

# Frequently Asked Questions

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The mortgage examination staff of the North Carolina Office of the Commissioner of Banks has prepared the following answers to some of the more frequently asked questions regarding the examination process and North Carolina's Mortgage Lending Act.

**Q: How long will the examination take?**

A: The time spent at a Licensee's office depends on the amount of documentation to be reviewed. Normally, examinations last one or two days. It also depends on the quality of documentation provided. For example, loan files that are in a consistent stacking order take less time to review than those that are not in a consistent stacking order.

**Q: Does a loan file register need to be maintained for both denied and closed applications?**

A: Yes. A "master" loan file register of all applications (denied and closed) must be maintained by the broker/lender's main office, including all branch activity. Click here to view a recommended application register [application register](#)

**Q: What if I have to cancel an examination?**

A: Examiner's schedules are often set months in advance of an examination and are typically scheduled to coincide with another examination in the same general location. It is unlikely that the examiner will be able to reschedule the examination to accommodate a licensee's schedule. Examiners have reported situations where they are told that the examination cannot be done because the owner or manager is not available. This is why it is important to make sure there is more than one person who can work with an examiner to complete the examination process.

**Q: Do business cards or company letterhead fall under the definition of "advertisement?"**

A: Unless business cards or company letterhead includes certain credit term(s) (such as the number of payments or the amount of a monthly payment), both are considered promotional items like pens, pencils, and notepads. Licensees should review the advertising requirements in Regulation Z and ensure that all advertisements – whether print, radio, television or internet – comply with this federal regulation.

**Q: When does the Annual Percentage Rate (APR) need to be disclosed in advertisements?**

A: Section 226.24 of Regulation Z requires the disclosure of an APR if an advertisement includes an interest rate. In addition, if an ad includes certain credit term(s) (such as the number of payments or the amount of a monthly payment), there are additional disclosures that must be made. Licensees should review the advertising requirements in Regulation Z and ensure that all advertisements – whether print, radio, television or internet – comply with this federal regulation.

**Q: Are two separate sets of disclosures required when brokering a first and second mortgage loan to an applicant simultaneously?**

A: Two separate sets of disclosures must be executed by the borrower if fees are received and retained by the broker in connection with both loans – one for the first mortgage and separate disclosures for the second mortgage.

**Q: Are amounts paid by mortgage lenders to mortgage brokers disclosed on the Good Faith Estimate (GFE) of settlement costs?**

A: Any fee or payment received by the mortgage broker from either the lender or the borrower arising from the initial funding transaction, including a servicing release premium or yield spread premium is to be noted on the GFE and listed in the 800 series of the HUD-1 Settlement Statement. Refer to Appendix B to Part 3500 of HUD's Regulation X (Illustrations of Requirements of RESPA) for additional guidance.

**Q: Can a loan officer's compensation be reported on Form 1099-MISC rather than Form W-2?**

A: It is OCOB's position that the reporting of compensation on Form 1099-MISC demonstrates conclusively, for the purpose of licensing under the Mortgage Lending Act (MLA), that the individual compensated is an independent contractor. If that individual acts as a mortgage broker, as defined under the MLA, he must be licensed as such (unless he is exempt). Licensees who compensate unlicensed, non-exempt mortgage brokers are subject to (1) regulatory action (i.e., license suspension or revocation), (2) criminal referral to local prosecuting authorities, and (3) reporting of such practices to Federal and State taxing authorities.

**Q: Can I pay an individual or company a referral fee?**

A: **Referral fees are illegal.** Section 8 of RESPA prohibits a person from giving or accepting anything of value in exchange for the referral business. Licensees should review the requirements and prohibitions of RESPA and provide training to employees to ensure compliance.

**Q: Can loan files be stored electronically?**

A: Generally, this is permitted as long as the electronic records are available for examination and copying. Some problems encountered while examining electronic records include: (1) documents that were not scanned properly and cannot easily be read and (2) more than one PDF file per loan. Please keep these things in mind when converting your records to an electronic format.

**Q: May an individual accept mortgage loan applications after satisfactorily completing the written licensing examination?**

A: No. It is unlawful for any person in this State to act as a mortgage broker or mortgage banker, or directly or indirectly to engage in the business of a mortgage broker or a mortgage banker, without first obtaining a license from the Office of Commissioner of Banks.

**Q: What documents should I keep in my mortgage loan files?**

A: The short answer? Everything! Section 03M .0501(c) of the North Carolina Administrative Code requires any licensee under the Mortgage Lender Act to "...create and retain a file for each mortgage loan application which shall contain, as applicable, applicant's name, date, name of person taking the application, signed HUD-1 Settlement Statements, copies of all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by State and Federal law."

**Q: The examiners came to do my examination, but didn't call ahead of time to make an appointment. Can they just come by unannounced?**

A: Yes. Examiners are allowed to arrive to conduct an examination without first making an appointment.