

Hot topics from EXAMINATIONS

- ▶ Examination findings (violations)
- ▶ Best Practices

Examination findings

BSA/AML

**TRID
violations**

**Non QM
loans**

**Record
retention**

Examination findings - BSA/AML

Bank Secrecy Act (“BSA”)/Anti-money Laundering (“AML”): Anti-money laundering programs for loan or finance companies

Section 31 CFR 1010.100(l)(1)(ii): residential mortgage loan originator companies are defined as loan and finance companies.

Title 31 CFR 1029.210 requires loan and finance companies to develop and implement a written BSA/AML program, approved by senior management that is reasonably designed to prevent the loan or finance company from being used to facilitate money laundering or the financing of terrorist activities.

Program requirements:

- Internal controls (policy and procedure);
- Qualified BSA/AML officer;
- Adequate ongoing training;
- Periodic independent testing.

Examination findings - BSA/AML

Internal Controls based on a risk assessment of company products & services

Risk assessment: low, medium, high risk based on the following:

- ▶ Customer base:
 - ▶ Salaried employees
 - ▶ Self-employed,
 - ▶ Cash business owners,
 - ▶ Foreigners, etc.
- ▶ Products:
 - ▶ “Vanilla” RML;
 - ▶ Non-QM loans: stated income.
- ▶ Geographic location
 - ▶ Hawaii
 - ▶ Mainland

Examination findings - BSA/AML

Internal Controls based on a risk assessment of company products & services

Risk assessment guidelines:

- ▶ Completed 18 months/annually or more frequently as your risk profile changes due to significant events
- ▶ Examples of changes:
 - ▶ Added 10 MLOs,
 - ▶ Increase geographic footprint to include other states/territories,
 - ▶ Added new products/services.

Examination findings - BSA/AML

No independent audit

- ▶ Independent testing to monitor and maintain an adequate program that is commensurate with the risks posed by the company's products, customers, location, and services.
 - ▶ The testing may be performed by a third party or by a company employee who is not the designated BSA officer and who has sufficient knowledge and expertise.
- ▶ Inadequate internal controls
 - ▶ Requires MLOC to incorporate policies & procedures based upon the MLOC's assessment of the money laundering and terrorist financing risks. (risk assessment)
 - ▶ The MLOC's BSA/AML risk assessment of the money laundering and terrorist financing is written and completed for a bank and is not based on MLOC specific risks.
 - ▶ The risk assessment also included information that is not applicable to the Company.

BSA/AML - Best Practices

- ▶ Risk assessment: low, medium, high risk based on the following:
 - ▶ Customer base: self-employed, cash business owners, foreigners, etc.
 - ▶ Products: doing a lot of non-QM loans: stated income.
 - ▶ Geographic location - of customer and property
- ▶ Risk assessment should be completed annually or more frequently as your risk profile changes due to significant events (added 10 MLOs, increase geographic footprint to include other states/territories, added new products/services).
- ▶ Independent review: frequency should be based off of the risk assessment.
 - ▶ Review of P&P and internal controls, training, BSA Officer qualifications, and transaction testing of actual mortgage loan files.
 - ▶ Can be done by someone internally who is knowledgeable, except the BSA Officer.

Examination findings - TRID TILA-RESPA Integrated Disclosure

- ▶ The TILA-RESPA Rule consolidates four disclosure forms that were required under TILA and RESPA for closed-end credit transactions secured by real property or cooperative unit into two forms:
 - ▶ **Loan Estimate** that must be delivered or placed in the mail no later than the third **business day** after receiving the consumer's **application**, and
 - ▶ **Closing Disclosure** that must be provided to the consumer at least three **business days** prior to **consummation**.

Examination findings - TRID Loan Estimate

- ▶ **Loan Estimate** is a good-faith estimate of credit costs and transaction terms on a form.
 - ▶ Replaced the GFE and the initial TIL for these transactions.
 - ▶ Timing still the same - within **three business days** of the receipt of the consumer's loan **application**. (§ 1026.19(e)(1)(iii)).
- ▶ **For credit costs unknown at the time of the transaction**, the creditor must make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and use due diligence in obtaining the information. (§ 1026.19(e)(1)(i); Comment 19(e)(1)(i)-1)

Examination findings - TRID Application

- ▶ The application triggers a Loan Estimate disclosure.
 - ▶ The consumer's name;
 - ▶ The consumer's income;
 - ▶ The consumer's social security number to obtain a credit report;
 - ▶ The property address;
 - ▶ An estimate of the value of the property; and
 - ▶ The mortgage loan amount sought.

Examination findings - TRID tolerance limits

Change in fees OK

- ▶ Prepaid interest; property insurance premiums; amounts placed into an escrow, impound, reserve or similar account. (§1026.19(e)(3)(iii)(A)-(C))
- ▶ For services required by the creditor if the creditor **permits the consumer to shop** and the consumer selects a third-party service provider not on the creditor's **written list of service providers**. (§1026.19(e)(3)(iii)(D))
- ▶ **Property taxes** and other charges paid to third-party service providers for services not required by the creditor. (§1026.19(e)(3)(iii)(E))

10% change in cumulative fees OK

- ▶ Recording fees (Comment 19(e)(3)(ii)-4);
- ▶ Charges for third-party services where the charge is not paid to the creditor or the creditor's affiliate (§ 1026.19(e)(3)(ii)(B));
- ▶ The consumer is permitted by the creditor to **shop** for the third-party service, and the consumer selects a third-party service provider on the creditor's **written list of service providers**, or the consumer is permitted by the creditor to **shop** for the third-party service, but the creditor fails to provide the **written list of service providers**. (§§ 1026.19(e)(3)(ii)(C); 1026.19(e)(1)(vi)

"0 tolerance" - no change in fees allowed

- Fees paid to the creditor, mortgage broker, or an **affiliate** of either, where such fees do not fall within the exceptions for charges that may change without regard to a tolerance limitation.
- Fees paid to an unaffiliated third party if the creditor **did not permit the consumer to shop**, for a third-party service provider for a settlement service (§ 1026.19(e)(3)(ii)(C); Comment 19(e)(3)(i)-1.iv); or
- Transfer taxes.

Examination findings - TRID Closing Disclosure

- ▶ The Closing Disclosure generally must contain the actual terms and costs of the transaction. (§ 1026.19(f)(1)(i)).
- ▶ The Closing Disclosure must be in writing and contain the information prescribed in § 1026.38 (seller transaction/credits).
- ▶ If the actual terms or costs of the transaction change prior to consummation, the creditor must provide a corrected disclosure that contains the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements, and requirements for providing corrected disclosures due to subsequent changes. (Comment 19(f)(1)(i)-1)
- ▶ New three-day waiting period. If the creditor provides a corrected disclosure, it may also be required to provide the consumer with an additional three-business-day waiting period prior to consummation. (§ 1026.19(f)(2)).
- ▶ Like with a revised **Loan Estimate**, a creditor can use a **Closing Disclosure** to reset tolerances when there is a **changed circumstance** or other triggering event.

Examination findings - TRID Violations

- ▶ The MLOC did not disclose the 203k supplemental origination fee (“203k fee”), a rehabilitation loan fee under the FHA 203k program and an estimated closing cost subject to the zero tolerance limit, in violation of Section 12 CFR 1026.19(e)(3)(i).
 - ▶ The 203k fee, under Loan Costs, Section A. Origination Charges, paid by or imposed on the consumer exceeded the amount originally disclosed.
 - ▶ January 5, 2016: the MLOC disclosed \$350 on the Loan Estimate (“LE”).
 - ▶ January 20, 2016: the MLOC disclosed \$477.82 on the Closing Disclosure (CD”)
- ▶ The MLOC paid **\$127.82 in restitution** to the consumer.

Examination findings - TRID Violations

- ▶ The MLOC did not disclose the origination fee, an estimated closing cost subject to zero tolerance limit, in violation of 1026.19(e)(3)(i).
 - ▶ On May 18, 2016, MLOC, received the loan application and issued the initial Loan Estimate (“LE”).
 - ▶ The MLOC issued a revised LE on June 22, 2016, due to a change in loan amount from \$500,000 to \$519,000, with no origination items. The consumer locked the interest rate on the same day.
 - ▶ The MLOC did not issue a revised LE disclosing the rate lock and pricing terms. (1026.19(e)(3)(iv)(D))
 - ▶ On June 28, 2016, the MLOC issued an initial CD reflecting the change in broker compensation method from lender-paid to borrower-paid, with disclosed amount of \$9,331.62.
 - ▶ On June 30, 2016, the MLOC issued a Final CD that reflected adjustments for prorations and lender credits with a net borrower-paid origination fee of \$9,331.62.
- ▶ The MLOC paid **\$9,331.62 in restitution** to the consumers.

Examination findings - TRID Violations

- ▶ 30 days to cure *026.19(f)(2)(iii)*
- ▶ Loan 1
 - ▶ January 18, 2017 loan closed.
 - ▶ June 20, 2017, the MLOC issued a corrected CD to the borrower.
 - ▶ 153 days. The corrected CD after consummation disclosed reduced loan payoff of \$1,840.71 and additional prepaid interest of \$36.04.
- ▶ Loan 2
 - ▶ October 21, 2017 loan closed.
 - ▶ February 9, 2018, the MLOC issued a corrected CD to the borrower.
 - ▶ 111 days. The corrected CD disclosed reduced recording fees, prepaid interest, principal curtailment, and loan payoff; and increased lender credits.
- ▶ **No restitution**, MLOC correctly adjusted at closing, but did not provide corrected CD.

TRID - Best Practices

- ▶ Lender “general” credits on the rate locked LE lowered or removed (because misquoted or mispriced).
- ▶ Fees increasing from the rate locked LE to the CD exceeding 0% and 10% tolerance rules without valid change in circumstance. Regulation requires documentation to support a valid change in circumstance. Some examples:
 - ▶ Change in loan amount due to change in purchase price: Sales Contract addendum
 - ▶ Borrower wanted higher rate and pay less points: Correspondence log notes, follow-up email/letter to borrower confirming change in rate and pricing.
 - ▶ Change in borrower to add a trust: Trust document in file to support trust file review fee, new application.
 - ▶ Rate lock extension fee: Fully document the reason for the rate lock extension.

TRID - Best Practices

- ▶ Fees incorrectly slotted in tolerance buckets.
- ▶ Brokers not keeping rate sheets in their files.
 - ▶ Keep whatever rate sheet you are using to price your loans for every disclosure where you are quoting specific rate and points: anti-steering disclosure, initial LE, rate locked LE.

Non QM loans - trending upwards

- ▶ Any home loan that doesn't comply with the CFPB rules on Qualified Mortgages
- ▶ Not necessarily a high risk or subprime loan
- ▶ Generally home loans originated for consumers who are not able to prove they are capable of making the mortgage payments (ex. Self employed doctors, dentists, lawyers)

Non QM loans vs. QM loan

What is a QM loan?

- ▶ 4 key rules
 1. Ability to repay (fully document income, employment, assets, credit, monthly debts)
 2. Restrictions on risky loan features (loan terms over 30 years, interest-only, balloon payments, negative amortization loans)
 3. Caps on fees and points
 4. Debt-to-income ratio (43%) or limits on how much income can go towards monthly mortgage payments

What is a Non QM loan?

- ▶ Anything that is not QM loan

Non QM loans - Best Practices

- ▶ Document why you are recommending this loan type:
 - ▶ DU/LP ineligible feedback
 - ▶ Memo with reason: DTI, self-employed, interest only, non-conforming property, FICO, etc.
- ▶ MLOs to provide anti-steering disclosure.
- ▶ Non-QM lenders may pay higher origination fees to MLOCs; however, MLOs are paid per employee contract.
 - ▶ MLOCs should not be compensating MLOs extra for non-QM loans originated.
 - ▶ MLOs should be acting in the best interest of the consumer and not the MLO/MLOC.

General - Best Practices

- ▶ Document conversations regarding the loan transaction. Determine if your LOS has a communications log and use it to document conversations.
- ▶ Record retention is 7 years - review your policy and procedures and keep loan records you are responsible for.
- ▶ Clear NMLS license items timely, including items related to Mortgage Call Reports as examiners use this information to prepare for an exam. An NMLS license item will prevent you from renewing your license.
- ▶ Keep loan files organized - stacking order.

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Questions?

Exam topics?