IBAT Insights

(Ask IBAT Anything)

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The Independent Community Bankers Association of New Mexico

Question

As rates start to go up, we are thinking people may want to modify their ARM loan into a fixed rate loan and want to be prepared to handle this correctly. If that is handled via a loan modification, does it trigger new disclosures?

Answer

Under $1026.20, a refinancing occurs when an existing obligation is satisfied and replaced by a new obligation undertaken by the same consumer, with certain exceptions. A new transaction (a refinancing) subject to new disclosures results if the creditor either increases the rate based upon a variable rate feature not already disclosed or if the creditor adds a variable feature to the obligation.

Converting an ARM to a fixed rate loan would not trigger new disclosures (a refinancing) provided the original obligation is not satisfied and replaced, only modified. However, it would trigger a rate adjustment notice under §1026.20(c) if the subsequent interest rate adjustment results in a corresponding payment change. Notice the underlined passage below.

(c) Rate adjustments with a corresponding change in payment. The creditor, assignee, or servicer of an adjustable-rate mortgage shall provide consumers with disclosures, as described in this paragraph (c), in connection with the adjustment of interest rates pursuant to the loan contract that results in a corresponding adjustment to the payment. To the extent that other provisions of this subpart C govern the disclosures required by this paragraph (c), those provisions apply to assignees and servicers as well as to creditors. <u>The disclosures required by this paragraph (c) also shall be provided for an interest rate adjustment resulting from the conversion of an adjustable-rate mortgage to a fixed-rate transaction, if that interest rate adjustment results in a corresponding payment change.</u>

Source link.