

SFA Closed End Second Reduced Compliance Scope

DISCLAIMER

THIS DOCUMENT IS NOT INTENDED TO BE LEGAL ADVICE AND IS STRICTLY FOR GENERAL INFORMATIONAL PURPOSES. THE INFORMATION PROVIDED HEREIN SHALL NOT BE RELIED ON BY ANY THIRD PARTY AS LEGAL ADVICE. IF YOU HAVE RECEIVED THIS INFORMATION AND HAVE QUESTIONS ABOUT ANY SPECIFIC TRANSACTION OR GENERALLY ABOUT LAWS APPLICABLE TO YOU OR YOUR BUSINESS, YOU SHOULD CONSULT WITH INDEPENDENT LEGAL COUNSEL.

The goal of the Structured Finance Association (“SFA”) Closed-End Second (“CES”) Reduced Compliance Scope (“SFA - CES Reduced Compliance Scope”) documentation is to establish and adopt a standardized scope for closed-end subordinate lien loans, which is a reduced scope relative to the full version of the SFA TRID compliance scope of review. It establishes a baseline to be used by a third-party review firm (“TPR”) when performing compliance reviews as part of loan level due diligence on closed-end subordinate lien loan transactions. The full review scope continues to be available and may be used by industry participants, when requested.

The primary difference from the full scope is the reduced TILA-RESPA Integrated Disclosure (“TRID”) testing. The CES compliance review is limited to the specific components enumerated below with the testing of those components in accordance with the SFA TRID Compliance Review Scope (“TRID Grid”), published by the SFA. All other TRID testing, including other components of the SFA published TRID Grid (that are not explicitly enumerated below), are considered outside of scope for purposes of this review.

We note that the SFA - CES Reduced Compliance Scope encompasses, among other things, federal and state high cost laws, federal and state higher priced laws, the ability to repay components of the federal Truth-in-Lending Act (“TILA”), the Loan Origination Compensation rules, and rights of rescission under TILA, which is intended to ensure that the loan originators and assignees, including securitization trusts, are not exposed to civil liability, extended rights of rescission and validity of loan enforcement issues.

The underlying premise of this documentation is to establish a baseline approach to pre-securitization testing that will drive the due diligence conducted by TPRs for closed-end subordinate lien loans. However, the scope’s inclusions and exclusions set forth in the document do not necessarily reflect how courts and regulators—including the Consumer Financial Protection Bureau—may view liability for TRID violations presently, or in the future. The CES scope reductions delineated in this document are specifically focused on the compliance review. The remaining due diligence performed under credit or collateral reviews are not modified.

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Compliance Testing - In Scope

Test Area	Citation	Description
ATR/QM	§1026.43	Ability-to-Repay and QM testing
TILA - Prepayment Penalty	§1026.43(g)	Prepayment penalty limitations
TILA - Loan Originator Compensation	§1026.36(d)	Compensation based on terms of a transaction, Dual Compensation
TILA - Rescission	§1026.23 & §1026.17(d)	Rescission (including testing for timely delivery of closing disclosure reflecting accurate material disclosures for purposes of determining rescission timing).
TILA - Originator Disclosures and Provisions	§1026.36(g), §1026.36(h), §1026.36(i), §1026.36(k)	Nationwide Mortgage Licensing System (NMLS) & Registry ID on Loan Documents and other provisions
TILA - HOEPA	§1026.31, §1026.32, and §1026.34	Federal High-cost mortgage thresholds, disclosure requirements, prohibited practice, cures
TILA - HPML	§1026.35	Federal Higher-priced mortgage loan threshold, disclosure requirements, and provisions
TILA Material Disclosures	§1026.18, §1026.22, §1026.23, §1026.38	APR, Finance Charge, Amount Financed, Total of Payments, Payment Columns
State High-Cost Laws	Various	State-level high-cost or covered loans and Prohibited Practices
Flood / NFIP	Homeowner Flood Insurance Affordability Act of 2014 (HFIAA)	Flood zone and insurance compliance
State - Texas Constitution	Texas 50(a)(6), 50(f)(2), and 50(t)	Texas Home Equity disclosure requirements and prohibitions
State specific prepayment penalty provisions	Various	State-level prepayment penalty limitations
State - Late Charge with Assignee Liability	Various	New Jersey, Georgia, New Mexico, and West Virginia.

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Compliance Testing - Outside of Scope

Test Area	Citation	Description
TRID - Timing Requirements	§§1026.19(e)(1)(iii), (e)(4)(i), (e)(4)(ii), (f)(1)(ii), (f)(2)(ii)	LE and CD Timing Requirements and Waiting Periods
TRID - Good Faith Fee Tolerance	§1026.19(e)	Fee tolerances 0%, 10%, and Good Faith
TRID - Page 1 Closing Disclosure	§§1026.38(a), (b), (d)	General Information, Loan Terms, Costs at Closing
TRID - Page 2 Closing Disclosure	§1026.38(e), (f), (g), (h)	Alternative Cash to Close, Closing Costs - Loan Costs, Other Costs, Totals (TRID formatting and disclosure provisions)
TRID - Page 3 Closing Disclosure	§1026.38(i), (k), (l)	Calculating Cash to Close, Summaries of transaction
TRID - Page 4 Closing Disclosure	§1026.38(l), (m), (n)	Loan Disclosures, AP Table, AIR Table
TRID - Page 5 Closing Disclosure	§1026.38(p), (q), (r), (s)	Other Disclosures, Questions Notice, Contact Information, Signature Statement
TRID - Form of Disclosures	§1026.38(t)	Form of Disclosures
*State - Late Charge without Assignee Liability	Various	State-level late charge limitations - no assignee liability states/regulations
*RESPA	§1024	RESPA disclosure testing
*ECOA	§1002	Equal Credit Reporting Act
*FACTA	§1022	Fair Credit Reporting

** These items are excluded from the Closed End Second Reduced Scope, but can be performed by a TPR firm based on a client's custom request.*