Title 5: Banking and Consumer Finance

Part 2: Mortgage Company Activities

Part 2 Chapter 1: Mississippi S.A.F.E. Mortgage Act

Rule 1.1 Purpose.

This regulation was adopted as an amendment to the Regulations for the Mississippi SAFE Mortgage Act amendments made by the Mississippi Legislature with an effective date of July 1, 2013 and are intended only to clarify the existing law (both statutory and regulatory) governing the mortgage business. These Regulations do not create any new or substantive rights in favor of any borrower or against any licensee, regardless of whether the loan was made prior to or after the effective date of these Regulations.

These regulations are promulgated pursuant Section 81-18-1, et seq., Mississippi Code of 1972, Annotated, also known as the Mississippi S.A.F.E. Mortgage Act, and other applicable statutes to establish administrative procedures required by the Mississippi Department of Banking and Consumer Finance.

These Regulations shall be applicable to licensees under the Mississippi S.A.F.E. Mortgage Act. These Regulations are not intended to create any private right, remedy, or cause of action in favor of any borrower or against any Licensee or are these Regulations intended to apply to any business transaction of a Licensee not covered by Mississippi Law.

Source: *Miss. Code Ann.* §81-18-1; *Effective date August 30, 2013*

Rule 1.2 Loan Originators.

Loan originators are required to be licensed per Section 81-18-7(4), Mississippi Code of 1972, Annotated, and to follow specific requirements outlined in this section.

1. Loan originators must be W-2 employees of the licensee.
2. If a loan originator leaves a licensed mortgage broker or lender to be licensed with another licensed mortgage broker or lender, then the initial loan originator application must be fully completed in the Nationwide Mortgage Licensing System and Registry (NMLS) system. All licenses issued by the Department are non-transferrable.
3. The licensed mortgage broker or mortgage lender shall maintain loan originator information for each loan in a handwritten or computer generated format that specifically states the names of the individual(s) that conduct all aspects of the loan application process, the date that such activity is conducted and the licensed location where the tasks are performed. This information is to be kept as part of each borrower's loan file or may be kept as part of the required Journal of Mortgage Transactions. At a minimum, the below items are to be notated in the required information:

a. Taking the Mortgage Loan Application or assisting the borrower in completing the Mortgage Loan Application
b. Requesting the credit report.
c. Negotiating or offering to negotiate the terms of the residential mortgage loan.

Source: *Miss. Code Ann.* §81-18-7(4); *Effective date August 30, 2013*

Rule 1.3 Licensing Criteria.

1. In order to determine the applicant's suitability for a license, the Commissioner and/or the NMLS shall forward the fingerprints submitted with the application to the Mississippi Department of Public Safety and to the FBI for a national criminal history record check. The Commissioner may request a new set of fingerprints at any time from any person licensed with the department. Final verification of the background check does include any subsequent investigation that must occur to determine the disposition of an arrest indicated on the background check.

2. If the NMLS license application is withdrawn or denied, the license fees are non-refundable.

3. A person must be named the Qualifying Individual for a company applying for a mortgage broker or lender license.

a. Qualifying Individual means an employee of the mortgage broker or lender who submits documentation of a minimum of two (2) years experience directly related to mortgage activities. Proof of experience includes, but is not limited to: letter(s) from previous or current employers stating job description, copies of other state licenses, etc. Resumes and W-2 forms may be included, but are not sufficient proof of experience.

b. This person is not required to be an owner, co-owner or officer of the company; however, the individual will be the person primarily responsible for the operations of the licensee.

Source: *Miss. Code Ann.* §81-18-29; *Effective date August 30, 2013*

Rule 1.4 Surety Bond Requirements.

1. The following chart will be the Surety Bond Requirement for the renewal for all Licensed Mortgage Brokers based on the volume of Mississippi residential mortgage loans originated by the licensed mortgage broker from the previous licensing / calendar year. This only includes loans that were closed by a Lender or exempt company. The amounts shown will be the minimum amount required of Surety Bond Coverage. If the company wishes to renew their initial bond amounts (Mortgage Broker $25,000) and forward an original Continuation Certificate for renewal to the Department, that will be acceptable.

Volume *	Amt Surety Bond Coverage
$1,000,000 or less	$15,000
More than $1,000,000 but less than $5,000,000	$20,000
More than $5,000,0000	$25,000

2. The following chart will be the Surety Bond Requirement for the renewal for all Licensed Mortgage Lenders based on the volume of Mississippi residential mortgage loans originated, brokered, funded, serviced and / or owned by the licensed mortgage lender from the previous licensing / calendar year. This only includes loans that were closed by a Lender or exempt company. The amounts shown will be the minimum amount required of Surety Bond Coverage. If the company wishes to renew their initial bond amounts (Mortgage Lender $150,000) and forward an original Continuation Certificate for renewal to the Department, that will be acceptable.

Volume **	Amt Surety Bond Coverage
$10,000,000 or less	$75,000
More than $10,000,000 but less than $25,000,000	$100,000
More than $25,000,0000	$150,000

Source: *Miss. Code Ann.* §81-18-29; *Effective date August 30, 2013*

Rule 1.5 Branch Offices.

1. Wholesale lending offices only (have no direct contact with a consumer) are not required to be licensed. No origination or modification of a Mississippi residential mortgage loan may occur at this location. The wholesale lending office / branch may accept payments on a residential mortgage loan.

2. A branch office will be considered "open" if the signage is in place, a business license has been applied for and approved, advertising has been placed and/or there is an unlocked door or no signage on the door indicating that the branch office is closed or not yet open for business. If the branch is considered "open" without prior approval from the Department, then a civil money penalty will be issued to the company and possible denial of the branch license.

Source: *Miss. Code Ann.* §81-18-29; *Effective date August 30, 2013*

Rule 1.6 Requirements for in-state offices.

Each principal place of business and branch office in the state of Mississippi shall meet all of the following requirements:

1. The location shall be in compliance with local zoning ordinances; however, zoning shall not be residential. This documentation should include a letter from the City or County on their official letterhead stating the zoning of the property. A Privilege Tax License is not sufficient proof of zoning.

2. The mortgage licensed location may be located inside the building of another type of business; however, the required signage must indicate the presence of this office and must follow the above guidelines, as well as any guidelines required by regulation of the other business.

Source: *Miss. Code Ann.* §81-18-29; *Effective date August 30, 2013*

Rule 1.7 Advertisements.

Advertisements are considered to be in print or by electronic means and do include internet websites and advertisements. Business cards are considered by the Department to be a form of advertisement and must meet the requirements for such.

Source: *Miss. Code Ann.* §81-18-29; *Effective date August 30, 2013*

Rule 1.8 Required Contents of Individual Borrower Files. The required mortgage company files will be kept at the Books and Records Information address listed on the NMLS system.

The individual borrower files of a mortgage broker and lender shall contain at least the following items. Please note, that the use of correction fluid on any document associated with the mortgage loan, which includes, but are not limited to the below listed items, is considered a fraudulent activity.

The original or copy (unless otherwise specified below) of all documentation dated and signed by the applicant and/or loan originator, including, but not limited to:

1. Application – copy of the original signed and dated by the applicant and mortgage loan originator
2. Credit File (Authorizations to order credit report, verifications, credit reports, etc)
3. Appraisal and invoice from appraiser – complete copy of appraisal and is not required to be signed by applicant or loan originator
4. Notice of Right of Rescission
5. Broker or Co-Broker Agreement

6. Good Faith Estimate – within 3 working days of taking application. If mailed, lender must retain a copy of the cover letter stating date mailed and address where the GFE was mailed. If hand delivered, lender must develop a separate document to be signed by applicant acknowledging receipt of the Good Faith Estimate.
7. Initial Truth in Lending Disclosure (not required to be signed by applicant)
8. Servicing Disclosure (if funding the loan)
9. Notice of Right to Receive Copy of Appraisal
10. Affiliated Business Agreement (when applicable)
11. Proof of Assignment (transfer) of loan (if applicable).
12. Equal Credit Opportunity Act disclosure (within 3 days of application)
13. Lock-in agreement from lender (if applicable)
14. Notice of Action Taken (within 3 business days of receiving notice that loan is denied or within 30 calendar days of receiving an application denied by lender).
15. Mortgage Origination Agreement containing information outlined in 81-18-33(a)
16. Final HUD Settlement Statement – copy of signed original
17. Final Truth in Lending – for all Lenders or Brokers who table fund – at settlement
18. Promissory Note (copy)
19. Deed of Trust (copy)
20. Final Loan Application – signed and dated by the applicant(s)
21. Verification that the applicant received the "Settlement Cost Booklet"

These records are to be maintained for a minimum of thirty-six (36) months from the date of the loan application, maintained in a secure format and maintained separately from any and all other business records (this includes other state mortgage records). The records must be kept in a secure onsite or offsite location. An onsite secure location would include the licensed main or branch office of origination or the main office location of the company. If the branch location becomes unlicensed, then the mortgage records must be maintained where the main office records are maintained according the NMLS system or another licensed branch location. The location of the records must be updated in the Books and Records Section of NMLS for that unlicensed branch at time of the branch closure. An off-site secure location would include a storage facility with security, etc and would not include a person's home, unless this is the licensed location of the mortgage broker or lender. The Commissioner in his sole discretion, after giving written notice, may require records to be maintained for a longer period of time. The following federal regulations may also be used as guides to supplement the minimum recordkeeping requirements stated above: Regulation B, Regulation X, and Regulation Z. However, the requirements outlined above are separate and apart from any record keeping requirements stated in federal regulations. Compliance with the provisions of this policy cannot be relied upon for ensuring compliance with federal regulations.

Source: *Miss. Code Ann.* §81-18-29; *Effective date August 30, 2013*

Rule 1.9 Penalties assessed by the Department.

The company or loan originator, once assessed a penalty by the Department, will have thirty (30) days in order to pay the full amount of the penalty, unless otherwise noted by the Department.

Source: *Miss. Code Ann.* §81-18-29; *Effective date August 30, 2013*

Rule 1.10 Lock-in Fee and Lock-in Agreement.

1. If the broker collects the Lock In_fee on the lender's behalf and the fee is made payable to the broker, then the fee must be placed in the broker's escrow account until it is transferred to the lender.

2. The mortgage broker may not charge or collect a lock-in fee that is not on behalf of a named lender.

3. If the lock-in fee is refundable, then the lock-in agreement is to state if the consumer will receive payment back in the form of a check or in the form of a reduction of origination fees at closing from the mortgage company.

Source: *Miss. Code Ann.* §81-18-29; *Effective date August 30, 2013*

Rule 1.11 Guidelines on Nontraditional Mortgage Product Risks. The Department is incorporating the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Products Risks", which was issued on November 14, 2006, into Department Regulations. In addition, this Guidance will be incorporated into the Examination of all licensed Mortgage Brokers and Mortgage Lenders.

GUIDANCE ON NONTRADITIONAL MORTGAGE PRODUCT RISKS

I. INTRODUCTION

On October 4, 2006, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies) published final guidance in the *Federal Register* (Volume 71, Number 192, Page 58609-58618) on nontraditional mortgage product risks ("interagency guidance"). The interagency guidance applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions.

Recognizing that the interagency guidance does not cover a majority of loan originations, on June 7, 2006 the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) announced their intent to develop parallel guidance.

Both CSBS and AARMR strongly support the purpose of the guidance adopted by the Agencies and are committed to promote uniform application of its consumer protections for all borrowers.

The following guidance will assist state regulators of mortgage brokers and mortgage companies (referred to as “providers”) not affiliated with a bank holding company or an insured financial institution to promote consistent regulation in the mortgage market and clarify how providers can offer nontraditional mortgage products in a way that clearly discloses the risks that borrowers may assume.

In order to maintain regulatory consistency, this guidance substantially mirrors the interagency guidance, except for the deletion of sections not applicable to non-depository institutions.

II. BACKGROUND

The Agencies developed their guidance to address risks associated with the growing use of mortgage products that allow borrowers to defer payment of principal and, sometimes, interest. These products, referred to variously as “nontraditional,” “alternative,” or “exotic” mortgage loans (hereinafter referred to as nontraditional mortgage loans), include “interest-only” mortgages and “payment option” adjustable-rate mortgages. These products allow borrowers to exchange lower payments during an initial period for higher payments during a later amortization period.

While similar products have been available for many years, the number of institutions and providers offering them has expanded rapidly. At the same time, these products are offered to a wider spectrum of borrowers who may not otherwise qualify for more traditional mortgages. CSBS and AARMR are concerned that some borrowers may not fully understand the risks of these products. While many of these risks exist in other adjustable-rate mortgage products, the concern of CSBS and AARMR is elevated with

nontraditional products because of the lack of principal amortization and potential for negative amortization. In addition, providers are increasingly combining these loans with other features that may compound risk. These features include simultaneous second-lien mortgages and the use of reduced documentation in evaluating an applicant’s creditworthiness.

III. TEXT OF FINAL CSBS-AARMR GUIDANCE

The text of the final CSBS-AARMR Guidance on Nontraditional Mortgage Product Risks follows:

CSBS-AARMR GUIDANCE ON NONTRADITIONAL MORTGAGE PRODUCT RISKS

Residential mortgage lending has traditionally been a conservatively managed business with low delinquencies and losses and reasonably stable underwriting standards. In the past few years consumer demand has been growing, particularly in high priced real estate markets, for closed-end residential mortgage loan products that allow borrowers to defer repayment of principal and, sometimes, interest. These mortgage products, herein referred to as nontraditional mortgage loans, include such products as "interest-only" mortgages where a borrower pays no loan principal for the first few years of the loan and "payment option" adjustable-rate mortgages (ARMs) where a borrower has flexible payment options with the potential for negative amortization.[1]

While some providers have offered nontraditional mortgages for many years with appropriate risk management, the market for these products and the number of providers offering them has expanded rapidly. Nontraditional mortgage loan products are now offered by more lenders to a wider spectrum of borrowers who may not otherwise qualify for more traditional mortgage loans and may not fully understand the associated risks.

Many of these nontraditional mortgage loans are underwritten with less stringent income and asset verification requirements ("reduced documentation") and are increasingly combined with simultaneous second-lien loans.[2] Such risk layering, combined with the broader marketing of nontraditional mortgage loans, exposes providers to increased risk relative to traditional mortgage loans.

Given the potential for heightened risk levels, management should carefully consider and appropriately mitigate exposures created by these loans. To manage the risks associated with nontraditional mortgage loans, management should:

- Ensure that loan terms and underwriting standards are consistent with prudent lending practices, including consideration of a borrower's repayment capacity; and
- Ensure that consumers have sufficient information to clearly understand loan terms and associated risks prior to making a product choice.

The Mississippi Department of Banking and Consumer Finance expects providers to effectively assess and manage the risks associated with nontraditional mortgage loan products.

Providers should use this guidance to ensure that risk management practices adequately address these risks. The Mississippi Department of Banking and Consumer Finance will carefully scrutinize risk management processes, policies, and procedures in this area. Providers that do not adequately manage these risks will be asked to take remedial action.

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[1] Interest-only and payment option ARMs are variations of conventional ARMs, hybrid ARMs, and fixed rate products. Refer to the Appendix for additional information on interest-only and payment option ARM loans. This guidance does not apply to reverse mortgages; home equity lines of credit ("HELOCs"), other than as discussed in the Simultaneous Second-Lien Loans section; or fully amortizing residential mortgage loan products.

[2] Refer to the Appendix for additional information on reduced documentation and simultaneous second-lien loans.

The focus of this guidance is on the higher risk elements of certain nontraditional mortgage products, not the product type itself. Providers with sound underwriting, and adequate risk management will not be subject to criticism merely for offering such products.

Loan Terms and Underwriting Standards

When a provider offers nontraditional mortgage loan products, underwriting standards should address the effect of a substantial payment increase on the borrower's capacity to repay when loan amortization begins.

Central to prudent lending is the internal discipline to maintain sound loan terms and underwriting standards despite competitive pressures. Providers are strongly cautioned against ceding underwriting standards to third parties that have different business objectives, risk tolerances, and core competencies. Loan terms should be based on a disciplined analysis of potential exposures and compensating factors to ensure risk levels remain manageable.

Qualifying Borrowers—Payments on nontraditional loans can increase significantly when the loans begin to amortize. Commonly referred to as payment shock, this increase is of particular concern for payment option ARMs where the borrower makes minimum payments that may result in negative amortization. Some providers manage the potential for excessive negative amortization and payment shock by structuring the initial terms to limit the spread between the introductory interest rate and the fully indexed rate. Nevertheless, a provider's qualifying standards should recognize the potential impact of payment shock, especially for borrowers with high loan-to-value (LTV) ratios, high debt-to-income (DTI) ratios, and low credit scores. Recognizing that a provider's underwriting criteria are based on multiple factors, a provider should consider these factors jointly in the qualification process and may develop a range of reasonable tolerances for each factor. However, the criteria should be based upon prudent and appropriate underwriting standards, considering both the borrower's characteristics and the product's attributes.

For all nontraditional mortgage loan products, a provider's analysis of a borrower's repayment capacity should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate,[3] assuming a fully amortizing repayment schedule.[4] In addition, for products that permit negative amortization, the repayment analysis should be based upon the initial loan

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[3] The fully indexed rate equals the index rate prevailing at origination plus the margin that will apply after the expiration of an introductory interest rate. The index rate is a published interest rate to which the interest rate on an ARM is tied. Some commonly used indices include the 1-Year Constant Maturity Treasury Rate (CMT), the 6-Month London Interbank Offered Rate (LIBOR), the 11th District Cost of Funds (COFI), and the Moving Treasury Average (MTA), a 12-month moving average of the monthly average yields of U.S. Treasury securities adjusted to a constant maturity of one year. The margin is the number of percentage points a lender adds to the index value to calculate the ARM interest rate at each adjustment period. In different interest rate scenarios, the fully indexed rate for an ARM loan based on a lagging index (e.g., MTA rate) may be significantly different from the rate on a comparable 30-year fixed-rate product. In these cases, a credible market rate should be used to qualify the borrower and determine repayment capacity.

[4] The fully amortizing payment schedule should be based on the term of the loan. For example, the amortizing payment for a loan with a 5-year interest only period and a 30-year term would be calculated based on a 30-year amortization schedule. For balloon mortgages that contain a borrower option for an extended amortization period, the fully amortizing payment schedule can be based on the full term the borrower may choose.

amount plus any balance increase that may accrue from the negative amortization provision.[5]

Furthermore, the analysis of repayment capacity should avoid over-reliance on credit scores as a substitute for income verification in the underwriting process. The higher a loan's credit risk, either from loan features or borrower characteristics, the more important it is to verify the borrower's income, assets, and outstanding liabilities.

Collateral-Dependent Loans—Providers should avoid the use of loan terms and underwriting practices that may heighten the need for a borrower to rely on the sale or refinancing of the property once amortization begins. Loans to individuals who do not demonstrate the capacity to repay, as structured, from sources other than the collateral pledged may be unfair and abusive.[6] Providers that originate collateral-dependent mortgage loans may be subject to criticism and corrective action.

Risk Layering—Providers that originate or purchase mortgage loans that combine nontraditional features, such as interest only loans with reduced documentation or a simultaneous second-lien loan, face increased risk. When features are layered, a provider should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance or other credit enhancements. While higher pricing is often used to address elevated risk levels, it does not replace the need for sound underwriting.

Reduced Documentation—Providers increasingly rely on reduced documentation, particularly unverified income, to qualify borrowers for nontraditional mortgage loans. Because these practices essentially substitute assumptions and unverified information for analysis of a borrower's repayment capacity and general creditworthiness, they should be used with caution. As the level of credit risk increases, it is expected that a provider will more diligently verify and document a borrower's income and debt reduction capacity. Clear policies should govern the use of reduced documentation. For example, stated income should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. For many borrowers, providers generally should be able to readily document income using recent W-2 statements, pay stubs, or tax returns.

Simultaneous Second-Lien Loans—Simultaneous second-lien loans reduce owner equity and increase credit risk. Historically, as combined loan-to-value ratios rise, so do defaults. A delinquent borrower with minimal or no equity in a property may have little incentive to work with a lender to bring the loan current and avoid foreclosure. In addition, second-lien home equity lines of credit (HELOCs) typically increase borrower exposure to increasing interest rates and monthly payment burdens. Loans with minimal or no owner equity generally should not

[5] The balance that may accrue from the negative amortization provision does not necessarily equate to the full negative amortization cap for a particular loan. The spread between the introductory or "teaser" rate and the accrual rate will determine whether or not a loan balance has the potential to reach the negative amortization cap before the end of the initial payment option period (usually five years). For example, a loan with a 115 percent negative amortization cap but a small spread between the introductory rate and the accrual rate may only reach a 109 percent maximum loan balance before the end of the initial payment option period, even if only minimum payments are made. The borrower could be qualified based on this lower maximum loan balance.

[6] A loan will not be determined to be "collateral-dependent" solely through the use of reduced documentation.

have a payment structure that allows for delayed or negative amortization without other significant risk mitigating factors.

Introductory Interest Rates—Many providers offer introductory interest rates set well below the fully indexed rate as a marketing tool for payment option ARM products. When developing nontraditional mortgage product terms, a provider should consider the spread between the introductory rate and the fully indexed rate. Since initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier-than-scheduled recasting of monthly payments. Providers should minimize the likelihood of disruptive early recastings and extraordinary payment shock when setting introductory rates.

Lending to Subprime Borrowers—Providers of mortgage programs that target subprime borrowers through tailored marketing, underwriting standards, and risk selection should ensure that such programs do not feature terms that could become predatory or abusive. They should also recognize that risk-layering features in loans to subprime borrowers may significantly increase risks for both the provider and the borrower.

Non-Owner-Occupied Investor Loans—Borrowers financing non-owner-occupied investment properties should qualify for loans based on their ability to service the debt over the life of the loan. Loan terms should reflect an appropriate combined LTV ratio that considers the potential for negative amortization and maintains sufficient borrower equity over the life of the loan. Further, underwriting standards should require evidence that the borrower has sufficient cash reserves to service the loan, considering the possibility of extended periods of property vacancy and the variability of debt service requirements associated with nontraditional mortgage loan products.

Risk Management Practices

Providers should ensure that risk management practices keep pace with the growth of nontraditional mortgage products and changes in the market. Providers that originate or invest in nontraditional mortgage loans should adopt more robust risk management practices and manage these exposures in a thoughtful, systematic manner. To meet these expectations, providers should:

- Develop written policies that specify acceptable product attributes, production, sales and securitization practices, and risk management expectations; and
- Design enhanced performance measures and management reporting that provide early warning for increasing risk.

Policies—A provider's policies for nontraditional mortgage lending activity should set acceptable levels of risk through its operating practices and policy exception tolerances. Policies should reflect appropriate limits on risk layering and should include risk management tools for risk mitigation purposes. Further, a provider should set growth and volume limits by loan type, with special attention for products and product combinations in need of heightened attention due to easing terms or rapid growth.

Concentrations—Providers with concentrations in nontraditional mortgage products should have well-developed monitoring systems and risk management practices. Further, providers should consider the effect of employee and third party incentive programs that could produce higher concentrations of nontraditional mortgage loans. Concentrations that are not effectively managed will be subject to elevated supervisory attention and potential examiner criticism to ensure timely remedial action.

Controls—A provider's quality control, compliance, and audit procedures should focus on mortgage lending activities posing high risk. Controls to monitor compliance with underwriting standards and exceptions to those standards are especially important for nontraditional loan products. The quality control function should regularly review a sample of nontraditional mortgage loans from all origination channels and a representative sample of underwriters to confirm that policies are being followed. When control systems or operating practices are found deficient, business-line managers should be held accountable for correcting deficiencies in a timely manner.

Third-Party Originations—Providers often use third parties, such as mortgage brokers or correspondents, to originate nontraditional mortgage loans. Providers should have strong systems and controls in place for establishing and maintaining relationships with third parties, including procedures for performing due diligence. Oversight of third parties should involve monitoring the quality of originations so that they reflect the provider's lending standards and compliance with applicable laws and regulations.

Monitoring procedures should track the quality of loans by both origination source and key borrower characteristics. This will help providers identify problems such as early payment defaults, incomplete documentation, and fraud. If appraisal, loan documentation, credit problems or consumer complaints are discovered, the provider should take immediate action. Remedial action could include more thorough application reviews, more frequent re-underwriting, or even termination of the third-party relationship.

Secondary Market Activity—The sophistication of a provider's secondary market risk management practices should be commensurate with the nature and volume of activity. Providers with significant secondary market activities should have comprehensive, formal strategies for managing risks. Contingency planning should include how the provider will respond to reduced demand in the secondary market.

While third-party loan sales can transfer a portion of the credit risk, a provider remains exposed to reputation risk when credit losses on sold mortgage loans or securitization transactions exceed expectations. As a result, a provider may determine that it is necessary to repurchase defaulted mortgages to protect its reputation and maintain access to the markets.

Consumer Protection Issues

While nontraditional mortgage loans provide flexibility for consumers, the Mississippi Department of Banking and Consumer Finance is concerned that consumers may enter into these transactions without fully understanding the product terms. Nontraditional mortgage products have been advertised and promoted based on their affordability in the near term; that is, their lower initial monthly payments compared with traditional types of mortgages. In addition to apprising consumers of the benefits of nontraditional mortgage products, providers should take appropriate steps to alert consumers to the risks of these products, including the likelihood of increased future payment obligations. This information should be provided in a timely manner—before disclosures may be required under the Truth in Lending Act or other laws—to assist the consumer in the product selection process.

Concerns and Objectives—More than traditional ARMs, mortgage products such as payment option ARMs and interest-only mortgages can carry a significant risk of payment shock and negative amortization that may not be fully understood by consumers. For example, consumer payment obligations may increase substantially at the end of an interest-only period or upon the "recast" of a payment option ARM. The magnitude of these payment increases may be affected by factors such as the expiration of promotional interest rates, increases in the interest rate index, and negative amortization. Negative amortization also results in lower levels of home equity as compared to a traditional amortizing mortgage product. When borrowers go to sell or refinance the property, they may find that negative amortization has substantially reduced or eliminated their equity in it even when the property has appreciated. The concern that consumers may not fully understand these products would be exacerbated by marketing and promotional practices that emphasize potential benefits without also providing clear and balanced information about material risks.

In light of these considerations, communications with consumers, including advertisements, oral statements, promotional materials, and monthly statements should provide clear and balanced information about the relative benefits and risks of these products, including the risk of payment shock and the risk of negative amortization. Clear, balanced, and timely communication to consumers of the risks of these products will provide consumers with useful information at crucial decision-making points, such as when they are shopping for loans or deciding which monthly payment amount to make. Such communication should help minimize potential consumer confusion and complaints, foster good customer relations, and reduce legal and other risks to the provider.

Legal Risks—Providers that offer nontraditional mortgage products must ensure that they do so in a manner that complies with all applicable laws and regulations. With respect to the disclosures and other information provided to consumers, applicable laws and regulations include the following:

- Truth in Lending Act (TILA) and its implementing regulation, Regulation Z.
- Section 5 of the Federal Trade Commission Act (FTC Act).

TILA and Regulation Z contain rules governing disclosures that providers must provide for closed-end mortgages in advertisements, with an application,[7] before loan consummation, and when interest rates change. Section 5 of the FTC Act prohibits unfair or deceptive acts or practices.

[7] These program disclosures apply to ARM products and must be provided at the time an application is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

Other federal laws, including the fair lending laws and the Real Estate Settlement Procedures Act (RESPA), also apply to these transactions. Moreover, the sale or securitization of a loan may not affect a provider's potential liability for violations of TILA, RESPA, the FTC Act, or other laws in connection with its origination of the loan. State laws, including laws regarding unfair or deceptive acts or practices, may apply.

Recommended Practices

Recommended practices for addressing the risks raised by nontraditional mortgage products include the following:[8]

Communications with Consumers—When promoting or describing nontraditional mortgage products, providers should give consumers information that is designed to help them make informed decisions when selecting and using these products. Meeting this objective requires appropriate attention to the timing, content, and clarity of information presented to consumers. Thus, providers should give consumers information at a time that will help consumers select products and choose among payment options. For example, providers should offer clear and balanced product descriptions when a consumer is shopping for a mortgage—such as when the consumer makes an inquiry to the provider about a mortgage product and receives information about nontraditional products, or when marketing relating to nontraditional mortgage products is given by the provider to the consumer—not just upon the submission of an application or at consummation.[9] The provision of such information would serve as an important supplement to the disclosures currently required under TILA and Regulation Z or other laws.[10]

- *Promotional Materials and Product Descriptions*
  Promotional Materials and other product descriptions should provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions, including information about the matters discussed below.

  - *Payment Shock.* Providers should apprise consumers of potential increases in payment obligations for these products, including circumstances in which interest rates or negative amortization reach a contractual limit. For example, product descriptions could state the maximum monthly payment a consumer would be required to pay under a hypothetical

[8] Providers also should review the recommendations relating to mortgage lending practices set forth in other supervisory guidance from their respective primary regulators, as applicable, including guidance on abusive lending practices.
[9] Providers also should strive to: (1) focus on information important to consumer decision making; (2) highlight key information so that it will be noticed; (3) employ a user-friendly and readily navigable format for presenting the information; and (4) use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers considering the nontraditional mortgage products and other loan features described in this guidance.
[10] Providers may not be able to incorporate all of the practices recommended in this guidance when advertising nontraditional mortgages through certain forms of media, such as radio, television, or billboards. Nevertheless, providers should provide clear and balanced information about the risks of these products in all forms of advertising.

loan example once amortizing payments are required and the interest rate and negative amortization caps have been reached.[11] Such information also could describe when structural payment changes will occur (e.g., when introductory rates expire, or when amortizing payments are required), and what the new payment amount would be or how it would be calculated. As applicable, these descriptions could indicate that a higher payment may be required at other points in time due to factors such as negative amortization or increases in the interest rate index.

    - *Negative Amortization*. When negative amortization is possible under the terms of a nontraditional mortgage product, consumers should be apprised of the potential for increasing principal balances and decreasing home equity, as well as other potential adverse consequences of negative amortization. For example, product descriptions should disclose the effect of negative amortization on loan balances and home equity, and could describe the potential consequences to the consumer of making minimum payments that cause the loan to negatively amortize. (One possible consequence is that it could be more difficult to refinance the loan or to obtain cash upon a sale of the home.)

    - *Prepayment Penalties*. If the provider may impose a penalty in the event that the consumer prepays the mortgage, consumers should be alerted to this fact and to the need to ask the lender about the amount of any such penalty.

    - *Cost of Reduced Documentation Loans*. If a provider offers both reduced and full documentation loan programs and there is a pricing premium attached to the reduced documentation program, consumers should be alerted to this fact.

- *Monthly Statements on Payment Option ARMs*
  Monthly statements that are provided to consumers on payment option ARMs should provide information that enables consumers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement should contain an explanation, as applicable, next to the minimum payment amount that making this payment would result in an increase to the consumer's outstanding loan balance. Payment statements also could provide the consumer's current loan balance, what portion of the consumer's previous payment was allocated to principal and to interest, and, if applicable, the amount by which the principal balance increased. Providers should avoid leading payment option ARM borrowers to select a non-amortizing or negatively-amortizing payment (for example, through the format or content of monthly statements).

- *Practices to Avoid*
  Providers also should avoid practices that obscure significant risks to the consumer. For example, if a provider advertises or promotes a nontraditional mortgage by emphasizing the comparatively lower initial payments permitted for these loans, the provider also should give clear and comparably prominent information alerting the consumer to the risks. Such information should explain, as relevant, that these payment amounts will increase, that a balloon payment may be due, and that the loan balance will not decrease and may even

[11] Consumers also should be apprised of other material changes in payment obligations, such as balloon payments.

increase due to the deferral of interest and/or principal payments. Similarly, providers should avoid promoting payment patterns that are structurally unlikely to occur.[12] Such practices could raise legal and other risks for providers.

Providers also should avoid such practices as: giving consumers unwarranted assurances or predictions about the future direction of interest rates (and, consequently, the borrower's future obligations); making one-sided representations about the cash savings or expanded buying power to be realized from nontraditional mortgage products in comparison with amortizing mortgages; suggesting that initial minimum payments in a payment option ARM will cover accrued interest (or principal and interest) charges; and making misleading claims that interest rates or payment obligations for these products are "fixed."

Control Systems—Providers should develop and use strong control systems to monitor whether actual practices are consistent with their policies and procedures relating to nontraditional mortgage products. Providers should design control systems to address compliance and consumer information concerns as well as the risk management considerations discussed in this guidance. Lending personnel should be trained so that they are able to convey information to consumers about the product terms and risks in a timely, accurate, and balanced manner. As products evolve and new products are introduced, lending personnel should receive additional training, as necessary, to continue to be able to convey information to consumers in this manner. Lending personnel should be monitored to determine whether they are following these policies and procedures. Providers should review consumer complaints to identify potential compliance, reputation, and other risks. Attention should be paid to appropriate legal review and to using compensation programs that do not improperly encourage lending personnel to direct consumers to particular products.

With respect to nontraditional mortgage loans that a provider makes, purchases, or services using a third party, such as a mortgage broker, correspondent, or other intermediary, the provider should take appropriate steps to mitigate risks relating to compliance and consumer information concerns discussed in this guidance. These steps would ordinarily include, among other things, (1) conducting due diligence and establishing other criteria for entering into and maintaining relationships with such third parties, (2) establishing criteria for third-party compensation designed to avoid providing incentives for originations inconsistent with this guidance, (3) setting requirements for agreements with such third parties, (4) establishing procedures and systems to monitor compliance with applicable agreements, policies, and laws, and (5) implementing appropriate corrective actions in the event that the third party fails to comply with applicable agreements, policies, or laws.

Appendix

Interest-Only Mortgage Loan—A nontraditional mortgage on which, for a specified number of years (e.g., three or five years), the borrower is required to pay only the interest due on the loan

[12] For example, marketing materials for payment option ARMs may promote low predictable payments until the recast date. Such marketing should be avoided in circumstances in which the minimum payments are so low that negative amortization caps would be reached and higher payment obligations would be triggered before the scheduled recast, even if interest rates remain constant.

during which time the rate may fluctuate or may be fixed. After the interest-only period, the rate may be fixed or fluctuate based on the prescribed index and payments include both principal and interest.

Payment Option ARM—A nontraditional mortgage that allows the borrower to choose from a number of different payment options. For example, each month, the borrower may choose a minimum payment option based on a "start" or introductory interest rate, an interest-only payment option based on the fully indexed interest rate, or a fully amortizing principal and interest payment option based on a 15-year or 30-year loan term, plus any required escrow payments. The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization. The interest-only option avoids negative amortization but does not provide for principal amortization. After a specified number of years, or if the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance over the remaining loan term.

Reduced Documentation—A loan feature that is commonly referred to as "low doc/no doc," "no income/no asset," "stated income" or "stated assets." For mortgage loans with this feature, a provider sets reduced or minimal documentation standards to substantiate the borrower's income and assets.

Simultaneous Second-Lien Loan—A lending arrangement where either a closed-end second-lien or a home equity line of credit (HELOC) is originated simultaneously with the first lien mortgage loan, typically in lieu of a higher down payment.

Source: *Miss. Code Ann.* §81-18-29; *Effective date August 30, 2013*