109:4-3-19 **Determining a consumer’s ability to repay a residential mortgage loan.**

(A) Division (B)(2) of section 1345.031 of the Revised Code prohibits a supplier from engaging in a pattern or practice of providing residential mortgage loan transactions to consumers based predominantly on the supplier’s realization of the foreclosure or liquidation value of the consumer’s collateral without regard to the consumer’s ability to repay the loan in accordance with its terms, provided that the supplier may use any reasonable method to determine a borrower’s ability to repay the loan. Such methods may include, but shall not be limited to, verification of the borrower’s current and expected income, current and expected cash flow, net worth and other financial resources, current financial obligations, property taxes and insurance, assessments on the property, employment status, credit history, and other relevant factors such as debt-to-income ratio, credit score, tax returns, pension statements, employment payment records, and statements or information submitted by the consumer in their mortgage loan application, provided that no supplier shall disregard facts and circumstances that indicate that the financial or other information submitted by the consumer is inaccurate or incomplete.

(B) "Pattern or practice" is not established by isolated, random, or accidental acts, although it can be established without the use of a statistical process. In addition, a supplier may be acting pursuant to a written or unwritten policy and that action alone could establish a pattern or practice of making mortgage loans in violation of this rule.

(C) “The supplier’s realization of the foreclosure value of the consumer’s collateral” means the amount of money the supplier would reasonably be expected to recoup from the proceeds of a court-ordered sale of the collateral through a foreclosure action.

(D) “The supplier’s realization of the liquidation value of the consumer’s collateral” means the amount of money the supplier would reasonably be expected to recoup from the proceeds of a sale of the collateral by the consumer.

(E) In addition to the factors listed in paragraph (A) of this rule, and without limiting the applicability of division (B)(2) of section 1345.031 of the Revised Code and this rule to all residential mortgage loan products, for nontraditional mortgage loan products and mortgage loan products with a discounted introductory rate, great weight and due consideration shall be given to the federal Interagency Guidance on Nontraditional Mortgage Product Risks, 71 Fed. Reg. 58,609 (2006), as amended, in deciding whether or not the supplier used a reasonable method of determining a borrower's ability to repay the loan.

(F) Neither division (B)(2) of section 1345.031 of the Revised Code nor this rule shall apply to reverse mortgages.

(G) All records, worksheets, or supporting documentation used by the supplier in conducting an analysis of the consumer's ability to repay the loan in accordance with its terms shall be maintained by that supplier in the consumer's loan file for each residential mortgage loan transaction for a period of at least two years from the date of closing, or as required by other applicable state or federal law, whichever time period is greater. The records required to be maintained by this rule may be retained in an electronic format.

(H) For purposes of division (A) of this rule, a consumer shall be considered to have an ability to repay if the lender is offering a fully-amortizing fixed-rate refinance loan that has the same or lesser interest rate as the consumer's current loan, the same or lesser principal amount as the consumer's current loan, and does not extend the payoff date of the consumer's current loan. If the consumer currently has an adjustable rate mortgage, the interest rate of the consumer's current loan is the interest rate the consumer is paying as of the date of the refinance.

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Certification

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