Option ARMs, or Option Payment ARMs) were offered to many consumers, although this practice is not common in today's mortgage marketplace. These loans provided borrowers with several payment choices each month during the loan's introductory period, including a minimum payment that was less than the interest accruing and due with the principal each month. If the borrower chose the minimum payment option, the accrued but unpaid interest was added to the loan balance, so the principal amount actually increased. This outcome, where the outstanding loan balance increase as opposed to decreases, is known as negative amortization. Eventually the loan would be recast after the introductory period (typically five years), and the borrower's fully amortizing payments increased in order to repay the increased principal (which included the unpaid interest added to the original principal balance) and interest. Balloon loans, interest-only loans, and Pay Option ARMs often are called "non-traditional loans."

Mortgage originators offer various mortgage products that may be classified in different ways, such as:

a. Purpose

Mortgages often are categorized by whether they are used to purchase real property (called purchase money loans) or to refinance an existing loan (refinances). Refinance loans can either be "no cash out" or "cash out" loans. "No cash out" loans are refinance transactions where the proceeds of the new loan are used to pay off existing liens and can sometimes include the closing costs associated with the transaction. There is typically a small amount of funds that the borrower can receive back from the transaction and it still be considered a "no cash out" transaction. "Cash out" loans are loans made for more than the existing loan's outstanding principal balance. The borrower receives the cash borrowed in excess of the amount necessary to pay off the existing loan and associated closing costs. Additional loans (junior liens) other than the primary loan (first lien) may also be paid off with the proceeds of the new transaction. The purpose of these junior loans and secondary market requirements will determine if the new transaction would be considered a "cash out" or a "no cash out" transaction.

Construction loans, bridge loans, temporary loans, or combined construction to permanent financing loans are examples of short-term loans for other purposes. Another type of loan is a "home equity" loan, in which the borrower can receive funds to use for any purpose by borrowing against home equity. Equity is the amount the property is currently worth, minus the outstanding principal balance of any other mortgage the consumer has. Reverse mortgages are available to older homeowners to borrow against the equity they have in their homes. (See below for fuller discussion of reverse mortgages.)

b. Lien position

Lien position determines which mortgage loan receives priority over other loans in the event of a foreclosure or bankruptcy. A mortgage that is in a first lien position, sometimes called a senior loan, has priority for payment over a mortgage in a junior lien position if there is a foreclosure or bankruptcy proceeding. The proceeds from the foreclosure sale are divided according to lien position. A "simultaneous second lien" is a second lien originated at the same time as a first lien mortgage, which may allow a consumer to borrow an amount that is 100 percent of the value of the home. Sometimes lenders have allowed consumers to borrow an amount greater than the value of the property, although this practice is not common in today's mortgage marketplace. Payments necessary for a simultaneous second lien will have an impact on the borrower's ability to repay the mortgage.

c. Closed-end or open-end

Most purchase money and refinance mortgages are considered "closed-end credit" under the Truth in Lending Act, generally consisting of installment financing where the amount borrowed and repayment schedule are set at the transaction's outset. Closed-end mortgages can take first or junior lien positions.

In contrast, home equity lines of credit (HELOCs) are "open-end credit," extended to a consumer under a plan in which:

i. the creditor reasonably contemplates repeated transactions;

ii. the credit line generally is made available to the consumer to the extent that any unpaid balance is repaid; and

iii. the creditor may impose a finance charge from time to time on an outstanding unpaid balance.[1]

During the time while borrowers are able to draw down funds, they usually must pay a monthly interest charge on the outstanding balance. If the borrower owes funds after a fixed period of years, called the "draw period," the consumer enters the "repayment period" and must pay off the outstanding balance in regular periodic payments of principal and interest. The repayment period is also a fixed term of years. HELOCs are often, but not always, in a junior lien position.

Depending upon the lender and the HELOC agreement, the consumer may have to pay back the entire outstanding balance as soon as the draw period ends. In these cases, there is no repayment period, just a balloon payment in the amount of the outstanding balance when the

[1] 12 CFR 1026.2(a)(20).

draw period ends. HELOCs usually have an adjustable interest rate that changes over time, so the consumer's payments may not be the same from month to month.

d. Reverse Mortgages

A reverse mortgage is a special type of loan that allows homeowners 62 and older to borrow against the equity in their homes. It is called "reverse" because the consumer receives payments ***from*** the lender, without making loan payments ***to*** the lender. In exchange for borrowing the money and receiving these payments, the borrower grants the lender a lien interest in the home. The lender charges interest each month and is paid off when the borrower leaves the home.

In taking out a reverse mortgage loan, a consumer can receive a lump-sum payment, regular monthly payments, or a line of credit. The borrower does not have to pay back the loan as long as the borrower continues to live in the home, maintain it, and stay current on expenses like homeowner's insurance and property taxes. If the borrower moves, passes away, or goes into assisted living or a nursing home on a long-term basis, the loan has to be paid off, including the outstanding principal and interest accrued during the life of the loan, usually by selling the house. However, a non-borrowing spouse may be permitted to remain in the home after the borrower has left the home under certain circumstances.[2]

The vast majority of reverse mortgages extended today are through the Home Equity Conversion Mortgage (HECM) program, which is the reverse mortgage product insured by the Federal Housing Administration.

Because of the unique features of reverse mortgages, examiners should follow the procedures that are specific to reverse mortgages and be aware that other mortgage origination and servicing examination procedures may not apply to reverse mortgages.

e. Ability-to-Repay

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to require that creditors make a reasonable, good faith determination that the consumer can repay almost all closed-end transactions secured by a dwelling. The requirement applies generally to closed-end loans secured by a dwelling, including manufactured housing, conventional and governmental loans, and prime and subprime loans (see below). One way that lenders can meet TILA's ability-to-repay (ATR) requirement is by making qualified mortgages (QMs)—loans with certain features determined, by rule, meet TILA's ATR standards. If lenders do not choose to originate QM loans, they must demonstrate that loans otherwise meets TILA's ATR requirement. As a result, mortgages are usually referred to as either QM loans, which are presumed to comply

[2] For more information, *see* https://www.hud.gov/program_offices/housing/sfh/hecm/surviving_non_borrowing_spouse

with TILA's ATR requirement, or Non-QM loans, which must comply with the general ability-to-repay requirements directly.

The ATR rule does not apply to HELOCs, timeshares, reverse mortgages, temporary or bridge loans, or loans to finance the initial construction of a dwelling. It also does not apply to certain types of creditors making loans under programs for low- and middle- income borrowers, such as housing finance agencies, Community Development Financial Institutions and certain nonprofit organizations.

f. Conventional Lending

Conventional lending generally refers to prime standardized mortgage products that are not government-backed loans (discussed below). Conventional loans can be "conforming" or "non-conforming." Conventional conforming mortgages meet the underwriting and documentation standards set by the government sponsored enterprises (GSEs): Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac). Loans that are *eligible* for purchase by the GSEs have QM status under a temporary provision that expires October 1, 2022 (or whenever the GSEs exit conservatorship, whichever is earlier). Non-conforming mortgages may have, among other attributes, principal balances that exceed the loan limits set by the GSEs.

g. Governmental Support

Government-backed lending includes mortgage lending that is insured by the Federal Housing Administration (FHA) or guaranteed by either the U.S. Department of Veteran Affairs (VA) or the U.S. Department of Agriculture's (USDA) Rural Housing Service (RHS), among other agencies. Government-supported loans generally offer terms similar to conventional loans, but these loans provide additional benefits to consumers such as smaller down payments, higher loan-to-value ratios (amount of loan in proportion to the appraised value of the home), less restrictive qualifying criteria or lower interest rates. Consumers that qualify for these loans must pay additional insurance or guarantee fees in order to obtain the government backing. FHA, VA, and USDA have defined what constitutes a QM under the authority granted to them under the Dodd-Frank Act.. All of these loans are collectively referred to as "Agency" loans in these examination procedures.

h. Subprime and Alt-A Lending

Subprime mortgages carry interest rates higher than the rates of prime mortgages. These loans might also be called "higher-priced" or "high cost" mortgages, depending on how much the interest rate exceeds the average prime offer rate. A subprime mortgage generally has a higher cost and is offered to prospective borrowers with impaired credit records – those borrowers whose credit rating is "subprime." The higher interest rate is intended to compensate the lender for accepting the greater risk in lending to such borrowers. Traditionally, "subprime" has been the riskiest lending category, followed by "Alt-A," or Alternative-A, and then A-paper, or "prime," as the least risky. Alt-A borrowers may have prime credit, but some aspect of the loan makes it riskier.

2. Business of Mortgage Origination

Mortgage lending generally occurs through retail, wholesale, or correspondent lending channels. Sometimes there are no clear lines of demarcation among the channels, as a participant may operate in more than one of them. Each channel is described in more detail below.

a. Retail Channel

In the retail channel, the lender conducts the origination process directly with the consumer, either in person or through an online application. An employee of the lender, generally called a loan officer, solicits the loan, takes the application, and tracks the application through to the closing process.

b. Wholesale Channel − Mortgage Brokers

In the wholesale channel, a mortgage broker solicits the loan and takes the application from the consumer. Mortgage brokers are independent contractors and are not employees of the lender. The broker establishes relationships with multiple mortgage lenders and offers different mortgage loan products from these lenders. Mortgage brokers generally do not make underwriting decisions and do not actually fund the loans. In this channel, it is the mortgage lender that makes the underwriting decision, based on information provided by the broker. These mortgage lenders, called wholesale lenders, often are divisions of larger depository institutions. Generally, a wholesale lender requires a broker to enter into a wholesale lending agreement before the broker may originate loans on the lender's behalf.

In a variant of standard wholesale mortgage originations, some brokers "table fund" loans. In a table-funded transaction, the mortgage broker closes the loan as the lender of record and then assigns the loan to a purchaser at or immediately after the closing. The loan purchaser provides the funding for the loan, but the documents name the mortgage broker as the creditor.

c. Correspondent Channel – Small Mortgage Lenders

Correspondent lending, a form of retail lending, is often comprised of smaller institutions, or mortgage bankers. Correspondent lenders are the primary interface with consumers, conducting all steps in the mortgage origination process and funding their own loans. They generally originate and deliver loans pursuant to underwriting standards set by other lenders or investors, usually larger depository lenders. What differentiates a correspondent lender from a retail lender is that correspondent lenders will not portfolio or securitize these loans but will always sell their loans to another aggregator or investor. In addition to soliciting consumers directly, correspondent lenders may also receive applications and mortgage documents from mortgage brokers. Generally, an investor will require a correspondent lender to enter into a written correspondent lending agreement before the correspondent may originate loans for sale to the wholesale investor.

There are instances where mortgage brokers desire to make a transition and become correspondent lenders. These mortgage brokers typically identify themselves as a mini-correspondent lender. The mini-correspondent model is a non-delegated arrangement where the mortgage "broker" performs a subset of the mortgage origination activities in partnership with a traditional wholesale lender, who—in this instance—acts as the investor. The mini-correspondent will fund the loan in its name, usually using a warehouse line of credit, and then sells the loan to the wholesale lender/investor. While some mortgage brokers successfully transition into a mortgage banker, there may be instances where a mortgage broker remains as a mini-correspondent lender and never makes the complete transition to being an independent mortgage banker for various business-related reasons. Instead, the mortgage broker continues to conduct certain activities as a traditional mortgage broker, despite entering into mini-correspondent arrangements with particular wholesale lenders.

3. Federal Consumer Financial Law Requirements and Supporting Guidance

Mortgage originators must comply with several federal consumer financial laws:

a. The Real Estate Settlement Procedures Act (RESPA) and its implementing regulation, Regulation X, require lenders or mortgage brokers, with respect to mortgage origination, to provide borrowers with disclosures regarding the nature and costs of the real estate settlement process. RESPA also protects borrowers against certain abusive practices, such as fees or kickbacks for the referral of settlement service business and arrangements to evade the RESPA requirements. RESPA also places requirements on the administration of, and limitations upon required deposits into, escrow accounts. Generally, for closed-end loans secured by a dwelling, application and closing disclosures are provided under Regulation Z, pursuant to the TILA-RESPA Integrated Disclosure rule, which requires a Loan Estimate and a Closing Disclosure (collectively, Integrated Disclosures) to be provided for loans with applications received on or after October 3, 2015. For closed-end loans secured by a dwelling whose applications are received before October 3, 2015, and for reverse mortgages, HELOCs, chattel mortgage loans, and loans made by an entity that does not fit the Regulation Z definition of a creditor, the RESPA disclosures required at or before origination include, as applicable:

   i. Good Faith Estimate (GFE) of settlement costs within three business days after application (note that the GFE is not required to be provided if the TILA open-end disclosures are provided to the borrower, as required by Regulation Z);

   ii. An initial notice explaining whether the servicing rights to the loan may be transferred (note that this requirement does not apply to HELOCs); and

   iii. For loans other than HELOCs subject to TILA and Regulation Z, a settlement statement (HUD-1/1A) provided at or before closing that reflects the actual costs to be paid by the borrower and seller or the borrower when there is no seller, respectively.

b. The Truth in Lending Act (TILA) and its implementing regulation, Regulation Z, provide a uniform system for creditors' disclosures of credit terms. Generally, for closed-end loans secured by a dwelling, application and closing disclosures are provided under

Regulation Z, pursuant to the TILA-RESPA Integrated Disclosure rule, which requires the Integrated Disclosures to be provided for loans with applications received on or after October 3, 2015. For applications received before October 3, 2015, reverse mortgages, HELOCs, chattel mortgage loans, and loans made by an entity that does not fit the Regulation Z definition of a creditor, the TILA disclosures required at or before origination include:

i. Initial Truth-in-Lending (initial TIL) disclosure within three business days after application; and

ii. Final Truth-in-Lending (final TIL) disclosure at least three business days before closing.

c. In addition, Regulation Z:

i. Imposes certain advertising rules;

ii. Requires written disclosure and re-disclosure of certain loan terms;

iii. Requires that creditors make a good faith determination of the borrower's ability to repay and verify information they relied on to do so;

iv. Provides consumers with rescission rights in certain circumstances;

v. Provides consumers with legal remedies if the creditor fails to consider ability to repay;

vi. Delineates and prohibits certain unfair and deceptive mortgage lending practices;

vii. Restricts certain mortgage loan originator compensation;

viii. Requires certain mortgage loan originator qualifications;

ix. Requires loan originator identification on certain loan documents;

x. Requires depository institutions to have policies and procedures to ensure and monitor compliance with certain requirements;

xi. Prohibits certain terms and practices in the origination of "higher-priced" loans and prohibit additional terms and practices on a subset of these loans known as "high cost loans;"

xii. Requires escrow accounts for certain "higher-priced" mortgage loans;

xiii. Prohibits certain appraisal practices; and

xiv. Prohibits mandatory arbitration, the financing of credit insurance, or waivers of federal rights.

For loans covered by either the Integrated Disclosures or the pre-existing TILA and RESPA requirements, several additional disclosures are necessary, depending on the type of loan.

i. Provision of a written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant's location;

ii. Disclosure of affiliated business arrangements;

iii. Special information booklet, otherwise known as "Your home loan toolkit: A step-by-step guide;" and

iv. Consumer Handbook on Adjustable Rate Mortgages (CHARM) booklet.

d. The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) and its implementing regulations, Regulation G (Federal) and Regulation H (State), establish requirements for registration and, when applicable, standards for licensing of individuals who are residential mortgage loan originators. The registration and licensing requirements are administered, in part, through the Nationwide Mortgage Licensing System and Registry (NMLSR). Each loan originator, unless exempt, must obtain and maintain a state loan originator's license if not an employee of a covered financial institution, register through the NMLSR, obtain a unique identifier, and provide it to consumers in certain circumstances, and maintain registration through the NMLSR.

e. The Gramm-Leach-Bliley Act (GLBA), through its implementing regulation, Regulation P, requires covered entities to provide privacy notices and limits the sharing of certain consumer information without providing the consumer notice and an opportunity to opt-out.

f. The Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V, impose disclosure and other requirements on mortgage lenders that obtain information from a consumer reporting agency to determine a consumer's credit worthiness. These include the disclosure of credit score information, disclosure of adverse action, and disclosure of risk-based pricing.

g. Mortgage Acts and Practices – Advertising Rule (MAP Rule), also known as Regulation N, applies only to non-depository mortgage lenders and state-chartered credit unions, as well as entities that market and advertise mortgage products but are not mortgage lenders, such as mortgage brokers, real estate brokers, advertising agencies, lead generators, and rate aggregators. The MAP Rule sets forth specific deceptive acts and practices in the advertising of mortgage loan products and prohibits misrepresentation in any commercial communication concerning terms of mortgage loan products.[3]

h. The Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B, prohibit creditors from discriminating against any applicant with respect to any aspect of a credit transaction:

   i. On the basis of race, color, religion, national origin, sex,[4] marital status, or age (provided the applicant has the capacity to contract);

   ii. Because all or part of the applicant's income derives from any public assistance program; or

   iii. Because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.[5]

   Creditors also are prohibited from making any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application. ECOA's fair lending requirements are predominately covered in the Bureau's fair lending examinations.

   In addition, ECOA and Regulation B require lenders to retain information related to applications, existing accounts, and prescreened solicitations for a specified period of time, and to provide adverse action notices and appraisal and other written valuations to consumers, such as those generated by automated valuation models (AVMs) and broker price opinions.

i. The Home Mortgage Disclosure Act (HMDA) and its implementing regulation, Regulation C, require mortgage lenders that meet certain threshold conditions to collect, report to federal regulators, and disclose to the public certain data about applications for, and originations and purchases of, home purchase loans, home improvement loans, and refinancings for each calendar year. The data include information about the loan or application (e.g., loan amount, loan purpose, action taken), the applicant (e.g., sex, ethnicity and race), and the property (e.g., property type and geographic information such

[3] The MAP Rule became effective on August 19, 2011. Mortgage Acts and Practices – Advertising, 76 Fed. Reg. 43826 (July 22, 2011).

[4] The term "sex," as used in ECOA and Regulation B includes discrimination based on sexual orientation and gender identity. *See* Equal Credit Opportunity (Regulation B); Discrimination on the Bases of Sexual Orientation and Gender Identity, 86 Fed. Reg. 14363 (Mar. 16, 2021), *available at* https://www.federalregister.gov/documents/2021/03/16/2021-05233/equal-credit-opportunity-regulation-b-discrimination-on-the-bases-of-sexual-orientation-and-gender

[5] The Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*, is the collection of federal statutes that protects consumers when applying for or receiving credit. The Act includes statutes that have certain rights for consumers, such as dispute rights under the Fair Credit Reporting Act. The ECOA prohibits discriminating against an applicant who has exercised a right, such as a dispute right pursuant to one of the statutes outlined in the Act.

as census tract, state and metropolitan statistical area (MSA)). HMDA's requirements are covered in the Bureau's HMDA exams.

These laws historically have been implemented by regulations published by one or more of seven federal agencies, including the Federal Trade Commission, the Department of Housing and Urban Development, the Board of Governors of the Federal Reserve System, and other prudential regulators. The Dodd-Frank Act generally transferred these agencies' rulemaking authority under those laws to the Bureau, which published implementing regulations under its authority, effective beginning December 30, 2011. When examiners observe violations of regulatory requirements, they should cite to the regulation that was in effect at the time the act occurred.

The CFPB has issued policy guidance discussing the above regulations and detailing how the Bureau intends to exercise its supervision and enforcement authority. Below are descriptions and links to two guidance documents regarding mini-correspondent lenders and third-party service providers.

j. As discussed above, some mortgage brokers take on the title of a "mini-correspondent lender" as they transition to correspondent lending. However, just because a party calls itself a "mini-correspondent lender" does not mean that it is automatically exempt from regulations applicable to transactions involving mortgage brokers. See Policy Guidance on Supervisory and Enforcement Considerations Relevant to Mortgage Brokers Transitioning to Mini-Correspondent Lenders (July 9, 2014), CFPB Policy Guidance, http://files.consumerfinance.gov/f/201407_cfpb_guidance_mini-correspondent-lenders.pdf.

k. Third-party service providers for supervised banks and non-banks are expected to comply with federal consumer financial law. However, the outsourcing of mortgage origination activities to third-party service providers (e.g., software vendors, mortgage brokers, and settlement agents) does not limit or remove a supervised bank or non-bank's obligations under consumer financial services law. Supervised banks and non-banks are expected to oversee their business relationships with service providers in a manner that ensures compliance with federal consumer financial law by all parties. See CFPB Bulletin 2016-0262, Service Providers (October 31, 2016), https://files.consumerfinance.gov/f/documents/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf

To carry out the objectives set forth in the Examination Objectives section, the examination process also will include assessing other risks to consumers generally prohibited by the Dodd-Frank Act. These risks may include potentially unfair, deceptive, or abusive acts or practices (UDAAPs) with respect to mortgage originators' interactions with consumers.[6]

[6] Sec. 1036 of the Dodd Frank Act (July 21, 2010).

Please refer to CFPB's examination procedures regarding UDAAPs for more information about the legal standards and the CFPB's approach to examining for UDAAPs.

The particular facts in a case are crucial to a determination of unfair, deceptive, or abusive acts or practices. As set out in the Examination Objectives section, examiners should consult with Headquarters to determine whether the applicable legal standards have been met before a violation of any federal consumer financial law can be cited, including a UDAAP violation.

General Considerations

Completing the following examination modules will allow examiners to develop a thorough understanding of mortgage brokers' and lenders' practices and operations. To complete the modules, examiners should obtain and review, as applicable, each entity's:

1. organizational charts and process flowcharts;
2. board minutes, annual reports, or the equivalent to the extent available;
3. relevant management reporting;
4. policies and procedures;
5. rate sheets;
6. loan applications, verification of information relied on in determining ability to repay;
7. loan account documentation, notes, disclosures, and all other contents of loan underwriting and closing files;
8. operating checklists, worksheets, and review documents;
9. relevant computer program and system details;
10. wholesale and correspondent lending agreements, due diligence and monitoring procedures, and lending procedures;
11. underwriting guidelines; compensation policies;
12. historical examination information;
13. audit and compliance reports; management's responses to findings;
14. training programs and materials;

15. service provider contracts;[7]

16. advertisements; and

17. complaints.

Information requests for mortgage origination examinations are geared towards obtaining the type of information examiners need prior to an examination team's scheduled on-site review of an institution. The information requests should be tailored to reflect an institution's specific risk profile or the scope of the particular examination.

Transaction testing should occur for all mortgage origination focused examinations. In selecting a sample of files for transaction testing, examiners should use reasonable sampling methods, which may require use of a judgmental or statistical sample. The sample size selected for transaction testing should reflect the size, product line, and risk profile of the institution and the scope of the examination. The sample size should allow examiners to gain a thorough understanding of the nature of the institution's mortgage origination business line(s).

Examiners should obtain a list of consumer files, as requested in the mortgage origination information requests, and select a valid sample for further review.

1. Consider weighting the sample to review more loans from branches with a larger volume of complaints or product type that presents a greater risk of consumer financial harm.

2. Obtain complete loan files, which contain the disclosures required by federal consumer financial laws and other legal documents, as well as underwriting documents, rate sheets, and all documents provided to and by the consumer.

When on-site, examiners should review the sample of loan origination files to assess an institution's compliance with the federal consumer financial laws as further described in the individual modules below.

As resources permit, examiners also should conduct interviews with management, staff and third parties to determine whether they understand and consistently follow the policies, procedures, and regulatory requirements applicable to mortgage lending; manage change appropriately, including implementation of new requirements; and implement effective controls. Examiners also should consider observing consumer interactions and, if consumer complaints or the document review indicate potential concerns, interviewing consumers.

[7] CFPB issued a bulletin highlighting its expectation that supervised banks and non-banks oversee their business relationships with service providers in a manner that ensures compliance with federal consumer financial law. See CFPB Bulletin 2016-02, Service Providers (October 31, 2016), https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-guidance/compliance-bulletin-and-policy-guidance-2016-02-service-providers

Examination Procedures

Module 1 – Company Business Model

Conduct initial interviews for all relevant departments. This may occur during deep-dive meetings held with the institution at the beginning of on-site examination activities. Some of the information outlined below may have already been gathered during the pre-scoping and information gathering portion of the examination.

1. Determine the type of mortgage origination channel(s) used by the entity. Is the entity:
   a. Acting as a broker;
   b. Acting as a correspondent;
   c. Lending through a retail system;
   d. Lending through a wholesale or correspondent system; or
   e. Using a combination of these strategies?
2. Determine the funding source(s) the entity uses.
3. Ascertain the product volume, mix, trends, and concentrations across all branches.
4. Review the organizational chart and reporting structure for mortgage loan origination to determine the reporting structure and responsibilities of key managers.
5. Review and list the types of products the entity offers. Determine whether the entity offers hybrid ARMs, interest-only loans, simultaneous second liens, Alt- A loans, or subprime loans. If the entity offers reverse mortgages, determine whether it offers HECMs and, if so, what percentage of the reverse mortgages originated are HECMs.
6. Determine whether the quality control (or audit, as applicable), underwriting, and appraisal functions operate independently of the production function (sales unit).
7. If the examination includes assessment of the entity's compliance with RESPA:
   a. Determine whether the entity allows borrowers to choose their title insurer or requires the borrowers to use an affiliated settlement service provider. **Please refer to the RESPA examination procedures, Purchase of Title Insurance, 12 CFR 1024.16; Payment or Receipt of Referral or Unearned Fees, 12 CFR 1024.14; and Affiliated Business Arrangements, 12 CFR 1024.15, for more information.**
   b. Assess whether fees, payments, advances, loans, services, discounts, free website advertising, rebate, or other consideration given or received from any settlement service provider may be considered a kickback, unearned fee, or thing of value in

return for the referral of settlement services business. **Please refer to the RESPA examination procedures, 12 CFR 1024.14, for more information.**

Mini-Correspondent Lenders

Some mortgage brokers take on the title of a “mini-correspondent lender” as they transition to correspondent lending. However, just because a party calls itself a “mini-correspondent lender” does not mean that it is automatically exempt from regulations applicable to transactions involving mortgage brokers. Therefore, to determine the true nature of a mini-correspondent:

1. Determine whether the mini-correspondent still acts as a mortgage broker in some transactions, either brokering to the same wholesale lender that supplies the warehouse in of credit or otherwise.

    a. If so, determine what distinguishes the mini-correspondent’s mortgage brokerage transactions from its lender transactions.

2. Determine the number of investors the mini-correspondent has available to purchase its loans.

3. Determine whether the mini-correspondent is using a bona fide warehouse line of credit as the source to fund the loans that it originates.

    a. Determine how thorough the process was for the mini-correspondent to get approved for that warehouse line of credit.

    b. Determine whether the mini-correspondent has more than one warehouse line of credit.

    c. Determine whether the warehouse lender providing the line of credit affiliated with any of the mini-correspondent’s investors that purchase loans from the mini-correspondent.

    d. If the warehouse line of credit is provided by an investor to whom the mini-correspondent will sell loans to, determine whether the warehouse line is a “captive” line (i.e., the mini-correspondent is required to sell the loans to investors providing the warehouse lines or affiliates of the investors).

    e. Determine what percentage of the mini-correspondent’s total monthly originated volume is sold by the mini-correspondent to the entity providing the warehouse line of credit to the mini-correspondent or to an investor related to the entity providing the warehouse line of credit.

    f. Determine whether the mini-correspondent’s total warehouse line of credit capacity bear a reasonable relationship, consistent with correspondent lenders generally, to its size (i.e., its assets or net worth).

4. Determine what changes the mini-correspondent has made to staff, procedures, and infrastructure to support the transition from mortgage broker to mini-correspondent.

5. Determine what training or guidance has the mini-correspondent received to understand the additional compliance risk associated with being the lender or creditor of a residential mortgage transaction.

6. Determine which entity (mini-correspondent, warehouse lender, or investor) is performing the majority of the mortgage origination activities.

    a. Determine which entity underwrites the mortgage loan before consummation and otherwise makes the final credit decision.

    b. Determine what percentage of the mortgage origination activities (such as the taking of loan applications, loan processing, and pre-consummation underwriting) is being performed by the mini-correspondent or an independent agent of the mini-correspondent.

    c. If the majority of the mortgage origination activities are being performed by an investor, determine whether there is a plan in place to transition these activities to the mini-correspondent. Determine what conditions must be met to make this transition.

Module 2 – Advertising and Marketing

This module applies to both mortgage brokers and mortgage lenders. Examiners should evaluate the originator's advertising materials and disclosures across all media, including print, television, radio, telephone solicitation scripts, and electronic media (including the Internet, email and text messages) for any material misrepresentations. If the entity engages in telemarketing, examiners also should listen to a selection of the sales calls. Finally, examiners should determine whether the entity employs or acts as a third-party lead generator, and should understand the extent of any relationships that the entity has with affiliated or other service providers (i.e., as a broker or agent) to advertise, offer, or provide loans or other products and services.

Transaction Testing

TILA, Regulation Z

1. Assess compliance with TILA, Advertising Provisions, for advertisements concerning open-end accounts. **Please refer to the TILA examination procedures, Advertising, regarding 12 CFR 1026.16, for more information**.

2. Assess compliance with TILA, Advertising Provisions, for advertisements concerning closed-end loans. **Please refer to the TILA examination procedures, Advertising, regarding 12 CFR 1026.24, for more information**.

RESPA, Regulation X

1. Assess whether the entity complies with the RESPA Section 8 prohibitions against giving or accepting kickbacks for the referral of settlement service business and a split or portion of unearned fees.[8] **Please refer to the examination procedures regarding RESPA, 12 CFR 1024.14, for more information.**

SAFE Act, Regulation G

1. Assess whether mortgage loan originator employees of depository institutions disclose NMLS numbers on all advertisements, whether those advertisements are made on paper or electronically. (12 CFR 1007.105)

FCRA, Regulation V

1. Assess compliance with Fair Credit Reporting Act prescreening obligations. **For more information please refer to the FCRA examination procedures on Prescreened Consumer Reports and Opt-Out Notice, Sections 604(c) and 615(d); 15 U.S.C. 1681b(c)**

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[8] If the testing required to complete this procedure has been completed under Module 1, Procedure 8, please refer to those results without repeating the procedure here.

and 15 U.S.C. 1681m(d); and 12 CFR 1022.54, in Module 3 – Disclosures to Consumers and Miscellaneous Requirements.

2. Assess compliance with FCRA's affiliate marketing rule. **Please refer to the FCRA examination procedures, 12 CFR 1022.20 – 1022.27, for more information**.

Mortgage Acts and Practices, Regulation N (12 CFR 1014.3)

1. For non-depositories and state-chartered credit unions, determine whether advertisements, promotional materials, and other "commercial communications"[9] for mortgage credit products contain material misrepresentations, expressly or by implication, of the following:[10]

   f. the interest rate charged for the product, including, but not limited to the amount of interest owed each month that is included in the consumer's payments, loan amount, or total amount due, or whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer (12 CFR 1014.3(a)(1)-(2));

   g. the annual percentage rate, simple annual rate, periodic rate, or any other rate (12 CFR 1014.3(b));

   h. the existence, nature, or amount of fees or other costs associated with the product, including, but not limited to misrepresentations that no fees are charged (12 CFR 1014.3(c));

   i. the existence, cost, payment terms, or other terms associated with any additional product or feature that may be sold with the product, including, but not limited to credit insurance or credit disability insurance (12 CFR (1014.3(d));

   j. the terms, amounts, payments, or other requirements related to taxes or insurance associated with the product, including, but not limited to whether separate payment of taxes or insurance are required or the extent to which tax or insurance payments are included in the loan payments, loan amount, or total amount due from the consumer (12 CFR 1014.3(e)(1)-(2));

   k. the existence, nature, or amount of prepayment penalties (12 CFR 1014.3(f));

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[9] The MAP Rule, 12 CFR 1014, which applies to non-banks and state-chartered credit unions, defines "commercial communication" broadly as "any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, on-hold script, upsell script, training materials provided to telemarketing firms, program-length commercial ("infomercial"), the internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term *commercial communication*." 12 CFR 1014.2.

[10] The MAP Rule lists 19 examples of specific prohibited claims, including the claims described in this item.

l. the variability of interest, payments, or other terms of the product, including but not limited to misrepresentations using the word “fixed” (12 CFR 1014.3(g));

m. comparisons between rates or payments available for a period less than the full length of the product and actual or hypothetical rates or payments (12 CFR 1014.3(h)(1)-(2));

n. product type, including whether the loan amortizes (12 CFR 1014.3(i));

o. amount of the obligation, or the existence, nature, or amount of cash or credit available to the consumer (12 CFR 1014.3(j));

p. existence, number, amount, or timing of any minimum or required payments, including misrepresentations about whether payments are required in a reverse mortgage or other mortgage credit product (12 CFR 1014.3(k));

q. potential for default, including misrepresentations concerning the circumstances when the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations (12 CFR 1014.3(l));

r. product effectiveness with respect to debt reduction, elimination, restructuring, or waiver or forgiveness of the debt in whole or in part (12 CFR 1014.3(m));

s. the affiliation of a mortgage credit product or product provider to a governmental entity or other organization (12 CFR 1014.3(n)(1));

t. the relation of a mortgage credit product to a governmental benefit, or that the mortgage credit product advertised is endorsed, sponsored, or affiliated with any government or other program (12 CFR 1014.3(n)(2));

u. the source of any commercial communication, including but not limited to whether the commercial communication is made by or on behalf of the consumer’s current mortgage lender or servicer (12 CFR 1014.3(o));

v. the right of a consumer to reside in the dwelling subject to the mortgage credit product or the duration of that right, including but not limited to what conditions a consumer with a reverse mortgage can stay in the dwelling (12 CFR 1014.3(p));

w. a consumer’s credit qualifications for a particular product or program, including whether the consumer has been preapproved or guaranteed for any such product or term (12 CFR 1014.3(q));

x. the consumer's likelihood to obtain a refinancing or modification, including misrepresentations concerning whether the consumer has been preapproved or guaranteed for refinancing or modification (12 CFR 1014.3(r));

y. the availability, nature, or substance of counseling services, including, but not limited to the qualifications of those offering the services or advice (12 CFR 1014.3(s)).

2. For non-depositories and state-chartered credit unions, determine whether the entity keeps and maintains records of all advertisements and promotions for a period of twenty-four months from the last date the entity made or disseminated the applicable advertisement or promotion (12 CFR 1014.5(a)).

Other Risks to Consumers - General

1. Determine whether advertisements and promotional materials for mortgage loan products contain misleading representations that a lender or broker is acting in a fiduciary capacity or in the consumer's best interest.
2. Determine whether advertisements and promotional materials for mortgage loan products clearly disclose all material limitations or conditions on the terms or availability of products or services, such as:
    a. special interest rates for a limited time period (teaser rates);
    b. the expiration date for terms that apply only during an introductory period;
    c. interest rate resets that could cause significant increases in payments;
    d. material prerequisites for obtaining particular products, services, or benefits (e.g., discounts, refunds or rebates);
    e. non-amortizing or less-than-fully amortizing loan terms;
    f. balloon payments; or
    g. prepayment penalties.
3. Determine whether advertisements and promotional materials avoid using fine print, separate statements, or inconspicuous disclosures to correct potentially misleading headlines.
4. If additional products or services are sold or offered in connection with the loan, such as credit insurance products, home warranties, or annuities, determine whether advertisements and promotional materials provide timely, clear, and understandable information about the existence of costs, payment terms, penalties, or other terms and charges, the reasons for their imposition, and the salesperson's compensation from cross-sales.
5. Determine the target audience for each type of advertisement and product. Assess whether the entity designs advertisements, promotional materials, disclosures and scripts to be comprehensible by the target audience.

Please refer to the UDAAP examination procedures, Marketing and Disclosures, for more information.

Other Risks to Consumers – Non-traditional Mortgage Loans

1. Determine whether advertisements and promotional materials:

   a. Provide timely, clear, and understandable information about the costs, key terms, and features associated with non-traditional mortgage loans, including information about balloon clauses, negative or less than full amortization, prepayment penalties, and the cost of reduced documentation that are important in enabling the consumer to make an informed decision whether the product meets the consumer's needs.

Please refer to the UDAAP examination procedures, Marketing and Disclosures, for more information.

Other Risks to Consumers – Reverse Mortgages

1. Determine whether the entity offers or receives compensation from those offering other financial products, like an annuity or long-term care insurance, to be paid for with the proceeds of the reverse mortgage. If so, determine whether the entity provides timely, clear, and understandable information about these products.

2. Determine whether the entity provides timely, clear, and understandable information about the costs and relative risks of reverse mortgages.

3. Determine whether the entity provides timely, clear, and understandable information about the requirements to pay property taxes, insurance, utilities, maintenance, and other expenses after obtaining a reverse mortgage.

4. Determine whether the entity provides timely, clear, and understandable information about the circumstances under which the borrower may be required to pay the loan in full.

5. Determine whether the entity provides timely, clear, and understandable information about the ability of a non-borrowing spouse to stay in the home if the borrowing spouse no longer resides there or passes away, if applicable.

6. Determine whether the entity provides timely, clear, and understandable information regarding the ability of the borrower's estate or heirs to retain the home after the borrower passes away.

7. Determine whether the entity has adequate safeguards against improper marketing of reverse mortgages to seniors who have medical or cognitive problems or in situations raising concerns about undue influence by third parties.

Please refer to the UDAAP examination procedures, Marketing and Disclosures, for more information.

Module 3 - Loan Originators

This module focuses on an entity's compliance with the compensation, qualification, identification, and policy and procedure requirements for loan originators. Examiners should be prepared to review compensation agreements, tax records, receipts and other appropriate documentation in order to identify all compensation and incentive plans and confirm compliance with the Loan Originator Rule. For the qualification and documentation aspect of the Loan Originator Rule, examiners should be prepared to assess whether loan originators are appropriately registered and are identified on the required documents. For loan originators that are not required to be registered, examiners should be prepared to assess whether background qualification requirements have been met by the institution.

Transaction Testing

TILA, Regulation Z

Prohibited Payments to Loan Originators (12 CFR 1026.36(d)(1))

1. Review loan files, loan originator compensation agreements (including incentive programs), payment records, and other applicable records to confirm that loan originators are not receiving prohibited payments. **Please refer to the TILA examination procedures Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i), for more information.**

2. Interview loan originators, including highly compensated loan originators, to verify information obtained from written records provided by the creditor. **Please refer to sample questions at the TILA examination procedures Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i),end of this module for more information.**

3. Assess whether, in connection with a consumer credit transaction secured by a dwelling, no loan originator receives and no person pays to a loan originator, directly or indirectly, compensation that is based on any of the transaction's terms or a factor that is a proxy for a term. (12 CFR 1026.36(d)(1)(i)).[11] **Please refer to the TILA examination procedures Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i), for more information.**

4. Assess whether, in connection with a consumer credit transaction secured by a dwelling, a loan originator receives and a person pays an originator, directly or indirectly, compensation that is based on loan product type.[12] **Please refer to the TILA examination procedures**

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[11] The amount of credit extended is not deemed to be a transaction term, provided compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended. Such compensation may be subject to a minimum or maximum dollar amount.

[12] Compensation based on loan product type often will violate Regulation Z because many "products" in the market refer to different bundles of specific transaction terms. *See* Loan Originator Compensation Requirements under the Truth in Lending Act

Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i), for more information.

5. Assess whether, in connection with a consumer credit transaction secured by a dwelling, an institution uses point banks, marketing service agreements, or other similar devices to provide prohibited compensation to an individual loan originator based on transaction terms or the terms of multiple transactions conducted by that individual loan originator. **Please refer to the TILA examination procedures, Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i) for more information.**

6. Determine whether creditors and loan originator organizations have retained records related to loan originator compensation and compensation agreements for three years after the date of payment. **Please refer to the TILA examination procedures General Procedures, for more information.**

7. Assess whether any of the proceeds from a consumer credit transaction secured by a dwelling are placed into an account from which payments are made back to the individual loan originator or an entity owned in whole or part by that individual loan originator and those payments are not reflected on the final settlement statement for the transaction. **Please refer to the TILA examination procedures Prohibited Payments to Loan Originators, 12 CFR 1026.36(d)(1)(i), for more information.**

8. If loan originators receive compensation pursuant to a non-deferred compensation plan, determine whether the 10 percent total compensation limit applies. If it does, determine whether non-deferred compensation received by the loan originator complies with the 10 percent total compensation limit. **Please refer to the TILA examination procedures, Prohibited Payments to Loan Originators, for more information.**

Prohibition on Dual Compensation (12 CFR 1026.36(d)(2))

1. Determine whether any loan originator receives compensation directly from a consumer and from any person other than the consumer in a consumer credit transaction secured by a dwelling. **Please refer to the TILA examination procedures Prohibition on Dual Compensation regarding Regulation Z, 12 CFR 1026.36(d) for more information.**

Prohibition on Steering (12 CFR 1026.36(e))

1. Confirm that, in connection with a consumer credit transaction secured by a dwelling, a loan originator does not direct or "steer" a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless

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(Regulation Z), 78 Fed. Reg. 11,279, 11,327 n. 82 (Feb. 15, 2013). *See also*, 2013 Loan Originator Rule Small Entity Compliance Guide (Feb. 2013), *available at* https://files.consumerfinance.gov/f/201503_cfpb_2013-loan-originator-rule-small-entity-compliance-guide.pdf the consummated transaction is in the consumer's interest. **Please refer to the TILA examination procedures, Prohibition on Steering, 12 CFR 1026.36(e)(1), for more information.**

The rule provides a safe harbor to facilitate compliance with the prohibition on steering in 12 CFR 1026.36(e)(1). The loan originator is deemed to comply with the anti-steering prohibition if the consumer is presented with loan options that meet specific conditions for each type of transaction in which the consumer expressed an interest.

Loan Originator Qualifications and Documentation (12 CFR 1007, 1008, and 1026.36(f))

1. Determine whether an individual is a loan originator. **Please refer to the SAFE Act Regulations G, 12 CFR 1007.102, and Appendix A, and Regulation H, 12 CFR 1008.103 and its corresponding Appendix A for examples.**

2. Determine whether the loan originator organization and its individual loan originators are registered or licensed as required by applicable state and federal law, including the SAFE Act.

3. Determine whether the financial institution's written policies and procedures comply with SAFE Act requirements and the institution conducts annual independent compliance tests to assure compliance with the SAFE Act regulation.

Please refer to the SAFE Act examination procedures for supervised financial institutions regarding Regulation G, 12 CFR 1007.104. For loan originators required to be registered under state law, see Regulation Z, 12 CFR 1026.36(f).

4. Determine whether the loan originator organization, including a creditor:

   a. complies with state law qualification requirements for legal existence and foreign qualification, to the extent applicable;

   b. ensures its individual loan originators are licensed and/or registered to the extent required under the SAFE Act and state law; and

5. Determine whether the loan originator organization, for individual loan originator employees who are not licensed and do not have to be licensed, prior to acting as loan originators:

   a. obtains, among other things, a criminal background check, a credit report, and information about administrative, civil or criminal findings;

   b. makes certain determinations, including financial responsibility, where applicable; and

   c. provides periodic training.

6. Confirm that the NMLSR ID information for the loan originator organization and the primary individual loan originator is disclosed on the credit application; the Loan Estimate and the Closing Disclosure; the note or loan contract; and the security instrument.

Please refer to the TILA examination procedures Loan Originator Qualifications and Documentation regarding Regulation Z, 12 CFR 1026.36(f).

Module 4 – Loan Disclosures and Terms - Closed-End Residential Mortgage Loans

This module focuses on the disclosures required for closed-end residential transactions subject to the TILA-RESPA Integrated Disclosure rule, effective October 3, 2015. The Loan Estimate and Closing Disclosure (collectively, Integrated Disclosures) are required for most closed-end loans secured by a dwelling for which applications are received on or after the effective date. Examiners should obtain and review a sample of complete loan files to assess the entity's compliance. If consumer complaints regarding mortgage origination and closing indicate potential violations of disclosure requirements, examiners may also conduct interviews of consumers from the sample and ask questions relevant to each topic area below.

Transaction Testing

Loan Estimate

TILA, Regulation Z

***Estimates Prior to the Loan Estimates* (12 CFR 1026.19(e)(2))**

1. If the creditor has provided the consumer with a written estimate of terms or costs prior to delivery of the Loan Estimate, determine whether:

    a. the creditor clearly and conspicuously states on the first page, in no smaller than 12-point font, "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan," and

    b. the estimate does not use a format or content substantially similar to the Loan Estimate (form H-24 of Appendix H).

Please refer to the TILA examination procedures, Pre-Disclosure Activity, for more information.

2. Determine whether the creditor or mortgage broker imposed a fee (other than for a credit report) before the consumer received the Loan Estimate and indicated intent to proceed with the transaction. **Please refer to the TILA examination procedures, Pre-Disclosure Activity, for more information.**

***Timing* (12 CFR 1026.19(e)(1)(iii))**

1. Determine whether the Loan Estimate was delivered or placed in the mail no later than three business days after receipt of the consumer's application. **Please refer to the TILA examination procedures, Mortgage Loans Secured by Real Property – Early Disclosures (Loan Estimate), 12 CFR 1026.19: Timing, for more information.**

2. Determine whether the Loan Estimate was delivered or placed in the mail no later than seven business days before consummation of the transaction (other than a timeshare transaction).**Please refer to the TILA examination procedures, Mortgage Loans**

Secured by Real Property – Early Disclosures (Loan Estimate), 12 CFR 1026.19: Timing, for more information.

3. If the consumer waived the seven business day waiting period, determine whether the creditor obtained a dated written statement describing the personal financial emergency, modifying or waiving the waiting period, and containing signatures by all consumers who are primarily liable on the obligation. **Please refer to the TILA examination procedures, Mortgage Loans Secured by Real Property – Early Disclosures (Loan Estimate), 12 CFR 1026.19: Timing, for more information.**

Accurate Completion of the Loan Estimate **(12 CFR 1026.37)**

1. Determine whether the creditor accurately disclosed the Loan Estimate disclosures on Page 1 of the Loan Estimate. **Please refer to the TILA examination procedures, Loan Estimate, 12 CFR 1026.37(a), for more information.**

2. Determine whether the creditor has accurately calculated, including compliance with rounding rules, and completed the Loan Terms table on Page 1 of the Loan Estimate. **Please refer to the TILA examination procedures, Loan Terms – 12 CFR 1026.37(b) and Form of Disclosures, 12 CFR 1026.37(o), for more information.**

3. Determine whether the creditor has accurately calculated, including compliance with rounding rules, and completed the Projected Payments table on Page 1 of the Loan Estimate. **Please refer to the TILA examination procedures, Projected Payments, 12 CFR 1026.37(c) and Form of Disclosures, 12 CFR 1026.37(o), for more information.**

4. Determine whether the creditor has accurately completed the Costs at Closing table on Page 1 of the Loan Estimate. If reviewing a transaction without a seller, determine whether the creditor or mortgage broker used the alternative Cash to Close table. **Please refer to the TILA examination procedures, Costs at Closing, 12 CFR 1026.37(d), for more information.**

5. Determine whether the creditor discloses that the consumer may obtain general information and tools on the Bureau's website and has included a link to the site specified in 12 CFR 1026.37(e). **Please refer to the TILA examination procedures, Website Disclosure, 12 CFR 1026.37, for more information.**

6. Determine whether the creditor accurately itemized, including compliance with rounding rules, the transaction's loan closing costs on Page 2 of the Loan Estimate. **Please refer to the TILA examination procedures, Closing Cost Details: Loan Costs, 12 CFR 1026.37(f) and Form of Disclosures, 12 CFR 1026.37(o), for more information**.

7. Determine whether the creditor accurately itemized, including compliance with rounding rules, the transaction's other closing costs on Page 2 of the Loan Estimate. **Please refer to the TILA examination procedures, Closing Cost Details: Other Costs, 12 CFR 1026.37(g) and Form of Disclosures, 12 CFR 1026.37(o), for more information**.

8. Determine whether the creditor accurately itemized, including compliance with rounding rules, the amount of cash or funds required from the consumer at closing on Page 2 of the Loan Estimate. **Please refer to the TILA examination procedures, Closing Cost Details: Calculating Cash to Close, 12 CFR 1026.37(h) and Form of Disclosures, 12 CFR 1026.37(o), for more information**.

9. For a transaction without a seller, determine whether the creditor used the alternative Cash to Close table. **If so, please refer to the TILA examination procedures, Closing Cost Details: Alternative Calculating Cash to Close Table for Transactions without a Seller, 12 CFR 1026.37(h)(2), for more information**.

Adjustable Payment **(12 CFR 1026.37(o))**

1. If the loan includes an adjustable payment feature (e.g., interest only, optional payments, step or seasonal payments), determine whether the creditor included and accurately completed, including compliance with rounding rules, the adjustable payment table. **Please refer to the TILA examination procedures, Closing Cost Details: Adjustable Payment (AP) Table, 1026.37(i) and Form of Disclosures, 12 CFR 1026.37(o), for more information.**

Adjustable Rate Mortgage **(12 CFR 1026.37(j))**

1. If the loan includes an adjustable interest rate, determine whether the creditor included and accurately completed the adjustable interest rate table. **Please refer to the TILA examination procedures, Closing Cost Details: Adjustable Interest Rate (AIR) Table, 12 CFR 1026.37(j), for more information.**

NMLSR Information **(12 CFR 1026.37(k))**

1. Determine whether the creditor correctly completed the NMLSR information for the transaction including information for the individual loan originator who is the primary contact for the consumer at the mortgage broker if the consumer is uses a mortgage broker. **Please refer to the TILA examination procedures, Additional Information About This Loan, 12 CFR 1026.37(k), for more information.**

2. Determine whether the creditor accurately calculated and itemized, including compliance with rounding rules, the appropriate comparison information. **Please refer to the TILA examination procedures, Additional Information About This Loan: Comparisons, 12 CFR 1026.37(l) and Form of Disclosures, 12 CFR 1026.37(o), for more information.**

Additional Disclosures on the Loan Estimate **(12 CFR 1026.37(m))**

1. Determine whether the creditor has provided the disclosures regarding appraisal, assumption, homeowner's insurance, late payments, refinancing, servicing of the loan, liability after foreclosure, and construction loans. **Please refer to the TILA examination procedures, Additional Information About This Loan: Other Considerations, 12 CFR 1026.37(m) for more information.**

Confirmation of Receipt **(12 CFR 1026.37(n))**

1. Assess whether the creditor has chosen to have the consumer sign the receipt of the Loan Estimate. Determine whether the creditor has included all required language. If the creditor has not chosen to include a signature line, determine whether the creditor has included the label "Loan Acceptance" and the appropriate language. **Please refer to the TILA examination procedures, Additional Information About This Loan: Confirm Receipt, 12 CFR 1026.37(n) for more information.**

Revised Loan Estimate **(12 CFR 1026.19(e)(3)(iv))**

1. If a revised or corrected Loan Estimate(s) was provided to the consumer, determine whether an appropriate changed circumstance occurred that affects settlement charges; the consumer's eligibility; credit terms or settlement as requested by the consumer; points or lender credits due to rate lock; or because the initial Loan Estimate expired. **Please refer to the TILA examination procedures, Revised Loan Estimates, for more information.**

Interest Rate Lock **(12 CFR 1026.19(e)(3)(iv)(D))**

1. If the interest rate was locked, determine whether the creditor provided a revised Loan Estimate, including the revised interest rate, any points paid to reduce the interest rate, lender credits, and any other interest rate dependent charges and terms within three business days after the rate has been locked. **Please refer to the TILA examination procedures, Revised Loan Estimates, for more information.**

Timing Prior to Closing **(12 CFR 1026.19(e)(4))**

1. If a revised Loan Estimate(s) was provided to the consumer, determine whether it was provided after a consumer received a Closing Disclosure form. Determine whether the revised or corrected Loan Estimate was delivered or placed in the mail no later than four business days before consummation of the transaction. **Please refer to the TILA examination procedures, Provision and Receipt of Revised Disclosures for more information.**

Closing Disclosure

TILA, Regulation Z

Timing **(12 CFR 1026.19(f)(1))**

1. Determine whether the Closing Disclosure (form H-25 of Appendix H) was delivered or placed in the mail no later than three business days before consummation of the consumer's transaction. **Please refer to the TILA examination procedures, Mortgage Loans Secured by Real Property – Final Disclosures (Closing Disclosures), 12 CFR 1026.19(f), for more information**.

2. If the consumer waived the three-business-day waiting period, determine whether the creditor obtained a dated written statement describing the personal financial emergency, modifying or waiving the waiting period, and containing signatures by all consumers who are primarily liable on the obligation. **Please refer to the TILA examination procedures, Mortgage Loans Secured by Real Property, Final Disclosures (Closing Disclosures), 12 CFR 1026.19(f), for more information**.

Accurate Completion of Closing Disclosure **(12 CFR 1026.38)**

1. Determine whether the creditor accurately disclosed the Closing Information disclosures on Page 1 of the Closing Disclosure. **Please refer to the TILA examination procedures, Closing Information, 12 CFR 1026.38(a)(3), for more information**. If a transaction does not have a seller, determine whether the creditor included the appraised property value, using the term *"Estimated Prop. Value."*

2. Determine whether the creditor accurately disclosed the Transaction Information disclosures on page 1 of the Closing Disclosure. **Please refer to the TILA examination procedures, Transaction Information, 12 CFR 1026.38(a)(4), for more information**.

3. Determine whether the creditor accurately disclosed the Loan Information disclosures on page 1 of the Closing Disclosure. **Please refer to the TILA examination procedures, Loan Information, 12 CFR 1026.38(a)(5), for more information**.

4. Determine whether the creditor has accurately calculated, including compliance with rounding rules, and completed the Loan Terms table on Page 1 of the Closing Disclosure. **Please refer to the TILA examination procedures, Loan Terms, 12 CFR 1026.38(b) and Form of Disclosures, 12 CFR 1026.38(t), for more information**.

5. Determine whether the creditor has accurately calculated, including compliance with rounding rules, and completed the Projected Payments table on Page 1 of the Closing Disclosure. **Please refer to the TILA examination procedures, Projected Payments, 12 CFR 1026.38(c) and Form of Disclosures, 12 CFR 1026.38(t), for more information**.

6. Determine whether the creditor has accurately completed the Costs at Closing table on Page 1 of the Closing Disclosure. If reviewing a transaction that does not have a seller, determine whether the creditor chose to use the alternative calculating Cash to Close table and accurately determined the amount due from or to the consumer. **Please refer to the TILA examination procedures, Costs at Closing, 12 CFR 1026.38(d), for more information**.

7. Determine whether the creditor accurately disclosed all loan costs associated with the loan transaction. Costs must be noted as either being paid at or before closing and whether they were paid by the borrower, the seller, or others. **Please refer to the TILA examination procedures, Closing Costs Details: Loan Costs, 12 CFR 1026.38(f), for more information**.

8. Determine whether the creditor accurately disclosed all other costs associated with the loan transaction. Costs must be noted as either being paid at or before closing and whether they were paid by the borrower, the seller, or others. **Please refer to the TILA examination procedures, Closing Costs Details: Other Costs, 12 CFR 1026.38(g), for more information**.

9. Determine whether the creditor accurately disclosed the borrower's total closing costs. The creditor must disclose the total closing costs, the closing costs subtotals, and any applicable lender credits. Lender credits must be displayed as a negative number. **Please refer to the TILA examination procedures, Closing Costs Details: Total Closing Costs, 12 CFR 1026.38(h), for more information**.

10. Determine whether the creditor accurately compares the final amounts listed in the Calculating Cash to Close table to amounts previously disclosed and includes a notation of whether the amount changed prior to closing. **Please refer to the TILA examination procedures, Calculating Cash to Close, 12 CFR 1026.38(i), and Form of Disclosures, 12 CFR 1026.38(t), for more information**.

11. For a transaction that does not involve a seller, determine whether the creditor used the alternative Calculating Cash to Close table on the Loan Estimate. If so, determine whether the creditor accurately compares the amounts listed in the alternative Calculating Cash to Close table. **Please refer to the TILA examination procedures, Alternative Cash to Close Table for Transactions Without a Seller, 12 CFR 1026.38(e) and Form of Disclosures, 12 CFR 1026.38(t), for more information**.

12. Determine whether the creditor accurately completes the summary of the borrower's transaction and that all amounts are correct. **Please refer to the TILA examination procedures, Summaries of Transactions: Borrower's Transaction, 12 CFR 1026.38(j), for more information**.

13. Determine whether the creditor accurately completes the summary of the seller's transaction and that all amounts are correct. **Please refer to the TILA examination procedures, Summaries of Transactions: Seller's Transaction, Section 12 CFR 1026.38(k), for more information**.

14. For a transaction that does not involve a seller, determine whether the creditor used the optional Payoffs and Payments table and accurately completed the table to reflect the amounts paid to other parties from the loan proceeds**. Please refer to the TILA examination procedures, Payoffs and Payments table for Transactions without a Seller, 12 CFR 1026.38(t)(5)(vii)(B), for more information**.

15. Determine whether the creditor completes accurately all required components under the Loan Disclosures section. **Please refer to the TILA examination procedures, Additional Information About This Loan: Loan Disclosures, 12 CFR 1026.38(l), for more information**.

Adjustable Payment Table **(12 CFR 1026.38(t))**

1. If the loan includes an adjustable payment feature (e.g., interest only, optional payments, step or seasonal payments), determine whether the creditor included and accurately completed, including compliance with rounding rules, an Adjustable Payment (AP) Table as disclosed on the Loan Estimate. **Please refer to the TILA examination procedures, Additional Information About This Loan: Adjustable Payment (AP) Table, 12 CFR 1026.38(m) and Form of Disclosures, 12 CFR 1026.38(t), for more information**.

Adjustable Interest Rate Table **(12 CFR 1026.38(n), (o))**

1. If the loan includes an adjustable interest rate, determine whether the creditor included and accurately completed the Adjustable Interest Rate (AIR) Table as disclosed on the Loan Estimate. **Please refer to the TILA examination procedures, Additional Information About This Loan: Adjustable Interest Rate (AIR) Table, 12 CFR 1026.38(n), for more information.**

2. Determine whether the creditor accurately calculated and completed the Loan Calculations section on page 5 of the Closing Disclosure. **Please refer to the TILA examination procedures, Loan Calculations, 12 CFR 1026.38(o), for more information.**

Other Disclosures **(12 CFR 1026.38(p))**

1. Determine whether the creditor includes the disclosures required in the Other Disclosures section on page 5 of the Closing Disclosure, including the consumer's liability after foreclosure, and as required, the appropriate loan acceptance language. **Please refer to the TILA examination procedures, Other Disclosures, 12 CFR 1026.38(p), for more information.**

Questions **(12 CFR 1026.38(q))**

1. Determine whether the creditor includes a separate questions notice, containing all the information required and formatted per the regulation. **Please refer to the TILA examination procedures, Questions Notice, 12 CFR 1026.38(q)**.

NMLSR **(12 CFR 1026.38(r))**

1. Determine whether the creditor provides contact and NMLSR information for all relevant parties, including, as applicable, the Lender, the Mortgage Broker, the Real Estate Broker(s) and the Settlement Agent. **Please refer to the TILA examination procedures, Contact Information, 12 CFR 1026.38(r), for more information**.

Confirm Receipt **(12 CFR 1026.38(s))**

1. Assess whether the creditor has chosen to have the consumer sign the receipt of the Loan Estimate. Determine whether the creditor has included all required language. **Please refer to the TILA examination procedures, Confirm Receipt, 12 CFR 1026.38(s), for more information**.

Revised Closing Disclosure **(12 CFR 1026.19(f)(2))**

1. Determine whether a revised or corrected Closing Disclosure was provided to the consumer due to an inaccurate APR, a change to the loan product, or the addition of a pre-payment penalty. Confirm that the consumer received the revised or corrected Closing Disclosure three business days prior to consummation of the transaction. **Please refer to the TILA examination procedures, Subsequent Changes, for more information.** If the consumer waived the three-business-day waiting period, confirm that the creditor received a written statement of a bona-fide personal emergency. **Please refer to the TILA examination procedures, Provision of Closing Disclosures, for more information.**

2. If a revised or corrected Closing Disclosure was provided to the consumer for any other changes in loan terms or costs, confirm that the creditor provided the revised or corrected disclosure at or before consummation. **Please refer to the TILA examination procedures, Subsequent Changes, for more information.**

3. Confirm that the creditor does not exceed acceptable tolerance limits for the closing costs disclosed in the Closing Disclosure. **Please refer to the TILA examination procedures, Subsequent Changes, for more information.**

Tolerance Cure **(12 CFR 1026.19(f)(2)(v))**

1. If closing costs exceed acceptable tolerances, determine whether the creditor provided refunds to the consumer within 60 calendar days after consummation. **Please refer to the TILA examination procedures, Subsequent Changes, for more information. Providing a refund within 60 calendar days cures the tolerance violation.**

Revised or Corrected Closing Disclosure **(12 CFR 1026.19(f)(2)(iii))**

1. Determine whether the creditor was required to provide a revised or corrected Closing Disclosure within 30 calendar days after consummation due to an inaccuracy or change in amount paid by the consumer. **Please refer to the TILA examination procedures, Subsequent Changes, for more information.**

Additional Disclosures

TILA, Regulation Z

1. If the creditor allows consumers to shop for settlement services, determine whether the creditor provided the consumer with a written list of available settlement service providers within three business days after receipt of the consumer's application. **Please refer to the TILA examination procedures, Shopping for Settlement Service Providers, for more information.**

2. Determine whether each borrower received two (2) copies of the notice of the right to rescind required by Regulation Z for a non-purchase money loan secured by a principal dwelling. **Please refer to the TILA examination procedures, Closed-End Credit Transactional Testing Procedures and Open-End Credit Transactional Testing Procedures for more information**.

3. If reviewing a purchase transaction, determine whether the creditor or mortgage broker provided the consumer with the "Your home loan toolkit: A step-by-step guide" within three business days of receiving the consumer's application. If the application was denied before the end of the three-day period, providing the booklet is not required.

4. If reviewing an adjustable rate mortgage, determine whether the creditor or mortgage broker provided the consumer with the Consumer Handbook on Adjustable Rate Mortgages (CHARM) booklet.

RESPA, Regulation X

1. For mortgage lenders, determine whether the lender complies with RESPA List of Homeownership Counseling Organizations requirements. **Please refer to the RESPA examination procedures, 12 CFR 1024.20, for more information**.

2. For any person making a referral to an entity that is part of an affiliated business arrangement, determine whether the entity complies with RESPA requirements for affiliated business arrangements. **Please refer to the RESPA examination procedures, 12 CFR 1024.15, for more information**.

Homeowners Protection Act

1. Determine whether the entity provided a notice to the borrower of the borrower's ability to terminate private mortgage insurance. **Please refer to the examination procedures regarding the Homeowners Protection Act for more information**.

Loans Terms

TILA, Regulation Z

1. Determine whether agreements for consumer transactions secured by a dwelling contain terms that require arbitration or whether terms have been applied or interpreted to bar a consumer from bringing a claim in court. **Please refer to TILA examination procedures on Prohibition on Mandatory Arbitration Clauses and Waiver of Certain Consumer Rights, 12 CFR 1026.36(h).**

2. Determine whether a creditor finances, directly or indirectly, premiums or fees for credit insurance. **Please refer to TILA examination procedures on Prohibition on Financing Credit Insurance, 12 CFR 1026.36(i).**

Other Risks to Consumers

1. Compare Loan Estimates and Closing Disclosures for evidence of misrepresentations or other unfair, deceptive, or abusive acts or practices related to the interest rate, points, closing costs, the loan product, or the loan's features. **Please refer to the UDAAP examination procedures, Availability of Terms or Services as Advertised, for more information**.

2. Determine whether there are instances where consumers lose their rate locks prior to their expiration, resulting in the consumer being placed in more expensive mortgage products, despite obtaining a rate lock and submitting all required documentation within required time frames. **Please refer to the UDAAP examination procedures, Availability of Terms or Services as Advertised, for more information**.

Module 5 – Loan Disclosures and Terms - Other Residential Mortgage Loans

This module focuses on the disclosures required for closed- and open-end residential transactions that are not subject to the TILA-RESPA Integrated Disclosure rule. These transactions include reverse mortgages, HELOCs, and chattel-dwelling loans (e.g., loans secured by a mobile home or by a dwelling that is not attached to real property).They also include closed-end residential mortgages where the application was received prior to October 3, 2015, the effective date for the TILA-RESPA Integrated Disclosure requirements. The disclosures required for these loans include TILA disclosures, GFEs, HUD-1/HUD-1-A, the affiliated business arrangement disclosure, and servicing transfer notices. During transaction testing, examiners should identify acts, practices, and materials that indicate potential violations of federal consumer financial laws.

Transaction Testing

Disclosures

TILA, Regulation Z

1. For closed-end transactions, determine whether TILA disclosures are timely provided. **Please refer to the TILA Examination Procedures, Disclosures, Generally – Timing, for more information**.

2. For open-end transactions, determine whether the TILA disclosures are timely provided. **Please refer to the TILA examination procedures, Timing Requirements – Open-End Credit, for more information**.

3. For reverse mortgages, determine whether TILA disclosures are timely provided. **Please refer to the TILA examination procedures, Timing Requirements – Closed-End Credit Secured by a Dwelling, for more information**.

4. Assess whether the creditor has accurately calculated and disclosed the amount financed as required pursuant to 12 CFR 1026.18(b). **Please refer to the TILA narrative, Subpart C, Finance Charge, Amount Financed and APRs for more information**.

5. Assess whether the creditor has accurately calculated and disclosed the finance charge. **Please refer to the TILA narrative, Subpart C, Finance Charge, Amount Financed and APRs for more information**.

6. Assess whether the creditor has accurately calculated and disclosed the annual percentage rate (APR). **Please refer to the TILA narrative, Subpart C, Finance Charge, Amount Financed and APRs; and the TILA examination procedures, Closed-End Transactions Not Subject to 12 CFR 1026.19(e) and (f), for more information**.

7. Assess whether the creditor has accurately completed all payment schedules, rate schedules, and/or payment summary tables, as applicable. **Please refer to the TILA narrative, Subpart**

C, Finance Charge, Amount Financed and APRs and the TILA examination procedures, Closed-End Transactions Not Subject to 12 CFR 1026.19(e) and (f), for more information.

8. Determine whether each borrower received two (2) copies of the notice of the right to rescind required by Regulation Z for a non-purchase money loan secured by a principal dwelling. **Please refer to the TILA examination procedures, Closed-End Credit Transactional Testing Procedures and Open-End Credit Transactional Testing Procedures for more information**.

RESPA, Regulation X

Under RESPA and its implementing regulation, Regulation X, the lender/creditor is responsible for providing the Good Faith Estimate (GFE) and the "Your home loan toolkit: A step-by-step guide" (Settlement Cost Booklet) (see 12 CFR 1024.6). The regulations permit the mortgage broker to provide the disclosures, but the lender must ascertain whether the GFE has been provided.

1. During an examination of a mortgage broker, examiners should determine whether it has agreed to provide the GFE and Booklet and if so, whether it is doing so.

2. For mortgage lenders, determine whether the lender complies with RESPA GFE requirements. **Please refer to the RESPA examination procedures, 12 CFR 1024.7, for more information.**

3. For mortgage lenders, determine whether the creditor or mortgage broker provided the consumer financing a home purchase with the "Your home loan toolkit: A step-by-step guide" within three business days of receiving the consumer's application. If the application was denied before the end of the three-day period, providing the booklet is not required. **Please refer to the RESPA examination procedures, 12 CFR 1024.6, for more information.**

4. Assess whether the consumer has been charged a fee for an appraisal, inspection, or other similar settlement service prior to receiving the GFE and indicating an intention to proceed with the transaction. **Please refer to the RESPA narrative, GFE Application Requirements, for more information.**

5. For mortgage lenders, determine whether the lender complies with RESPA List of Homeownership Counseling Organizations requirements. **Please refer to the RESPA examination procedures, 12 CFR 1024.20, for more information**.

6. For any person making a referral to an entity that is part of an affiliated business arrangement, determine whether the entity complies with RESPA requirements for affiliated business arrangements. **Please refer to the RESPA examination procedures, 12 CFR 1024.15, for more information.**

7. For mortgage lenders, brokers, or dealers, determine whether the entity complies with RESPA requirements for providing the notice stating whether the servicing of the loan may be transferred. **Please refer to the RESPA examination procedures, 12 CFR 1024.33, for more information**.

8. Review the final settlement statement (HUD-1 or HUD-1A), and assess compliance with RESPA disclosure requirements and tolerance limits on settlement charges. **Please refer to the RESPA examination procedures, 12 CFR 1024.8, for more information.**

9. If escrow accounts were established, determine whether the borrower received an initial escrow account statement. **Please refer to the RESPA examination procedures, 12 CFR 1024.17, for more information.**

Homeowners Protection Act

1. Determine whether the entity provided a notice to the borrower of the borrower's ability to terminate private mortgage insurance (PMI). **Please refer to the examination procedures regarding the Homeowners Protection Act for more information**.

Reverse Mortgages

1. If the entity originates reverse mortgage loans, assess compliance with TILA provisions concerning those mortgage loans. **Please refer to the TILA examination procedures for Reverse Mortgages, 12 CFR 1026.33, for more information.**

Loans Terms

1. Determine whether agreements for consumer transactions secured by a dwelling contain terms that require arbitration or whether terms have been applied or interpreted to bar a consumer from bringing a claim in court. **Please refer to TILA examination procedures on Prohibition on Mandatory Arbitration Clauses and Waiver of Certain Consumer Rights, 12 CFR 1026.36(h).**

2. Determine whether a creditor finances, directly or indirectly, premiums or fees for credit insurance. **Please refer to TILA examination procedures on Prohibition on Financing Credit Insurance, 12 CFR 1026.36(i).**

Other Risks to Consumers

1. Compare the initial and subsequent GFEs and TILA disclosures with final HUD-1 settlement statements and final TILA disclosures for any evidence of unfair, deceptive, or abusive acts or practices with respect to the interest rate, points, closing costs, or the loan product or loan features. **Please refer to the UDAAP examination procedures, Availability of Terms or Services as Advertised for more information**.

2. Determine whether there are instances where consumers lose their rate locks prior to their expiration, resulting in the consumer being placed in more expensive mortgage products,

despite obtaining a rate lock and submitting all required documentation within required time frames. **Please refer to the UDAAP examination procedures, Availability of Terms or Services as Advertised, for more information**.

Module 6 - Appraisals

This module focuses on an entity's practices in connection with appraisals. Examiners should focus their transaction testing on whether an entity is meeting compliance obligations related to required appraisals for certain types of loans.

Transaction Testing

TILA, Regulation Z

1. For higher-priced mortgages that are not exempt from the appraisal requirement, determine whether the creditor obtained a written appraisal performed by a certified or licensed appraiser prior to consummation of the transaction. **Please refer to the TILA examination procedures, Higher-Priced Mortgage Loans: Appraisals, for more information.**

2. For certain higher-priced mortgage loans, determine whether the creditor properly assessed and, if required, obtained two written appraisals before consummation of the transaction. **Please refer to the TILA examination procedures, Higher-Priced Mortgage Loans: Appraisals, for more information.**

3. Determine whether the creditor provides a copy of each written appraisal no later than three business days prior to consummation of the loan or, if the loan is not consummated, no later than 30 days after that determination is made. **Please refer to the TILA examination procedures, Higher-Priced Mortgage Loans: Appraisals, for more information.**

4. Determine whether the lender complies with the Regulation Z requirements for valuation independence. **Please refer to the TILA examination procedures, Valuation Independence, 12 CFR 1026.42, for more information**.

ECOA, Regulation B

1. Determine whether the regulated entity provides copies of appraisals and other written valuations developed in connection with an application for credit to be secured by a first lien on a dwelling to applicants in accordance with Regulation B, 12 CFR 1002.14. **Please refer to the ECOA examination procedures, 12 CFR 1002.14(a), for more information.**

Other Risks to Consumers

1. Determine whether practices of the mortgage lender or its employees undermine appraisal independence. **Please refer to the UDAAP examination procedures, Employees and Third Parties Interacting with Consumers, for more information**.

2. Confirm that the entity maintains adequate oversight of the appraisers it uses (including termination where necessary) and safeguards against appraisal fraud. **Please refer to the UDAAP examination procedures, Employees and Third Parties Interacting with Consumers, for more information**.

Module 7 – Underwriting

This module focuses on an entity's underwriting practices. Examiners should focus their transaction testing on whether an entity is meeting ability-to-repay (ATR) underwriting obligations—specifically, the institution made a reasonable, good faith determination of a reasonable consumer's ability to repay the loan according to its terms. Examiners should be prepared to confirm an institution's reliance on third-party records to verify ability-to-repay factors. Examiners should also determine if high-cost or higher-priced mortgages are being made and assess the origination of these loans for compliance with the TILA.

Transaction Testing

This section of the Procedures applies only to mortgage lenders, not mortgage brokers.

TILA, Regulation Z

Ability-to-Repay Mortgages (12 CFR 1026.43(c))

1. Determine whether the lender meets the requirement to consider ATR for consumer-purpose, closed-end loans secured by a dwelling. Review the documentation used to make underwriting decisions, including applications, tax returns, verifications of income, assets, and employment, credit reports, and all other required documentation. **Please refer to the TILA examination procedures, Minimum Standards for Transactions Secured by a Dwelling, 12 CFR 1026.43, and Ability to Repay, 12 CFR 1026.43(c), for more information.**

2. Review a sample of loans that have been indemnified, repurchased, determined unsalable, or rejected during the review period. Assess the loans for compliance with ability-to-repay requirements. **Please refer to the TILA examination procedures, Ability-to-Repay, 12 CFR 1026.43(c), for more information.**

3. Review a sample of loans that have become delinquent within the first year during the review period. Assess the loans for compliance with ability-to-repay requirements. **Please refer to the TILA examination procedures, Ability-to-Repay, 12 CFR 1026.43(c), for more information.**

4. For loans made using automated underwriting systems, determine whether the originator entered the correct inputs and that all of the conditions on the feedback certificate were satisfied and documented before the loan was funded.

Qualified Mortgages (QMs) (12 CFR 1026.43(e))

1. If the creditor originates General QMQM loans as a way to meet TILA's ability-to-repay requirements, determine whether these loans directly meet the ATR requirements under 12 CFR 1026.43(c), or

a. Determine whether the QM loans contain all terms necessary for qualified mortgages and no prohibited terms. **Please refer to the TILA examination procedures, Qualified Mortgages 12 CFR 1026.43(e), for more information**;

b. Assess whether the points and fees are within the required limits. **Please refer to the TILA examination procedures, Qualified Mortgages, 12 CFR 1026.43(e), for more information**;

c. Determine whether the annual percentage rate does not exceed the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by the amounts specified in 12 CFR 1026.43(e)(2)(vi). **Please refer to the TILA examination procedures, Qualified Mortgages, 12 CFR 1026.43(e), for more information**.[13]

2. If the creditor originates Agency QM loans, determine:

a. Whether there is evidence in the loan file that the loan is eligible for purchase, insurance, or guarantee by (1) the GSEs (if operating under conservatorship and the consumer application is received by the creditor prior to October 1, 2022) or (2) the appropriate government agency. **Please refer to the TILA examination procedures for Qualified Mortgages – Other Agencies, 12 CFR 1026.43(e)(4) and Qualified Mortgages, 12 CFR 1026.43(e), for more information**;

b. Whether the loans contain any prohibited terms. **Please refer to the TILA examination procedures for Qualified Mortgages – Other Agencies, 12 CFR 1026.43(e)(4) and Qualified Mortgages 12 CFR 1026.43(e), for more information;**

c. Whether the loans meet the requirements of 12 CFR 1026.43(e)(2)(i) through (iii) (i.e., have substantially equal, periodic payments; restrictions on loan features; a maximum 30-year term; and points and fees—generally limited to a 3 percent threshold). **Please refer to the TILA examination procedures for Qualified Mortgages – Other Agencies, 12 CFR 1026.43(e)(4) and Qualified Mortgages, 12 CFR 1026.43(e), for more information;**

d. Whether any Agency QM loans that the creditor is required to indemnify or repurchase after consummation met the ATR requirements. **Please refer to the TILA examination procedures, Ability-to-Repay, 12 CFR 1026.43(c), for more information.**

3. For qualified mortgages consummated on or before January 10, 2021, where the points and fees exceeded the applicable threshold and the creditor attempted to cure the error, determine that the creditor reimbursed the appropriate amount

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[13] This subsection applies if the creditor chooses to rely on the price-based QM definition, which becomes compulsory for purposes of the General QM definition on October 1, 2022. Prior to that date, at the creditor's discretion, it may choose to rely on the previous debt-to-income based General QM definition, under which the ratio of the consumer's total monthly debt to total monthly income, at the time of consummation, does not exceed 43 percent in accordance with former Appendix Q.

a. within 210 days after consummation and

b. prior to the consumer instituting an action in connection with the loan, or

c. prior to the consumer providing written notice to the creditor of the error, or

d. prior to the consumer becoming 60 days past due on the legal obligation.

Please refer to the TILA examination procedures, Qualified Mortgages, 12 CFR 1026.43(e), for more information related to various QM categories, including Seasoned QM loans.

High-Cost Mortgages[14] (12 CFR 1026.32)

1. If the entity originates high-cost mortgage loans, assess compliance with TILA provisions concerning those mortgage loans. **Please refer to the TILA examination procedures for High-Cost Mortgages, 12 CFR 1026.32, for more information.**

Higher-Priced Mortgage Loans[15] (12 CFR 1026.35)

1. If the entity originates higher-priced mortgage loans, assess compliance with TILA provisions concerning those mortgage loans. **Please refer to the TILA examination procedures for Higher-Priced Mortgage Loans – 12 CFR 1026.35, for more information.**

2. Determine whether the entity originates higher-priced mortgage loans as defined under Regulation Z, 12 CFR 1026.35, and if so, whether these are not qualified mortgages as defined under Regulation Z, 12 CFR 1026.43, or other rules issued by HUD, USDA, or VA. **Please refer to the TILA examination procedures for Higher-Priced Mortgage Loans – 12 CFR 1026.35 and Qualified Mortgages – 12 CFR 1026.43(e) for more information.**

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[14] A "high-cost" loan is a consumer credit transaction secured by the consumer's principal dwelling, in which either:
- The APR at consummation will exceed by more than 6.5 percentage points for first-lien mortgage loans, or by more than 8.5 percentage points for subordinate-lien mortgage loans, the average prime offer rate (APOR); or
- The total points and fees (as defined in the regulation) payable by the consumer at or before loan closing will exceed the greater of 5 percent of the total loan amount or, for transactions of less than $20,000, the lesser of $1,000 or 8 percent of the loan amount; or
- There is a prepayment penalty over 2 percent of the amount prepaid that can be charged more than 36 months after consummation or account opening.

See the FFIEC rate spread calculator: http://www.ffiec.gov/ratespread/newcalc.aspx,andtheAPORspreadsheet at: http://www.ffiec.gov/ratespread/aportables.htm.

[15] A "higher-priced" mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by:
- 1.5 or more percentage points for loans secured by a first lien on a dwelling;
- 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or
- 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

3. Determine whether the entity established an escrow account prior to consummation of the higher-priced mortgage loan transaction**. Please refer to the TILA examination procedures, Higher-Priced Mortgage Loans: Escrow Accounts for more information**.

4. Determine whether the creditor structures a higher-priced mortgage loan as an open-end plan to evade the requirements of Regulation Z. **Please refer to the TILA examination procedures on Evasion of Minimum Standards for Loans Secured by a Dwelling – 12 CFR 1026.43(h).**

Home Equity Lines of Credit (HELOCs) (12 CFR 1026.40)

1. Determine for all home equity plans with a variable rate that the APR is based on an independent index. Further, ensure home equity plans are terminated or terms changed only if certain conditions exist. (12 CFR 1026.40(f))

2. Determine that, if any consumer rejected a home equity plan because a disclosed term changed before the plan was opened, all fees were refunded. Verify that non-refundable fees were not imposed until three business days after the consumer received the required disclosures and brochure. (12 CFR 1026.40(g) and (h))

3. Additional variable rate testing: Verify that when accounts were opened or loans were consummated, the loan contract terms were recorded correctly in the financial institution's calculation systems (e.g., its computer). Determine the accuracy of the following recorded information:

    a. Index value,

    b. Margin and method of calculating rate changes,

    c. Rounding method, and

    d. Adjustment caps (periodic and lifetime).

Evasion

1. Determine whether the creditor structures a mortgage loan as an open-end plan to evade the requirements of Regulation Z. **Please refer to the TILA examination procedures on Evasion of Minimum Standards for Loans Secured by a Dwelling – 12 CFR 1026.43(h)**.

Other Risks to Consumers

1. Review communication logs or notes in the mortgage loan files, and interview sales and production staff of the mortgage lender or broker to determine the independence of underwriters from the sales or production unit, with an emphasis on any influence mortgage loan originators may have over underwriters. **Please refer to the UDAAP examination procedures, Employees and Third Parties Interacting with Consumers, for more information.**

2. Review the loan file to determine whether loan documentation, including income documentation, has been altered or forged. Any indications of fraud should be handled in accordance with CFPB internal consultation procedures, and examiners should refer them to other authorities as appropriate.

3. Determine whether the compensation systems for underwriters (whether in-house or contracted) affect their incentives concerning the speed and quality of their underwriting. **Please refer to the UDAAP examination procedures, Employees and Third Parties Interacting with Consumers, for more information.**

4. If the lender offers non-traditional or subprime loan products:

    a. Determine if underwriting standards take adjusted payments into account in considering borrower ability to repay at expected payment change dates.

    b. If the lender offers loans that have two or more risky characteristics (called "risk layering"), determine whether risk layering is taken into account as part of the underwriting policies, whether any mitigating factors are required for approval, and whether actual underwriting practices conform with policies. Risky characteristics are any of the following:

        i. Limited or no documentation of income, assets, and/or employment;

        ii. Simultaneous second lien;

        iii. Negative amortization, option payment, or interest-only features;

        iv. Introductory rate 200 basis points or more below fully-indexed rate;

        v. Borrowers with subprime characteristics;

        vi. No escrow for property taxes and homeowner's insurance;

        vii. Extended amortization period or extended loan terms; or

        viii. Balloon clauses.

    c. Determine whether a customer is referred up to a prime loan if he qualifies for a prime loan and whether the referral is structured or framed to discourage the customer from applying for a prime loan.

Please refer to the UDAAP examination procedures for more information.

<u>Record Retention</u> **(12 CFR 1026.25)**

1. Assess whether the lender verifies and maintains a record of the information relied on for all ATR loans (QM and non-QM) for a period of three years. **Please refer to the TILA examination procedures, General Procedures, for more information**.

Module 8 – Examiner Conclusions and Wrap-Up

To conclude this supervisory activity, examiners must complete all steps under this section, regardless of the entity's risk profile.

1. Summarize the findings, supervisory concerns, and regulatory violations.
2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether the violation(s) are pattern or practice, or isolated.
3. Identify actions needed to correct violations and weaknesses in the institution's compliance management system that were identified during the examination, as appropriate.
4. Discuss all examination findings with the institution's management, including violations, recommendations and conclusions about risks and risk management. If necessary, obtain commitments for corrective action.
5. Compose conclusion comments, highlighting any issues that should be included in the Report of Examination or Supervisory letter. If necessary, compose a Matters Requiring Attention (MRA) comment.
6. Record violations according to Bureau policy in the Report of Examination or Supervisory Letter and CFPB's electronic database system to facilitate analysis and reporting.
7. If the examiner believes enforcement action may be appropriate, contact appropriate agency personnel for guidance.
8. Prepare a memorandum for inclusion in the work papers and CFPB's official system of record that outlines planning and strategy considerations for the next examination and, if appropriate, interim follow-up.
9. Update, organize and reference workpaper documentation in accordance with Bureau policy.
10. Ensure any paper or electronic media that contain sensitive entity sensitive or customer information are appropriately disposed of or secured.