

Deleted "After hours deposits", "Business day", "Check", "Deposit account", "Personal or family purposes", and "Time deposit".

3:1-15.2 Compliance with Federal law

Each banking institution shall comply with 12 C.F.R. 229 (Regulation CC) or with its successor regulation.

Recodified from N.J.A.C. 3:1-15.8 and amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Rewrote the section. Former N.J.A.C. 3:1-15.2, Availability of funds, repealed.

3:1-15.3 (Reserved)

Repealed by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Section was "Content of written disclosure statement".

3:1-15.4 (Reserved)

Repealed by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Section was "Initial written disclosure".

3:1-15.5 (Reserved)

Repealed by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Section was "Change in policy".

3:1-15.6 (Reserved)

Repealed by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Section was "Filing of written disclosure statements".

3:1-15.7 (Reserved)

Repealed by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Section was "Banking institutions' rights".

3:1-15.8 (Reserved)

Repealed by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Former N.J.A.C. 3:1-15.8, Compliance with Federal Law, recodified to N.J.A.C. 3:1-15.2.

SUBCHAPTER 16. MORTGAGE LOANS, FEES, OBLIGATIONS

3:1-16.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Application" means the document(s) or information, including the payment of any fees, that a particular lender or broker requires a borrower to submit for the purpose of having the lender or broker begin to process the loan document(s) to determine whether to grant or deny a mortgage loan.

"Borrower" means a natural person or persons who applies for credit or to whom credit is offered or extended primarily for personal, family or household purposes, and shall mean all co-borrowers, except that the lender may require the co-borrowers to designate one of the co-borrowers as the borrower for the purposes of these rules or, at the election of such natural person or persons, shall mean the attorney for the natural person or persons, but shall not mean other agents of the borrower.

"Borrower's agent" means a person or entity hired, contracted or requested by the borrower to supply information or documentation to the lender. A borrower's agents may include the seller, the borrower's attorney, depository institutions, title insurance companies, employer, spouse, surveyor, etc. A borrower's agents shall not include any person or entity hired, contracted or selected by the lender to perform a service or provide information or documentation to the lender, such as an appraiser, a credit reporting agency, the lender's attorney, the investor, etc.

"Broker" means any mortgage broker as that term is defined in N.J.S.A. 17:11C-2, or any lender when accepting and processing a mortgage loan application on behalf of a lender which will issue the commitment or loan denial.

"Business day" means any day on which the office or offices of the lender or broker are open to the public to provide financial services. A day shall not be regarded as a business day solely because the lender or broker conducts some transactions by appointment for particular customers on that day. A day may be a business day even though the lender or broker does not make entries into the books of the business on that day.

"Commitment" means a signed statement issued by a lender in which the lender promises to make a loan of specified terms to a specified borrower, and which is based on a satisfactory underwriting analysis of the appraisal, if an appraisal is required in connection with the loan, and a satisfactory underwriting analysis of the credit report, if a credit report is required in connection with the loan, except that any document indicating approval of a loan application which is contingent on the approval of a party to whom the lender seeks to sell the loan shall not be deemed a commitment.

"Current market yield" means:

1. In the case of a mortgage loan originated under a special program of, or committed for sale before expiration of the lock-in agreement to, a particular secondary market purchaser, the yield being sought by that purchaser for that loan; or

2. In the case of a mortgage loan not originated or committed as described in paragraph 1 above and not to be held in the lender's portfolio, the yield being sought, for the type of mortgage loan applied for, by the secondary market purchaser which purchased the highest dollar

volume of such mortgage loans from the lender during the preceding 12-month period; or

3. In the case of a mortgage loan to be held in the lender's portfolio, the average commitment rate offered by the lender, for the type of mortgage loan applied for, during the preceding 30-day period.

"Lender" means a State or Federally-chartered bank, savings bank, savings and loan association, credit union, or a mortgage banker or correspondent mortgage banker as defined in N.J.S.A. 17:11C-2.

"Lock-in agreement" means an agreement between the lender and the borrower whereby the lender guarantees until a specified date the availability of a specified rate of interest or specified formula by which the rate of interest will be determined and/or specific number of discount points, provided the loan is approved and closed by the specified date. If a specified date is not determinable, the lender may fulfill the requirement of this provision by setting forth with specificity the method by which the duration of the lock-in period will be determined. The term "lock-in agreement" does not include an agreement to fix the rate executed three or fewer calendar days before closing where appropriate disclosures have been made under the provisions of this subchapter.

"Mortgage loan" means any closed-end loan to a borrower which is secured by a first mortgage on real property located in New Jersey on which there is a one to six family dwelling, a portion of which may be used for nonresidential purposes.

"Promptly refund" or "return" means to refund or return to the borrower within seven calendar days following receipt of a written request for same from the borrower.

"Receipt" (or "received") means:

1. In the case of the lender, actual receipt (or actually received) at the office or by the person designated by the lender or broker as the place where or the person to whom the application or documentation must be submitted or, if no such place or person is designated, at the lender's or broker's principal office or any of its branch offices; or

2. In the case of a borrower:

i. Actual receipt (or actually received) where the document or correspondence is personally delivered to the borrower or sent to the borrower by registered or certified mail or by means of a commercial delivery service; or

ii. The third calendar day following deposit in the regular U.S. mail.

"Substantial fault of the borrower" means that the borrower or the borrower's agent:

1. Failed to provide in a timely manner information or documentation required by the lender;

2. Provided or omitted any information, in the application or subsequently, which upon verification proves to be significantly inaccurate causing the need for review or further investigation by the lender;

3. Failed to produce on or before the date specified by the lender all of the documentation specified in the commitment or closing instructions as being required for closing, which date may be less than seven calendar days following the date of receipt of the commitment or closing instructions; or

4. Failed to be ready, willing and able to close the loan or before the date specified by the lender.

5. For purposes of this section:

i. A person provides information or documentation "in a timely manner" if such information and documentation is received by the lender within seven calendar days after the person receives a request for same or within the time frame established by the lender if that time frame extends beyond seven calendar days after receipt of the request; and

ii. Information is "significantly inaccurate" if the correct information would, in the reasonable opinion of the lender, cause the borrower to be disqualified for the type of loan for which the borrower has applied or cause the secondary market source for which the loan is being originated to refuse to purchase the loan.

"Trust funds" means funds which are held in accordance with the terms of a written agreement between the lender and the borrower or seller, which provides that upon the occurrence of a specific condition or event the funds or a portion thereof shall be disbursed to the borrower or seller. Trust funds do not include escrows collected or held by the lender for taxes and insurance.

Amended by R.1989 d.332, effective June 19, 1989.

See: 21 N.J.R. 957(a), 21 N.J.R. 1668(b).

Definitions of "borrower" and "borrower's agent" added. "Current market yield" definition amended to include components specifically addressed to portfolio lenders and special loan programs for which there may be no identifiable secondary market.

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).

See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).

Revised definitions.

Administrative change.

See: N.J.R. May 4, 1992.

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 112(a), 33 N.J.R. 1087(a).

In "Broker", substituted "17:11C-2" for "17:11B-1d"; in "Lender", inserted "or correspondent mortgage banker" and substituted "17:11C-2" for "17:11B-1c".

3:1-16.2 Fees

(a) No lender shall charge a borrower any fees incident to the origination, processing or closing of a mortgage loan other than the following, except as otherwise authorized by State or Federal law, either explicitly or as interpreted by the appropriate regulator in official staff commentary, regulatory bulletins, or memoranda.

1. Application fee: Defined as a fee imposed by a lender or broker for accepting or processing a mortgage loan application. The application fee shall not be based upon a percentage of the principal amount of the loan or the amount financed;

2. Credit report fee, which shall not exceed the amount paid, or to be paid to the credit reporting agency by the party who receives the credit report directly from the credit reporting agency. The initial charge to the borrower may be based on a reasonable estimate provided that any amount in excess of the amount paid to the party providing the credit report is refunded to the borrower at or prior to closing;

3. Appraisal fee: If the appraisal is performed and delivered by a third party appraiser, the fee shall not exceed the amount paid, or to be paid, directly to the party performing and delivering the appraisal. If the appraisal is performed and delivered in-house, the fee shall approximate the usual, customary and reasonable fee for comparable appraisals by third party appraisers based on a survey of such fees charged by lenders to be conducted annually by the Department and published in the New Jersey Register. If the appraisal is performed by a third party appraiser and delivered by an appraisal management company, the fee charged by the lender shall not exceed the amount charged by the appraisal management company and shall approximate the usual, customary and reasonable fee for comparable appraisals by third party appraisers based on a survey of such fees charged by lenders to be conducted annually by the Department and published in the New Jersey Register. The initial charge to the borrower may be based on a reasonable estimate, provided that any amount in excess of the amount authorized above in this paragraph is refunded to the borrower at or prior to closing;

4. Commitment fee: Defined as a fee, exclusive of third-party fees, imposed by a lender as consideration for binding the lender to make a loan in accordance with the terms and conditions of its commitment and payable on or after acceptance of the commitment, except a lock-in fee charged pursuant to (a)5 below. The amount of any commitment fee shall be reasonably related to its purpose and may be based upon a percentage of the principal amount of the loan or the amount financed;

5. Lock-in fee: Defined as that portion of the commitment fee charged by a lender as the consideration for execution and fulfillment of the terms of the lock-in agreement. A lock-in fee may comprise all of the commitment fee. No lock-in fee shall be received by a lender prior to inception of the lock-in period;

6. Warehouse fee: Defined as a fee charged by a lender not to exceed the cost associated with holding the particular mortgage loan pending sale to a permanent investor and payable at closing. The fee shall be based on the actual holding period and warehouse rate and the

initial coupon rate on the mortgage loan. No profit shall accrue to the lender from the fee;

7. Third party fees: Limited to the following fees paid or actually incurred by a lender on behalf of a borrower:

i. Overnight delivery, messenger, fax, and other special delivery fees, provided that the type of service is authorized by the borrower in advance in writing or the specific service is authorized by the borrower in writing;

ii. Flood certification fees;

iii. Pest inspection or certification fees;

iv. Final inspection fee, not to exceed the amount of the fee paid or actually incurred to a third party or, if the final inspection is done in-house, not to exceed the going charge for such inspections by third parties;

v. Outside counsels' fees as permitted by N.J.S.A. 46:10A-6;

vi. Certified check fees, not to exceed the amount of the fee paid or actually incurred by the lender to the issuer of the certified check or, if the lender issues the certified check, not to exceed its usual fee for providing this service to its customers;

vii. Update fees to update the borrower's credit report and appraisal, not to exceed the amount of the fee paid or actually incurred by the lender to the credit reporting agency or appraiser or, if the appraisal is done in-house, not to exceed the going charge for such updates by third parties;

viii. One-time mortgage insurance premiums or, if the premiums are not collected on a one-time basis, not more than one-year of premiums;

ix. Survey fees;

x. Recording fees which shall not exceed the statutory amount for recording the deed, mortgage, and note, and which shall not include any amount for recording an assignment of the mortgage;

xi. Title and title search fees, including title insurance premiums;

xii. Taxes;

xiii. Tax service fees;

xiv. Radon test fees; and

xv. Fees not included among the above third party fees may be charged provided that prior written approval is obtained from the Department. The Department will only approve third party fees which are of benefit to the borrower and represent a cost not associated with the lender's overhead. Accordingly, the Department will not approve fees for document preparation, processing, underwriting, file updates, lender reviews, copying, funding, and miscellaneous.

8. Discount points or fractions thereof: A discount point is defined as an amount of money equal to one percent of the principal amount of the loan and payable only at closing.

9. A service fee not to exceed \$25.00 to cancel the mortgage, providing that the borrower has received prior written notice of the fee required by the lender, and providing further that if the lender collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the lender shall refund the service fee to the borrower.

(b) If a lender or broker uses a term for a fee which is different than a term listed in (a) above, the lender or broker shall be able to document to the Department that the fee fits the definition and description of a permissible fee listed above, and that the fee functions accordingly.

(c) This section does not restrict the imposition of fees after the closing of a mortgage loan, such as late fees and variable-to-fixed rate conversion fees.

(d) The Commissioner is authorized to order any person to make restitution for fees charged which are impermissible or improperly charged, or to make refunds when required, under these rules. Nothing in this subsection is deemed to set a limit on the amount of fees a lender may charge on a mortgage loan.

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).

See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).

Amended by R.1993 d.423, effective September 7, 1993.

See: 25 N.J.R. 2625(b), 25 N.J.R. 4063(b).

Amended by R.1994 d.559, effective November 7, 1994.

See: 26 N.J.R. 3234(a), 26 N.J.R. 4347(b).

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Rewrote (a).

Amended by R.2002 d.394, effective December 16, 2002.

See: 34 N.J.R. 814(a), 34 N.J.R. 4429(a).

Rewrote (a)3.

Public Notice: Appraisal Fee Survey.

See: 36 N.J.R. 2559(a).

Case Notes

Licenses of mortgage bankers revoked. N.J. Dept. of Banking v. Whitestone Mortgage, 92 N.J.A.R.2d (BKG) 1.

3:1-16.3 Application process

(a) Before a lender or broker accepts any application fee in whole or in part, any credit report fee, appraisal fee or any fee charges as reimbursement for third party fees, the lender or broker shall make written disclosure to the borrower (which disclosure may be contained in the application) as required by this section or N.J.A.C. 3:1-16.10, respectively, setting forth:

1. A description and the amount of each such fee;
2. Whether all or any part of such fees are refundable;

3. The terms and conditions for the refund, if all or any part of the fees are refundable, provided that, where applicable, the terms and conditions may be disclosed by making reference to these rules with proper citation;

4. A realistic estimate of the number of calendar days required to issue a commitment following receipt of such fees by the lender. If the lender subsequently determines that the estimate is unrealistic, it may return the application and all fees paid and offer the borrower the opportunity to reapply subject to a new estimate;

5. The name or title of a person within the lender's organization to whom the borrower may address written questions, comments, or complaints and who will be required to promptly respond to such inquiries; and

6. For correspondent mortgage bankers, a statement indicating that the licensee is a correspondent mortgage banker and as such does not hold mortgage loans or service mortgage loans for more than 90 days in the regular course of business.

(b) The disclosures required in (a) above shall be acknowledged in writing by the borrower and maintained by the lender or broker and a copy of such acknowledgment shall be given to the borrower.

(c) Except where explicitly authorized to return an application, or for other reasons consistent with due diligence, a lender is obligated to process an application submitted to it and to exert conscientious effort to either grant or deny the application within the realistic estimate disclosed as required in (a) above.

(d) Not later than three business days after the lender receives the borrower's application, or before closing of the loan, whichever is earlier, the lender shall provide the borrower with a good faith estimate as a dollar amount or range of each fee for a settlement service which the borrower is likely to incur.

1. For the purpose of this subsection, "settlement service" shall mean a service related to the origination, processing, or closing of a mortgage loan, and for which the lender anticipates the borrower will pay a fee at or before settlement based upon the lender's general experience.

2. With respect to the settlement service fees imposed on a borrower by the lender (and not by third parties), the lender shall indicate which, if any, of such fees are refundable in whole or in part and the terms and conditions for such refund.

3. Good faith estimates of fees for settlement services which are made pursuant to, and conform to, Federal Regulation X shall satisfy the disclosure requirement of this subsection, provided that the lender also makes the disclosures required by (d)2 above.

(e) The borrower may, without penalty or responsibility to pay additional fees, withdraw an application at any time prior to acceptance of a commitment. Upon such withdrawal, the lender or broker shall be responsible to refund to the borrower only those fees to which the borrower may be entitled pursuant to the terms set forth in the written disclosure required by (a) above, except that:

1. Where the lender or broker has failed to provide the borrower with the written disclosure required by (a) above, the lender or broker shall promptly refund to the borrower all funds paid to the lender or broker;

2. Where the lender has failed to issue a commitment or justifiable credit denial and its realistic estimate of the time needed to do so has expired through no substantial fault of the borrower and the borrower has withdrawn his or her application as a result, the lender shall promptly refund to the borrower all funds paid to the lender;

3. Where an application is denied, or a commitment is issued on terms and conditions substantially dissimilar to those for which the application was submitted and which

are unacceptable to the borrower, for reasons (other than bona fide underwriting considerations) which the lender knew or should have known at the time of application from the facts disclosed on the face of the application, the lender shall promptly refund to the borrower all funds paid to the lender. For purposes of this paragraph, a commitment is issued on terms and conditions which are "substantially dissimilar" to those for which the application was submitted if the interest rate, discount points or commitment fee as set forth in the commitment is higher than, or the term of the loan as set forth in the commitment is different than, the corresponding terms of the loan for which application was made.

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).

See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).

Amended by R.1993 d.423, effective September 7, 1993.

See: 25 N.J.R. 2625(b), 25 N.J.R. 4063(b).

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (a)6, inserted "correspondent" preceding references to mortgage bankers throughout and deleted "non-servicing" throughout.