

# **Updated Changes on Residential Home Mortgage**

*A guide to understanding the new requirements and  
corresponding impacts*



33 Sylvan Avenue, Englewood Cliffs, NJ 07632  
(Tel) 201.592.7701 (Fax) 201.592.1782  
[www.primbank.com](http://www.primbank.com)

The mortgage industry continues to subject many new government requirements that related to home financing. Recent changes in rules and regulations in mortgage lending are designed to (i) prohibit abusive mortgage lending practices and to (ii) provide essential information and adequate time to understand their home purchase or refinance options.

These changes influence the timeline in general and certainly has many process impacts for lenders with greater compliance costs and regulatory burdens.

This is to provide you with details regarding recently changed rules and regulation on mortgage lending in the following areas:

1. Mortgage Disclosure Improvement Act (MDIA)
2. SAFE Mortgage Licensing Act
3. The Home Valuation Code of Conduct (HVCC)
4. RESPA Reform
5. Higher-Priced Mortgage Loans (HPML)
6. Red Flags Rules

## **Mortgage Disclosure Improvement Act (MDIA)**

The Mortgage Disclosure Improvement Act (MDIA) is an amendment of the Housing and Economic Recovery Act of 2008 (HERA) which was enacted by Congress on July 30, 2008.

How did this happen? The final rule issued by the Federal Reserve Board on July 30, 2008 regarding the Truth-in-Lending Act and Home Ownership Equity Protection Act has an effective date of October 1, 2009. On July 30, 2008, Congress enacted the Housing and Economic Recovery Act which included provisions regarding MDIA. On October 3, 2008, Congress enacted the Emergency Economic Stabilization Act which amended MDIA. On May 8, 2009 the Federal Reserve Board approved final rules to implement the provisions of MDIA, as amended by the Emergency Economic Stabilization Act and applied an effective date of July 30, 2009. MDIA amends TILA, codifies early disclosure requirements and expands regulatory provisions.

HERA amended the Truth in Lending Act which became known as MDIA. The MDIA broadened the requirements of TIL to include disclosures for mortgage loans secured by dwellings other than the consumer's principal dwelling and the required waiting periods between the time when disclosures are given and consummation of the mortgage transaction. MDIA applies only to closed-end loans secured by a consumer's principal dwelling and does not affect the disclosure requirements for home equity lines of credit (HELOCs).

Written Application — The MDIA allows lenders to rely on RESPA and Regulation X in deciding whether a written application has been received. Regulation X defines application to mean “the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan.” An application is received when it reaches the creditor in any of the ways applications are normally transmitted — by mail, hand delivery, or through an intermediary agent or broker.

Business Day — The Truth-in-Lending Act (TILA) contains two definitions of a business day. One is the general definition and the other is known as the specific definition. The general definition is “a business day is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions.” The specific definition is “a business day is all calendar days except Sundays and Federal holidays”. Under the MDIA, the definition of business day for both the 3 and 7-day waiting periods is: all calendar days except Sundays and holidays, which is the specific definition. The general applies to the timing of the initial TIL disclosures. The specific rule applies to Right of Rescission and loans subject to the Home Ownership and the Equity Protection Act.

Initial Fees — Lenders may only collect a fee for the reasonable cost of a credit report prior to the issuance of the initial disclosures. Disclosures must be given before the consumer pays any fee, other than a bona fide and reasonable fee for obtaining the consumer's credit history. There is no specific regulatory rule with respect to the collection of post-dated checks or authorization to process a credit card after the waiting period. Obtaining post-dated checks or advance credit card authorization conveys to the consumer that “they are accepting the transaction prior to reviewing the disclosures.”

Initial Disclosure Statement — Lenders must continue to issue disclosures within 3 business days from application as previously required by TIL. The regulation does not include rules or presumptions regarding the delivery of disclosures by mail, overnight courier, electronic transmission, etc. and creditors may presume that the consumer receives the disclosures three business days after they are sent.

Notice of “No Requirements to Complete” — The MDIA requires that the early disclosures contain a clear and conspicuous notice containing the following statement: “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.” The statement must be contained on a disclosure form that is grouped together with the other disclosures.

Revised APR Three Business Day Notice — If the APR is out of tolerance, lenders must re-disclose three business days prior to consummation. If the corrected disclosures are mailed, the consumer is considered to receive the disclosures three business days after mailing. The MDIA requires that consummation may not occur until three business days after the consumer receives corrected disclosures. If disclosures are delivered electronically consistent with the E-Sign Act or by overnight courier, the creditor may rely on evidence of actual delivery to determine when the three-business-day waiting period begins. Re-disclosure is required when the percentage rate varies by more than 1/8 of one percent (.125) in a regular transaction (fixed-rate) or more than 1/4 of one percent (.25) in an irregular transaction (adjustable rate). The comparison is based on the estimated APR at consummation and the most recently disclosed TIL.

Seven Business Days Prior to Consummation — Lenders must allow applicants to have a 7 business day waiting period after mailing or delivering the TIL prior to closing of the loan. This timing is not based on receipt date (or assumed receipt date) by the consumer; the timing begins with the mailing or delivery by the lender. This rule is based on the specific rule which includes Saturdays. Consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period have expired.

Waivers — Borrowers may waive both the seven-day and three-day waiting period to meet a bona fide personal financial emergency. However, if the TIL Statement is out of tolerance, the waiver is no longer effective. After re-disclosure, borrowers must submit a signed statement describing the emergency.

Denied or Withdrawn Applications — Lenders may determine within the three-business-day period that the application will not or cannot be approved on the terms requested. If the consumer withdraws the application within the three-business-day period, the creditor need not make the disclosures under this ruling.

Timeshare Transactions — Lenders must comply with the initial disclosure requirements; however, both the 3- and 7-day waiting periods do not apply. The timing on early disclosures for time shares is applicable based on the receipt of the consumer’s application or before the credit is extended. Subsequent changes to terms beyond tolerance for time shares can be disclosed no later than consummation.

## **SAFE Mortgage Licensing Act**

The Housing and Economic Recovery Act of 2008, signed into law on July 30, 2008 (Public Law 110-289) (HERA), constitutes a major new housing law that is designed to assist with the recovery and the revitalization of America's residential housing market - from modernization of the Federal Housing Administration, to foreclosure prevention, to enhancing consumer protections. The SAFE Act is a key component of HERA.

Under the SAFE Act, residential mortgage loan originators who are employees of agency-regulated institutions, including national and State banks, savings associations, credit unions, and Farm Credit System institutions, and certain of their subsidiaries must be registered with the Nationwide Mortgage Licensing System and Registry (Registry), a database established by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators to support the licensing of mortgage loan originators by the States. As part of this registration process, mortgage loan originators must furnish to the Registry background information and fingerprints for a background check. The S.A.F.E. Act generally prohibits employees of an agency-regulated institution from originating residential mortgage loans without first registering with the Registry.

The SAFE Act encourages states to participate in the Nationwide Mortgage Licensing System and Registry, and requires states to have in place, by law or regulation, a system for licensing and registering loan originators that meets the requirements of sections 1505, 1506, and 1508(d) of the SAFE Act. The SAFE Act requires the states to have the licensing and registration system in place by: (1) July 31, 2009, for states whose legislatures meet annually; and (2) July 31, 2010, for states whose legislatures meet biennially. For both this 1-year period and 2-year period, HUD may extend the deadline, by not more than 24 months, if HUD determines that a state is making a good faith effort to establish a state licensing law that meets the minimum requirements of the SAFE Act.

In case of New Jersey, the mortgage loan originators must complete 20 hours of NMLS approved pre-licensure education, including 4 hours of New Jersey specific education and successful passage of both the National and State components of the SAFE Test. The criminal history background check by the FBI must also be completed through NMLS of fingerprints.

## The Home Valuation Code of Conduct (HVCC)

The Home Valuation Code of Conduct (HVCC) establishes standards for solicitation, selection, compensation, conflicts of interest and appraiser independence. It is effective May 1, 2009, for any mortgage that will be sold to Fannie Mae or Freddie Mac; Federal Housing Administration (FHA) and Federal Home Loan Bank (FHLB) mortgages are not covered in the agreement.

Under the rules of the HVCC, individual banks and mortgage brokers who sell conventional loans in the secondary market to Fannie Mae and Freddie Mac cannot hand-select their own appraisers anymore. They must let an appraisal management company pluck an appraiser from its pool of appraisers to do an appraisal. The revised Code:

- Prohibits lenders and third parties from influencing or attempting to influence the development, result, or review of an appraisal report.
- Requires lenders to ensure that borrowers are provided a copy of the appraisal report no less than three business days prior to closing, unless the borrower waives the requirement. The lender may require the borrower to reimburse it for the cost of the appraisal, but the lender must provide a copy of the appraisal report to the borrower at no additional cost.
- Requires any third party specifically authorized to perform certain actions on behalf of the Seller to be in compliance with the Code.
- Requires lenders or third parties authorized by lenders to be responsible for selecting, retaining, and providing for payment of all compensation to appraisers. The Code does not allow any other third parties to perform these activities.
- A lender, in connection with the loan being originated, may accept an appraisal report prepared by an appraiser for a different lender provided that the lender obtains written assurances from the other lender that it has adopted the Code and determines that such appraisal conforms to appraisal requirements and is otherwise acceptable.
- Requires absolute independence within a lender's organization between the appraisal function and loan production and limits communication with the appraiser.
  - A lender's loan production staff is prohibited from being involved in the selection of the appraiser, or having any substantive communications with an appraiser or appraisal management company about valuation.
  - The loan production staff consists of those responsible for generating loan volume or approving loans, as well as their subordinates. This includes an employee whose compensation is based on loan volume or the closing of a loan transaction. Employees responsible for the credit administration function or credit risk management are not considered loan production staff.
- The lender's use of an appraisal report prepared by an in-house appraiser or an affiliate in underwriting a loan must meet certain conditions including:
  - The appraiser, or the company for which the appraiser works, reports to a function of the lender independent of sales or loan production, and sales and loan production

staff have no involvement in the operation of appraisal functions or selection of the appraiser.

- Sales and loan production staff are not allowed to have substantive communications with in-house appraisers relating to or having an impact on valuation and do not provide the appraiser any estimated or target value of the property or loan amount (except a copy of the purchase contract may be provided.)
- The appraiser's compensation does not depend on the final estimate of value or the closing of the loan.
- The lender has written policies and procedures implementing the Code and has mechanisms to report and discipline any violators.
- The lender's appraisal functions are either annually audited by an external auditor or are subject to federal or state regulatory examination, and the lender provides to Freddie Mac any adverse audit findings indicating Code non-compliance.
- Allows lenders to also use in-house staff appraisers to: 1) order appraisals; 2) conduct appraisal reviews and other quality control functions; 3) develop, deploy, or use internal automated valuation models; and 4) prepare appraisals in connection with transactions other than mortgage origination transactions, such as workouts, if the lender complies with the terms of the Code.
- Lenders may use appraisal reports prepared by other entities engaged by the lender to provide other settlement services for the same transaction, as long as certain conditions are met.
- Requires lenders to quality control test a randomly selected 10 percent (or other bona fide statistically significant percentage) sample of appraisal reports or valuations used by the lender, and report any adverse findings, including non-compliance of the Code, to Freddie Mac and/or Fannie Mae with respect to loans sold to the GSAs.
- Allows Sellers with an asset size of less than \$250 million to be considered a small bank as defined in 12 U.S.C. Section 2908 and exempting them from the requirements in Section IV(Prevention of Improper Influences on Appraisers) of the Code. Sellers that qualify for this exemption must represent and warrant that they have in place appropriate policies and procedures, as well as adequate controls to prevent undue appraiser influence.

## **RESPA Reform**

RESPA (Real Estate Settlement Procedures Act) Reform, effective from January 1, 2010, was enacted by the U.S. Department of Housing and Urban Development (HUD) with the intent to help protect borrowers applying for home financing by standardizing the industry and:

- providing for a more thorough explanation and disclosure of key loan terms and settlement charges [via revisions to the Good Faith Estimate (GFE) and Settlement Statement (HUD-1)];
- including a side-by-side chart (on the new page 3 of the HUD-1) to help compare the estimated charges shown on the GFE with the actual charges at closing; and
- requiring that fees not increase between issuance of the GFE and closing except under limited circumstances.

### New RESPA Reform GFE

Beginning January 1, 2010, HUD will require all lenders and mortgage brokers to provide borrowers with the new RESPA Reform GFE on any application that is taken on or after January 1, 2010 with a property identified. Additionally, settlement agents and attorneys will be required to provide borrowers with the new RESPA Reform HUD-1 settlement statement that closely aligns with the new GFE.

- Lender the lender must provide the applicant with a GFE later than 3 business days after a lender receives an application, or information sufficient to complete an application.
- The lender is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The lender may, at its option, charge a fee limited to the cost of a credit report. The lender may not charge additional fees until after the applicant has received the GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays.

### New RESPA Reform HUD-1

The new Settlement Statement (HUD-1) will increase from two to three pages and will include a side-by-side comparison chart to help borrowers compare final loan terms disclosed on the latest GFE with the charges shown on the HUD-1.

- All charges are subject to tolerance thresholds, regardless of whether there is a credit for that fee at closing by the seller, realtor or loan originator.
- Tolerance thresholds are for “increases” only; decreases beyond the threshold are allowed

### Disclosing Fees - Tolerances for amounts included on GFE.

The *initial* GFE distributed by any loan originator in a transaction becomes the binding GFE. The actual charges at settlement may not exceed the amounts included on the GFE for: (i) the origination charge, (ii) while the borrower's interest rate is locked, the credit or charge for the

interest rate chosen, (iii) while the borrower's interest rate is locked, the adjusted origination charge, and (iv) transfer taxes.

The sum of the charges at settlement for the following services may not be greater than 10 percent above the sum of the amounts included on the GFE: (i) Lender-required settlement services, where the lender selects; the third party settlement service provider, (ii) Lender-required services, title services and required title, insurance, and owner's title insurance, when the borrower uses a settlement service provider identified by the loan originator; and (iii) Government recording charges. The amounts charged for all other settlement services included on the GFE may change at settlement.

The loan originator is bound, within the tolerances to the settlement charges and terms listed on the GFE provided to the borrower, unless a new GFE is provided prior to settlement. If a loan originator provides a revised GFE, the loan originator must document the reason that a new GFE was provided. Loan originators must retain documentation of any reasons for providing a new GFE for no less than 3 years after settlement.

### Changing Circumstances

Changing circumstances are defined as follow:

- Acts of God, war, disaster or other emergency
- Changed situation or inaccurate information provided by the borrower after issuance of the GFE

If pricing changes due to a changed circumstance, or a borrower requested change, only the interest rate dependant charges and terms may change. This includes only those charges or credits which will, in turn, impact the "Adjusted Origination Charges."

If pricing changed due to going from a float to a lock, only the interest rate dependant charges and terms may change "Adjusted Origination Charges."

The origination fee(all lender or lender and mortgage broker origination points, processing fees and administrative fees) CANNOT change, even with a changed circumstance (Exception: If the loan amount changes and a portion of the "Origination Charge" is a percentage of the loan amount or the overall loan program changes).

*Changed circumstances affecting settlement costs.* If changed circumstances result in increased costs for any settlement services such that the charges at settlement would exceed the tolerances for those charges, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances actually resulted in higher charges.

*Changed circumstances affecting loan.* If changed circumstances result in a change in the borrower's eligibility for the specific loan terms identified in the GFE, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances.

*Borrower-requested changes.* If a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of the borrower's request.

Expiration of original GFE. If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time specified by the loan originator pursuant to paragraph (c) above, the loan originator is no longer bound by the GFE.

Interest rate dependent charges and terms. If the interest rate has not been locked by the borrower, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate may change. If the borrower later locks the interest rate, a new GFE must be provided showing the revised interest rate-dependent charges and terms. All other charges and terms must remain the same as on the original GFE, except as otherwise provided in paragraph (f) of this section.

## Higher-Priced Mortgage Loans (HPML)

In 2008, the Federal Reserve Board (FRB) revised **Regulation Z**, which implements the Truth in Lending Act and the Home Ownership and Equity Protection Act, to prohibit creditors from making higher-priced mortgage loans “based on the value of the consumer’s collateral without regard to the consumer’s repayment ability as of consummation, including the consumer’s current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations (12 CFR § 226.34(a)(4)). This repayment ability rule and other consumer protections for mortgage loans took effect for applications received on or after October 1, 2009.

### *What is “higher-priced mortgage loans”?*

HPMLs are not to be confused with HOEPA loans (Home Owner Equity Protection Act) which carry different rules, tolerance levels and state-specific regulations. HPMLs are loans secured by the borrower's principal dwelling that are priced at an APR (Annual Percentage Rate) exceeding a new index published by the Federal Reserve Board named the Average Prime Offer Rate (APOR).

Based on the date the interest rate is set (locked or re-locked) lenders must compare their APR with the Fed’s APOR index. The loan will be considered a higher-priced mortgage loan if the APR exceeds the index by:

- 1.5 or more percentage points on First Liens
- 3.5 or more percentage points on Subordinate Liens

The Federal Institutions Examination Council (FFIEC) publishes the Average Prime Offer Rate (APOR) on behalf of the Federal Reserve Board. To determine whether or not your loan is considered a Higher-Priced Mortgage Loan, go to the FFIEC website at <http://www.ffiec.gov> and select **Rate Spread Calculator** from the Consumer Compliance menu on the homepage.

### *What should be done if the loan is classified as HPMLs?*

The borrower’s ability to pay must be verified and documented..

- Verify income to cover repayment ability through W-2, tax returns, pay-stubs, financial institution records or third party verifications
- Verify the borrower(s)’ current obligations through credit reports and other documents

A creditor is presumed to have complied with this rule if they have verified the borrower’s repayment ability and determined repayment ability of P&I scheduled for the first seven years, taking into account their obligations. The lender may utilize debt ratios or disposable income.

In addition, the lender must provide escrow services for real estate tax and homeowner’s insurance.

## **Red Flags Rules**

The Red Flag Rules are implemented under the Fair and Accurate Credit Transactions Act of 2003 (FACTA) Sections 114 & 315. effective as of August 1, 2009.

The Federal Trade Commission (FTC) jurisdiction applies to non-depository mortgage lenders and state-chartered banks. FACTA's definition of "creditor" applies to any entity that regularly extends or renews credit, or arranges for others to do so, includes mortgage brokers - even very small companies.

The rules apply to creditors and financial institutions that deal in covered accounts which may be vulnerable to identity theft. Creditors and financial institutions with covered accounts must have an identity theft prevention program to identify and respond to patterns, practices or specific activities that could indicate identity theft.

**Financial institutions** include: banks, thrifts, credit unions, or entities that hold a "transaction account" where a consumer can make payments, drafts or transfers. Examples are:

Checking Accounts

Savings Accounts

Brokerage Accounts allowing consumers to write checks

**Creditors include:** a business or organization that regularly extends, renews or continues credit; arranges for another entity to extend/renew/continue credit; or is the assignee of a creditor who extends/renews/continues credit. Examples are:

Finance Companies

Utility Companies

Mortgage Brokers

Mortgage Companies

Automobile Dealers

Telecommunications Companies

**Covered Accounts** include credit cards, checking/savings accounts, car loans, mortgage loans, cell phone, utility and margin accounts. Other covered accounts include small business or sole proprietorship accounts that may have risks associated with account opening or access.

## **Identity Theft Program**

The regulation requires that every business have a written plan that serves to detect, prevent and mitigate identity theft. The plan must reflect the size, structure and business model of the institution and updated periodically. The plan must be approved by the company's board of directors or senior executive committee who shall direct a designated senior management employee to oversee the program. The designated person must implement the program, train staff, oversee audits, complete annual reports and monitor compliance to all persons who have access to covered accounts, which include both new and existing borrowers.

The plan must outline a thorough and pro-active system that covers the following topics, as applicable to the creditor:

Executive Policy Statement  
Organizational Structure & Areas of Accountability  
Plan Overview & Definitions  
Information Security & Spyware Control  
Phishing & Re-pollution Procedures  
Internal Fraud Procedures  
External Procedures & Vendor Approval Process  
Risk Monitoring Schedule  
Risk Assessment Procedures  
Red Flag Categories & List of Red Flags  
Customer Identity Verification Process  
Address Discrepancy Procedures  
Change of Address Procedures  
Active Duty Alert Procedures  
Red Flag Detection tools & steps  
Red Flag Response  
Red Flag Mitigation  
Fraud& Investigation Procedures  
Customer Fraud Hotline  
Customer Theft Forms & Procedures  
Resources (FTC, Equifax, TransUnion & Experian)  
Reporting to Authorities  
Staff Training  
Document Retention  
Quality Control & Audit Policy

The overall compliance program should address day-to-day operations and internal workflow on an interdepartmental level as well as external branches & operations centers. The program must address 3rd party originators, loan correspondents, closing agents and other service providers.

Red flags apply to covered accounts that include new or existing customer information accessed by the creditor or accessed by 3rd parties and are identified on various sources:

- Documents furnished by the consumer
- Documents furnished by transaction parties
- Documents furnished by employers or other income source
- Notices received from outside persons or entities in connection to the account being serviced

Red flags are often discovered by cross-checking telephone directories, public or internet sources. Red Flags are generally identified as follows on consumer reports:

- Alerts, notifications or warnings on the credit report
- Alerts noted on an SSN validation check
- Alerts noted on a Factual ID or Fraud-Check

Ordering vendor reports, such as SSN checks or Factual ID are not mandatory, but help support red flag detection. Vendor reports can help a lender save time and also resolve “false positives” by clearing unwarranted discrepancies. If a vendor report indicates any type of alert or variance, the lender must respond to that alert. There are risk assessment and red flag detection tools that enable the lender to enter comments and other mitigation steps. An interactive, automated system

is very effective since it allows the detection, investigation and outcome to be combined in one report. The lender's LOS system can have a built-in audit trail that substantiates red flag compliance.

The Federal Trade Commission has identified "26 Red Flags" to be used as a guide for drafting an internal policy. The FTC list is not to be used as a "checklist" and companies must list sources and examples that are specific to their business model.

1. A fraud alert was indicated in the consumer report
2. Notice of a credit freeze in a consumer report
3. A consumer reporting agency provided notice of address discrepancy
4. Unusual credit activity, such as an increased # of accounts or inquiries
5. Documents provided for identification appear altered or forged
6. Photograph on ID inconsistent with appearance of customer
7. Information on ID inconsistent with information provided by customer
8. Information on ID, such as signature, inconsistent with information on file at financial institution
9. Application appearing forged, altered or destroyed and reassembled
10. Information on ID does not match any address in the consumer report, SSN has not been issued or appears on the SSN Administration's Death Master File
11. Lack of correlation between SS number range and date of birth
12. Personal identifying information associated with known fraud activity
13. Suspicious addresses supplied, such as a mail drop, prison, phone numbers associated with pagers or answering service
14. SS number provided matches info submitted by another customer
15. Address or phone number matches other applicants
16. Customer unable to supply identifying information in response to notification that the application is incomplete
17. Personal information inconsistent with information already on file at financial institution or creditor
18. Person opening account or customer unable to correctly answer challenge questions
19. Shortly after change of address, creditor receives request for additional users of account
20. Most of available credit used for cash advances, jewelry or electronics, plus customer fails to make first payment
21. Drastic change in payment patterns, use of available credit or spending patterns
22. An account that has been inactive for a lengthy time suddenly exhibits unusual activity
23. Mail sent to customer repeatedly returned as undeliverable despite ongoing transactions on active account
24. Financial institution or creditor notified that customer is not receiving paper account statements
25. Financial institution or creditor notified of unauthorized charges or transactions on customer's account
26. Financial institution or creditor notified that it has opened a fraudulent account for a person engaged in identity theft
27. Address Discrepancies

A notice of address discrepancy is a notice that is sent to Mortgage lenders from a consumer reporting agency that informs the company of a substantial difference between the address of a consumer that the company provided to request the consumer report and the address(es) in the agency's file for the consumer. Upon receipt of such notice, it is the responsibility of the lender to a) compare the information in the consumer report provided by the consumer reporting agency

and b) verify the information in the consumer report provided by the consumer reporting agency directly with the consumer.

In addition, lenders are required to furnish an address for the consumer that the company has reasonably confirmed is accurate to the consumer reporting agency from whom it received the notice of address discrepancy. Reasonable confirmation is when the lender can form a reasonable belief that the consumer report relates to the consumer about whom the company requested the report; has established a continuing relationship with the consumer, or regularly furnishes information to that consumer reporting agency.

### Response and Mitigation

Whenever a Red Flag is detected, the institution must assess the level of risk and evaluate the exposure to identity theft to the lender and/or consumer. Examples of responses are:

- Ask borrower to submit a written explanation
- Ask borrower to submit supporting documentation to clear the discrepancy
- Request borrower's employer to furnish supplementary payroll records

Lenders should complete an internal "red flag checklist" or use another procedure to document the detection, investigation, and outcome or response. The checklist can be placed in borrower's folder or stored with borrower's other information in database. Copies should be provided to the compliance officer.