Required Compliance for Commercial Loans Secured by Real Estate

March 2016

Disclaimer

This presentation is designed to provide accurate and authoritative information in regard to the subject matter covered. The handouts, visuals, and verbal information provided are current as of the webinar date. However, due to an evolving regulatory environment, Financial Education & Development, Inc. does not guarantee that this is the most-current information on this subject after that time. Webinar content is provided with the understanding that the publisher is not rendering legal, accounting, or other professional services. Before relying on the material in any important matter, users should carefully evaluate its accuracy, currency, completeness, and relevance for their purposes, and should obtain any appropriate professional advice. The content does not necessarily reflect the views of the publisher or indicate a commitment to a particular course of action. Links to other websites are inserted for convenience and do not constitute endorsement of material at those sites, or any associated organization, product, or service.
### Sponsors

- Alabama Bankers Association
- Arkansas Community Bankers
- California Community Banking Network
- Independent Bankers of Colorado
- Florida Bankers Association
- Community Bankers Association of Georgia
- Community Banker Association of Illinois
- Indiana Bankers Association
- Community Bankers of Iowa
- Community Bankers Association of Kansas
- Kentucky Bankers Association
- Maine Bankers Association
- Community Bankers of Michigan
- Independent Community Bankers of Minnesota
- Missouri Independent Bankers Association
- Montana Independent Bankers Association
- Nebraska Independent Community Bankers
- Independent Comm. Bankers Assoc. of New Mexico
- Independent Comm. Bankers Assoc. of NY State
- Independent Community Banks of North Dakota
- Community Bankers Association of Ohio
- Community Bankers Association of Oklahoma
- Pennsylvania Association of Comm. Bankers
- Independent Banks of South Carolina
- Independent Comm. Bankers of South Dakota
- Tennessee Bankers Association
- Independent Bankers Association of Texas
- Vermont Bankers Association
- Virginia Association of Community Banks
- Community Bankers of Washington
- Community Bankers of West Virginia
- Wisconsin Bankers Association

**Directed by**

The Community Bankers Webinar Network

---

### Today’s Presenter – Susan Costonis, CRCM

Susan Costonis is a compliance consultant and trainer. She specializes in compliance management along with deposit and lending regulatory training. Most of her 37-year career was spent as a banker in several areas including lending, loan administration, electronic banking, and compliance risk management.

Susan has successfully managed compliance programs and exams for institutions that ranged from a community bank to large multi-state bank holding companies. She has been a compliance officer for institutions supervised by the OCC, FDIC, and Federal Reserve. Susan has been a Certified Regulatory Compliance Manager since 1998, completed the ABA Graduate Compliance School, and graduated from the University of Akron and the Graduate Banking School of the University of Colorado. She regularly presents to financial institution audiences in several states and “translates” complex regulations into simple concepts by using humor and real life examples.
Seminar Objectives

- Which regulations apply to **commercial loans** that are secured by **real estate**? Are there any exceptions when the real estate is taken as “an abundance of caution”? Do the commercial lenders and support staff at your bank understand the data collection required for HMDA reportable applications? Is a written application **required** for a business-purpose loan? Join this fast-paced webinar to understand the application process with step-by-step instructions and actual examples that explain the regulatory requirements in terms that are easy to understand.

Highlights

- Which **factors** determine if the application is for business or consumer purpose?
- What are the **compliance requirements** and **common violations** when real estate is taken as collateral?
- Review of the required disclosure for the “Right to Receive a Copy of Appraisal”
- Overview of HMDA requirements and preview of the changes to business-purpose loans when the new **HMDA rules become effective January 1, 2018**.
- Flood insurance violations can be costly. What are some of the unique challenges with commercial buildings and collateral?
- There are four “trip wire” events for flood insurance. Learn about the new rules for “detached structure on residential property.”
Take-Away Toolkit

- Matrix of 28 loan types and required disclosures for both consumer and commercial loans with explanations about real-estate-secured loans
- Checklists that outline which compliance regulations apply to commercial credit and the exemptions
- Step-by-step HMDA controls
- Flood insurance resources
- Collateral checklist
- Fair lending policy – business-purpose loan requests are covered by the Equal Credit Opportunity Act and the Fair Housing Act

Guide to Commercial Real-Estate-Secured Regulations

- What applies to consumer?
- What applies to business?
- What are the commercial requirements?
- Reg B
- Reg C
- Reg Z
- RESPA
- BSA/CIP
- Loans to insiders
- Flood insurance
Commercial Lending Hotspots

- Fair Housing
- ECOA – Regulation B
- Flood Hazard
- FCRA
- Accommodation Loans
- Loans to Insiders
- HMDA (Regulation C)

What Should Lenders Know About Compliance Rules?

<table>
<thead>
<tr>
<th>Loan purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of request</td>
</tr>
<tr>
<td>Terms of request and loan type</td>
</tr>
<tr>
<td>(secured, unsecured, line of credit, term of loan)</td>
</tr>
<tr>
<td>Collateral offered</td>
</tr>
<tr>
<td>Ownership of collateral</td>
</tr>
<tr>
<td>Location of collateral</td>
</tr>
<tr>
<td>Borrower information (sole proprietor, partnership, corporation, joint intent).</td>
</tr>
<tr>
<td>Follow your CIP procedures</td>
</tr>
<tr>
<td>Guarantors</td>
</tr>
</tbody>
</table>
Collect the Business Information Listed Below

**BASIC INFORMATION**
- Business name
- Business address (no P.O. Box)
- Business phone number
- Business fax number
- Tax Identification Number/SSN
- Date business was established
- Ownership type and # of owners
- Annual revenue
- Business account number(s) and balance(s)

**BUSINESS OWNER INFO**
- Name, home address & home phone number
- Social Security number(s), TINs
- Citizenship
- Annual household income
- Personal account number(s) and balance(s)
- Primary contact (must be an owner of the business) and primary contact phone number
- Primary contact email address

**In the Ideal World**
- Commercial lenders must have a working knowledge of Reg B requirements, including the signature guarantee rules (and prohibitions.) and the appraisal requirements on first-lien real-estate-secured applications.
- If commercial lenders obtain credit reports on individuals the FCRA requirements must be followed. Credit score disclosures must be provided.
- Commercial lenders must know rules about loans with various dwellings, including development loans and multiple dwelling buildings. Fair lending issues must be understood. The matrix in the toolkit can be helpful.
- Commercial loan files must be audited for compliance with flood hazard requirements. Lenders should have clear procedures for flood insurance compliance.
In the Ideal World

- The HMDA-LAR must be reviewed to see whether reportable commercial loans are properly entered. While the monitoring information for a corporation or partnership is “NA”, many examiners expect that a sole proprietor is asked for ethnicity, race, and gender if the application is taken in person; it should be requested in a phone application and the response is noted in the loan file.

- Commercial lenders must understand insider lending restrictions. Commercial lenders should be involved in the process of maintaining the insider lists. No one knows organizational structure better than a commercial lender.

- Compliance training should be focused with the most emphasis on identifying consumer purpose loans that are subject to Regulation Z and RESPA. It may help to develop a buddy system so that a commercial lender can get compliance support from an experienced consumer lender.

Fair Lending Basics

Table 1
Prohibited Bases under Equal Credit Opportunity Act (ECOA) and Fair Housing Act (FHA)

<table>
<thead>
<tr>
<th>ECOA</th>
<th>FHA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race or color</td>
<td>Race or color</td>
</tr>
<tr>
<td>Religion</td>
<td>Religion</td>
</tr>
<tr>
<td>National origin</td>
<td>National origin</td>
</tr>
<tr>
<td>Sex</td>
<td>Sex</td>
</tr>
<tr>
<td>Marital status</td>
<td>Familial status</td>
</tr>
<tr>
<td>Age</td>
<td>Handicap</td>
</tr>
<tr>
<td>Receipt of public assistance income</td>
<td></td>
</tr>
<tr>
<td>Exercising, in good faith. any right under the</td>
<td>Consumer Credit Protection Act</td>
</tr>
</tbody>
</table>

Discrimination

Table 1:
Prohibited Bases under Equal Credit Opportunity Act (ECOA) and Fair Housing Act (FHA)
Lending Regulation Highlights

- Fair Housing Act
- BSA
- Flood Hazard
- HMDA
- RESPA
- Truth in Lending (Regulation Z)

Consumer Credit Definition

- 1. **Primary purposes.** A creditor must determine in each case if the transaction is primarily for an exempt purpose. If some question exists as to the primary purpose for a credit extension, the creditor is, of course, free to make the disclosures, and the fact that disclosures are made under such circumstances is not controlling on the question of whether the transaction was exempt.

- 2. **Factors: A-E;** See examples and requirements for non-owner occupied rental property and owner-occupied rental property.

- See WARNING on change with loans made to a trust are NOT exempt
Will I Qualify For a Loan?

• **Regulation B** defines application at a point earlier than any other regulation. For purposes of Regulation B, an application exists when a customer first asks about credit from the lender. The purpose of Regulation B's definition is to extend the regulation's protections to individuals at the earliest possible phase of applications because the opportunity to discriminate exists.

• What is the role of the commercial lender in fair lending?

What Is an Application?

• An application is an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The creditor shall exercise reasonable diligence in obtaining such information.

• 1. General. A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.
### What are Procedures & Due Diligence?

<table>
<thead>
<tr>
<th>Procedures</th>
<th>Due Diligence</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Refers to the <strong>actual practices followed by a creditor</strong> for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit decisions based on oral requests, the creditor's procedures are to accept both oral and written applications.</td>
<td>- A creditor must act with <strong>reasonable diligence</strong> to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed... the creditor should contact the applicant promptly.</td>
</tr>
</tbody>
</table>

### Is It an Inquiry or an Application?

<table>
<thead>
<tr>
<th>Creditor is encouraged to provide information</th>
<th>Denied Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>- <strong>If a creditor also evaluates information about the consumer</strong>, decides to decline the request, and communicates this to the consumer, the creditor has treated the inquiry or prequalification request as an application and must then comply with the [adverse action] notification requirements under §1002.9.</td>
<td>- <strong>If enough information has been collected to make a decision and a denial or approval has been indicated</strong> to the applicant, this exchange between the lender and applicant is an “application” according to of Regulation B. Remember the purpose of Regulation B is to promote the availability of credit and explain the terms to potential applicants.</td>
</tr>
</tbody>
</table>
A Few Key Questions That You Should Ask

1. What constitutes a credit application according to your bank’s policies?
2. When is a credit application ‘complete’ according to your bank’s policies and practices?
3. What are your compliance obligations in light of those policies and practices?

What Happens Now?

- If enough information has been collected to make a decision and a denial or approval has been indicated to the applicant, this exchange between the lender and applicant is an “application” according to of Regulation B. Remember the purpose of Regulation B is to promote the availability of credit and explain the terms to potential applicants.

- It doesn’t matter if the amount of information collected by the lender is complete according to the application procedures, if no fees have been paid, if the applicant had identified a specific property or loan amount, or whether the exchange is written or verbal.
What are the Due Diligence Requirements?

- The creditor must act with *reasonable diligence to collect information needed to complete the application*. For example, the creditor should *request information from third parties, such as a credit report, promptly after receiving the application*. If additional information is needed from the applicant, such as an *address or a telephone number to verify employment*, the creditor should *contact the applicant promptly*.

Written Application & Signature Requirements

- **1. Requirement for written applications.** Model application forms are provided in Appendix B to the regulation, although use of a printed form is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete an application on behalf of an applicant and need not require the applicant to sign the application (NOTE: This is for a consumer-purpose purchase or refinance of purchase money of a principal dwelling – NOT a typical commercial loan).

- **REAL WORLD ANSWER:** If your bank’s loan policy requires a written and signed application for a commercial credit request, the policy should be *consistently followed*.

- **If the bank enters into litigation with a commercial borrower it may be extremely beneficial to have written and signed documentation in a court case.**
What’s an Application Under HMDA?

- A bank that had assets of **$44 million as of 12/31/15 and has an office in an MSA** is subject to HMDA reporting for 2016.

- **Application.**—(1) **In general. Application** means an oral or written request for a home purchase loan, a home improvement loan, or a refinancing that is made in accordance with procedures used by a bank for the type of credit requested.

---

What’s an Application Under RESPA & Reg Z?

*Submission of a borrower’s financial information in anticipation of a credit decision relating to a federally related mortgage loan*

1. the borrower’s name,
2. the borrower’s monthly income,
3. the borrower’s Social Security number to obtain a credit report,
4. the property address,
5. an estimate of the value of the property,
6. the mortgage loan amount sought,
7. and **any other information deemed necessary by the loan originator** was allowed **UNTIL October 3, 2015, and was REMOVED under the Integrated Disclosure Rules**
### Old and New Coverage Chart

<table>
<thead>
<tr>
<th>OLD COVERAGE- RESPA</th>
<th>NEW COVERAGE – REG Z</th>
</tr>
</thead>
<tbody>
<tr>
<td>A consumer loan request, regardless of the purpose, that is</td>
<td>TRUTH IN LENDING, <strong>EXEMPTIONS</strong></td>
</tr>
<tr>
<td>secured by a first or subordinate lien on residential real</td>
<td>✓ HELOCs</td>
</tr>
<tr>
<td>property, exemptions included:</td>
<td>✓ Reverse mortgages</td>
</tr>
<tr>
<td>✓ Property of more than 25 acres</td>
<td>✓ Chattel-dwelling loans (mobile home, no real estate)</td>
</tr>
<tr>
<td>✓ Temporary financing</td>
<td>In addition to <strong>consumer-purpose dwelling secured</strong></td>
</tr>
<tr>
<td>✓ Vacant land</td>
<td><strong>transactions</strong>, certain loans <strong>have been ADDED</strong> to</td>
</tr>
<tr>
<td>✓ Business purpose</td>
<td>the TILA-RESPA Integrated disclosure requirements:</td>
</tr>
<tr>
<td>✓ Loan modifications</td>
<td><strong>CLOSED-END &amp; CONSUMER PURPOSE</strong></td>
</tr>
<tr>
<td>✓ HELOCs</td>
<td>✓ Construction-only loans</td>
</tr>
<tr>
<td></td>
<td>✓ Loans secured by vacant land or by 25 or more acres</td>
</tr>
<tr>
<td></td>
<td>✓ Credit extended to certain trust for tax are estate</td>
</tr>
<tr>
<td></td>
<td>planning are covered</td>
</tr>
</tbody>
</table>

### Regulation B – Equal Credit Opportunity Act

**Regulation B**

- The purpose of the ECOA is to promote the availability of credit to all creditworthy applicants without regard to any of the prohibited bases.
- For purposes of Regulation B, an **application** exists when a customer **first asks** about credit from the lender.
- **Regulation B applies to both consumer and business purpose credit.** The difference is found in adverse action notification requirements. Reg B covers the entire life of the loan as well as marketing practices.
Reg B Disclosures

- Written application required
- Notice of intent of joint application
- Notice of incompleteness
- Notice of action taken
- Statement of reasons for adverse action
- Credit score disclosures on adverse action notices
- NEW! Rules on providing appraisals and other valuations

Joint Intent Compliance Options

1. Signed applications
2. Signed applications and separate affirmation – applications with the signatures are stronger proof when the form has a separate disclosure where applicants affirm joint intent. 
   BEST PRACTICE
3. No written application – provide (at time of application) a joint intent disclosure so they can indicate joint intent
4. No written application and no applicant acknowledgement – the loan officer may document a note to the credit file; showing a date would be helpful
New Reg B Appraisal Rules

- **Coverage:** Applications secured by a first lien on a dwelling; no purpose exemption
- **Disclosure:** Provide no later than 3 business days from application
- **Timing:** Provide a copy of all appraisals and written valuations promptly upon completion or 3 business days prior to consummation or account opening
- **Waivers:** An applicant may waive timing but it must be obtained at least 3 business days prior to consummation
- **Reimbursement:** Can’t charge for the copy, may charge for the appraisal
- **Withdrawn, denied or incomplete:** Copy must still be provided
- **Copies in electronic form:** Permitted with E-SIGN compliance
- **Documents that are not “valuations”** – example: Mobile home invoice

Sample Disclosure of Right to Receive a Copy of Appraisals

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.

NOTE: This appraisal disclosure became part of the “INTEGRATED DISCLOSURES” for covered CONSUMER purpose loan applications taken on or after 10/3/15. Customers applying for business credit are exempt from the Integrated Disclosure Rules. Continue to PROVIDE this disclosure as required.
Discrimination – What Is It?

Reg B prohibits financial institutions from discriminating against an applicant on a prohibited basis regarding any aspect of a credit transaction:
- Race or color
- Religion
- National Origin
- Sex
- Marital Status
- Age
- Receipt of income from any public assistance program
- Exercising rights in good faith under the Consumer Credit Protection Act

Types of Discrimination

GOLDEN RULE FOR FAIR LENDING
Treat everyone equally
Taking Applications (Section 1002.5)

- Reg B prohibits financial institutions from making any oral or written statement to applicants or prospective applicants that would discourage on a prohibited basis a “reasonable person” from making or pursuing an application.

Information About a Spouse or Former Spouse

- The spouse will be permitted to use the account;
- The spouse will be contractually liable on the account;
- The applicant is relying on the spouse’s income as a basis for repayment of the credit requested;
- The applicant resides in a community property state or property on which the applicant is relying as a basis for repayment of the credit requested is located in such a state; or
- The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested (see toolkit for rules)
What is Adverse Action?

- A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the bank makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;
- A termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantially all of a class of the bank's accounts; or
- A refusal to increase the amount of credit available to an applicant who has made an application for an increase
- See timing requirements and notification reasons

Adverse Action for Business Applicants

- The statement of the action taken may be given orally or in writing; disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure is in a form the applicant may retain and contains the information
- For an application made solely by telephone, a bank satisfies the requirements by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action
- For a business that had gross revenues in excess of $1,000,000 in its preceding fiscal year a bank may: notify the applicant, orally or in writing, within a reasonable time of the action taken; and provide a written statement of the reasons for adverse action and the ECOA notice if the applicant makes a written request for the reasons within 60 days of being notified of the adverse action
Flood Disaster Protection Act

- Standard flood hazard determination form
- Notice of flood status
- Proof that notice was given and adequate insurance was in place at the loan closing
- Force placement notification

**NOTE:** This is not a typical “consumer” compliance protection law. The purpose of the law is to protect the GOVERNMENT'S program for flood insurance for residential AND commercial property. Lenders have been “deputized” to enforce the provisions. IT IS COLLATERAL Driven – NOT PURPOSE Driven!!

Flood Coverage

The regulations apply when the four “trip wire” events occur. Remember **MIRE**

Is the lender **making, increasing, renewing** or **extending** a loan that is:

- Secured by a building or a mobile home
- Located or to be located in an area determined by the Director of the Federal Emergency Management Agency to have special flood hazards.
What is Insurable?

- Any “building or mobile home” securing a loan and any personal property securing such loan located in a building or mobile home securing a ‘loan’ must be ‘covered’ for the full term of the loan by flood insurance.

- NEW EXCEPTION FOR CERTAIN DETACHED NON-RESIDENTIAL STRUCTURES on a RESIDENTIAL PROPERTY

---

Contents

- Lenders should be particularly cautious about content coverage on loans secured by commercial real estate. Taking contents (inventory or equipment) is a common practice with commercial loans. In this case contents coverage must also be purchased.
## Contents

<table>
<thead>
<tr>
<th>IF A LOAN IS...</th>
<th>THEN FLOOD INSURANCE IS...</th>
</tr>
</thead>
<tbody>
<tr>
<td>To finance inventory stored in a building located within an SFHA, but the loan is not secured by the building</td>
<td>Not required for the building or the contents stored in that building.</td>
</tr>
<tr>
<td>Secured by a building and contents, the building is located in an SFHA in a participating community</td>
<td>Required for the building and any contents stored in that building.</td>
</tr>
<tr>
<td>Secured by contents located in buildings other than the building securing the loan</td>
<td>Not required on those (however, SBA may require it)</td>
</tr>
</tbody>
</table>

### What are the Coverage Provisions?

<table>
<thead>
<tr>
<th>Building Coverage</th>
<th>Emergency Program</th>
<th>Regular Program</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Dwelling</td>
<td>$35,000</td>
<td>$250,000</td>
</tr>
<tr>
<td>2-4 Family Dwelling</td>
<td>$35,000</td>
<td>$250,000</td>
</tr>
<tr>
<td>5+ Family Dwelling</td>
<td>$100,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>Non-Residential</td>
<td>$100,000</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contents Coverage</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>$10,000</td>
<td>$100,000</td>
</tr>
<tr>
<td>Non-Residential</td>
<td>$100,000</td>
<td>$500,000</td>
</tr>
</tbody>
</table>
41. Does the Regulation apply where the lender takes a security interest in a building or mobile home located in an SFHA only as an “abundance of caution”?

**Answer:** Yes. The Act and Regulation look to the collateral securing the loan. If the lender takes a security interest in improved real estate located in an SFHA, then flood insurance is required.

---

**What is a Base Flood Elevation?**

- BFE 53 feet
- Slab - 50 feet
Lender’s Responsibility

- Document the determination of flood hazard status, on the Standard Flood Hazard Determination Form (SFHDF); A & V zones are flood hazard zones.
- Provide notice to the borrower if collateral is, or will be, in an SFHA per the appropriate sample Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance.
- Require that adequate flood insurance is obtained for buildings in SFHAs;
- Require the escrow of flood insurance premiums if escrow is required for other items, such as hazard insurance and taxes; changes in 2016.
- During the term of the loan, ensure that flood insurance is maintained or obtained if the lender becomes aware that the building becomes part of an SFHA; and
- Force place flood insurance if the borrower allows the policy to lapse or if insurance is inadequate.

Overview of Flood Changes

1. Exempts certain detached structures from the mandatory flood insurance purchase requirement;
2. Implements provisions regarding the force placement of flood insurance;
3. Requires servicers to escrow flood insurance premiums for certain loans secured by residential improved real estate (or a mobile home);
4. Amends the current “Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance” form. Specifically, language was added concerning the escrow requirement and coverage for detached structures; and
5. Provides verbiage for an “Option to Escrow for Outstanding Loans” notice that will assist institutions in informing existing borrowers about their “option” to escrow flood insurance premiums and fees, as required.
Detached Structures

- Flood insurance is not required on any structure on a residential property if it is detached from the primary residential structure and does not serve as a residence.
- The exemption applies to loans made for business, commercial, or agricultural purposes, in addition to consumer loans, if they are secured by a residence.
- The exemption applies only to structures that the lender or servicer deems part of the residential property.
- When detached structures are given as collateral, lenders and servicers may require the structure be covered regardless. In this instance, the structures themselves – such as detached greenhouses – have value to the bank and the borrower, and accordingly do not meet the purpose of the exception.

Detached Structures

- “Residential property” applies only to structures for which there is a residential use (personal, family, or household purpose) and not to structures for which there is a commercial, agricultural, or other business use
- A structure is “detached” from the primary residential structure if it is not joined by any structural connection to the residential structure – i.e., it stands alone
- A detached structure “serves as a residence” based upon a good faith determination of the lender of the structure’s intended use
### Good Faith Determination Factors

- Has the borrower indicated the structure will be used as a residence?
- Does the structure have bathroom facilities?
- Does the structure have kitchen facilities?
- Does the structure have sleeping facilities?
- Is the structure traditionally used as a residence? (a guest house)
- Is the structure traditionally used for some purpose other than a residence? (a green house, a horse barn, a tool shed)

### Common Flood Violations

**Common Violations of Part 339**

- Inadequate Insurance
- Lapsed Insurance
- No Insurance
- Force-Placement
- No Notice Provided

**Common Violations**
Flood Insurance Calculation Examples

- How does a bank calculate the appropriate amount of insurance?
  - Compare three values: (1) The maximum amount of insurance available under the National Flood Insurance Program, commonly referred to as NFIP, (2) the insurable value of the property, and (3) the principal loan amount(s) outstanding. The lesser of the three is the minimum required amount of coverage.

<table>
<thead>
<tr>
<th>Property Type</th>
<th>Current NFIP Limits</th>
<th>Biggert-Waters Act (not yet effective)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>$250,000</td>
<td>Same</td>
</tr>
<tr>
<td>Residential – Multi-Family</td>
<td>$250,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>Commercial</td>
<td>$500,000</td>
<td>Same</td>
</tr>
<tr>
<td>Personal Contents</td>
<td>$100,000</td>
<td>Same</td>
</tr>
<tr>
<td>Commercial Contents</td>
<td>$500,000</td>
<td>Same</td>
</tr>
</tbody>
</table>

Note: The $500,000 multi-family coverage was effective June 1, 2014!

---

Flood Insurance Calculation Examples

**Commercial Building Example**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan Amount</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Insurable Value</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Maximum Available Insurance</td>
<td>$500,000</td>
</tr>
<tr>
<td>Minimum Required Flood Insurance Coverage</td>
<td>$500,000</td>
</tr>
</tbody>
</table>
### Commercial Buildings and Home Example

<table>
<thead>
<tr>
<th>Structure</th>
<th>(A) Insurable Value</th>
<th>(B) Max NFIP Available</th>
<th>(C) Lesser of A and B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-Family</td>
<td>$200,000</td>
<td>$250,000</td>
<td>$200,000</td>
</tr>
<tr>
<td>Commercial #1</td>
<td>$1,000,000</td>
<td>$500,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>Commercial #2</td>
<td>$300,000</td>
<td>$500,000</td>
<td>$300,000</td>
</tr>
</tbody>
</table>

Aggregate of Maximum Building Coverage: $1,000,000

Loan Amount: $2,000,000

Lesser of Aggregate Coverage and Loan Amount: $1,000,000

Note – Each building must have a separate flood insurance policy!

### Examples - Building or Contents Coverage?

**Chef Goodcook loan examples**

- **Example 1**: Collateral = GBSA  
  (no flood insurance required)
- **Example 2**: Collateral = Mortgage on building in SFHA  
  (flood insurance required on building only, not the contents)
- **Example 3**: Collateral = GBSA and Mortgage on building in SFHA and contents are in the building  
  (flood insurance required on building and contents)

GBSA = General Business Security Agreement  
SFHA = Special Flood Hazard Area
Overview of the 2018 HMDA Changes

- Changes become effective January 1, 2018
- Types of transactions will include:
  - Closed-end consumer-purpose mortgage loans and open-end lines of credit secured by a dwelling.
  - Dwelling-secured business-purpose loans and lines of credit, but only if used for home purchase, home improvement or refinancing.
  - Home improvement loans secured by a dwelling.
  - Covered loans and lines of credit do not include agricultural-purpose or certain other specifically excluded transactions.
Section 1071 – Small Business Data Collection

- The CFPB set January 1, 2018, as the effective date of the new HMDA regulations. Potentially, the CFPB could have chosen January 1, 2017, as an effective date. The longer lead time may also be positive news for small business lenders that will be subject to the new Small Business Data Collection rule required by the Dodd-Frank act. Section 1071 of the act requires the CFPB to issue implementing regulations.

- It’s not too early to begin a game plan for these changes.

Take-Away Tool Supplement

<table>
<thead>
<tr>
<th>JOINT INTENT</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>BUSINESS APPLICATION TEMPLATE</td>
<td>4</td>
</tr>
<tr>
<td>BUSINESS LOAN AND COLLATERAL CHECKLIST</td>
<td>6</td>
</tr>
<tr>
<td>FREE DOWNLOADS FOR REAL ESTATE SECURED CHECKLISTS</td>
<td>8</td>
</tr>
<tr>
<td>CIP WORKSHEET FOR BUSINESS APPLICANT</td>
<td>10</td>
</tr>
<tr>
<td>REQUIRING SIGNATURES FOR AN APPLICATION &amp; GUARANTORS</td>
<td>12</td>
</tr>
<tr>
<td>REGULATION B – TO DO AND NOT TO DO</td>
<td>15</td>
</tr>
<tr>
<td>REG B CHEAT SHEET APPRAISAL COPY RULES</td>
<td>16</td>
</tr>
<tr>
<td>STEP BY STEP HMDA CONTROLS</td>
<td>18</td>
</tr>
<tr>
<td>FLOOD INSURANCE RESOURCES</td>
<td>22</td>
</tr>
<tr>
<td>SAMPLE FAIR LENDING POLICY</td>
<td>23</td>
</tr>
<tr>
<td>REAL ESTATE LOAN MATRIX</td>
<td>27</td>
</tr>
</tbody>
</table>
Joint Intent

• ROUTINELY ASK ALL APPLICANTS IF THEY INTEND TO APPLY JOINTLY OR INDIVIDUALLY
• DOCUMENT!!!!
• Have them initial the application

Business Loan and Collateral Checklist

• See “never” applicable
• Applicable as usual
• Steps during the application process
• CIP
• Entity documentation
• Financial information
• Guarantors
• Appraisal/Evaluation
• Adverse action
• Flood insurance
• LTV, mortgage, security interest
• Protecting collateral
• Prepare for closing, at closing, after closing
Agricultural/Commercial Real Estate Checklist

At application:
1. Application
2. CIP information obtained
3. Joint Intent - Reg B
4. HMDA Bank: Government Monitoring Information (race, sex, ethnicity)

Within 3 business days of application:
1. Appraisal Disclosure

Prior to closing:
1. Flood Hazard Determination Form
2. Flood Notice (if in flood zone) signed by borrowers
3. Verify CIP information
4. Copy of Appraisal

Closing:
1. Note signed
2. Insurance
3. Hazard insurance
4. Flood insurance

CIP Worksheet for Business Customers

- **Type of Business** – Sole Proprietorship, Corporation, LLC, Partnership, Non-Profit
- **Copies of Business Documentation**
- **See Examples of Name of Business**
- **Acceptable Documentation**
- **CIP Information Requirements**
- **Forms of ID** – must comply with the CIP Policy and Procedures of YOUR bank
- **Additional questions** – MSB (Money Service Business)
- **Internet Gambling** (Reg GG)
Signature Requirements

- So...Mrs. Smith applies (as the sole applicant) for a loan secured by an interest in her primary dwelling. The primary dwelling is jointly owned with Mr. Smith. This is how the application, note, and security agreement (mortgage) would be signed:
  - Mrs. Smith signs the application, note, and security agreement (mortgage)
  - Mr. Smith only signs the security agreement (mortgage)

Guarantors

- Guarantees. A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. A creditor may require the personal guarantee of the partners, directors, or officers of a business, and the shareholders of a closely held corporation, even if the business or corporation is creditworthy. The requirement must be based on the guarantor’s relationship with the business or corporation, however, and not on a prohibited basis. For example, a creditor may not require guarantees only for women-owned or minority-owned businesses. Similarly, a creditor may not require guarantees only of the married officers of a business or the married shareholders of a closely held corporation.
Sample Fair Lending Policy

- Outlines prohibition on disparate treatment
- Disparate impact
- Prevention and detection of discrimination
- Training
- Second review
- Self assessment
- Technical compliance – written applications, adverse action notifications, lobby notices
- Responsibilities
- Compliance management

Typical Commercial Loan Examples

[Table and chart with loan characteristics and applicable regulations]
Questions???

Thanks for Attending!

Susan Costonis, C.R.C.M.
Compliance Training & Consulting for Financial Institutions
susancostonis@msn.com