

DEPARTMENT OF LABOR, LICENSING AND REGULATION
SUBTITLE 03 - Commissioner of Financial Regulation

Chapter: 09.03.01 - Credit Unions

Authority: Financial Institutions Article, §§2-105.1, Annotated Code of Maryland

Note: brackets mean [new language], cross outs mean deleted language.

.08 Real Estate Lending.

A. Definitions.

- (1) "Appraisal" means an objective estimate of value established using a real estate appraisal policy approved by the board of directors in accordance with all applicable federal and State laws and regulations and in conformity with secondary market guidelines including but not limited to the Federal National Mortgage Association (FNMA) and/or Federal Home Loan Mortgage Corporation (FHLMC).
- (2) "Appraiser" means an individual who performs appraisals under the authority of real estate appraisal policies and procedures approved by the Commissioner of Financial Regulation under Financial Institutions Article, §2-110, Annotated Code of Maryland.
- (3) "Construction mortgage" means an interim loan covering residential construction and development costs in which funds are advanced at specific stages of construction with a portion held back until completion of the project.
- (4) "Escrow account" means either a special limited-withdrawal share account or an accounts payable account used for the accumulation of funds to pay for not more than 1 year's taxes, ground rent, assessments, insurance premiums, or other charges that could affect the credit union's lien position.
- (5) "Flood insurance" means insurance affording protection against loss or damage from flood and other hazards covered by a standard mortgage clause in favor of the credit union and subsequent purchasers of the mortgage.
- (6) "Hazard insurance" means property insurance affording protection against loss or damage from fire and other hazards covered by a standard extended coverage endorsement with a standard mortgage clause in favor of the credit union and subsequent purchasers of the mortgage.
- (7) "Insured or guaranteed loan" means a loan that is fully or partially insured or guaranteed by the federal government, State government, local government, or any agency of these governments.
- (8) "Lender's title insurance" means insurance that protects:
 - (a) The credit union against loss due to clouds or defects in title to real property in an amount equal to the current principal balance of the loan; and
 - (b) Subsequent purchasers of the mortgage or deed of trust.
- (9) "Market value" means the highest price that real property will bring in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller acting in a prudent and knowledgeable manner, and assuming the price is not affected by undue stimulus.

(10) "Net worth" means retained earnings as defined under generally accepted accounting principles. Retained earnings include, but are not limited to, undivided earnings, regular reserves, and any other appropriations designated by management or the Commissioner.

(11) "Permanent financing" means a longer-term mortgage loan greater than 10 years in maturity and covering development costs, construction costs, legal expenses, and other related costs. Permanent financing is also known as a take-out loan for a construction loan.

(12) "Principal residence" means a structure where the owner will be domiciled or will reside permanently within the time period established by the applicable federal loan programs or within 60 days after initial disbursement of the loan.

(13) "Private mortgage insurance" means mortgage insurance that is purchased for conventional loans on that amount of the loan that is in excess of 80 percent loan to value.

(14) Purchase Money Mortgage.

(a) "Purchase money mortgage" means the acquisition of property through the use of a first mortgage or first deed of trust.

(b) "Purchase money mortgage" does not include refinances or seasoned loans.

(15) "Refinance—cash out" means the repayment of an existing mortgage debt from the proceeds of a new mortgage that has the same borrower and the same security property, which:

(a) Is settled in accordance with existing underwriting guidelines; and

(b) May include:

(i) The unpaid principal balance of the existing first mortgage,

(ii) Closing costs,

(iii) Points,

(iv) The amount required to satisfy any outstanding subordinate mortgage liens, and

(v) Additional cash that the borrower may use for any purpose.

(16) "Refinance—no cash out" means the repayment of an existing mortgage debt from the proceeds of a new mortgage that has the same borrower and the same security property, which:

(a) Is settled in accordance with existing underwriting guidelines; and

(b) May include:

(i) The unpaid principal balance of the existing first mortgage,

(ii) Closing cost,

(iii) Points, and

(iv) The amount required to satisfy any outstanding subordinate mortgage liens.

(17) Residential Real Property.

(a) "Residential real property" means a structure designed for residential use by not more than four families, at least one unit of which shall be occupied by the owner of the structure.

(b) "Residential real property" includes a one- to four-family unit in a planned unit development or condominium project where certain portions of the secured property are owned in common with others.

(c) "Residential real property" does not include a unit in a cooperative project.

(18) "Secondary mortgage loan market" means a nationally recognized market, the most common of which has been created by the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), where first mortgages are securitized or sold, or both, separately to investors.

(19) "Secondary residence" means one structure in addition to a principal residence:

(a) here the owner resides for at least 2 weeks every calendar year; or

(b) Which the owner will not rent to others for at least 2 weeks every calendar year.

(20) "Security instrument" means either a deed of trust or a mortgage that constitutes a lien.

(21) "Value" means the lower of the appraised market value or the purchase price.

B. Requirements. A credit union may make loans secured by residential real property only in accordance with a written loan policy adopted by the board of directors. The policy shall have ~~four~~ [seven] sections, if applicable, as follows:

(1) General real estate lending policy;

(2) Purchase money mortgages, refinances;

(3) Construction mortgage—permanent financing;

(4) Second mortgages, home equity loans/lines of credit;

(5) Nonconforming real estate loans; ~~and~~

[(6) Foreclosure Policy; and]

[(7) Loan Modification Policy.]

C. General Real Estate Lending Policy Section.

(1) The general real estate lending policy section shall, at a minimum, address the following:

(a) Types of real estate loans to be offered, for example:

(i) Purchase money mortgages, refinances—cash out, or refinances—no cash out with fixed or adjustable rates;

(ii) Second mortgages, home equity loans/lines of credit, open-end, closed-end with fixed or adjustable rates;

(iii) Nonconforming real estate loans; and

(iv) Construction mortgages;

(b) The Maryland lending statute under which each type of loan is written;

(c) Total real estate lending limits determined by the board of directors, which:

(i) Do not exceed the lesser of ~~30~~ [40] percent of total credit union assets that can be invested in real estate loans, or four times total credit union capital that can be invested in real estate loans, and

(ii) May not be exceeded unless approved in writing by the Commissioner;

(d) The credit union's market area for real estate loans;

(e) The terms and pricing of real estate loans;

- (f) The qualifications and experience needed by personnel involved in making real estate loans;
 - (g) Monitoring and quality control standards and procedures that address the loan portfolio, collateral, and interest rate risk;
 - (h) Any requirement that a borrower contribute funds to an escrow account maintained in the credit union for accumulation of funds to pay real estate taxes, hazard insurance, ground rents, flood insurance, PMI, and any other similar expense items;
 - (i) Any requirement that a borrower have hazard insurance, as permitted by the Commercial Law Article, Annotated Code of Maryland, and with the following provisions:
 - (i) The hazard insurance company may be chosen by the borrower, and
 - (ii) The credit union should be listed as the loss payee on the insurance policy;
 - (j) Any requirement that a borrower provide a termite inspection on the improvements of the real property;
 - (k) Any requirement that a borrower provide a perc test if the real property has a septic tank system;
 - (l) Any requirement that a borrower provide a chemical/bacteriological and yield test if the property has a well water system;
 - (m) Any requirement that a borrower provide a survey of the real property; and
 - (n) Provisions that notify loan officers of the requirements of §C(2)—(6) of this regulation.
- (2) The loan application, security instrument, and note, if a deed of trust is used, shall be executed on the most current version of the Federal Housing Administration (FHA), Veterans' Administration (VA), Federal Home Loan Mortgage Corporation (FHLMC), or Federal National Mortgage Association (FNMA) standard forms or uniform instruments for the jurisdiction in which the property is located. If FHA, VA, FHLMC, or FNMA uniform instruments do not exist, the credit union shall have on file a current attorney's opinion stating that the forms in use meet the requirements of applicable federal, State, and local law.
- (3) The loan shall be:
- (a) Secured by a properly executed and recorded mortgage or deed of trust on real property naming the credit union as the secured party or beneficiary; and
 - (b) If a deed of trust is used, supported by a properly executed promissory note.
- (4) A credit union shall comply with all requirements of the Flood Disaster Protection Act.
- (5) A credit union shall require that real estate loans in excess of \$100,000 have an appraisal prepared and signed by the appraiser before the date of the approval of the loan. In the case of an insured or guaranteed loan, the appraisal form shall comply with the requirements of the insuring or guaranteeing agency. All negative comments by the appraiser shall be explained or reflect financial adjustments, or both.
- (6) Appraisal Guidelines.
- (a) In accordance with Financial Institutions Article, §2-110, Annotated Code of Maryland, the credit union shall have on file with the Commissioner an approved real estate appraisal policy and procedure which includes the following appraisal guidelines:
 - (i) The appraiser may not have a financial interest in the real estate being appraised;

- (ii) The appraiser shall be independent of influence from the credit union, the borrower, the seller, or any other related third party; and
- (iii) The appraiser shall have demonstrated experience in appraising property similar in type and value to the real property that is being considered for the loan.
- (b) The credit union shall maintain evidence of the appraiser's professional certification, license, or any other recognized measure of competence in their field.

D. Purchase Money Mortgages, Refinances Policy.

- (1) The purchase money mortgages, refinances policy section shall, at a minimum, address the following:
 - (a) policy statement adopted by the board of directors that all purchase money mortgages will be underwritten to be sold on the secondary market if liquidity conditions or the interest rate risk exposure to the credit union makes the sale necessary;
 - (b) A description of the loan products offered, for example, purchase money mortgages, refinances—cash out, and refinances—no cash out;
 - (c) statement that any loan made under this section of the written loan policy shall be a loan to finance the purchase of a principal residence or secondary residence by a borrower or to refinance an existing mortgage or deed of trust by a borrower;
 - (d) A requirement that loan maturities may not exceed 30 years;
 - (e) The requirements for and the release of private mortgage insurance;
 - (f) Underwriting guidelines that are consistent with nationally recognized secondary mortgage market standards such as the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC); and
 - (g) Provisions notifying loan officers of the requirements of §D(2)—(5) of this regulation.
[Loan Officers must register under NMLS and have a unique identifier number.]
- (2) A loan, including an adjustable rate loan, shall be amortized by substantially equal installments sufficient to retire the loan at maturity except when allowed by law. Installments shall be payable at least monthly.
- (3) A loan made under this section of the real estate policy may not exceed 80 percent of the appraised value of the property securing the loan at the time of disbursement, except that:
 - (a) An insured or guaranteed loan may equal the maximum amount acceptable to the insuring or guaranteeing agency;
 - (b) The loan amount may equal up to 95 percent of the value of the property if private mortgage insurance is obtained for the amount of the loan in excess of 80 percent of the value;
 - (c) A loan made in accordance with any Federal Home Loan Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), federal, State, county, or municipal program may equal the maximum loan-to-value amount acceptable under the program and shall be originated to be sold in the secondary market without recourse or with recourse if the program permits.

(4) A credit union shall require that a borrower provide an opinion or certificate of title signed by an attorney licensed to practice in the jurisdiction in which the property is located, or a lender's title insurance policy affirming the quality and position of the lien.

(5) Loan Documentation. A loan file shall be maintained for each loan, and, at a minimum, contain all of the following:

(a) loan application supported by an executed sales contract, or other applicable documents and any modifications, bearing the signature or signatures of principal parties to the transaction;

(b) A written appraisal, if required, prepared and signed by the appraiser before the date of the approval of the loan;

(c) In the case of an insured or guaranteed loan, an appraisal form which complies with the requirements of the insuring or guaranteeing agency;

(d) When applicable, a private mortgage insurance certificate or documentation that the loan is insured or guaranteed;

(e) When applicable, a complete settlement statement (Form HUD-1 or HUD-1A [**or other similarly approved federal settlement forms**]) detailing all charges and fees and distribution of the loan proceeds;

(f) An opinion or certificate of title signed by an attorney licensed to practice in the jurisdiction in which the property is located, or a lender's title insurance policy affirming the quality and position of the lien;

(g) A current hazard insurance policy;

(h) A current flood insurance policy, if required;

(i) A properly executed security instrument and note, if a deed of trust is used, and a document indicating the date or dates and place or places of recording of the instruments;

(j) When applicable, evidence of compliance with the Federal Truth in Lending Act, 15 U.S.C. §1601 et seq., which is incorporated by reference;

(k) When applicable, disclosure required by the Real Estate Settlement Procedures Act, 12 U.S.C. §2601 et seq., which is incorporated by reference;

(l) Any and all other required loan documents including but not limited to credit documentation, verifications, surveys, and appraisals.

E. Construction Mortgage—Permanent Financing. The construction mortgage -permanent financing loan policy section shall, at a minimum, address the following:

(1) The maturity of the construction loan may not exceed 2 years unless a time extension is granted in writing by the credit union for unusual circumstances;

(2) The credit union may collect interest-only payments during the term of the construction loan;

(3) The loan-to-value ratio for construction mortgages may not exceed 95 percent;

(4) The appraisal requirements for construction loans are the same as those in §C(5) and (6) of this regulation;

(5) The construction mortgage agreement with the borrower shall contain, at a minimum, the following provisions:

- (a) detailed description of the various stages at which funds will be disbursed and the inspection requirements for each stage;
- (b) A requirement that the final draw for the construction loan may not be made until the final use and occupancy permit from the appropriate local jurisdiction is obtained; and
- (c) requirement that before the construction loan is granted, all required building permits, perc tests, wetland determinations, surveys, and other required documents shall be completed;
- (6) If the construction loan amount is greater than \$150,000, the borrower shall purchase a performance bond to ensure the contractor fulfills the contractor's obligations;
- (7) If applicable, when the permanent financing pays off the construction mortgage, all applicable provisions of §D of this regulation shall apply to the purchase money mortgage; and
- (8) If applicable, provisions for permanent financing shall be addressed.

F. Second Mortgage, Home Equity Loan/Line of Credit Policy.

- (1) The second mortgage, home equity loan/line of credit policy section shall, at a minimum, address the following:
 - (a) description of the various loan products offered, for example, second mortgages, and home equity lines of credit;
 - (b) Underwriting guidelines that are consistent with prudent loan underwriting standards for second mortgages and home equity lines of credit or secondary market conditions as they may exist; and
 - (c) provisions that notify loan officers of the requirements of §F(2)—(6) of this regulation.
- (2) Any loan made under this section shall be secured by the borrower's principal residence or secondary residence.
- (3) Loan maturities may not exceed 30 years in the case of home equity loan/lines of credit with a draw period. The payback period may not exceed 20 years.
- (4) A loan, including an adjustable rate loan shall be amortized by substantially equal installments sufficient to retire the loan at maturity except when allowed by law. Installments shall be payable at least monthly.
- (5) A loan made under this section of the real estate policy may not exceed 105 percent of the appraised value of the property securing the loan at the time of disbursement.
- (6) A credit union shall require a written bring-to-date title opinion or certificate of title signed by an attorney licensed to practice in the jurisdiction in which the property is located, or a lender's title insurance policy affirming the quality and position of the lien.

G. Nonconforming Real Estate Loan Policy.

- (1) The nonconforming real estate loan policy section shall, at a minimum, address the following:
 - (a) description of what constitutes the various loan products offered, for example, first mortgages, second mortgages, and home equity loans/lines of credit, which may be any of the following:
 - (i) Purchase money mortgages that do not conform to secondary mortgage market standards,

- (ii) Purchase money mortgages that exceed secondary mortgage market requirements for debt ratios, property requirements, etc.,
 - (iii) Second mortgages to borrowers who are rolling over unsecured debt into secured debt under a board of directors/credit committee approved work-out situation;
 - (b) A methodology to segregate this category of real estate loans from the regular mortgage loan portfolio so that effective monitoring can be achieved that recognizes the higher risks associated with this type of loan;
 - (c) Underwriting guidelines that are consistent prudent loan underwriting standards; and
 - (d) Provisions that notify loan officers of the requirements of §G(2)—(7) of this regulation.
- (2) The nonconforming loan policy shall limit nonconforming loans to not more than 10 percent of the total real estate loan limit as described in §C(1)(c) of this regulation.
 - (3) A loan made under this section of the approved written loan policy shall be a loan secured by the borrower's principal residence or secondary residence.
 - (4) Loan maturities may not exceed 30 years.
 - (5) A loan, including an adjustable rate loan, shall be amortized by substantially equal installments sufficient to retire the loan at maturity except when allowed by law. Installments shall be payable monthly or more frequently.
 - (6) A loan made under this section of the real estate loan policy may not exceed 100 percent of the appraised value of the property securing the loan at the time of disbursement unless the purpose of the loan is to secure existing unsecured debt with the credit union and no cash out is given in the transaction.
 - (7) A credit union shall require a bring-to-date title opinion or certificate of title signed by an attorney licensed to practice in the jurisdiction in which the property is located, or a lender's title insurance policy affirming the quality and position of the lien.
- H. Any violation of this regulation, or any lending practices that may be considered unsafe or unsound at the discretion of the Commissioner, may result in the termination or restriction of the credit union's real estate lending policy.