



2022 Mortgage Session What's New in Exams?

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Hot Topics Examination findings

- State Examination System “SES”
- TILA
- Branch address
- ECOA
- Looking forward

State Examination System (SES)

- SES is an end-to-end examination management tool that DFI began using in 2020. All exams will be performed in SES.
- SES Complaint Tool: SES also has a complaint management tool that DFI uses to process all complaints through. Similar to the exam tool, all communication with DFI's investigator will be done in SES.

State Examination System (SES)

The Process 1 of 2

- EIC will contact the licensee's NMLS point of contact (POC) of the upcoming examination.
- DFI will set up an exam session in SES and email the entry letter and information requests to the POC and invite the POC to the SES session. The POC can appoint another employee to be the POC for the exam session.
- EIC will send Information Requests (IR) segregated by Areas of Review (AR) with deadlines to submit the documents in SES. The POC will receive an email from SES informing them that an IR has been sent.

State Examination System (SES)

The Process 2 of 2

- The POC will upload the documents in SES in response to each AR. Examiners will upload additional IRs throughout the exam to gather more information regarding loan files reviewed.
- Once the examination has been completed, EICs will schedule an exit meeting through Microsoft Teams Meeting.
- The Report of Examination and Transmittal Letter will be uploaded in SES for the licensee to download. If a response to the ROE is required, a deadline will be specified.
- EIC will bill the licensee for exam related expenses in NMLS.

TILA 1026.19(e)(1)(vi)(C): Written Service Provider List Title and Escrow companies 1 of 2

- Examiners identified apparent violations of TILA where LOS systems are listing title and escrow companies that are not licensed to do business in Hawaii under Chapter 449 and/or Chapter 431, Hawaii Revised Statutes on the written service provider list (WSPL).
- 10% vs 0% tolerance – can the consumer shop for the service provider:
- Pursuant to CFPB's TRID Rule Small Entity Compliance Guide (page 55-56), "errors or omissions on the written list or untimely delivery of the written list may impact the tolerance standard applicable to the settlement services required to be disclosed on the written list.

TILA 1026.19(e)(1)(vi)(C): Written Service Provider List Title and Escrow companies 2 of 2

- If the error or omission does not prevent the consumer from shopping, the charges are not paid to the creditor or an affiliate, and the consumer is otherwise considered to have shopped, the charges are subject to the 10% cumulative tolerance standard.
- If the error or omission does prevent the consumer from shopping, the charges are subject to the zero tolerance standard.”

TILA 1026.19(e)(1)(vi)(C): Written Service Provider List 1 of 2

- Understated vs Actual costs
- Examiners identified **systemic issues** when MLOs accepted the default costs on the incorrect WSPL that were understated versus the actual costs and entered the understated costs into the LE. This action triggers a tolerance violation that exceeds the 10% threshold.
- Several companies had to perform scrubs of originated and closed loans and were required to provide thousands of dollars in restitution to consumers.

TILA 1026.19(e)(1)(vi)(C): Written Service Provider List 2 of 2

- Examiners also saw instances where the WSPL had the incorrect service provider costs; however, MLOs quoted the correct costs on the LE, resulting in no tolerance violations.
- How to solve this violation: The root cause for this error was due to companies adopting the default settings in their LOS system without customizing the WSPL section. Hawaii DFI recommends that all companies verify that all service providers on their list are available to Hawaii consumers.

TILA 1026.19(e)3: Tolerance Violations and Reduction in Lender Credits 1 of 2

- Examiners find fee tolerance violations and reduction in lender credits without valid change in circumstances allowable under 1026.19(e)(3)(iv)(A).
- Examples of what examiners see during exams regarding increase in fees:
 - Fees increased at request of borrower while rate remained constant,
 - Appraisal came in higher than estimated but still within loan level LTV adjustment,
 - Loan amount changed but still within loan level LTV adjustment,
 - Borrower did not qualify for QM at the lower fee structure.

TILA 1026.19(e)3: Tolerance Violations and Reduction in Lender Credits 2 of 2

- Examples of what examiners see during exams regarding reduction in lender credits:
 - Lender credits removed or decreased and or points added even though loan closed within rate lock period and rate remained the same,
 - Lender credits reduced even after the borrower paid a rate lock extension fee and loan closed within extended rate lock period.

TILA 1026.19(e)3: Tolerance Violations and Reduction in Lender Credits 1 of 2

How are these violations assessed during an exam?

- Examiners employ a **reasonable approach** when assessing change in circumstance.
- Examiners review the company's responses to questions and loan documentation to determine whether a valid change in circumstance is allowable per statute.
- Examiners assess whether fees disclosed on the LE were based on the MLO's best estimate with the information on hand at the time of the disclosure.

TILA 1026.19(e)3: Tolerance Violations and Reduction in Lender Credits 2 of 2

- Examples of valid changes seen:
 - Increase in points for a lower rate chosen – examiners will review prior pricing with loan level adjustments and validate new pricing with rate sheet.
 - Appraisal fee increased due to different appraisal type needed: 1-4 SFR to business mix use,
 - Trust document review fees added – initial application did not reflect property to be held in trust.

ECOA 1002.9(a)(1): Notice of Action Taken

- Examiners identified instances where the adverse action notice exceeded the 30-day requirement for notice of action taken.
- Section 12 CFR 1002.9(a)(1) of Regulation B states "A creditor shall notify an applicant of action taken within:
 - i. 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;
 - ii. 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;
 - iii. 30 days after taking adverse action on an existing account; or
 - iv. 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered."

HRS 454F-10.5(g): Branch Address

- Branch address must be accurate.
- Home office is acceptable for a branch office location.
- If a location is not in a commercial building, or such posting is not permitted by the commercial building, then the business hours shall be posted on the home page of the MLOC's website, along with the address and phone number of the location. Business hours, whether posted at a location or on a MLOC website, shall be displayed in a clear, conspicuous, and accurate manner that informs the consumer when the location will be open.

Branch information can be on a business card or in email information if the licensee does not have a website.

Questions??

Mortgage loan origination questions:

- dfi-nmls@dcca.hawaii.gov
- 808.586.2820
- SES Call Center: 1 (800) 269-6189