



# **Non-Owner-Occupied Business Purpose Exemption Guide**

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## TABLE OF CONTENTS

1.	SUMMARY .....	2
2.	BACKGROUND AND REGULATORY OVERVIEW .....	2
3.	PROGRAM.....	4
4.	GUIDELINES.....	5
5.	DEFINITIONS.....	6

The following presentation is for educational and informational purposes and should not be construed as legal advice. Recipients should not construe the contents of this Program Guide as legal, tax, accounting, or investment advice; recipients should consult their own counsel, tax and financial advisors as to legal and related matters concerning any transaction. Further, this Program Guide does not purport to be all-inclusive or to contain all of the information that a recipient may require.

## 1. SUMMARY

Acra Lending (“Acra Lending”) has reviewed the Official Interpretations as provided by the CFPB in connection to Regulation X and Regulation Z. These Official Interpretations make the statement that any mortgage loan against a Non- Owner-Occupied (“NOO”) investment property being used to “(i) acquire, (ii) improve, or (iii) maintain” a property (specifically not called out as the “subject” in “Comment 3(a)-3.ii.A.4” of “1026.3 – Exempt Transactions”) can be considered specifically a “Business Purpose” loan. The identification of a mortgage as Business Purpose loan, compared to a consumer loan, allows for an exemption to the requirements of Regulation X and Regulation Z.

As advised and permitted in the Official Interpretation of §1026.3(a) of Regulation Z, Acra Lending will rely primarily on the borrower’s written statement of purpose for the loan request in order to determine whether or not the loan request is for a “Business Purpose”. Each applicant will be provided with and allowed to review the Acra Lending Business Purpose Loan Certification and Attestation form (“Attestation”). The Attestation form is attached hereto as Exhibit A. A completed Attestation must be received from the borrower as a condition for Acra Lending to fund the loan.

With an executed Business Purpose Attestation from the borrower, Acra Lending can originate or purchase non-owner-occupied loans without regard to compliance and conformance to Disclosure issuance, transaction timing, or fee tolerances required under Regulation X and / or Regulation Z. Further, as Regulation Z also incorporates the Ability-to-Repay eight-point test, Acra Lending may also disregard the test and requisite documentation therein mandated.

## 2. BACKGROUND AND REGULATORY OVERVIEW

In general Regulation X is the Real Estate Settlement Procedures Act (“RESPA”) and covers the disclosure of a Good Faith Estimate (“GFE”), whereas Regulation Z is for Truth in Lending Act (“TILA”) and covers the disclosure of a Truth-in-Lending form (“TIL”).

Both Regulation X & Regulation Z allow for exemptions to compliance under certain circumstances, specifically loans for a Business Purpose:

### **§ 1026.3 – Exempt transactions.**

The following transactions are not subject to this part or, if the exemption is limited to specified provisions of this part, are not subject to those provisions:

- a. Business, commercial, agricultural, or organizational credit.
  - 1. An extension of credit primarily for a business, commercial or agricultural purpose.

For consistency, Regulation X adopts the definition of “Business Purpose” via Regulation Z:

**§ 1024.5 – Coverage of RESPA.**

b. **BUSINESS PURPOSE LOANS.**

An extension of credit primarily for a business, commercial, or agricultural purpose, as defined by 12 CFR 1026.3(a)(1) of Regulation Z. Persons may rely on Regulation Z in determining whether the exemption applies.

Acra Lending has interpreted “Business Purpose” as found in the Official Interpretations to §1026.3(a):

**OFFICIAL INTERPRETATION TO §1026.3(a)**

**3. FACTORS.**

In determining whether credit to finance an acquisition—such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), the following factors should be considered:

- i. **GENERAL.**
  - A. The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.
  - B. The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.
  - C. The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.
  - D. The size of the transaction. The larger the transaction, the more likely it is to be business purpose.
  - E. The borrower's statement of purpose for the loan.

However, the preceding Official Interpretation has been supplemented further, marking a change in stance for the direct discussion of an investment property:

#### **OFFICIAL INTERPRETATION TO §1026.3(a)**

##### **4. NON-OWNER-OCCUPIED RENTAL PROPERTY.**

Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a

single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner-occupied and is not governed by this special rule. (See comment 3(a)-5, however, for rules relating to owner-occupied rental property.)

Even so, both Regulation X and Regulation Z are clear not to overstep State laws for disclosure:

#### **§1024. 5 – Coverage of RESPA.**

##### **c. Relation to State laws.**

1. State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency.

#### **OFFICIAL INTERPRETATION TO 5(c)(1)**

State laws that are inconsistent with the requirements of RESPA or Regulation X may be preempted by RESPA or Regulation X. State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. In addition, nothing in RESPA or Regulation X should be construed to preempt the entire field of regulation of the practices covered by RESPA or Regulation X, including the regulations in Subpart C with respect to mortgage servicers or mortgage servicing.

### 3. PROGRAM

Acra Lending relies upon the NMLS and State Regulators to provide background diligence on mortgage originators as considered in Acra Lending's Know Your Customer Policy. Acra Lending has therefore taken the stance that an MLO, Broker, and / or Lender / Seller will need to be appropriately licensed through the NMLS and State Regulator, where appropriate, without consideration to an exemption thereto. Each counter-party, as consistent with Acra Lending's current policies and procedures in connection to Vendor Management, should have completed Acra Lending's internal approval process in advance of submitting a loan file to Acra Lending.

All loans made against Non-Owner-Occupied properties will utilize Acra Lending's Non-Prime Program. In all instances, income will be documented via a Debt Service Coverage Ratio ("DSCR"). DSCR is calculated by dividing reconciled property rents from actual PITIA payments.

Loans made against Non-Owner-Occupied properties will:

- Conform to the applicable Pricing Matrix (See Exhibit B);
- Have a \$100k minimum loan amount;
- Have impounds;
- Have a term of 30-years that can be (i) either fully amortized or have an interest only term and (ii) be a Fixed Rate Mortgage or hybrid-ARM with a 5- or 7- year initial fixed term;
- Be subject to a 2-year Prepayment Penalty or the maximum allowable by state law as described in the Rate Matrix;
- Be limited to a set maximum LTV / CLTV for both Purchase & Refinance transactions as described on the Rate Matrix;
- Not be subject to disclosures required under TRID, RESPA or TILA;
- Not be tested for ATR, TILA, RESPA or TRID compliance; and / or
- Be subject to any other applicable Federal and State regulation.

## 4. GUIDELINES

The following are excerpts from the Acra Lending Underwriting Guide pertaining to NOO loans:

### **3.37 INVESTMENT PROPERTY (NON-OWNER OCCUPIED)**

*An Investment property is a one-to-four-unit residential dwelling or a unit in a condominium complex or a PUD owned by an individual who does not occupy the dwelling. The dwelling is leased and occupied as a principal year-round residence to individuals other than the owner.*

- Vacant investment properties are not eligible for a refinance transaction.*
- Acra Lending limits the number of investment properties a borrower may own including subject to 20 properties, whether mortgaged or not.*

*All borrowers purchasing or refinancing a one-to-four-family investment property must execute a One-to-Four-Family Rider with loan documents and provide rent-loss insurance coverage. If the subject is qualified with the full PITIA payment, then no rent loss coverage will be required.*

## **VI. RENTAL INCOME REQUIREMENTS**

### **DEBT SERVICE COVERAGE RATIO ("DSCR")**

*Acra Lending calculates the DSCR by dividing the sum of annual principal, interest, real estate taxes, property insurance, and homeowner's / condominium association fees (collectively, "PITIA") by the lesser of (i) annual in-place rent or (ii) market rent. Tenant occupied properties will require documentation of timely receipt for the prior two (2) months rental payments.*

*The minimum rental income required is 1.15 times greater than the subject's PITIA (DSCR of 1.15 : 1.00).*

## 5. DEFINITIONS

Ability-to-Repay ("ATR"): An eight-point test as provided under §1026.43(c)(2) for measuring and determining of a mortgagor's reasonably expected ability to repay a mortgage according to its terms as documented by third-party records.

Business Purpose Loan(s): Loans made that are exempt to Regulation X and / or Regulation Z as defined in the CFPB's Official Interpretation(s) thereto.

CFPB: The Consumer Financial Protection Bureau or any successor thereto.

Debt Service Coverage Ratio ("DSCR"): The ratio of current or anticipated market rents compared to the monthly debt obligations for an investment property (rent divided by PITIA payments).

Disclosures: Documents required to be provided to a mortgagor under Regulation X and Regulation Z including but not limited to a Closing Disclosure, Good Faith Estimate, Loan Estimate, or Truth-in-Lending form.

Official Interpretation: Supplemental commentary published by the CFPB provided to add clarification and explanation to specific provisions and subsections of to a denoted or referenced Act.

Regulation X: Real Estate Settlement Procedures Act ("RESPA") of 1974, as amended, 12 CFR, Part 1024.

Regulation Z: Truth in Lending Act ("TILA"), as amended, 12 CFR, Part

1026. SAFE Act: The Secure and Fair Enforcement for Mortgage

Licensing Act of

2008 enacted on July 30, 2008, and mandates a nationwide licensing and registration system for residential mortgage loan originators (MLOs).



**Exhibit A**

**Business Purpose Loan Certification and Attestation**

Date: \_\_\_\_\_

Borrower Name(s): \_\_\_\_\_

Loan#: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Property Address: \_\_\_\_\_

By signing this document, I am confirming that my loan request is for business purposes and not household purposes, and that the loan proceeds are intended to be used and will in fact be used for business purposes only, and not my personal use. I also represent that I do not occupy the property as my Primary Residence or as a Second Home. I intend to lease or rent the property to a third party. I understand that because the loan will be made exclusively for business purposes, laws applicable to consumer purpose transactions, including but not limited to the following, are not applicable to this loan:

- Truth in Lending Act (15 U.S.C. § 1601 et seq.);
- Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.);
- Gramm-Leach Bliley Act (15 u.s.c. § 6802-6809);
- Secure and Fair Enforcement Mortgage Licensing Act (12 U.S.C. § 5101 et seq.); and / or
- Homeowners Protection Act (12 U.S.C. § 4901 et seq.).

By signing below, I confirm I have read and understand this document and I affirm that the Property to is to be a non-owner-occupied investment property.

\_\_\_\_\_  
Borrower 1

\_\_\_\_\_  
Date

\_\_\_\_\_  
Borrower 2

\_\_\_\_\_  
Date

## Exhibit B

### NON PRIME WHOLESALE RESIDENTIAL RATE SHEET & MATRIX

Date: 10/29/2020

#### GENERAL INFORMATION

Credit Tier	AAA*	AA*	A*	BBB*	BB*	B*	CCC*
Minimum FICO	≥ 750	≥ 725	≥ 700	≥ 675	≥ 650	≥ 600	≥ 575
LTV Threshold	Primary Residence or Secondary Home Transactions						
≤ 50% LTV	3.750%	3.999%	4.375%	4.500%	4.625%	5.250%	6.125%
≤ 60% LTV	3.999%	4.375%	4.625%	4.750%	4.875%	5.625%	6.625%
≤ 65% LTV	4.375%	4.625%	4.750%	4.875%	5.125%	5.875%	7.125%
≤ 70% LTV	4.500%	4.750%	4.875%	5.125%	5.375%	6.125%	7.375%
≤ 75% LTV	4.750%	4.875%	5.125%	5.375%	5.750%		
≤ 80% LTV	4.875%	5.125%	5.375%	5.750%	6.750%		
≤ 85% LTV	5.750%	6.250%	6.625%				
≤ 90% LTV	6.750%	6.875%					
Max LTVs	AAA*	AA*	A*	BBB*	BB*	B*	CCC*
Purchase	90%	80%	80%	80%	80%	70%	70%
Refinance	80%	80%	80%	75%	75%	70%	70%
CLTV**	80%	80%	85%	80%	80%	70%	70%

  

Credit Tier	AAA*	AA*	A*	BBB*	BB*	B*	CCC*
Minimum FICO	≥ 750	≥ 725	≥ 700	≥ 675	≥ 650	≥ 600	≥ 575
LTV Threshold	Investor Property (DSCR)						
≤ 50% LTV	4.500%	4.999%	5.250%	5.500%	5.999%	6.125%	6.999%
≤ 60% LTV	4.750%	5.250%	5.375%	5.625%	6.250%	6.750%	7.750%
≤ 65% LTV	5.125%	5.375%	5.500%	5.999%	6.625%	7.375%	8.250%
≤ 70% LTV	5.250%	5.500%	5.875%	6.250%	6.875%	7.999%	9.250%
≤ 75% LTV	5.375%	5.750%	6.250%	6.375%	6.999%		
≤ 80% LTV	5.999%	6.750%	7.125%				
Max LTVs	AAA*	AA*	A*	BBB*	BB*	B*	CCC*
Purchase	80%	80%	80%	75%	75%	70%	70%
Refinance	70%	70%	70%	70%	70%	65%	65%
CLTV**	80%	80%	80%	75%	75%	70%	70%

DSCR minimum is [1] 1.0 - 1.0 for (a) LTVs > 70% or (b) "BB"/"CCC" Grades (all LTVs), or [2] must have 12-month reserves for negative cashflow, if applicable.

  

Credit Tier	AAA*	AA*	A*	BBB*	BB*	B*	CCC*
Margin	3.000%	3.250%	3.500%	3.750%	4.000%	4.250%	5.000%
Max Mtg Late (12-mth)	0 x 30	0 x 30	0 x 30	1 x 30	1 x 30	0 x 60	0 x 90
Seasoning	AAA*	AA*	A*	BBB*	BB*	B*	CCC*
Residency	2-3 Years	2-3 Years	2-3 Years	2-3 Years	2-3 Years	2-3 Years	2-3 Years
Homeowner	2-3 Years	2-3 Years	2-3 Years	2-3 Years	2-3 Years	2-3 Years	2-3 Years
Short Sales	2-2 Years	2-2 Years	2-2 Years	2-1 Year	2-1 Year	Settled	Settled
Dead-in-Lies	2-2 Years	2-2 Years	2-2 Years	2-1 Year	2-1 Year	Settled	Settled

\*\* CLTV < 95% for LTV < 80%. Can not exceed 80% MAX CLTV.  
Max Adjustment is 5% CLTV Increase

#### ADJUSTMENTS

Description	Rate	Note
Cash-Out Refinance	0.250%	Apply for LTVs > 70%
Second Home	0.500%	Add to Primary Rate, Max LTV from DSCR Table
Investor (DTI)	0.500%	Add to Primary Rate, Max LTV from DSCR Table
Alt Dec - BK Stmt	-	Credit Grades AAA to B
Alt Dec - Full	0.500%	Credit Grades AAA to B (or Asset Depletion as additional source)
1/1 Hybrid ARM	0.000%	Pricing in Grid is for a 5/1 Hybrid ARM
30-Year Fixed	0.000%	Pricing in Grid is for a 5/1 Hybrid ARM
Interest Only (5-yr)	0.250%	30-Term, Min Loan 22.50K, Grades AAA to BB, Avail on 5/1 or 3/1
ITM	0.500%	Purch -5% & Ref -10% LTV/CLTV (Max 80% LTV/CLTV). \$1M max loan amt
Foreign Nationals	0.750%	Investor Property Only, Max 70% Purchase / 65% Refinance, Price on "A"
Business LLC Borrower	0.250%	Loan to US Business Entity requires Personal Guarantee, Additional Guidelines
Performance < 90 Days	0.375%	Purch 70% & Ref 65% Max LTV/CLTV, 12-Months Reserves, Additional Guidelines
Performance < 180 Days	0.250%	Purch 80% & Ref 70% Max LTV/CLTV, 6-Months Reserves, Additional Guidelines
< \$ 150,000	0.750%	
> \$ 1,000,000	0.125%	Primary: Max 85% / Investor: -5% LTV/CLTV
> \$ 1,500,000	0.250%	Primary: Purch -5% & Ref -10% LTV/CLTV, INVI -10% LTV/CLTV, AAA to BB Only
> \$ 2,000,000	0.500%	Primary Only, Purch 65% & Ref 60% Max LTV/CLTV, AAA to BB Only
Non-War Condo	0.375%	Purch -5% & Ref -10% LTV/CLTV - Max 75% LTV/CLTV
Condo / PUD / CHS	0.500%	Purch 75% & Ref 70% Max LTV/CLTV
2-4 Unit Property	0.375%	Max 85% LTV/CLTV
Rural Property	0.625%	Purch 70% & Ref 65% Max LTV/CLTV, 2750K max loan amt, Min "BB" Grade
1-Year Prepay	-	All INVI 2% / 2% Sequential Stepdown Prepayment Penalty
2-Year Prepay	0.250%	All INVI 2% / 2% Sequential Stepdown Prepayment Penalty
1-Year Prepay	0.500%	All INVI 2% Prepayment Penalty
Buy Out Prepay	1.00 pt	Not applicable if Transaction is on Primary Residence or 2nd Home
Lender Paid Comp	2-1	Investor Prop Only, Max 3.0 Points, Requires 30-Day PPP, 0.25% Increments
Rate Buy Down	3-1	Program Floor of 3.750% (Primary), 4.250% (2nd) & 4.250% / 4.500% (Inv DTI/DSCR)

#### Administration / Underwriting / Commitment Fee - \$1,295

\*Broker Origination Points and Fees are limited to the lesser of (a) 3.0% of the loan amount and (b) the maximum allowable by Federal & State High Cost thresholds.

**CONTACT YOUR LOCAL  
ACCOUNT EXECUTIVE**

#### GENERAL INFORMATION

NO FEDERAL OR STATE HIGH COST LOANS
Income Documentation Full Doc = W2 + Pay Stubs / Wage Earner or 1040s + P&L / Self-Employed or Commission Alt Doc = 12 Personal or Business Bank Statements / SE Only ATR = Full / Asset Depletion = Only Assets to Qualify max LTV 70% DSCR = Calculate by dividing (a) recorded property rents by (b) actual PITIA payments. Minimum DSCR is LTV based. (Foreign Nationals = Qualify and Price on DSCR)
Maximum Debt-to-Income Ratio 50% Back End
Loan Terms 30-Year Amortized & Term - 5/1 or 7/1 Hybrid ARM or 30-yr Fixed All Loans require loanholding for Term & Insurance > 85% LTV requires (i) Full Doc or BK Stmt & (ii) 12-months Reserves
Interest Only (IO) Consumer IO loans qualify at max rate at first fully amortized point IO Loan is 5-yr IO Paymt & 25-yr Fully Amortized (30-year term)
Index & Adjustment Caps Floored at Start Rate / 1-Year CMT 2.0% Initial Change Cap / 2.0% Annual Cap / 6.0% Life Cap
Occupancy Primary / Second Home / Investment (INV)
Reserve Requirement None for ≤ 65% LTV, 6 Months for > 65%, 12 Months for > 85%
Loan Amounts \$100,000 Minimum to \$3,000,000 Maximum (Round-down to \$50) Loan Amounts > \$1.0M Require Senior Management Approval Loan Amounts > \$1.5M require Two (2) Approvals
Property Types SFR / Condos / Townhouse / 2-4 Units Non-Warrantable Condos - Reference Acra Lending Guidelines
Rate Lock Policy Reference separate policy for full details. Rate locks for 30-day period with Conditional Loan Approval and extension for Closing.
States AL, AR, AZ, CA, CO, CT, DC, DE, FL, GA, ID, IL, IN, KS, KY, LA, MD, ME, MI, MN, MT, NC, NE, NH, NJ, NV, OH, OK, OR, PA, SC, TN, TX, UT, VA, VT, WA, WI, & WY Texas - Primary Purch & Ref. & INVI or 2nd Home Purch & Ref.
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25531 Commerce Drive, Suite 160, Lake Forest CA 92630 | (888) 800-7661 | www.acralending.com