RESCINDED

Replaced by Comptroller's Handbook, "Truth in Lending Act"

OTS Mortgage Regulations

The Office of Thrift Supervision's (OTS) home mortgage loan disclosure requirements are set forth in 12 C.F.R. 560.210. On July 17, 1998, OTS revised §560.210 to conform its adjustable rate mortgage disclosure requirements with a simple cross-reference to the Regulation Z disclosure provisions, which was issued by the Federal Reserve Board under the Truth-in-Lending Act. This revision does not affect the function of promoting safe and sound lending nor OTS's enforcement authority.

The revised §560.210 states that savings associations must provide the initial disclosures described in Regulation Z at 12 CFR 226.19(b) and the adjustment notices at 12 CFR 226.20(c) for variable-rate transactions. The Federal Reserve Board's Commentary to Regulation Z serves as the primary interpretive vehicle for §560.210. OTS still retains the discretion to issue its own interpretations as circumstances warrant.

COVERAGE

The disclosure and notice requirements of §560.210 apply to all closed-end adjustable- and fixed-rate mortgage loans secured by property occupied or to be occupied by the borrower. (A fixed-rate mortgage may or may not be fully amortizing and includes graduated payment loans on which the schedule of payment adjustments is fixed at the time of executing the original loan documents.)

LINKS

Program

INITIAL DISCLOSURE REQUIREMENTS FOR ADJUSTABLE-RATE LOANS

In reference to §226.19(b), savings associations must provide the following two disclosures to prospective borrowers when an application is provided or before receiving payment of a non-refundable fee, whichever is earlier:

- the booklet entitled: Consumer Handbook on Adjustable Rate Mortgages, or a suitable substitute; and

- a loan program disclosure for each ARM program in which the consumer expresses an interest.

The program disclosure must include the following, as applicable:

- the fact that the interest rate, payment, or term may change;

- the index or formula used in making adjustments, and a source of information about the index or formula;
- an explanation of how the interest rate and payment will be determined, including how the index is adjusted;
- a statement indicating the consumer should inquire about the current margin value and interest rate;
- the fact that the interest rate will be discounted and a statement that the consumer should inquire as to the amount of the discount;
- the frequency of interest rate and payment changes;
- rules relating to changes in the index, interest rate, payment amount, and the outstanding loan balance;
- a historical example, based on a sample $10,000 loan amount. This example must illustrate all significant loan program terms, including, for example, how payments and the loan balance would be affected by changes in the interest rate implemented according to the terms of the loan.
- an explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on the most recent payment shown in the historical example;
- the initial rate and payment and maximum interest rate and payment for a sample $10,000 loan originated at the most recent interest rate shown in the historical example assuming the maximum periodic increases in rates and payments;
- the fact that the loan contains a demand feature;
- the type of information that will be provided in notices of adjustments and the timing of such notices; and
- a statement that disclosure forms are available for the creditor's other variable-rate loan programs.

Adjustment Notice Requirements

The notice requirements for adjustments are referenced in §560.210. However, §560.35 contains certain limitations with respect to adjustments on home loans secured by borrower-occupied property, or property to be occupied by the borrower. Such limitations include:

- the requirement that the interest rate correspond directly with the movement of an index or a formula or schedule set forth in the loan contract that specifies the amount of the increase and the time at which it may be made; and,

- adjustments to the payment and the loan balance that do not reflect an adjustment to the interest rate may be made only if the adjustments reflect a change in a national or regional index, available to the borrower and outside the control of the association, that measure the rate of inflation or changes in consumer disposable income, or in the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula or schedule set forth in the loan contract. (§560.35(d)(3) provides an exception to the index rules when certain procedures are followed).

Variable-rate Adjustments

Section 226.20(c) requires that adjustment notices be provided at least once each year in which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but not more than 120, calendar days prior to the due-date of a payment at the new level. Adjustment notices must either be delivered or placed in the mail within the time limitation and include the following:

- The current and prior interest rates;

- The index values upon which the current and prior interest rates are based;

- The extent to which the creditor has foregone any increase in the interest rate; the contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance; and, the amount of the payment required to fully amortize the loan at the new interest rate over the remainder of the loan term if that amount is different from the payment resulting from the adjustment.

References

(See Truth in Lending, Section 1305.)