

CUNA REGTRAC

MORTGAGE LENDING REGULATIONS GUIDE

A supplement to the Mortgage Lending Regulations Book



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Preface

Legal Review

The RegTraC books are designed to provide general information regarding regulations affecting credit unions. They are not intended to substitute for legal advice based upon specific facts in any individual case, and credit unions with regulatory concerns are advised to consult with attorneys or specialists to obtain advice directed to their specific circumstances.

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If you have further questions, please contact CUNA at 800-356-9655, ext. 4249, or e-mail RegTraC@cuna.com.

Introduction

This guide is intended to generally identify the major regulatory disclosure requirements for closed-end home secured loans, primarily the requirements under the Truth in Lending Act (TILA)/Regulation Z and the Real Estate Settlement Procedures Act (RESPA)/Regulation X. It starts with the requirements at the time of application and identifies requirements through servicing of the closed-end mortgage loan. The guide also references other areas and regulations which are covered in more detail in the CUNA RegTraC Mortgage Lending Regulations book, as well as additional resources that may be helpful in understanding the regulatory provisions.

For information on the specific types of closed-end home secured loans covered by the regulations and provisions in the guide, it is important to review the specific regulation. In addition, the Consumer Financial Protection Bureau (CFPB) has provided a [chart](#) that helps identify the applicability of the 2013 mortgage rule amendments.

Closed-End Home Secured Loans

On or With the Application

Adjustable-rate mortgage loan disclosures and booklet (Reg. Z section 1026.19)

Section 1026.19(b) of Regulation Z requires credit unions to provide a special variable-rate disclosure and a booklet entitled [*Consumer Handbook on Adjustable-Rate Mortgages*](#) to members who apply for variable-rate mortgage loans. These types of loans are better known as adjustable-rate mortgages (ARMs). You must give the ARM disclosure and booklet at the time you give the application. If you charge a nonrefundable fee before you provide the application, you must give the disclosure and booklet before charging the fee. This disclosure requirement is in addition to, not in place of, the other disclosures required under Regulation Z. If the application is accessed by the member in an electronic form, the ARM disclosures and booklet must be provided in an electronic form on or with the application.

Credit unions must provide the ARM disclosure and booklet to any member who applies for an adjustable-rate loan with a term greater than one year that will be secured by the member's principal dwelling. The [ARM disclosures must contain the information listed here](#).

[Section 1026.19\(b\)\(2\)](#) requires credit unions to provide a loan program disclosure for each variable-rate program in which a member expresses an interest.

This means that if you offer more than one type of variable-rate loan program, you must prepare separate disclosures for each program. If an applicant expresses an interest in a particular ARM program or in more than one program, you must provide disclosures for each program.

Home Mortgage Disclosure Act (HMDA)

HMDA and Regulation C require that credit unions collect certain information at the time of application. The government monitoring information requirements for HMDA reporting credit unions are found in the [CUNA RegTraC Mortgage Lending Module: Section 3—Home Mortgage Disclosure Act and Regulation C](#).

Receipt Of Application

Section 1026.19(a) of Regulation Z requires credit unions to timely provide residential mortgage loan applicants with a good faith estimate of the disclosures that constitute a disclosure statement under section 1026.18. This requirement applies to all applications for loans that meet the definition of a residential mortgage loan under Regulation Z and are subject to RESPA and Regulation X.

Loan Estimates Under Regulation Z (Reg. Z sections 1026.18 and 1026.19)

The loan estimates required to be provided under Regulation Z must be provided to all loans that are subject to the Real Estate Settlement Procedures Act (RESPA)/Regulation X. RESPA covers “Federally related mortgage loans” which includes any loan secured by a first or subordinate lien on residential real property except for temporary financing such as a construction or bridge loan. Loan estimates are not required to be provided for home equity lines of credit (HELOCs) or mortgage transactions secured by an interest in a timeshare plan.

Click [here](#) for the list of required loan estimate information. For more information, see [Regulation Z section 1026.18](#) and [section 1026.19](#)

The loan estimates must be delivered or mailed to the applicant not later than the third business day after your credit union receives the application. The general definition of “business day” applies for this purpose—days on which a creditor’s offices are open to the public for carrying on substantially all of its business functions. If the loan is consummated in a shorter time period (for example, less than three business days after your credit union’s receipt of the application), you must provide the disclosure statement before consummation.

In addition, the estimates must be delivered or mailed not later than the seventh business day before consummation of the loan. The applicant is deemed to have received the corrected disclosures three business days after

they are mailed or delivered. The seven day waiting period and the three-day waiting period after redisclosure both use a different definition of “business day”—the more precise definition used for rescission purposes applies in these situations—all calendar days except Sundays and specified legal public holidays.

Furthermore, the estimate or corrected estimate must contain the following statement: “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.” A member may not be charged any fee (except for a fee imposed for obtaining the member’s credit report, provided the fee is bona fide and the amount is reasonable) by the credit union or any other party in connection with the member’s mortgage loan application before the member has received the loan estimate as required above, and has indicated their intent to proceed. If the loan estimate is mailed to the member, the member is considered to have received it three business days after it was mailed.

Written List of Service Providers (Reg. Z 1026.19(e)(1)(vi))

If the credit union permits the member to shop for a settlement service, the credit union must provide a written list identifying available providers for that settlement service. They must also include verbiage stating the member may choose to shop for those services. When providing this list the credit union must identify at least one available provider for service which the member is

able to shop. The credit union must also provide complete and accurate contact information for the providers listed.

Special Information Booklet (Reg. Z section 1026.19(g))

The special information booklet must be provided to applicants to help them understand the nature of the costs of settlement services. It must be provided to any member who applies for a federally related purchase money mortgage loan.

The rule provides six exceptions to the delivery of this disclosure. These exceptions are:

- The loan is denied within the three business day period after receipt of the application.
- The brochure [*What You Should Know about Home Equity Lines of Credit*](#) is delivered in a home equity line of credit transaction.
- The transaction is a refinancing.
- It is a closed-end subordinate lien loan.
- The transaction is a reverse mortgage.
- The purpose of the loan is not to purchase a one-to-four family residential property.

The credit union or mortgage broker must deliver the special information booklet within three business days of receipt of the application (use the same definition of application as you do for the loan estimate) by the credit union or preparation by the mortgage broker. Under the regulations, this obligation can be met by mailing the special information booklet within the three-day period, whether or not it is

actually received by the member within three days, or whether it is received at all.

If more than one individual applies for a loan, the requirement is met by delivering the special information booklet to any one of the members. The special information booklet may be reproduced as long as it is clearly legible, is not made part of any other document, and the booklet is changed only to the extent permitted by the rule.

Servicing Disclosure (Reg. X section 1024.33)

For reverse mortgage loans, a servicing disclosure statement must be provided within three days (excluding legal public holidays, Saturdays and Sundays) of application. The disclosure is not required if the loan is denied within the three-day period. Appendix MS-1 to the rule contains a [**model form**](#). If co-applicants indicate the same address on the application, then one copy to that address is sufficient; otherwise, a copy must be delivered to each applicant.

Homeownership Counseling Notice (Reg. X section 1024.20)

The Homeownership Counseling Notice must consist of a clear and conspicuous written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant's location. The list must be provided no later than three business days after receiving an application for a federally related mortgage loan, and may be obtained from the CFPB's applicable website no earlier than 30 days prior to the time when the list is provided to the

loan applicant. More information about the list can be found on the CFPB's website: <http://www.consumerfinance.gov/mortgagehelp/>.

Appraisal Notice (Reg. B section 1002.14)

For a first-lien loan secured by a dwelling, the credit union is required to notify the applicant in writing of the right to receive a copy of the appraisal or valuation. The disclosure must be mailed or delivered no later than the third business day after receiving an application. If the application is for credit which will not be secured by a first lien, but the credit union later determines that the credit will be secured by a first lien, the credit union must provide the disclosure no later than the third business day after determining it is applicable.

The sample disclosure language is as follows:

We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.

For a checklist of required disclosures for closed-end mortgage loans, see Appendix D.

Underwriting

At or prior to consummation, credit unions must determine that consumers have the ability to repay a consumer-purpose closed-end loan that is secured

by a dwelling. This requirement does not apply to loans for time-shares, reverse mortgages, bridge loans with a term of 12 months or less, and the construction phase of a construction-to-permanent loan. Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

To comply with the rule, the credit union may either underwrite a loan using the ability to repay factors or have a loan that meets the terms of a qualified mortgage (QM). For help determining whether a loan may be underwritten as a Qualified Mortgage or utilizing the ability to repay factors, please refer to the decision tree in Appendix E.

Determining the Ability to Repay (Reg. Z section 1026.43)

Ability to Repay (ATR) Factors

The rule provides that a creditor must make a reasonable and good faith determination at or before consummation that the consumer will have the ability to repay (ATR) the loan according to its terms. The ATR will not only depend on the creditor's standards, but also on the individual facts and circumstances surrounding the extension of credit and how the underwriting factors are applied.

In making the ATR determination, credit unions must use eight underwriting factors:

1. current or reasonably expected income or assets;
2. current employment status;