

Regulatory Bulletin 1.3-104 Counseling and Opt-In Requirements for Subprime Adjustable Rate Mortgage Loans Made to First Time Home Loan Borrowers

By the [Division of Banks](#)

DATE: November 23, 2022

REFERENCED SOURCES: [G.L. c. 184, s. 17B½](#)

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1.0 Applicability and Scope

The purpose of this Regulatory Bulletin is to provide a standard for determining when an extension of credit with an adjustable or variable rate of interest made to a first-time home loan borrower and secured by a mortgage lien on the borrower's residential property qualifies as a subprime mortgage loan and triggers the counseling and opt-in requirements set forth in General Laws chapter 184, section 17B½.

2.0 Definitions

As used in this Regulatory Bulletin the following words shall, unless the context otherwise requires, have the following meanings:

Affirmatively opt-in writing: At or before the loan closing, but in no event prior to the borrower(s) receiving the in-person counseling required by General Laws chapter 184, section 17B½, the mortgagee shall obtain a separate statement signed by the borrower(s) which includes a statement in at least 16-point capitalized boldface font indicating that the borrower elects to opt into a subprime mortgage loan with an adjustable or variable interest rate.

Annual percentage rate: This term shall have the same meaning as found in General Laws chapter 140D and 209 CMR 32.00 *et seq.*

Average prime offer rate: An annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. For the purposes of this Regulatory Bulletin, the term ‘Average Prime Offer Rate’ refers to the values published by the Bureau of Consumer Financial Protection (CFPB) for the average prime offer rate (APOR) for a comparable transaction.

First-time home loan borrower: A natural person obtaining a mortgage loan to purchase a residential property for the first time.

Fully indexed rate: This term shall have the same meaning as found in 12 CFR 1026.43(b)(3).

Mortgage loan: A loan to a natural person made primarily for personal, family, or household purposes secured wholly or partially by a mortgage on residential property.

Residential property: Real property located in the Commonwealth having thereon a dwelling house with accommodations for four or less separate households and occupied, or to be occupied, in whole or in part by the obligor on the mortgage debt, but excluding mortgage liens on vacation and investment properties.

Simultaneous second lien: A loan secured by a second or subsequent mortgage lien originated and closed in conjunction with a first mortgage loan on the same residential property, the proceeds of which are used as part of the purchase price of the residential property.

3.0 Policy

General Laws chapter 184, section 17B½ states in part that “no mortgagee shall make a subprime loan at a variable or adjustable rate of interest unless the mortgagor affirmatively opts in writing for the variable or adjustable rate subprime loan *and* receives certification from a counselor.” Accordingly, the Division hereby adopts the following standard for determining when a loan made to a first-time home loan borrower with an adjustable or variable rate of interest qualifies as a subprime mortgage loan. In addition, the Division adopts the following guidelines to meet the counseling and opt-in requirements.

1. Determination of Subprime Mortgage Loans

For the purposes of General Laws chapter 184, section 17B½, the determination of whether an extension of credit with an adjustable or variable rate of interest made to a first-time home loan borrower will be deemed to be a subprime mortgage loan shall be made in accordance with the following:

a. **First Lien Mortgage Loans**

- i. A first lien mortgage loan shall not be deemed to be subprime if the loan amount does not exceed the conforming loan limits set for the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) and is eligible for purchase by FNMA or FHLMC.
- ii. Otherwise, a first lien mortgage loan shall be deemed to be a subprime mortgage loan if either of the following apply:
 1. The loan amount does not exceed the conforming loan limits set for FNMA or FHLMC and the initial fixed interest rate or fully indexed rate, whichever is higher, is greater than **three (3.0)** percentage points above the value of the Average Prime Offer Rate applicable to a comparable transaction and in effect as of the date the interest rate for the transaction is set.
 2. The loan amount exceeds the conforming loan limits set for FNMA or FHLMC and the initial fixed interest rate or fully indexed rate, whichever is higher, is greater than **four (4.0)** percentage points above the value of the Average Prime Offer Rate applicable to a comparable transaction and in effect as of the date the interest rate for the transaction is set.

b. **Simultaneous Second Lien Mortgage Loans**

For loans secured by a simultaneous second lien on residential property, the mortgage loan shall be deemed to be a subprime mortgage loan if the initial fixed interest rate or fully indexed rate, whichever is higher, is greater than **five (5.0)** percentage points above the value of the Average Prime Offer Rate applicable to a comparable transaction and in effect as of the date the interest rate for the transaction is set.

2. **Counseling and Opt-in Requirements**

At or before the closing of the mortgage loan, the mortgagee shall obtain from a first-time home loan borrower seeking a subprime loan with an adjustable or variable interest rate, a written certification from a third-party nonprofit approved counseling organization, prior to the day of the loan closing, that the borrower received in-person counseling on the advisability of the loan transaction. The mortgagee must then obtain the borrower's written statement to affirmatively opt in for the variable or adjustable rate subprime mortgage loan. Such third-party nonprofit organization shall be approved by one of the following entities: (1) the United States Department of Housing and Urban Development; (2) MassHousing; or (3) the Massachusetts Homeownership Collaborative also known as Citizens' Housing and Planning Association (CHAPA). Notwithstanding the foregoing, compliance with the pre-loan counseling requirements

of 12 C.F.R. §1026.34(a)(5), where the counseling has been provided in person, shall be deemed to fulfill compliance with the counseling requirements of this paragraph.

If more than one borrower is applying for the mortgage loan and one or more of the co-borrowers has previously purchased a residential property, only the co-borrower(s) who is purchasing a residential property for the first time is required to obtain a written certification from a third-party nonprofit approved counseling organization that the first-time home loan borrower received in-person counseling. However, each co-borrower, regardless of whether the individual is a first-time home loan borrower, must provide a written statement to affirmatively opt in for the variable or adjustable rate subprime mortgage loan.

4.0 Historical Notes

This bulletin was issued on January 30, 2008. The bulletin was revised on May 8, 2012. This bulletin was further revised on November 23, 2022.

5.0 Authority

G.L. c. 184 s. 17B½.