



Duane Gomer Education Presents

PROFESSIONAL MLO EDUCATION
FOR

MLO'S

2020 TEXTBOOK: 1ST Edition

BY MICHELLE RODRIGUEZ, DUANE GOMER
& CINDY DOUGLAS

CA DBO SAFE COMPREHENSIVE 8 HOURS OF CONTINUING EDUCATION



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Written By: Michelle Rodriguez, Duane Gomer and Cindy Douglas
Senior Editor: Carole Kim

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2020 Edition
1st Printing



Published by Duane Gomer Education, a Division of Duane Gomer Inc.
23312 Madero #J, Mission Viejo, CA 92691
www.duanegomer.com

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PRODUCED AND PRINTED IN THE UNITED STATES OF AMERICA

Comments or suggestions to:
Duane Gomer Education, Inc.
23312 Madero #J,
Mission Viejo, CA 92691
(800) 439-4909
duane.g@duanegomer.com

8 Hour CA-DBO SAFE Comprehensive: Professional MLO Education 2020 Edition

Course Provider: **Duane Gomer Inc.**

Address: **23312 Madero #J**
Mission Viejo, CA 92691
800-439-4909

NMLS Course Provider #**1400388**
NMLS Course # **11976**



Date of Course Content: April 2020

Date Course Approved: 6/1/2020

Attachments:

1. NMLS Rules of Conduct for Students



Rules of Conduct for NMLS Approved Pre-Licensure (PE) and Continuing Education (CE) Courses

The Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), requires that state-licensed MLOs complete pre-licensing (PE) and continuing education (CE) courses as a condition to be licensed. The SAFE Act also requires that all education completed as a condition for state licensure be NMLS approved. Since 2009 NMLS has established course design, approval, and delivery standards which NMLS approved course providers are required to meet. To further ensure students meet the education requirements of the SAFE Act, NMLS has established a Rules of Conduct (ROC). The ROC, which have been approved by the NMLS Mortgage Testing & Education Board, and the NMLS Policy Committee, both of which are comprised of state regulators, are intended to stress that NMLS approved education be delivered and completed with integrity.

Rules of Conduct

As an individual completing either pre-licensure education (PE) or continuing education (CE), I agree to abide by the following rules of conduct:

1. I attest that I am the person who I say I am and that all my course registration information is accurate.
2. I acknowledge that I will be required to show a current government issued form of identification prior to, and during the course, and/or be required to answer questions that are intended to verify/validate my identity prior to, and during the course.
3. I understand that the SAFE Act and state laws require me to spend a specific amount of time in specific subject areas. Accordingly, I will not attempt to circumvent the requirements of any NMLS approved course.
4. I will not divulge my login ID or password or other login credential(s) to another individual for any online course.
5. I will not seek or attempt to seek outside assistance to complete the course.
6. I will not give or attempt to give assistance to any person who is registered to take an NMLS approved pre-licensure or continuing education course.
7. I will not engage in any conduct that creates a disturbance or interferes with the administration of the course or other students' learning.
8. I will not engage in any conduct that would be contrary to good character or reputation, or engage in any behavior that would cause the public to believe that I would not operate in the mortgage loan business lawfully, honestly or fairly.
9. I will not engage in any conduct that is dishonest, fraudulent, or would adversely impact the integrity of the course(s) I am completing and the conditions for which I am seeking licensure or renewal of licensure.

I understand that NMLS approved course providers are not authorized by NMLS to grant exceptions to these rules and that I alone am responsible for my conduct under these rules. I also understand that these rules are in addition to whatever applicable rules my course provider may have.

I understand that the course provider or others may report any alleged violations to NMLS and that NMLS may conduct an investigation into alleged violations and that it may report alleged violations to the state(s) in which I am seeking licensure or maintain licenses, or to other states.

I understand the CSBS Privacy Notice is applicable to these Rules of Conduct. The CSBS Privacy Notice can be found here:

[https://nationwidelicensingsystem.org/about/policies/NMLS%20Document%20Library/CSBS%20External%20Privacy%20Notice-6.18%20\(1\).pdf](https://nationwidelicensingsystem.org/about/policies/NMLS%20Document%20Library/CSBS%20External%20Privacy%20Notice-6.18%20(1).pdf)

I further understand that the results of any investigation into my alleged violation(s) may subject me to disciplinary actions by the state(s) or the State Regulatory Registry (SRR), including removal of any course from my NMLS record, and/or denial or revocation of my license(s).

Course Number(s)

Signature

Date (mm/dd/yyyy)

Print Name

NMLS ID (If Known)



DUANE GOMER EDUCATION

23312 Madero St., Suite J · Mission Viejo, CA 92691 · (949) 457-8930 · (800) 439-4909
(949) 455-9931 · E-mail: Duane@DuaneGomer.com · Web site: www.DuaneGomer.com

Dear DRE and DBO Students,

Your support of our courses is so appreciated. It is a sincere pleasure to present this course for MLO's. I would like to highlight some factors:

1. In a recent survey of our students a high percentage voted for a final project instead of an exam so that will be the procedure to end the class today.
2. Students expressed a strong desire to keep breaks to a minimum and finish faster so we will follow that request.
3. Last year we started a system whereby students downloaded their Certificates from our website. This has made the final checkout go even smoother. As you know, the Certificate is only for your records. We have the official record.
4. Your hours will be banked and the \$12 fee will be paid. We are allowed seven days by regulation to complete the process, but your hours are banked much faster. You can't renew your endorsement (pay dues online with the NMLS) until November 1st. The deadline for paying dues and filing is normally December 21st.
5. NMLS Regulations state that an hour is 50 minutes so an 8 hour course has 400 minutes of instruction, including the final project.
6. The Student Information Sheet in the back of the book must be completed, dated and signed and given to the instructor at the end of the class. This is important.
7. You have been told that you can't take the same class two years in a row. This class is a new class for 2020 so you can keep taking Duane Gomer Education forever.
8. MOST IMPORTANT: NMLS insists that students shall not take unauthorized breaks, talk, text, email or use your phone during class. Violation of this rule will result in no credit for an individual.
9. To Download a full copy of the textbook that accompanies this workbook go to <http://duanegomer.com/nmls/2020.pdf>

Thank you,

Chapter 1

NON-TRADITIONAL MORTGAGES

Preface

Who Requires the CE Topics?

The Multi-State Mortgage Committee (MMC) is comprised of 10 appointed State Regulator members and one Conference of State Bank Supervisors (CSBS) member.

Their role is to implement cooperative protocol between state agencies and the financial industry.

The role of the State Regulator's includes licensing and supervising of state-chartered banks and non-bank entities to include mortgage lenders.

They ensure the financial services operate in a safe and sound manner.

An examination is completed by State Regulators to determine if a financial institution is operating in compliance with state and federal laws.

A review of a financial institution's loans and corporate records are conducted to decide whether the entities are effectively meeting the requirements to operate, monitor, and control risks associated with loan origination activities.

For additional information reference [MMC Mortgage Examination Manual](#)

Section 1

Rehab Mortgages

Introduction

There have been many changes in lending in the past few decades. Facts that were true in the 80's are not true today.

1. People are living longer, and many want to stay where they are because of family, friends, doctors, and most important grandchildren.
2. They are staying longer in their homes at every age bracket, and they have equity.
3. Younger prospects are burdened with student debt and other obstacles so there are fewer first-time buyers.
4. Many younger prospects are boomerang children and are still at the old homestead.
5. Assisted living and care costs are increasing rapidly so senior boomers are now boomeranging to the homes of their children.

This means that many homeowners will be wanting to redesign and make their homes better for their later years or maybe add on to their present square footage. There could be access improvements, mold, lead-based paint, asbestos, septic tanks, remodels, weatherization, appliances, flooring, yards, plumbing/electrical, structure or foundation work, move-ons, razing a home, adding a unit, and many others too numerous to mention.

FHA has some answers. The answers are in their 203K loan program. This is HUD's primary program for rehabilitation and repair of single-family properties. The loans are provided through HUD-approved mortgage lenders nationwide and insured by the Federal Housing Administration.

The loans are very beneficial for low and modern-income families or individuals since the down payment can be as little as 3%. The properties must be used as a principal residence.

The FHA requires that you complete the repairs within six months. You cannot include improvements for commercial use or luxury items such as tennis courts, gazebos, or swimming pools.

Eligible Homes¹

1. Cooperative units and investment properties are not eligible.
2. A one to four-unit residence that has been completed for at least one year.
3. Condominiums (interior improvements only)
4. Mixed-use residential properties that include commercial space.
5. Conversion of a one-unit residence to up to four-family units.
6. Conversion of a multi-unit to one- to four- less units.
7. Move-ons.
8. Homes that have been demolished or will be razed.

Two Types

There are two types of 203k rehabilitation loans, the limited (streamlined) and the standard 203k (construction loan).

First, the streamline loan is the most popular and will suit homeowners who are looking to buy a fixer upper. Also, more lenders offer the streamline loans. The 203K is not a simple loan to complete and has many pitfalls so learn the rules.

No structural changes allowed on streamlined loans and the maximum amount is \$35,000. With all the "soft costs" involved any bid will probably have to be lower than \$30,500.

An escrow account will be set up for the repair costs. An excellent method to understand these loans is to review the 203k and Streamlined 203k Maximum Mortgage worksheet.² It is included at the end of Section 1.

Streamline Requirements³

1. Only FHA-approved Lenders can offer 203k streamline loans.
2. No foreclosures, bankruptcies, or short sales in the past 3 years.
3. Must be able to prove income. (w2's, tax returns, bank statement).
4. Down payment of 3.5%.
5. Minimum 640 credit score.
6. Stable employment history.
7. No more than 1 late payment in past 12 months.

¹ [The Section 203\(k\) Loan Program](#)

² [HUD-92700](#)

³ [24 CFR § 203.5](#)

Streamline Guidelines

1. Up to 110% of the purchase price of the home
2. Must meet the FHA loan limit guidelines
3. The home can't be vacant for a period of more than 30 days
4. Occupying borrower only
5. Not available to real estate investors
6. All repairs and renovations must be finished 1 month before closing

Loan Process for a Standard 203k⁴

1. Complete the FHA approval requirements for a 203k loan.
2. Find a general contractor. Might be a good idea to find one experienced in 203k contracts.
3. Request a detailed bid of all expenses.
4. Get an appraisal which will reflect the future value of the home.
5. Bid, appraisal, and other borrower documents go to underwriting.
6. Underwriter approves (usually with some conditions)
7. Buyer signs and the lender funds the escrow account.
8. 50% to contractor upfront, remainder when done.
9. Six months to finish and then final payment.
10. Escrow account is closed and your buyer has a home with one loan.

Some Extra Fees⁵

For a sample breakdown of all fees, see the HUD-92700 section.

1. Two inspection fees at \$150.00 each.
2. Title Update: \$150.00; protects lender and will be in first position.
3. Supplemental Origination Fee: (1.5% or \$350.00 whichever is greater)
4. Contingency Reserve.

⁴ [The 203k Loan Process](#)

⁵ [The FHA 203k Rehab Loan: Financing the Fixer-Upper](#)

More Facts⁶

1. The Maximum Mortgage Amount is the same as for standard FHA loans (203b). The loan amount must not exceed the purchase price plus rehab costs, less the 3.5% down payment or 110% of the expected market future less the 3.5% down payment.
2. Can I do the work myself? In some cases, yes, if you are extremely qualified.
3. Will I ever need HUD-consultants? Not on a Streamline loan, but in most cases on a Standard 203k.
4. Can a 203k loan be used on an investment property or to buy furniture? No.
5. Ratios are still 31% to 43% and the highest LTV can be 97.5%
6. Most people who qualify for a 203b loan can qualify for a 203k loan.
7. Lenders may charge a higher interest rate and higher fees for 203Ks.

Other Loans to Consider⁷

There are other loans that can be considered. Fannie Mae has a Homestyle Renovation Loan⁸ and Freddie Mac has a HomeReady Loan⁹. Both are rehab loans with one close. Many MLO's believe that these loans are better for homeowners than the 203k.

1. No upfront premium
2. Lower monthly Mortgage Insurance. 40% to 80% which would save \$1,600 monthly on the above loan.
3. Mortgage insurance is automatically removed after 12 years or sooner with proof of 20% equity.
4. Normally lower interest rates for Home Ready and Home Style than 203Ks.
5. Greater flexibility and less stringent appraisal requirements and less hurdles for minor safety issues.
6. You can build some luxuries items like swimming pools and gazebos.
7. Possibly higher loan amounts.

⁶ [24 CFR § 203.50](#)

⁷ [Fannie Mae Homestyle vs FHA 203Ks](#)

⁸ [Fannie Mae Homestyle Renovation Loan](#)

⁹ [Freddie Mac HomeReady Loan](#)

Important Alert for MLO's

These are some other reasons why these loans will become more popular. Yes, they are not easy to complete, and it might be hard to find a proper lender, but the California Legislature has made a strong statement in promotion of Granny Units/Accessory Dwelling Units.

They made some changes that were effective January 1, 2020. It appears that the State of California wants more Granny Flats/ADUs built. Speedier Government approvals means more loans. The Bill passed is AB68 and following is a brief summary.

AB 68: State of California Regulation¹⁰

A Brief Summary of the Provisions of AB 68.

- Requiring local agencies to issue ADU permits in 60 days (rather than the current 120-day limit)
- Prohibiting local agencies from imposing lot coverage or lot size requirements on ADUs
- Eliminating the requirement that off-street parking spaces be replaced if a garage, carport, or covered parking is demolished to build an ADU.
- Requiring local agencies to allow additional space (up to 150 square feet) beyond the physical dimensions of the existing garage or shed for purposes of accommodating ADU access and egress.
- Prohibiting local agencies from imposing maximum ADU sizes less than 800 square feet or maximum ADU heights of less than 16 feet.
- Prohibiting local agencies from requiring that pre-existing “nonconforming zoning conditions” be corrected as a condition for ADU permit issuance.
- Impose requirements on lot coverage or minimum lot size.
- Allow no more than 60 days to ministerially approve an ADU or JADU permit application if there is an existing single-family or multifamily dwelling on the lot.

¹⁰ [AB68](#)

- Require a setback for ADUs within existing structures, and new ADUs located in the same location and footprint as existing structures, and no more than a four-foot side and rear yard setback.
- Require, as a condition for ministerial approval of an application, correction of physical conditions that do not conform to current zoning standards.
- Allowing ministerial “by-right” approvals for:
 - Two ADUs per single family property, an attached or detached ADU.
 - Plus, a “junior” ADU (made from existing living space).
 - Multiple ADUs at multifamily properties.

A new income source for MLOs and a service to the public.

Ministerial Right

In United States law, a **ministerial act** is a government action “performed according to legal authority, established procedures or instructions from a superior, without exercising any individual judgment.” It can be any act a functionary or bureaucrat performs in a prescribed manner without exercising any individual judgment or discretion. Under law, this would be classified under the rubric of public policy.

**203(k) and Streamlined (k)
Maximum Mortgage Worksheet**
See Public Reporting Statement on the back before
completing this form (See Notes 1 thru 8 on back)

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval
No. 2502-0527
(exp. 07/31/2017)

Borrower's Name & Property Address (include street, city, State, and zip code)			FHA Case Number	No. of Units	HUD REO? <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Purchase <input type="checkbox"/> Refinance <input type="checkbox"/> Streamlined (k) <small>(Note 6)</small> <small>Purchase Date (owned less than 12 months)</small> <input type="text"/>
			Type: <input type="checkbox"/> Owner-Occupant <input type="checkbox"/> Nonprofit <input type="checkbox"/> Government Agency			
A. Property Information	1. Contract Sales Price Or <input type="checkbox"/> Existing Debt \$	2. 'As-is' Value \$	3. After-improved Value \$	4. 110% of A3 (Note 8) \$	5. Borrower Paid Closing Costs + Prepays (Refinance) \$	6. Allowable energy Improvements (Note 2) \$
B. Rehabilitation and Other Allowable Costs	1. Total Cost of Repairs (Line 36, HUD-9746-A) includes the improvements in A6 and REO Lead Based Paint Stabilization \$					\$
	2. Contingency Reserve on Repair Costs (%) (10 to 20% of B1) \$					\$
	3. Inspection Fees (x \$ per inspection) + Title Update Fee (x \$ per draw) \$					\$
	4. Mortgage Payments Escrowed (months x \$) if uninhabited (Note 7) \$					\$
	5. Sub-Total for Rehabilitation Escrow Account (Total of B1 thru B4) \$					\$
	6. Architectural and Engineering Fees (Exhibits) (Note 7) \$					\$
	7. Consultant Fees (including mileage, if applicable) (\$ + miles@ /mile) (Note 7) \$					\$
	8. Permits \$					\$
	9. Other Fees (explain in Remarks) \$					\$
	10. Sub-Total (Total of B5 thru B9) \$					\$
	11. Supplemental Origination Fee for both 203k and Streamlined (k) (greater of \$350 or 1.5% of B10) \$					\$
	12. Discount Points on Repair Costs and Fees (B10x %) \$					\$
	13. Sub-Total for Release at Closing (Total of B6 thru B9 + B11 and B12 (Note 3) \$					\$
	14. Total Rehabilitation Cost (Total of B5 and B13 minus A6) (Streamlined (k) can not exceed \$35,000) \$					\$
C. Mortgage Calculation for Purchase Transactions	1. Lesser of Sales Price (A1) or As-Is-Value (A2) \$					\$
	2. Total Rehabilitation Cost (B14) \$					\$
	3. Lesser of Sum of C1 + C2 (\$) or 110% of After-Improved Value (A4) \$					\$
	4. Base Mortgage Amount: Sum of C3 +(-) Required Adjustment (Note 4) (\$) x LTV Factor (96.5%) (Owner-Occupant) or Less Allowable Down payment/ HUD-Owned Property (\$) (Note 5) \$					\$
D. Mortgage Calculation for Refinance Transactions	1. Sum of Existing Debt (A1) + Rehabilitation Cost (B14) + Borrower Paid Closing Costs + Prepays (A5) + Discount on Total Loan Amt minus Discount on Repair Costs (B12) minus FHA MIP Refund (\$) \$					\$
	2. Lesser of Sum of As-is Value (A2) (Note 1) + Rehabilitation Cost (B14) (\$) or 110% of After-Improved Value (A4) \$					\$
	3. D2 (\$) x LTV Factor (97.75%) (Owner-Occupant) \$					\$
	4. Base Mortgage Amount Lesser of D1 or D3 (Note 5) \$					\$
E. Calculation for EEM	1. Energy Efficient Mortgage (EEM) Amount (C4 or D4) + A6 (Note 2) \$					\$
F. Summary	UFMIP Factor %	UFMIP \$	Total Escrowed Funds \$	Interest Rate %	Discount Pts \$	\$
	1. Total Mortgage Amount with UFMIP (C4, or D4 or E1 + UFMIP) \$					
DE Underwriter's Signature, Title & Date						CHUMS No.
Borrower's Signature & Date (Optional)			Co-Borrower's Signature & Date (Optional)			

Remarks (Continue on separate page if needed)

Notes:

1. If owned less than 1 year, use lesser of A2 or Original Acquisition Cost plus Debts incurred for rehabilitation since acquisition.
2. Refer to Mortgagee Letters 05-21, 95-46, and 93-13.
3. These Allowable Costs may be released at closing, provided paid receipts or contractual agreements requiring payment are obtained
4. Required Adjustments would include additions such as financeable repairs and improvements, energy related weatherization items, and solar energy systems, as well as subtractions including sales concessions in excess of six percent of the sales price, inducements to purchase, personal property items, etc., all as per HUD Handbook 4155.1 (May also include HUD REO Lead Based Paint Credit.)
5. Maximum Mortgage before UFMIP not to exceed statutory limit.
6. See ML 2005-50.
7. Not applicable to Streamline 203(k) transactions.
8. If Condominium limit to 100% of A3

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection involves an expanded information requirement for lenders that originate and service Section 203(k) mortgages. The purpose of the information is to help mitigate program abuses. The expanded information focuses on the loan origination process and requires increased documentation and strengthened internal control procedures. Periodic reporting of the information is not required. The information also includes information that was voluntarily accepted by the 203(k) lending community. The information provides a more comprehensive basis for evaluating lender underwriting practices and thereby improves risk management of the 203(k) loan portfolio. Responses are required under Section 203(k) of the National Housing Act (12 U.S.C. 1703). No assurance of confidentiality is provided.

Section 2

Negative Amortization¹¹

Introduction

Ask twenty experienced Mortgage Loan Originators a question about Negative Amortization, and you will get twenty different answers. Therefore, for this introduction we will go to the famous or infamous Consumer Financial Protection Bureau to see what they say.

Question to CFPB on their website: What is negative amortization?

Answer: Amortization means paying off a loan with regular payments, so that the amount you owe goes down with each payment. Negative amortization means that even when you pay, the amount you owe will still go up because you are not paying enough to cover the interest charged.

Your lender may offer you the choice to make a minimum payment that does not cover the interest you owe. The unpaid interest gets added to the amount you borrowed, and the amount you owe increases.

Usually, after a period of time, you will have to start making payments to cover principal and interest. These payments will be higher. A negative amortization loan can be risky because you can end up owing more on your mortgage than your home is worth. That makes it difficult to sell your house because the sales price won't be enough to pay what you owe. This can put you at risk of foreclosure.

Certain loans have payment options that let you pay only a portion of the amount of interest you owe each month. If you only pay some of the interest, the amount that you do not pay will get added to your principal balance. You end up paying not only interest on the money you borrowed, but interest on the interest you are being charged for the money you borrowed. This dramatically increases the amount of debt you have and the cost of the loan. To keep your debt from growing, you need to pay down all of the interest and at least some of the principal you owe.

¹¹ [§ 1026.43\(c\)\(5\)\(ii\)](#)

Another question to CFPB: What is a qualified mortgage?

Answer: A QM is a category of mortgage with certain more stable features that make it more likely that you will be able to afford the loan. There are certain types of loans with certain risky features that are not permitted, one being Negative Amortization.

The Congress of the United States passed the Dodd-Frank and included that language. They decided that a loan with negative amortization is toxic. Many of the loans that were lost to foreclosure in the last decade had negative amortization as one of the features. Major culprits were Adjustable Rate Mortgages, No Document Loans, and Graduated Payment Loans.

I find that many experienced, capable, knowledgeable, sophisticated, and honest Loan Originators have different opinions. This includes me.

Negative amortization is not for most borrowers. Borrowers must know the risks of this type of mortgage. Bad things can happen. It is imperative that MLO's explain these loans thoroughly, then explain them again, and then have the client explain. Sometimes, they are fine.

Years ago, there were more Neg. Amortization loans. What type of clients should consider them?

1. Someone who might not have much money at this time but is expecting more later. Med School Student.
2. Investor with courage. This will increase leverage and IF the property does well, the overall return is better. Some investors (this includes me) might like even more negative amortization, like no payments at all. That is mega Negative Amortization. Takes real courage.
3. Sometimes the lower payment will help make a good Performa Sheet to allow purchase of an investment property or to qualify a homebuyer.
4. Someone who can make it through the early years because their payments are lower.
5. Some sophisticated investors might believe that the market will be increasing, and in five years or so, he or she will refinance.

6. If someone is conservative, they will not like the idea of interest going up, or equity dropping as the payments do not cover the interest. I would have a policy of describing this feature of a loan and have the borrowers sign a written notice that they understand the risks. Not on a big form, just a small simple agreement, saying this loan has some interesting features that could prove to be toxic, and they understand the risks.
7. People who receive royalties on a quarterly or other basis, that is not the traditional monthly income: actors, singers, writers, etc."

Can you get a Negative Amortization loan today? Yes, but the interest rates might be higher, and they would not be sold on the secondary market. The loans would be kept in the lender's portfolio.

Time to Think 1.1

- 1) What is the minimum amount of a 203K loan? \$5,000
- 2) What is the number of pages of the Maximum Mortgage worksheet? 2
- 3) What is the name of the Freddie Mac rehab loan? HomeReady
- 4) What is a Portfolio loan? Bank keeps and services it
- 5) Poll Question: Have you ever had a GPM yourself and why?

Section 3

Seller Financing

Introduction

Seller financed loans have been used for decades to help buyers and sellers complete their American Dream. Yes, they can be useful in many instances. The loans are basic and simple but at the same time can create many problems. Whether or not an MLO ever intends to work with sellers on these loans, MLO's should understand them.

Federal Regulations tell MLO's to "work in the best interests of the clients, not in their best interests or their company's best interests". Sometimes a seller loan could be in the best interest of all parties.

MLO's main mantra should be to protect their clients from problems. The best way to do this is to become educated on the different types of loans consumers might encounter. Not all loans are QM's with no deviations. Be like Scouts, be ready and be prepared.

Advantages of Seller Financing

Sellers

1. A transaction could be created with additional financing. Sometimes there is just not enough money, and seller money could make the difference.
2. The property might bring a higher price with seller financing.
3. The seller would realize a return on the loan remaining on the property. Normally a better return than in a money market account.
4. The property could qualify for Internal Revenue Service installment sale treatment, and this would mean a tax deferral on some of the profit.

Buyers

1. Create a purchase when the buyer is short of cash or loan possibilities.
2. Lower the Lender's LTV which could lower the interest rate.
3. Private Mortgage Insurance could be eliminated.
4. Get started on real estate ownership sooner.

Mortgage Loan Originators, Lenders, Staff, Escrows, Underwriting, Processing, Title Companies, and others would benefit because there would be more sales. Seller money can be used in productive and creative ways. In this treatise we will only consider seller financing that qualifies for Federal Exceptions for the sellers. The seller financing will be junior liens in our examples.

Disadvantages; and There Are Many

Sellers: The buyers just do not make the payments. The sellers will be introduced to the California Non-Judicial Foreclosure Industry. Every transaction must be entered considering a possible Foreclosure and the consequences. This loan is a non-recourse loan so the new "lender" can only look toward the property and cannot get a judgment against the borrower.

Buyers: They stretched too far. There should be warnings along the way that if you do not make the payments on the loan you will lose your property. As stated above, the loan is non-recourse so unless there are other factors the seller can only take the property back, not sue for damages or take any other assets.

Lenders, MLO's, etc.: Foreclosures can happen even if there is a second loan between your loan and the borrower. This field requires solid policies, good underwriting, trained staff and originators. Key words are Disclose, Disclose, and then Disclose some more.

Some Other Quirks

Usury: Seller financing does not involve borrowing or lending or forbearance of money as seller financing is considered a sale on credit and not a loan. Thus, seller financing is not subject to the usury law. (See *Boerner v. Colwell Co.* (1978) 21 C.3d 37)¹².

Usury Rate: For most private loans from you to me for personal, family or household purpose is 10% in California, but there are tons of exceptions so study them before lending.

¹² [Boerner v. Colwell Co. \(1978\) 21 Cal.3d 37](#)

Installment Sale: When someone sells their home or other properties, and carries back a note, they have completed an installment sale. Tax on portions of capital gains could be deferred until the proceeds are received. Excellent tax planning if done correctly. By the way, if someone does not want to be concerned with these conditions, they can carry back a loan and tell IRS I would like to pay the tax anyway now.

Payment and Tax on The Loan: They can be interesting to calculate. Each payment will normally contain three types of money for the seller.

1. Interest on the loan payable at regular tax rate.
2. Portion of the payment that is deferred profit probably taxed at capital gains rate.
3. Return of the equity in the property that is not taxed at all.

Sale of Carryback Loan: There is nothing illegal in selling the note after the transaction has closed as long as proper rules are followed. There are companies now that will enter into a contract before the close of the sale to take the note for a price. There are regulations about transactions between related parties like in other real estate sales.

Criteria for Exceptions For Sellers To Extend Credit On Properties

There are two categories for the exceptions and the information is at 12 C.F.R. 1026.36¹³.

For a Seller Who Extends Credit on One Property

1. Be a natural person, estate or trust.
2. Provide seller financing for the sale of only one property during any 12 month period.
3. Property must be owned by the person and serve as security for the financing.
4. Did not construct the building or act as a contractor for any residence on the property (in the ordinary course of business).
5. The financing schedule has a repayment plan that will not result in negative amortization.
6. The loan has a fixed rate or an adjustable rate that will not adjust until after five or more years.
7. The loan is subject to reasonable annual and lifetime limitations on interest rate increases.

¹³ [§ 1026.36](#)

For a Seller Who Extends Credit on Three or Less Properties

1. Be a natural person or an organization.
2. Provide seller financing on three or fewer properties in any 12-month period.
3. Each property must be owned by the person and serve as security for the financing.
4. Did not construct the building or act as a contractor for any residence on the property (in the ordinary course of business).
5. Financing is fully AMORTIZING
6. The person determines in good faith that the consumer has a reasonable ability to repay.
7. The loan has a fixed rate or an adjustable rate that will not adjust until after five or more years.
8. The loan is subject to reasonable annual and lifetime limitations on interest rate increases.

For Both Exclusions

Where adjustable rate financing is used, an annual rate increase of two percentage points or less and a lifetime limitation of an increase of six percentage points or less are deemed reasonable. The index you use must be widely available.

Exceptions Are Rather Narrow

It is obvious that the Regulations do not allow a vast industry for seller financing. Of course, many owners will be functioning under different circumstances. Note that it does not say that the property must be a residence so someone could be selling commercial buildings with owner financing. This is common, but these properties do not come under RESPA, TILA, etc.

Processes and Protections

Many of the people doing seller financing may be doing it for the first time in their lives. They have never been involved in large dollar transactions. Protections must be set up for them so they have a perfect lending experience. This starts at the beginning. Even before offers are exchanged. There are so many items to consider and so many decisions to be made.

1. Use a professional Residential Purchase Agreement and make sure that it is thoroughly completed. There may be a need for Counter Offer Forms.
2. A Seller Financing Addendum and Disclosure should be used to explain all the complexities of Seller Financing.
3. A statement that " Seller agrees to extend credit to buyer as follows: and all terms are explained including principal, interest, payment, maturity terms".
4. Loan Application and Credit Report: Must be requested from buyer (borrower) with a deadline for performance.
5. How will the credit be handled?
 - a. Note and deed of trust
 - b. All-inclusive note and deed of trust
 - c. Installment land sale contract
 - d. Lease/Option
 - e. Lease/Purchase
 - f. Other
6. Will there be any of the following?
 - a. Late Charge Date (6% rule)
 - b. Balloon Payment Regulations and there are many
 - c. Prepayment and Due on Sale
7. Three requests to be considered.
 - a. Request for Copy of Default (CC 2924b)
 - b. Request for Notice of Delinquency (CC 2924e)
 - c. Tax Service (And Who Should Pay)
8. Title Insurance
9. Hazard Insurance Title Insurance
10. Tax Identification Numbers
11. Recording
12. Junior Financing
13. Statement that refinancing might be difficult to find
14. Default by Buyer
 - a. Seller may have to foreclose and no judgment available
 - b. Property may have decreased in value
15. Buyer's Ability to Pay

Time to Think 1.2

- 1) Which Federal Regulation discusses Seller Financing?

12 C.F.R.1026.36

- 2) A Seller Financed loan is a recourse loan. True / False
- 3) Poll Question: How many of you have used seller financing and how many have brokered an installment sale?

Section 4

15 Year Loans

Introduction

The SAFE ACT stated that the only Traditional Mortgage was the 30-year fixed rate loan, fully amortized. Therefore, the 15 year fixed and other variances are Non-Traditional Loans. That is why they are listed in this chapter and designated Non-Traditional Loans. I always thought that NT loans would be Reverse Mortgages, Graduated Payment Loans, Adjustable Rate Loans, Interest Only Loans, Negative Amortization, Hard Money Loans, Prepayment Loans, and Balloon Payments, among others.

After the chaos of the last decade many homeowners did consider and decide to obtain 15-year loans. Many of these were people who wanted to pay off their loans quickly and have a home free and clear with no loan payments. But even some conservative people liked this idea when they saw friends, neighbors, relatives, family, and others lose their homes to foreclosure or short sale.

Some years ago there was a Truth In Lending Form given out to applicants which explained the costs of the Loan. The form had four columns. The first column listed the APR (Annual Percentage Rate). This would normally be higher than the interest discussed because the costs prorated over the life of the loan. MLO's will all tell you that the clients would look at this figure, and they would say with emotion, "That is not the interest rate you quoted, what is going on here".

The MLO would then explain that this was not the interest rate and further explain how it was calculated. The client would next look at column two and three. Not too much said about those two columns.

Then, the clients read the fourth box, and all of them said something like, "Oh, my God", "What in the _____ is this?", "You have got to be kidding", "No Way", etc. The box was the total of all payments and the principal was added to this amount. It was a rather large number.

This form was for a 30-year loan and the interest paid does add up. The MLO could recommend a 15-year loan. Now, the client might be satisfied with column four, but not so satisfied with the payments.

When explaining the difference between a 30-year fixed and a 15-year fixed, an easy way to make a complete disclosure is to use the Loan Estimates. They will illustrate all the differences, such as lower interest rate on the 15-year, lower APR and a lower figure in the TIP line. Plus, much more principal paid off in the five-year period that is illustrated on the LE.

The TIP is the total amount of interest that you will pay over the loan term expressed as a percentage of your loan amount. The old column four is not on the new LE.

For the 15-year loan the TIP is 34.617% and on the 30-year loan it is 85.475%. Wonder how many borrowers understand that figure and whether the amount that is shown is good or bad.

Estimates: \$500,000 Loan, \$750,000 Property Value

It will also, in our example, illustrate that the payment goes from \$2,570.70 for the 30-year loan to \$3,729.84 for the 15-year loan. That is a figure that most borrowers thoroughly understand. They can use this form to compare other loan offers.

One item that the LE has that the TILA Estimate did not is a space for the applicant to sign that they received the form and the date received.

Another use of the form is to explain page three: Important Information.

The other considerations such as appraisal (get one), assumption (no), insurance (your choice), late payment (15 days-5%), liability after foreclosure (many loans in California are non-recourse), refinance (may not be able to), and servicing (potential to transfer your loan).

You should use these forms proudly. They were demanded by Congress, and the one form replaced two used previously. It did take them many years to develop them and then release them.

Loan Estimates

	15-yr fixed	20-yr fixed	30-yr fixed
Int Rate	4.125%	4.5%	4.625%
APR	4.184%	4.547%	4.660%
Est. Closing Costs	\$6,177	\$7,028	\$7,615
TIP	34.617%	52.21%	85.475%
Principal & Interest	\$3,729.84	\$3,163.25	\$2,570.70

Section 5

Jumbo Reverse Mortgages

Introduction

There are different types of Reverse Mortgages. It is not one size fits all.

1. HECM Reverse Mortgage, the regular product started in 1961 in Maine
2. Reverse Mortgage for Purchase, a newer innovation
3. Refinance Reverse Mortgages
4. Reverse Mortgage Equity Line of Credit
5. Single Purpose Reverse Mortgage
6. Jumbo Proprietary Reverse Mortgage (Non-QM, Non-HUD)

Why is the amount of jumbo reverse increasing? Homeowners with homes valued at more than the FHA limits wanted to receive the benefits of a Reverse Mortgage. Some lenders were ready to oblige because the LTV's were sound and the interest rates were higher. Since the loans were larger amounts, the costs of origination and servicing were reduced percentage wise

Jumbo and traditional reverse mortgages share many features.

1. The homeowner must be at least 62 years of age.
2. Loans increase over time (Negative Amortization personified)
3. Payment is due when borrower vacates the home for more than twelve months, sells it, dies, does not pay taxes or insurance, fails to maintain, condemnation or eminent domain.
4. Borrowers can use proceeds as they wish.
5. Borrowers can make payments on the loan if they wish.
6. The loans are Non-Recourse.
7. There is a three day right of rescission.
8. Interest is not deductible.
9. Eligible non-borrowing spouses can stay in the property under certain conditions.

10. Both loans do not typically impact Social Security or Medicare benefits.
11. Heirs will not receive as much money.
12. If you plan to move soon, it might not be prudent to contemplate a Reverse Mortgage.

But There Are Differences

1. Jumbo loan limits are much higher than the FHA limits.
2. The homeowner receives the full amount of the loan immediately.
3. Interest rates are higher for a Jumbo and normally fixed rate.
4. Interest rates are higher for a Jumbo than a normal fixed rate.
5. Jumbos do not include protections guaranteed by FHA, but most lenders follow the guidelines.
6. More chance for financial problems on Jumbos.
7. No tracking agency like HUD for Jumbos.
8. Fewer Jumbo lenders.
9. Less history.
10. Homes must have higher values.

Time to Think 1.3

1) When does consummation occur in California?

When documents are signed

2) What year was the Dodd-Frank Act passed? 2010

3) Poll Question: Have you ever had a NegAm loan?

Section 6

Vocabulary

Using vocabulary listings has always been an excellent method of education. The information can be concise and different topics can be presented for consideration. It is possible to review new changes and important factors.

We recommend a simple technique to work with the section. Take a piece of paper and place over the answers and then read the questions. Think of your answer and then check to see if you are right. When you are right, you will remember it longer and when you are wrong, you will realize that you learned something. Good reading.

Question	Answer
What are the two important factors of an ARM?	Index and Margin
The term for the maximum rate increase during the term of a loan	Lifetime interest rate cap
Allows borrower to convert from an ARM to a fixed rate	Conversion Option
Has a fixed rate for longer than a year before any rate adjustment	Hybrid Loan
Payments are not sufficient to pay accrued interest monthly	Negative Amortization
Most popular index for ARM's for many years	Libor
The name of the disclosure given to the borrower at the start	Loan Estimate

Question	Answer
The name of the disclosure given to the borrower at least three days before the end	Closing Disclosure
The agency that was created by Congress to protect consumers	Consumer Financial Protection Bureau
Director of the Bureau at this time	Kathy Kraninger
Dodd-Frank Wall Street Reform and Consumer Protection Act	The complete name of the Dodd-Frank Act
NMLS	Nationwide Multistate Licensing System
SAFE Act	Secure and Fair Enforcement Act
TRID	TILA RESPA Integrated Disclosure, Mortgage Loan
APR	Annual Percentage Rate
Year that CFPB was created	2010
Equal monthly payments on a Reverse Mortgage	Tenure
A loan where the lender can only look to the property	Non-recourse loan
A borrower is required to purchase extra products	Cross Selling
How long does an heir have to act on a reverse mortgage	Six months
Non-borrower allowed to stay in property after death of spouse	Deferral period

Question	Answer
HECM	Home Equity Conversion Mortgage
Review of RM borrower's assets	Financial Assessment
How does the VA stand behind their loans?	Guarantee
Rate of PMI on a VA loan?	None
VA contingency	Option Clause
Refinancing a VA loan too often	Churning
FHA loans are	Insured loans
Number of the famous HUD handbook	4000.1
PACE	Property Assessed Clean Energy
Head of HUD	Dr. Ben Carson
Many risky features in one loan	Risk layering
Higher FICOs, lower LTV and DTI, MI	Mitigating factors
IRRRL	Interest Rate Reduction Refinance Loan
Standards for VA cash-out financing	Net Tangible Benefit
CRA	Community Reinvestment Act
FDIC	Federal Deposit Insurance Corporation

Question	Answer
Low to moderate-income family loans in California.	CalHFA
NINA	Borrower with No Income, No Assets
NINANJ	Borrower with No Income, No Assets, No Job
A clause that states should the borrower sell or otherwise transfer the securing property, the lender is to be paid off.	Alienation Clause
The act of allowing another person to take over the existing mortgage on a property at the existing terms.	Assumption
The time that a consumer becomes contractually obligated on a credit transaction.	Consummation
An indication that the borrower wishes to move forward with their application.	Intent to Proceed
DOC	Former name of DBO
FIN-CEN	Financial Crime Enforcement Network
GPM	Graduated Payment Loan
Counties in California	58

CHAPTER 1

REVIEW QUIZ

1. Name types of borrowers that might want a Neg Am loan.

Young, Investors, Risk-takers, Lack of money

2. The Dodd Frank Act said that NegAm Loans were: Toxic

3. A big advantage to borrowers of a 15-year loan:

Earlier Payoff

4. Why is a 15-year loan normally at a lower interest rate than a 30-year loan?

The bank's money is not tied up for as long

5. Is a 15- year loan a traditional loan? No

6. In a reference for Rehab loans such as 24 CFR 203.50, what does CFR represent? Code of Federal Regulations

7. What is the name of the Fannie Mae Rehab loan? Homestyle

8. What is a 203B Loan? Regular FHA loan

9. What is the maximum amount that can be borrowed on a limited 203K loan?

\$35,000

10. What is the number of the Maximum Mortgage Worksheet?

HUD-97200

11. 203K inspections normally cost: \$150

12. The ADU CA Assembly Bill passed effective 1/1/2020 was?

AB68

13. Reverse Mortgages have been in existence for about how many years?

59 years

14. What would you estimate would be an average Jumbo Reverse Mortgage loan rate today? Will update for date of seminar

15. What is the link to research California Civil Codes?

leginfo.ca.gov

16. What would be a normal rate of PMI on Seller Financing? none

17. On a Federal exception on Seller Financing, what is the maximum number of loans you can make in 12 months? 3

18. On an AITD what is the senior loan? Existing loan at time of sale

19. Poll Question: What is your opinion about Rehab loans?

20. Poll Question: Do you ever recommend 15-year loans?

Chapter 2

ETHICS

Section 1

Anti-Money Laundering

What Is Money Laundering?¹⁴

The term, “money laundering” goes all the way back to the prohibition era, when organized crime leader Al Capone laundered proceeds from illegal liquor sales and prostitution through his chain of actual laundromats.

Money laundering is the process by which criminals attempt to conceal the illegal origin and ownership of the money obtained by their unlawful activities. Through money laundering, they try to change the money obtained from their crimes into funds from an apparently legal origin.

There are three steps to money laundering: 1) placement, 2) layering, and 3) integration.

Placement is when the criminal puts the illegally obtained funds into the legitimate financial system. At this stage, the criminal may smuggle cash across the U.S. border in luggage or secret compartments, after which the money is deposited in a bank account. Sometimes, they purchase cashier’s checks or money orders, which are then deposited in accounts at another location.

¹⁴ [Financial Action Task Force](#)

Layering is when the launderer conducts a series of conversions or movements of the money to distance the funds from the original source. This is the stage where the criminal attempts to destroy the trail from the illicit origin of the money. They may use a series of quick transactions, often through investment instruments or wire transfers through a series of accounts at various banks.

Finally, the integration stage is when the funds reenter the legitimate economy. This is the stage where real estate is a common way in which the criminals try to find a legitimate place for ill-gotten gains.

Here are some common forms of money laundering in the real estate market:

- a. Buying property with cash obtained from illegal ventures. In this form of money laundering, the criminal takes the cash from the criminal enterprise and buys a piece of real estate for cash. Often, a shell corporation is formed, sometimes in a foreign jurisdiction, and the shell corporation is the entity who buys the property. This makes it more difficult for investigators to track down the real individuals buying the property and identify the true source of the funds.
- b. Using illegally obtained money to renovate a property. The criminal buys a property and then uses money obtained through a criminal enterprise to renovate the property, and then sells the property for a higher value.
- c. Use of a third party to buy real estate on behalf of the criminal. In this example of money laundering, the criminal gives the illegally obtained money to a third party known as a “straw buyer”, who buys real estate on behalf of the criminal.
- d. Using a mortgage. The criminal obtains a mortgage to buy the property, and then pays off the loan early with money obtained from criminal activities. This is one of money launderers’ preferred “safe” methods of money laundering.

History of Anti-Money Laundering Regulation of Mortgage Brokers & Lenders

In the United States, many laws have been passed to fight money laundering – including the Bank Secrecy Act in 1970. The Financial Crimes Enforcement Network, or FinCEN¹⁵, a bureau of the Treasury Department was established in 1990 to combat money laundering, terrorist financing, and other financial crimes.

The USA Patriot Act¹⁶, or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act was passed in October 2001 after the September 11 terrorist attacks to give federal law enforcement expanded powers of search and surveillance. Among other things, the USA PATRIOT Act brought mortgage brokers under the federal anti-money laundering statutes.

Who is covered under the USA PATRIOT Act Anti-money laundering regulations?

The USA Patriot Act added loan or finance companies, including residential mortgage lenders and originators, to the list of persons covered by the anti-money laundering regulations. A residential mortgage lender is, “The person to whom the debt arising from a residential mortgage loan is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement, or to whom the obligation is initially assigned at or immediately after settlement.” (31 C.F.R. § 1010.100(l)(1))¹⁷ The term “residential mortgage lender” shall not include an individual who finances the sale of the individual's own dwelling or real property.” Seller Financing.

A residential mortgage originator is defined as a “person who accepts a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan”. Residential mortgage loan is defined as a loan that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on:(A) A residential structure that contains one to four units, including, if used as a residence, an individual condominium unit, cooperative unit, mobile home or trailer; or (B) Residential real estate upon which such a structure is constructed or intended to be constructed. (31 C.F.R. § 1010.100)¹⁸

¹⁵ <https://www.fincen.gov/>

¹⁶ [USA Patriot Act](#)

¹⁷ [31 CFR § 1010.100 - General definitions](#)

¹⁸ [ibid](#)

Therefore, the anti-money laundering rules don't apply to a mortgage broker that only handles commercial properties or apartment buildings of 5 or more units. But if a mortgage broker takes applications or negotiates loans secured by 1-4 unit dwellings or residential lots, that broker is subject to the FinCEN anti-money laundering rules. Also, a person is not exempt from the rules by virtue of being a sole proprietor.

When the regulation was being written, some commentators suggested that the anti-money laundering rules only cover a residential mortgage lender with a minimum number of 5 employees, or a minimum net-worth, but FinCEN rejected an "arbitrary size, net worth, or similar criteria" because this would perpetuate a then existing gap in Suspicious Activity Report¹⁹ (SAR) reporting. (77 Federal Register 8148 (February 14, 2012)).

Anti-Money Laundering Program

The FinCEN regulations state the components of an anti-money-laundering and terrorist financing program. (31 CFR 1029.210²⁰)

- a. First, the loan or finance company must assess money laundering and terrorist financing risks associated with the company's products & services. The company can make a list of all of the products or services it provides and assess the risk of money-laundering or terrorist financing with respect to each product or service. Some products or services will have higher risks than others.
- b. Next, the loan or finance company must develop written policies, procedures and internal controls based on the assessment. The policies, procedures and controls must integrate the company's agents and brokers into the anti-money laundering program.
- c. Third, the loan or finance company must designate a compliance officer responsible for the anti-money laundering program.
- d. Fourth, the company must provide on-going training of its employees. It is a good idea to maintain records of the trainings.

¹⁹ [Suspicious Activity Reports \(SAR\)](#)

²⁰ [31 CFR § 1029.210 - Anti-money laundering programs for loan or finance companies](#)

- e. Fifth, the company must perform independent testing to monitor & maintain an adequate program, commensurate with the risks. This can be conducted by a third party or internally, so long as the testing is not performed by the designated compliance officer responsible for the anti-money laundering program. The audit should evaluate the overall effectiveness of the program, review the risk assessment and staff training, and assess the process of reporting SARs and a sampling of SARs that were filed. The auditor should provide a copy of the audit report to the company's board of directors and report the results to senior management.
- f. Loan and finance companies must also comply with the requirement to report currency received in excess of \$10,000 in a trade or business (31 CFR 1010.330²¹). Any person who in the course of a trade or business received currency in excess of \$10,000 in one transaction or 2 or more related transactions must report the transaction to the Internal Revenue Service (IRS). Currency is defined as "coin or currency of the United States or of any other country, and a cashier's check by whatever name it is called, such as treasurer's check, bank check, bank draft, check, traveler's check, or money order having a face amount of not more than \$10,000". The company also has to report if they know that the instrument received is being used to try to circumvent the law (i.e. \$9,000 in cash and a \$2,000 check). The purpose of the rule is to prevent someone from bringing in just under \$10,000 in cash, and completing the rest of the transaction with a check or money order in the hopes of avoiding the institution reporting the transaction to the IRS. Lenders are exempt from reporting a check issued to a customer as proceeds of a loan. However, multiple payments relating to the same transaction (i.e. loan) may count. If the borrower makes their loan payments in cash or a combination of cash and check or money order, and the amount each month is less than \$10,000, the lender or servicer must add up the payments within the first year, and once the aggregate amount exceeds \$10,000, the company must report the aggregate amount within 15 days after receiving the payment that put the aggregate total over \$10,000. After that, the lender or servicer has to report if the payments exceed \$10,000 in cash or cash plus a check or money order in any 12-month period. The form used to report these activities to the IRS is Form 8300.

²¹ [31 CFR § 1010.330](#)

Anti-Money Laundering Program

Here are some examples of transactions for mortgage brokers and lenders that are reportable to the IRS:

1. A classic example of when this issue may arise in a mortgage brokerage occurs when the mortgage broker has an in-house escrow company, and a buyer brings in cash for a down payment on the purchase of a property, or cash to refinance a loan.
2. Another example is when a borrower brings in cash to pay off a loan or to pay down the principal.
3. Also, a borrower may bring in cash for fees to close a loan.
4. In a trust deed brokerage, an investor may bring in cash for a trust deed investment. Also, if a borrower makes their loan payments in cash, or a combination of cash and checks or money orders, then the lender or servicer must report the aggregate loan payments if and when they exceed \$10,000 in any 12-month period.

In each of these instances, if the cash, or cash plus check or money order is over \$10,000, the transaction should be reported to the IRS on the IRS 8300 form.

Information Sharing With the Government

Financial institutions, including loan and finance companies, are subject to requests from FinCEN for information regarding accounts or transactions in which the financial institution has engaged with a specified individual, entity, or organization.

Federal, State, local, or foreign law enforcement agencies with criminal investigative authority can request that FinCEN request information from a financial institution or institutions on their behalf. The financial institution, then, must review the accounts that they have now or in the last 12 months, or any transactions with the named suspect within the last 6 months. The company must report the findings to FinCEN. The company must designate a person as the contact person for FinCEN. The company is prohibited from telling anyone about the FinCEN request, especially not the named suspect. The company is not required to deny or engage in activity with the named suspect, and there is no ongoing reporting requirement to FinCEN for future activities with the named suspect. (31 CFR 1029.520²² and 1010.520²³)

²² [31 CFR § 1029.520](#)

²³ [31 CFR § 1010.520](#)

Office of Foreign Asset Control²⁴

The Office of Foreign Asset Control, or OFAC, is an office in the United States Department of the Treasury tasked with overseeing the sanctions that the United States has issued against individuals, entities, organizations or foreign governments, known as Specially Designated Nationals, or SDNs.

Financial institutions, money transfer companies, escrow companies, and others are required to block transactions for SDNs, and submit reports to OFAC on such transactions blocked and blocked assets held. The companies are required to retain records of such blocked transactions for 5 years. The penalties for violation are stiff – a person who willfully violates, neglects, or refuses to comply may be fined not more than \$1,000,000 or not more than 20 years imprisonment, or both.

As a practical matter, loan and finance companies, including mortgage brokers, should screen the names of customers or third parties through software, such as their LOS software, or the free tool on the OFAC website before sending money to the person. The OFAC website for its SDN List is here:

<https://sanctionssearch.ofac.treas.gov/>.

Time to Think 2.1

- 1) The three steps of money laundering are:
Placement, layering, integration
- 2) What is the official name of the Patriot Act? Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act.
- 3) FinCEN was established in which year? 1990.

²⁴ [OFAC](#)

Section 2

Do Not Call Registry

Background

The “Do Not Call” (DNC) Registry²⁵ is part of a rule promulgated under the authority of the Telemarketing and Consumer Fraud and Abuse Prevention Act²⁶ (TCFPA).

Passed by Congress in 1994, the TCFPA gave the Federal Trade Commission (FTC) and State Attorneys General authority to regulate telemarketing in an attempt to prevent and discourage telemarketing fraud. The Telemarketing Sales Rule (TSR) is the rule that the FTC issued in 1995 to put the mandate of the TCFPA into effect. The FTC has amended the TSR in 2003, 2008, 2010 and 2015.

The TSR gave consumers enhanced privacy protections and defenses against certain telemarketing practices deemed to be undesirable by the Federal government. The 2008 amendments address the use of prerecorded messages in telemarketing calls. The 2010 amendments addressed deceptive and abusive practices associated with debt relief services. And the 2015 amendments prohibit the use of remotely created payment orders and checks, money transfers, and the like, in both outbound and inbound telemarketing.

Coverage

Telemarketing is a plan, program, or campaign which is conducted to induce the purchase of goods or services by the use of one or more phones and which involves more than one interstate phone call, whether the call is made from inside or outside of the United States. (16 CFR 310.2)²⁷.

²⁵ [National Do Not Call Registry](#)

²⁶ [Telemarketing and Consumer Fraud and Abuse Prevention Act](#)

²⁷ [16 CFR 310.2](#)

A telemarketer is any person, who, in connection with telemarketing, initiates or receives phone calls to or from a customer. The rule also covers individuals and companies that provide substantial assistance or support to sellers or telemarketers. And in 2001, the USA PATRIOT act brought within the scope of the TSR for-profit telemarketers' solicitations who solicit contributions on behalf of non-profit charities.

Exceptions from Coverage

The following types of businesses are not under the FTC's jurisdiction, and therefore not covered under the TSR: banks, federal credit unions, federal savings and loans, common carriers such as long-distance telephone companies and airlines while they are engaging in common carrier activity, and non-profit organizations. However, individuals or companies that are hired by these types of entities to provide telemarketing services are covered under the TSR.

Examples:

- A non-bank that is hired by a bank to do telemarketing on the bank's behalf is covered under the TSR
- A non-telephone company is hired by a long-distance telephone company to do telemarketing on the long-distance telephone company's behalf is covered under the SFR

The following types of calls are exempt:

- Unsolicited calls from customers or donors are exempt except to extent that upselling occurs during the phone call.
- Calls placed by a customer in response to a catalogue are also exempt from coverage so long as during the calls, the seller takes orders only without further solicitation (16 CFR 310.2(gg))
- Business-to-business calls that do not involve the retail sale of nondurable office or cleaning supplies.
- Calls made in response to general media advertising, except calls related to credit card loss protection, credit repair, recovery services, advance-fee loans and certain business opportunities.

- Calls made by a customer in response to a direct mail solicitation, including email or fax or other similar methods of delivery, where (1) the solicitation is directed to a specific address or person, (2) the solicitation clearly, conspicuously and truthfully discloses all material information required by the TSR for any goods and services offered, and (3) contains no material misrepresentations. This exemption doesn't apply to calls relating to prize promotions, investment opportunities, debt relief services, credit card loss protection, credit repair, recovery services, advance-fee loans and certain business opportunities.

Mandatory Disclosures

Before a customer pays for goods or services offered, the telemarketer must truthfully, in a clear and conspicuous manner, disclose the following:

1. The total cost of the goods or service (a Regulation Z disclosure is presumed to be adequate disclosure).
2. All material restrictions, limitations, or conditions or purchase, receive or use the goods or service.
3. A statement of a policy of making no refunding, cancellations, exchanges or repurchases, or if a representation is made regarding a policy of refunds, cancellations, exchanges or repurchases – state the policy.
4. The odds of a prize promotion – no purchase necessary, and where to enter and for information.
5. All material costs or conditions to receive or redeem a prize.
6. Negative option feature, if applicable.

Deceptive and Abusive Telemarketing Acts and Practices

Those individuals and companies that are covered under the definition of telemarketer are prohibited from engaging in deceptive or abusive acts or practices.

The following are considered to be deceptive telemarketing practices:

1. Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information
 - a. Total costs to receive goods or services.
 - b. Material restriction, limitation, or condition to purchase, receive or use goods or services.

- c. Any material aspect of the performance, efficacy, nature or central characteristics of goods or services.
- d. Material terms of seller's refund, cancellation, exchange, or repurchase policies.
- e. Material aspects of a prize promotion.
- f. Material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability.
- g. Seller or telemarketer's affiliation with, endorsement or sponsorship by any person or government entity.
- h. That customer needs the offered goods or services to provide protections already afforded under the code regarding limits of credit card liability²⁸.
- i. Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s);
- j. Any material aspect of any debt relief service

2. Credit card laundering: To present to a credit card system for payment a credit card sales draft that is not the result of a telemarketing credit card transaction between the cardholder and the merchant.
3. Assisting or facilitating a telemarketer that the person knows or consciously avoiding knowing is engaged in deceptive or abusive telemarketing acts or practices.²⁹

The following are considered to be abusive practices:

1. Threats, intimidation, use of profane or obscene language
2. Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until the time frame for providing the services has expired and the seller has given the person documentation showing that the promised results have been achieved.
3. Requesting money or receiving payment to recover money paid in a previous telemarketing transaction until 7 days after getting the money back

²⁸ [15 U.S. Code § 1643](#)

²⁹ [16 CFR § 310.3](#)

4. Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the telemarketer has guaranteed or represented a high likelihood of success in obtaining the loan
5. Requesting or receiving payment of any fee or consideration for any debt relief service, unless certain provisions are met.
6. Disclosing or receiving for consideration unencrypted consumer account numbers for use in telemarketing-except as pursuant to a transaction
7. Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer with certain exceptions.
8. Failure to transmit the telemarketer's phone number and name to caller ID service used by a recipient.
9. Cause any phone to ring or calling a person repeatedly or continuously with intent to annoy, abuse, or harass
10. Denying or interfering with a person's right to be put on the DNC registry
11. Initiating a call to a person who has previously stated that he/she doesn't wish to receive an outbound call
12. Initiating a call to a person on the DNC registry
13. Abandoning any outbound telephone call
14. Initiating an outbound call with a pre-recorded message unless certain provisions are followed
15. To sell, rent, lease, purchase, or use any DNC registry for purposes other than compliance.
16. Engaging in outbound calls at the person's residence at any time other than between 8 AM & 9 PM local time at the called person's residence.
17. Failure to make the required oral disclosures in the sale of goods and services in a truthful, prompt, and clear & conspicuous manner:
 - i) The identity of the seller
 - ii) That the purpose of the call is to sell goods or service
 - iii) The nature of the goods or services
 - iv) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion

Time to Think 2.2

- 1) The Telemarketing and Consumer Fraud and Abuse Prevention Act (TCFPA) was passed in 1994.
- 2) The Federal Trade Commission (FTC) enforces the Telemarketing Sales Rule (TSR).
- 3) Telemarketers are prohibited from calling a person's residence at any time other than between 8 AM & 9 PM local time.

Do Not Call Registry

The Federal Do Not Call Registry (DNC registry) is a list that the FTC maintains. Consumers who do not want calls from telemarketers can register their phone number on the DNC registry³⁰. Telemarketers are prohibited from calling consumers who have registered their phone numbers on the DNC registry, with certain exceptions.

In addition, some states have their own DNC registries, which telemarketers must check in addition to the Federal DNC registry. California does not have a state registry. The following states have state DNC registries: Colorado, Florida, Indiana, Louisiana, Massachusetts, Missouri, Oklahoma, Pennsylvania, Tennessee, Texas, and Wyoming.

Once a consumer's number is on the Federal DNC registry, telemarketers have up to 31 days to stop calling the consumer. Telemarketers must pay a fee to access the DNC Registry. Calling consumers, even ones that aren't on the DNC Registry, is illegal unless the telemarketer has paid the requisite fee for access to the registry, or unless the telemarketer is exempt.

³⁰[Register Your Phone](#)

Violators are subject to a fine of approximately \$40,000 per violation. Each call may be considered a separate violation. There is a safe harbor for erroneously violating the DNC rules. A telemarketer will not be liable if, as part of its routine business practice:

- It has established and implemented written procedures to comply with the DNC registry rules
- It has trained its personnel in compliance procedures
- Maintains a Do Not Call list
- Uses a process to prevent telemarketing to any number on the DNC registry by using a version of the federal DNC registry obtained no more than 31 days prior to the call, and maintains records documenting this process.

Express Agreement

One of the exceptions to compliance with the DNC registry rules is when the telemarketer has the consumer's express agreement that the telemarketer may call the consumer. To qualify for the exception, the written agreement should be in writing, and clearly evidence the consumer's authorization that calls made by or on behalf of a specific party may be placed to the consumer, and shall include the telephone number to which the calls may be placed and the signature of the consumer.³¹

Established Business Relationship

Telemarketers do not have to comply with the DNC Registry rules if the seller has an established business relationship with the consumer, and the consumer has not stated that he or she does not wish to receive outbound telephone calls. An "established business relationship" means a relationship between a seller and a consumer based on:

- 1) the consumer's purchase of the seller's goods or services or a financial transaction between the consumer and seller, within the 18 months immediately preceding the date of the telemarketing call, or
- 2) The consumer's inquiry or application regarding a product or service offered by the seller, within the 3 months immediately preceding the date of a telemarketing call.

³¹ [16 CFR § 310.4\(b\)\(1\)\(B\)\(i\)](https://www.ecfr.gov/lookup/section?title=16&part=310.4&subpart=310.4(b)(1)(B)(i))

Examples of Abusive Consumer Acts

- A telemarketer calls a consumer whose number is listed on the DNC registry to try to get the consumer to take out a new mortgage without having a prior business relationship and without the consumer's written permission.
- A person makes an unsolicited advertising call to a person who is not listed on the DNC registry at 5:00 in the morning.
- During an unsolicited advertising call to a person who is not listed on the DNC registry, a person sends through a charge for a credit report to the customer's credit card without getting the customer's permission to do so.
- A telemarketer makes an unsolicited advertising call to a person who is not listed on the DNC registry, but who previously stated that they did not want to be called.

Senior Citizens and Other Consumer Fraud

Senior citizens are often targets of telemarketing fraud. This is because they often have a nest egg, own their primary residence, and have good credit – all things which make them attractive to fraudsters. Also, they are often reluctant to report fraud because they are ashamed of being scammed, or they might be concerned that relatives might think that they no longer have the mental capacity to manage their own affairs. Elderly people may be lonely and therefore less likely to hang up on telemarketers.

According to the Federal Bureau of Investigation, here are some things a telemarketer may say that are warning signs of telemarketing fraud:

- “You must act ‘now’ or the offer won’t be good.”
- “You’ve won a ‘free’ gift, vacation, or prize.” But you have to pay for “postage and handling” or other charges.
- “You must send money, give a credit card or bank account number, or have a check picked up by courier.” You may hear this before you have had a chance to consider the offer carefully.
- “You don’t need to check out the company with anyone.” The callers say you do not need to speak to anyone including your family, lawyer, accountant, local Better Business Bureau, or any consumer protection agency.
- “You don’t need any written information about the company or their references.”
- “You can’t afford to miss this ‘high-profit, no-risk’ offer.”

Time to Think 2.3

- 1) Name safe harbors for telemarketers: written procedures, training, Follow all Rules, DNC Lists.
- 2) Telemarketers have how many days to stop calling after a name is put in the DNC list? 31
- 3) Can a person tell me not to call if I just finished a loan 3 months ago?
yes

Section 3

Predatory Lending in the Subprime Market

Predatory Lending and Subprime Loans

Predatory Lending has long been a concern of lawmakers in the United States. In 1999, the Office of Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corp, the Office of Thrift Supervision, and the National Credit Union Administration issued an Interagency Guidance on Subprime Lending, stating that “Higher fees and interest rates combined with compensation incentives can foster predatory pricing or discriminatory “steering” of borrowers to subprime products...”

An Expanded Guidance for Subprime Lending Programs was released in 2001³². In 2006, the Federal agencies released the Interagency Guidance on Nontraditional Mortgage Product Risks³³. The agencies expressed concern that nontraditional mortgages had an elevated risk because of the lack of amortization and potential for negative amortization. Also, they were concerned that borrowers may not fully understand the risks of these products. Right after the subprime mortgage crisis hit in early 2007, the agencies issued the Statement on Subprime Mortgage Lending on July 10, 2007³⁴.

Subprime lending is defined in the 1999 Guidance³⁵ as “extending credit to borrowers who exhibit characteristics indicating a significantly higher risk of default than traditional bank lending customers.” Nontraditional mortgage products are defined as mortgage products that allow borrowers to defer payment of principal and sometimes interest. They are also known as alternative or exotic mortgage loans, and include interest only mortgages and payment option adjustable-rate mortgages. (Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609 (October 4, 2006)).

³² [Expanded Guidance for Subprime Lending Programs](#)

³³ [Guidance on Nontraditional Mortgage Product Risks](#)

³⁴ [Statement on Subprime Mortgage Lending](#)

³⁵ [OCC 1999 Guidance](#)

According to the 2007 Statement on Subprime Mortgage Lending, predatory lending involves at least one of the following elements:

- Making loans based mostly on the value of the borrower's property rather than on the borrower's ability to repay the mortgage according to its terms;
- Inducing a borrower to repeatedly refinance a loan in order to charge high points and fees each time the loan is refinanced ("loan flipping"); or
- Engaging in fraud or deception to conceal the true nature of the mortgage loan terms, or related products (such as credit insurance), from an unsuspecting or unsophisticated borrower.

The California Department of Real Estate (DRE) states that predatory loans carry high up-front fees that are added to the loan balance, which decrease the borrower's equity in their property.³⁶

Predatory lenders often try to pressure borrowers into signing loan agreements they can't afford or are not in the borrower's best interest. If the borrower has trouble repaying the mortgage, they are often encouraged to refinance the loan into another high-cost loan which can further deplete the borrower's equity in the property, and could result in foreclosure. The DRE lists the following predatory lending tactics:

- Exceedingly high interest rates and inflated fees in comparison with other lenders.
- Bait and switch tactics where a mortgage broker or lender knowingly offers one set of terms which are more appealing but are not readily available and then pressures the borrower into signing a contract with more expensive terms and hidden fees.
- Door-to-door high pressure salespersons and pitches for home equity loans related to home improvement contracts or contracts for the installation of items such as drapes and carpets.
- Salespersons with a background similar to the borrower's background, who attempts to gain their trust. This tactic is used to lull a homeowner into a false sense of security, causing the homeowner to make a decision based on trust instead of knowledge and understanding.

³⁶ [Avoiding Predatory Lending](#)

- Mail, radio and television ads that claim "No job! No credit! No problem! You can still qualify for a loan based on your home equity." These ads encourage the borrower to place their property at risk.
- High-pressure sales tactics requiring the borrower to sign a loan contract right away.

The Guidance and the Statements issued by the Federal agencies must be followed by the financial institutions over which the agencies have jurisdiction. Also, some state governments, such as California, have passed laws or issued rules governing subprime loans or nontraditional mortgage loans that refer to the Statement on Subprime Mortgage Lending and the Guidance on Nontraditional Mortgage Product Risks. But even for those mortgage lenders and brokers who do not come under the agencies' jurisdiction, the Guidance and Statements are instructive, and give useful guidance on considering and mitigating the risks inherent in subprime and nontraditional mortgage products, and also how to avoid predatory lending.

Time to Think 2.4

1) High pressure sales tactics are a sign of predatory lending.

2) The Guidance on Nontraditional Mortgage Product Risks was released in

2006.

3) Give an example of bait and switch:

Advertising a low rate then not having it available.

Predatory Lending and Subprime Loans

The Guidance on Nontraditional Mortgage Product Risks (“Guidance”) is concerned primarily with loans that defer repayment of principal or interest. These loans can be known as “nontraditional”, “alternative” or “exotic” mortgage loans. It also includes payment option adjustable rate mortgages.

This type of mortgage allows the borrower to choose from a number of payment options, a fully amortized loan payment at the fully indexed rate, but also may include a payment which is interest-only, or a payment that is based on an introductory interest rate. The introductory interest rate is often for a limited duration, and is less than the fully indexed interest rate, so that the amount of interest that is not included in the payment is added to the balance of the loan. A loan in which the principal balance may increase during the life of the loan is known as a negatively amortizing loan.

Statement on Subprime Mortgage Lending³⁷

The Statement on Subprime Mortgage Lending (“Statement”) was issued in response to the Federal agencies’ concern in the mid 2000’s over the growing use of adjustable-rate mortgage loans with low initial monthly payments based on an introductory rate that expires and adjusts to a variable rate. The result can be payment shock, often including one or more of the following characteristics:

- Low initial payments based on a fixed introductory rate that expires after a short period and then adjusts to a variable index rate plus a margin for the remaining term of the loan
- Very high or no limits on how much the payment amount or the interest rate may increase (“payment or rate caps”) on reset dates
- Limited or no documentation of borrowers’ income
- Product features likely to result in frequent refinancing to maintain an affordable monthly payment
- Substantial prepayment penalties and/or prepayment penalties that extend beyond the initial fixed interest rate period

³⁷ [Statement on Subprime Mortgage Lending](#)

Underwriting Practices

Both the Guidance and the Statement give recommendations to lending institutions for recognizing and mitigating the risk involved in marketing, originating, and servicing nontraditional mortgage products and subprime mortgage loans.

One suggestion is to consider the borrower's ability to repay the loan according to its terms. The Guidance states that the lending institution should consider the likelihood and effects of payment shock when setting the terms of the loan. Payment shock can occur when a loan has a low introductory rate which then jumps up to a much higher rate after the introductory rate period has expired.

Other indicia of risk include high loan-to-value ratios, high debt-to-income ratios, and low credit scores. Both the Guidance and the Statement propose that lenders can mitigate risk by calculating the borrower's ability to repay the debt by final maturity using the fully indexed rate and assuming a fully amortizing payment schedule. If the loan has negative amortization, the lender can use the initial loan amount plus any balance increases that may accrue from the negative amortization provisions. The Statement suggests that using the borrower's debt-to-income ratio is a means by which the lender can determine the borrower's ability to repay the loan. The DTI analysis should include, among other things, an assessment of a borrower's total monthly housing-related payments (e.g., principal, interest, taxes, and insurance, or what is commonly known as PITI).

Collateral dependent loans are loans which depend on being repaid by the borrower refinancing or selling the house or property which is used as collateral for the loan. The Guidance suggests that avoiding loan terms that create collateral dependent loans can mitigate the risks of nontraditional mortgages.

Risk-layering is the practice of structuring loan products which layer many different risks. An example of risk-layering is a loan which includes stated income or reduced documentation, low credit scores, and a simultaneous second lien loan. Engaging in risk-layering increases the risk for both the financial institution and the borrower. Both the Statement and the Guidance suggest that the financial institution should have strong risk management standards and policies.

The Guidance recommends that the financial institution have capital levels commensurate with the risk, and have allowances for loan losses. The Statement recommends that when risk-layering features are combined with a subprime mortgage loan, an institution should document the existence of effective mitigating factors that support the underwriting decision and the borrower's repayment capacity.

Reduced documentation or stated income loans are to be made with caution according to the Guidance. As risk increases, more diligence in documenting income is expected. The Statement is stricter. It states that "Stated income and reduced documentation loans to subprime borrowers should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity". The mitigating factors should be documented. Some examples of mitigating factors are:

- A borrower with a good payment history seeks to refinance into a loan of similar size and terms, and the borrower's financial condition has not deteriorated.
- Borrower has substantial liquid reserves or assets that can be documented and show the ability to repay the loan.

A higher interest rate is not considered to be an acceptable mitigating factor.

A simultaneous second lien loan is a junior mortgage loan that is made at the same time as the first mortgage. The existence of the second mortgage reduces the borrower's equity in the property. Borrowers who do not have much equity in their property have little incentive to keep paying their mortgage and present an increase in credit risk.

Lending to subprime borrowers is also seen as an increase in risk. Subprime borrowers as stated above "exhibit characteristics indicating a significantly higher risk of default than traditional bank lending customers." Examples of the characteristics that indicate a higher risk of default include low credit scores and reduced ability to repay the loan. The Guidance suggests lenders follow the Guidance on Subprime Lending, and to watch out for risk-layering.

Loans secured by non-owner-occupied properties present some special risks, according to the Guidance. Lenders should qualify the borrower over the life of the loan. Also, lenders should consider the vacancy factor, and also the chance that rates may increase, if the loan is an adjustable-rate mortgage.

Time to Think 2.5

- 1) Payment shock can occur when a loan has a low introductory rate which then jumps up to a much higher rate after the introductory rate period has expired.
- 2) A simultaneous second lien loan increases risk because it reduces the borrower's equity in the property.
- 3) The practice of structuring loan products which layer many different risks is called Risk-layering.

Workout Arrangements

Unlike the Guidance, the Statement on Subprime Mortgage Lending has a section on loan servicing practices, specifically regarding loan workouts and modifications. It states that prudent workout arrangements are in the long term interest of both the borrower and the lender. It recommends that the lender use prudent underwriting practices to consider a workout based on the borrower's financial capacity.

Portfolio and Risk Management Practices

The Guidance also suggested that to address the risk involved in nontraditional mortgage loans, financial institutions should consider the following portfolio and risk management practices:

- Develop written policies that specify acceptable product attributes, production and portfolio limits, sales and securitization practices, and risk management expectations.
- Design enhanced performance measures and management reporting that provide early warning for increasing risk.
- Establish appropriate levels that consider the credit quality of the portfolio and conditions that affect collectability.

- Maintain capital at levels that reflect portfolio characteristics and the effect of stressed economic conditions on collectability. Institutions should hold capital commensurate with the risk characteristics of their nontraditional mortgage loan portfolios.

In addition, the Statement suggests that the financial institution should recognize credit losses in a timely manner.

Consumer Protection

The Guidance also recommends that lenders consider enhancing consumer protections in their nontraditional mortgage loan originations and servicing. Communications with consumers should provide clear and balanced information about the benefits and risks of these products. The lender should comply with the pertinent laws and regulations, especially those involving consumer disclosures. In order to mitigate payment shock, lenders should inform consumers about potential increases in payment. Lenders should inform borrowers of the increasing loan balance and decreasing equity inherent in negatively amortizing loans.

Borrowers should be notified of the presence of a prepayment penalty in the loan terms. The Statement provides that on loans to subprime borrowers, the prepayment penalty should not exceed the initial interest rate period. The borrowers should have a reasonable time to refinance without incurring the prepayment penalty. If the lender offers reduced documentation loans at a higher price than fully documented loans, then the lender should inform the borrower of the extra cost.

The Statement recommends that if a loan does not provide for escrows for property taxes and hazard insurance, sometimes called impounds, the lender should disclose that the borrower is responsible for paying property taxes and hazard insurance in addition to their loan payment, and that the costs of these items can be substantial.

On the loan servicing side, the monthly statement for payment option adjustable-rate mortgages should give an explanation of each payment choice, and its effect on the principal balance of the loan. The Guidance lists the following practices that financial institutions should avoid:

- Practices that obscure significant risks to the consumer.
- Giving consumer predictions about future interest rates.
- Giving the borrower a one-sided description of the cash savings or expanded buying power for the nontraditional mortgage products.
- Suggesting that initial minimum payments for a payment option adjustable-rate mortgage will cover the interest due.

Control Systems

In the Guidance, the Federal agencies suggest that financial institutions should put into place policies and procedures that would help monitor and mitigate the risk of nontraditional mortgage products. One way to do this is to monitor whether the actual practices occurring at the company match the company's policies for nontraditional mortgage products. The Statement suggests that the financial institution establish appropriate criteria for hiring and training loan personnel, entering into and maintaining relationships with third parties, and conducting initial and ongoing due diligence on third parties. The Statement goes to recommend that financial institutions have procedures and systems in place to monitor compliance with applicable laws and regulations, third party agreements and internal policies.

The Guidance also recommends that the financial institution should monitor third parties hired to assist with nontraditional mortgages. Specifically, steps the financial institutions can take to monitor third parties include:

- Conducting due diligence and establishing other criteria for entering into and maintaining relationships with such third parties.
- Establishing criteria for third-party compensation designed to avoid providing incentives for originations inconsistent with the Guidance,
- Setting requirements for agreements with such third parties.
- Establishing procedures and systems to monitor compliance with applicable agreements, financial institution policies, and laws.
- Implementing appropriate corrective actions in the event that the third party fails to comply with applicable agreements, financial institution policies, or laws.

The Statement states that an institution's controls also should include appropriate corrective actions. And the financial institution should initiate procedures to review consumer complaints.

Predatory Lending in the Subprime Market Case Study

Sandy Sub is a mortgage broker regulated by the California Department of Real Estate and employs 10 loan officers. She is careful to follow the rules and regulations. One day, she receives a call from an angry borrower. It seems that one of her loan officers convinced the borrower to refinance their 30 year, fixed rate mortgage at 5% interest, by taking a new, 5 year, interest only loan for a larger loan amount than the previous loan, allowing the borrower some cash out. The payments on the new loan were the same as the old loan.

The loan had a prepayment penalty for the life of the loan. The borrower had responded to a direct mail advertisement that said, "No Job, No Credit, No Problem"! The borrower was a retired senior citizen on a fixed income. The borrower only had to show bank statement to qualify for the loan.

The borrower was not told that the monthly payments did not cover any principal, and that the borrower would have a large balloon payment in 5 years. The borrower wasn't allowed much time to review or think about the loan documents, because the loan officer said that rates were going up, and they had to close right away. The borrower doesn't know how he is going to pay the balloon payment if he is unable to refinance the loan because his credit is bad, has no other assets, is on a fixed income and is unable to work.

Sandy is concerned. Interest-only loans are not illegal, so she doesn't think she violated any laws. She wondered if other loan officers were failing to disclose pertinent loan terms to the borrowers. She doesn't have a formal way of tracking disclosures and does not have written policies and procedures on verbal disclosures. She also does not routinely track or monitor customer complaints.

Case Study Review

1. Was the loan a subprime loan; why or why not?
 - a) Yes, the loan is a subprime loan because the loan was made to a person who had characteristics indicating a significantly higher risk of default than traditional bank customer, including low credit score. And the loan had the following subprime features: prepayment penalty that extended to the life of the loan, reduced documentation, and interest-only payments.
2. Was there any risk-layering in the loan in the case study? If so, what risks were layered?
 - a) Yes, the risks that were layered are:
 - i. Low credit score
 - ii. Interest only loan
 - iii. Reduced documentation
3. Was the loan a collateral dependent loan; why or why not?
 - a) Yes, because the borrower had no way to pay the loan to maturity except to sell or refinance the loan.
4. What steps can Sandy take to monitor and mitigate any predatory or subprime lending risks?
 - a) To mitigate the predatory or subprime lending risks, Sandy can do the following:
 - i. Fully document the borrower's ability to repay the loan, including the balloon payment
 - ii. Ensure that the loan officers communicate the terms of the loan, including both the benefits and risks of the loan programs so the borrower can make an informed decision.
 - iii. Have written policies and procedures regarding disclosures, both written and verbal.
 - iv. Monitor employees for compliance with the company's policies and procedures
 - v. Monitor customer complaints, and look for areas where compliance is failing, and remedy the problems.

5. Did the loan in the case study have any predatory lending features? If so, what were they?
 - a) Yes, the loan has the following predatory lending features:
 - i. Collateral dependent loan based mostly on the value of the borrower's property rather than the borrower's ability to repay the loan according to its terms.
 - ii. Engaging in fraud or deception to conceal the true nature of the mortgage loan terms from an unsuspecting or unsophisticated borrower.
 - iii. High pressure sales tactics requiring borrower to sign a loan contract right away.
 - iv. Mail, radio and television ads that claim "No job! No credit! No problem!"

CHAPTER 2

REVIEW QUIZ

1. Which was the first Act passed to fight money laundering?

Bank Secrecy Act

2. The stage when funds re-enter the legitimate economy is called?

Integration

3. The Patriot Act was passed in? October 2001

4. Suspected Money Laundering should be reported on which reports?

Suspicious Activity Reports

5. A loan or finance company for an anti-money laundering program must designate a: Compliance Officer

6. Which IRS form is used to report activities involving more than \$10,000 cash? 8300

7. How long are blocked records to be retained? 5 years

8. Willfully neglecting to block SDN transactions could lead to fines and jail!

\$1,000,000 and 20 years or BOTH

9. Two Programs to know for reducing risk are the Guidance and the:

Statement

10. Which businesses are not covered by TSR? bank, federal credit unions plus savings and loans, long distance telephone companies, non-profits and airlines in some conditions
11. To qualify phone calls must not be made before: 8 am
12. Violators of DNC can be fined more than \$40,000
13. If a consumer inquires about a product and they do not declare they want no outbound calls I can call them for 3 months?
14. What are the types of properties that are considered residential properties?
1-4 units, condo, coop
15. FINCEN stands for: Financial Crimes Enforcement Network
16. Do you report a transaction to IRS under \$10,000 rule if they give you \$8000 in cash and a \$2500 money order? Yes
17. You are working with a DRE licensed broker. Where can you check to see if he has any State sanctions? dre.ca.gov
18. What are loan flipping, serial refinancing and churning? Predatory Lending

19. Is caveat emptor a good mantle for an MLO? No

20. Explain “Bait and Switch”. Offer me a set of terms then close on other terms

21. Poll Question: What is your opinion of the value to consumers of the DNC rules?

Chapter 3

FEDERAL LAW

Section 1

Disclosure

Introduction: A Brief History

In November 2013, pursuant to sections 1098 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Bureau issued the Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z). The 2013 TILA-RESPA Final Rule combined certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan into two new forms: The Loan Estimate and Closing Disclosure.³⁸

On August 11, 2017 CFPB memorialized the Bureau's informal guidance on various issues and made additional clarifications and technical amendments. This rule also creates tolerances for the total of payments, adjusts a partial exemption mainly affecting housing finance agencies and nonprofits, extends coverage of the TILA-RESPA integrated disclosure requirements to all cooperative units and provides guidance on sharing the integrated disclosures with various parties involved in the mortgage origination process.³⁹

³⁸ [Amended Federal Mortgage Disclosure Requirements](#)

³⁹ [Amendments to Federal Mortgage Disclosure Requirements](#)

Federal Mortgage Disclosure Requirements – Tolerance Violation and Loan Estimate Tolerance⁴⁰

The 2013 TILA-RESPA Final Rule requires creditors to provide consumers with good faith estimates of the disclosures, which describes the loan terms and closing costs required to be disclosed on the Loan Estimate⁴¹.

An estimated closing cost is disclosed in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed, except as otherwise provided.

10% Tolerance Charges

Estimates for certain third-party services and recording fees are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the sum of all such charges disclosed on the Loan Estimate by more than ten percent.⁴²

The 10% is accumulative. The total of all charges must exceed the estimate by more than 10%. One charge could increase by 10% and it would not create any problems.

This section also requires that, for the 10 percent tolerance to apply, the charge for the third-party service must not be paid to the creditor or an affiliate of the creditor and the creditor must permit the consumer to shop for the third-party service.

Loan Estimates: Regulation Z⁴³

The disclosures required must be delivered not later than three business days after the creditor receives the consumer's application. For example, if an application is received on Monday, the creditor satisfies this requirement by either hand delivering or placing them in the mail on or before Thursday. (Presumes each weekday is a business day in this example.)

⁴⁰ [§ 1026.19\(e\)\(3\)\(i\)](#)

⁴¹ [§ 1026.37](#)

⁴² [Federal Mortgage Disclosure Requirements Under the Truth in Lending Act](#)

⁴³ [§ 1026.19\(e\)\(1\)\(i\)](#)

The term “business day” means a day on which the creditor's offices are open to the public for carrying out substantially all of its business functions⁴⁴.

This differs from the definition of business days in other regulations. For example, on a 3-day right of rescission, “business day” is all days; except Sundays and Federal holidays.

Waiting Period⁴⁵

The seven-business-day waiting period begins when the creditor delivers or places the disclosures in the mail, not when the consumer receives or is considered to have received the disclosures. For example, if a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, consummation may occur on or after Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

This Regulation⁴⁶ further provides that certain other estimates are disclosed in good faith so long as they are consistent with the best information reasonably available to the creditor at the time they are disclosed. This is regardless of whether the figures exceed the initial estimate and by how much the amount exceeds what was initially stated and paid or imposed upon the consumer.

- (1) Prepaid interest
- (2) Property insurance premiums
- (3) Amounts placed into an escrow, impound, reserve, or similar account
- (4) Charges paid to third-party service providers selected by the consumer
- (5) Property taxes and other charges paid for third-party services not required by the creditor

⁴⁴ [§ 1026.2\(a\)\(6\)](#)

⁴⁵ [§ 1026.19\(a\)](#)

⁴⁶ [§ 1026.19\(e\)\(3\)\(ii\)](#)

Creditors are permitted, in certain limited circumstances, to use revised estimates of charges, instead of the charges originally disclosed to the consumer, to compare the charges actually paid by or imposed on the consumer⁴⁷.

The creditor is required to retain evidence that they performed the required actions as well as made the required disclosures under Regulation Z.

Settlement Services⁴⁸

This term means, "any service provided in connection with a prospective or actual settlement, including, but not limited to, any one of more of the following:

- Origination of a federally related mortgage loan (taking of applications, processing, underwriting, and funding)
- Rending of services by a mortgage broker (all of the above plus communicating with the parties of the loan)
- Provision of title services and other title work (even includes abstract preparation)
- Rendering of service by an attorney
- Preparation of documents, notary, delivery and recordation
- Rendering of credit reports and appraisals
- Inspections
- Settlement, Mortgage Insurance, Other Insurance, Homeowner's Warranties
- Services involving real property taxes and others
- Real broker and agent services and any other services

⁴⁷ [§ 1026.19\(e\)\(3\)\(iii\)](#)

⁴⁸ [Settlement Services Law and Legal Definition](#)

Shopping For Settlement Service Providers⁴⁹

- A creditor permits a consumer to shop for a settlement service if the creditor permits the consumer to select the provider of that service, subject to reasonable requirements.
- The creditor shall identify the settlement services for which the consumer is permitted to shop in the disclosures required under paragraph (e)(1)(i) of this section.
- If the consumer is permitted to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that settlement service and stating that the consumer may choose a different provider for that service.
- The creditor must identify at least one available provider for each settlement service for which the consumer is permitted to shop.
- The creditor shall provide this written list of settlement service providers separately from the disclosures required by other Regulations. Must be in accordance with timing requirements.

Closing Disclosure – Timing of Delivery⁵⁰

- Except as provided in paragraphs (f)(1)(ii)(B), (f)(2)(i), (f)(2)(iii), (f)(2)(iv), and (f)(2)(v) of this section, the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than three business days before consummation.
- For transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than consummation.
- If any disclosures required under paragraph (f)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

⁴⁹ [§ 1026.19\(e\)\(1\)\(vi\)](#)

⁵⁰ [§ 1026.19\(f\)\(1\)\(i\)](#)

- If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the three-business-day waiting period under paragraph (f)(1)(ii)(A) or (f)(2)(ii) of this section, after receiving the disclosures required under paragraph (f)(1)(i) of this section.
- To modify or waive the waiting period, the consumer shall give the creditor a dated, written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.
- The creditor is not required to provide the disclosures required under § 1026.19(f)(1)(i) if, before the time the creditor is required to provide the disclosures under § 1026.19(f)⁵¹, the creditor determines the consumer's application will not or cannot be approved on the terms requested, or the consumer has withdrawn the application, and, as such, the transaction will not be consummated.

Disclose Additional Credit Terms in Advertisement⁵²

If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

Disclosures required under this section shall be made clearly and conspicuously.

If an advertisement states a rate of finance charge, it shall state the rate as an “annual percentage rate”, using that term.

If the annual percentage rate may be increased after consummation, the advertisement shall state that fact.

If an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than the annual percentage rate.

⁵¹ [§ 1026.19\(f\)](#)

⁵² [§ 1026.24\(d\)](#)

If an advertisement is for credit not secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than the annual percentage rate.

If an advertisement contains the following terms:

- Amount of percentage of any down payment
- The number of payments or period of repayment
- The amount of any payment
- The amount of any finance charge

Then the following terms must be stated:

- The amount or percentage of the down payment
- The terms of repayment which reflect the prepayment obligations over the full term of the loan including any balloon payment
- The “annual percentage rate” using that term and if the rate may be increased after consummation

The requirements for all of this section (1026.24(f)) apply to any advertisement for credit secured by a dwelling, other than television and radio advertisements, including promotional materials accompanying applications.

If an advertisement for credit secured by a dwelling state a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the loan, the advertisement shall disclose in a “clear and conspicuous” manner:

- Each simple annual rate of interest that will apply.
- The period of time during which each simple annual rate of interest will apply
- The annual percentage rate for the loan.

Clear and Conspicuous

For the purposes of this section the term “clear and conspicuous” means that the terms must be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures.

In addition to the above requirements, if an advertisement for credit secured by a dwelling, states the amount of any payment, the advertisement shall disclose in a “clear and conspicuous” manner:

- The amount of each payment that will apply over the term of the loan, including any balloon payment.
- If it is a variable rate loan, the payments advertised shall be determined by the application of the sum of a reasonably current index and margin
- The period of time each payment will apply; and
- In the case of a loan secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance, if applicable, and that the actual payment obligation will be greater

An advertisement made through television or radio stating any of the terms requiring additional disclosures may comply either by stating clearly and conspicuously:

- Each of the additional disclosures required.
- The information required and listing a toll free telephone number or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional information.

If an advertisement, (other than on television or radio), for a loan secured by a consumer's principal dwelling states that the loan may exceed the fair market value of the property securing the loan, then the advertisement must also state:

- That the interest on the portion of credit that exceeds the fair market value is not tax deductible for Federal income tax purposes.
- That the consumer should consult a tax adviser.

Time to Think 3.1

- 1) The Loan Estimate Final Rule was passed in: 2013.
- 2) There is a 7 day waiting period when the creditor delivers the disclosures.
- 3) 10% Tolerance Charges are cumulative.

Section 2

Accurately Completing the Closing Disclosure⁵³

Purpose

Companies have provided borrowers with Closing Disclosures that inaccurately disclosed a Property Inspection Waiver (PIW). The fee is charged to Companies by Fannie Mae when it buys the loan on the secondary market that did not involve an appraisal. Since the PIW fee is a secondary market loan level price adjustment, and not a settlement fee, if the Companies want to pass it through to borrowers it must be included in Section A – Origination Charges – rather than Section B – Services you Cannot Shop For.

In addition, Companies have disclosed borrower good faith deposits as “Lender Credits” on the Closing Disclosures. Lender credits are payments from the creditor to the borrower, not the application of upfront deposits collected from the consumer since these monies are from the borrower not the lender. The good faith deposits from borrowers should be disclosed in the “borrower paid before closing” column on page two, or they could be disclosed as an “other credit” in section L on page three.

Finally, seller paid closing costs have not been disclosed on Closing Disclosures provided to borrowers on purchase transactions. Regulation Z allows specific seller paid costs to be exempted from disclosure on the Closing Disclosures; however, all other charges must be disclosed. For example, Regulation Z states in part: (g) Closing cost details; other costs. Under the master heading columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all costs in connection with the transaction, other than those disclosed under paragraph (f) of this section are listed in a table with a heading disclosed as “Other Costs”.⁵⁴

⁵³ [§ 1026.38](#)

⁵⁴ [§ 1026.38\(g\)](#)

The requirements, along with the limitation on the separation of borrowers and seller information are addressed in § 1026.38(t)(5)(v)⁵⁵ and indicate that seller paid fees such as real estate commissions and escrow fees must be disclosed on page two of the borrower's Closing Disclosure.

Attention to detail is not an option when it comes to completing the Closing Disclosure⁵⁶. This mandatory form details the final loan terms and closing costs for most transactions.

PIW – Property Inspection Waiver⁵⁷

There is a common misunderstanding on the handling of this fee on the Closing Disclosure. It is not a settlement fee. If the fee is passed through to the borrower(s) it must be referenced in Section A (Origination Charges) rather than Section B (Services You Did Not Shop For).

Good Faith Deposits

Another common error on the Closing Disclosure is documenting Good Faith Deposits received from the borrower(s) as a Lender Credit. Instead these deposit funds should be referenced in Section L "Paid Already by or on Behalf of Borrower at Closing", or alternatively, under "Other Credits".

Seller Paid Closing Costs

Page 2 of the Closing Disclosure "Closing Cost Details" defines there who paid what as part of the transaction. There are 3 columns, Borrower-Paid, Seller-Paid and Paid by Others. Be specific. Document, document, document. And when in doubt, document!

⁵⁵ [§ 1026.38\(t\)\(5\)\(v\)](#)

⁵⁶ [Annotated forms for TILARESPA Integrated](#)

⁵⁷ [Property Inspection Waiver Addendum Bulletin](#)

Recording Fee Cost on Closing Disclosure⁵⁸

Closing cost details; other costs. Under the master heading “Closing Cost Details” disclosed pursuant to paragraph (f) of this section, with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all costs in connection with the transaction, other than those disclosed under paragraph (f) of this section, listed in a table with a heading disclosed as “Other Costs.”

Taxes and other government fees. Under the subheading “Taxes and Other Government Fees,” an itemization of each amount that is expected to be paid to State and local governments for taxes and government fees and the total of all such itemized amounts that are designated borrower-paid at or before closing, as follows:

On the first line:

- a) Before the columns described in paragraph (g) of this section, the total amount of fees for recording deeds and, separately, the total amount of fees for recording security instruments; and
- b) In the applicable column as described in paragraph (g) of this section, the total amounts paid for recording fees.

If a mortgage broker receives a consumer’s application, the mortgage broker may provide the Loan Estimate to the consumer on the creditor’s behalf⁵⁹.

The provision of a Loan Estimate by a mortgage broker satisfies the creditor’s obligation to provide a Loan Estimate. However, any such creditor is expected to maintain communication with mortgage brokers to ensure that the Loan Estimate and its delivery satisfy the requirements described in this Guide, and the creditor is legally responsible for any errors or defects.⁶⁰

⁵⁸ [§ 1026.38\(g\) - Comment 38\(aa\)](#)

⁵⁹ [§ 1026.38\(e\)\(1\)\(ii\)](#)

⁶⁰ [§ 1026.19\(e\)\(3\)\(i\)](#)

If a mortgage broker provides the Loan Estimate to a consumer, the mortgage broker must comply with the three-year record retention requirement.

Receipt of Early Disclosures

- (1) As an example, the creditor might alternatively rely on evidence that the consumer received the disclosures earlier than three business days. For example, if the creditor sends the disclosures via overnight mail on Monday, and the consumer signs for receipt of the overnight delivery on Tuesday, the creditor could demonstrate that the disclosures were received on Tuesday.
- (2) Electronic Delivery: The three-business-day period provision applies to methods of electronic delivery, as in the case of email⁶¹.

If a creditor sends the disclosures required via email on Monday, the consumer is considered to have received the disclosures on Thursday, three business days later. The creditor alternatively could rely on evidence that the consumer received the emailed disclosures earlier.

A creditor who elects to deliver the disclosures required to a consumer via email, but doesn't obtain the consumer's consent to receive disclosures via email prior to delivering the disclosures, is not in compliance.⁶²

The Ability to Repay Rule⁶³

Requirement: A creditor shall not make a loan that is a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms.

⁶¹ [§ 1026.19\(e\)\(1\)\(iv\)](#)

⁶² [§ 1026.19\(e\)\(1\)\(iii\)](#)

⁶³ [§ 1026.43\(c\)](#)

(A.) Considerations: The following may be evidence that a creditor's ability-to-repay determination was reasonable and in good faith:

1. The consumer demonstrated actual ability to repay loans by making timely payments, without modification or accommodation, for a significant period of time after consummation or, for an adjustable-rate, interest-only, or negative-amortization mortgage, for a significant period of time after recast;
2. The creditor used underwriting standards that have historically resulted in comparatively low rates of delinquency and default during adverse economic conditions; or
3. The creditor used underwriting standards based on empirically derived, demonstrably and statistically sound models.

(B.) In contrast, the following may be evidence that a creditor's ability-to-repay determination was not reasonable or in good faith:

1. The consumer defaulted on loans a short time after consummation or, for an adjustable-rate, interest-only, or negative-amortization mortgage, a short time after recast.
2. The creditor used underwriting standards that have historically resulted in comparatively high levels of delinquency and default during adverse economic conditions.
3. The creditor applied underwriting standards inconsistently or used underwriting standards different from those used for similar loans without reasonable justification.
4. The creditor disregarded evidence that the underwriting standards it used are not effective at determining consumers' repayment ability.
5. The creditor disregarded evidence that the consumer may have insufficient residual income to cover other recurring obligations and expenses.
6. The creditor disregarded evidence that the consumer would have the ability to repay only if the consumer subsequently refinanced the loan or sold the property securing the loan.⁶⁴

⁶⁴ [Comment 43\(c\)\(1\)-1.ii.B](#)

(C.) All of the considerations listed in paragraphs (A) and (B) above may be relevant to whether a creditor's ability-to-repay determination was reasonable and in good faith. However, these considerations are not requirements or prohibitions with which creditors must comply, nor are they elements of a claim that a consumer must prove to establish a violation of the ability-to-repay requirements.⁶⁵

Repayment Ability at Consummation

The creditor is required to determine, at or before the time the loan is consummated, that a consumer will have a reasonable ability to repay the loan. A change in the consumer's circumstances after consummation (for example, a significant reduction in income due to a job loss or a significant obligation arising from a major medical expense) that cannot be reasonably anticipated from the consumer's application or the records used to determine repayment ability is not relevant to determining a creditor's compliance with the rule.⁶⁶

The final rule describes certain minimum requirements for creditors making ability-to-repay determinations, but does not dictate that they follow particular underwriting models. At a minimum, creditors generally must consider eight underwriting factors:

- (1) Current or reasonably expected income or assets
- (2) Current employment status
- (3) The monthly payment on the covered transaction
- (4) The monthly payment on any simultaneous loan
- (5) The monthly payment for mortgage-related obligations
- (6) Current debt obligations, alimony, and child support
- (7) The monthly debt-to-income ratio or residual income
- (8) Credit history

⁶⁵ [Comment 1026.43\(c\)\(1\)-ii.C](#)

⁶⁶ [Comment 1026.43\(c\)\(1\)\(2\)](#)

Time to Think 3.2

- 1) Clear and conspicuous is described in CFR 1024 as being disclosed with equal prominence and in close proximity to any trigger term.
- 2) PIW stands for Property Inspection Waiver.
- 3) The creditor must make a reasonable and good faith determination that the consumer will have a reasonable ability to repay the loan.

Third Party Service Fees in Excess of the Actual Costs⁶⁷

Requirement

Companies are charging Third Party Service Fees in excess of the actual cost for which nominal service is performed, or for which duplicative fees are charge is an unearned fee and violates this section.

Multiple services

When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person. For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing.

⁶⁷ [§ 1024.14](#)

Section 3

Appraisal and/or Other Valuation⁶⁸

Federal Regulations require that a creditor provide an applicant a copy of all appraisals and other written valuations developed in connection with an application for credit that is secured by a first lien on a dwelling.

Multiple applicants

If there is more than one applicant, the written disclosure about all written appraisals, the additional copies of those appraisals, and other written valuations, need only be given to one applicant. However, these materials must be given to the primary applicant where one is readily apparent. Similarly, if there is more than one applicant for credit in the transaction, one applicant may provide a waiver, but it must be the primary applicant where one is readily apparent.

Timing

Section 1002.14(a)(1) requires that a creditor provide an applicant copies of all appraisals and other written valuations to the applicant “promptly upon completion,” or no later than three business days before consummation.

- 1) For purposes of this timing requirement, “provide” means or “deliver.” Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant(s) or when evidence indicates actual receipt by the applicant(s), whichever is earlier.
- 2) The application and meaning of the “promptly upon completion” standard depends upon the facts and circumstances.
- 3) “Completion” occurs when the creditor receives the last version.
- 4) If an appraisal or other written valuation has been “developed”
- 5) But is not yet complete, the deadline for closed-end credit or open-end credit transaction for providing a copy is three business days before consummation or account opening still applies.

⁶⁸ [§ 1002.14\(a\)\(1\)](#)

6) Even if the transaction will not be consummated (for closed-end credit) or the account will not be opened (for open-end credit), the copy must be provided “promptly upon completion”.⁶⁹

Waiver⁷⁰

This permits the applicant to waive the timing requirement if the creditor provides the copies at or before consummation or account opening, except where otherwise prohibited by law. Except where otherwise prohibited by law, an applicant's waiver is effective in either of the following two situations:

- If, no later than three business days prior to consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule; or
- If, within three business days of consummation or account opening, the applicant provides the creditor an affirmative oral or written statement waiving the timing requirement under this rule and the waiver pertains solely to the appraisal or other written valuation containing only clerical changes from a previous version provided to the applicant.

For the purpose of this second type of waiver, revisions will only be considered clerical in nature if they have no impact on the estimated value, and have no impact on the calculation or methodology used to derive at the estimate of value. The applicant still must receive the copy of the revision at or prior to consummation or account opening.

Remember all the applicant is waiving is the timing requirement, not the actual right to receive their copy of the appraisal. This is a key point.

⁶⁹ [§ 1002.14\(a\)\(1\)](#)

⁷⁰ [§ 1002.14\(a\)\(1\)](#)

Multiple Versions of Appraisals or Valuations⁷¹

The reference to "all" appraisals and other written valuations does not refer to all versions of the same appraisal or other valuation. If a creditor has received multiple versions of an appraisal or other written valuation, the creditor is required to provide only a copy of the latest version received.

If, however, a creditor already has provided a copy of one version of an appraisal or other written valuation to an applicant, and the creditor later receives a revision of that appraisal or other written valuation, then the creditor also must provide the applicant with a copy of the revision. If a creditor receives only one version of an appraisal or other valuation that is developed in connection with the applicant's application, that version must be provided to the applicant.⁷²

HUD Prohibitions Against Kickbacks and Unearned Fees⁷³

One of the first phrases that comes out of this Section is the phrase "thing of value". MLO's and staff must be aware that HUD interprets this phrase broadly. It does not have to be money, property or baseball tickets to you. In one case the originator received a donation to her favorite charity, nothing to her and any relative. But that is a "thing of value".

Any referral of a settlement service is not a compensable service, unless specifically set forth below. A company may not pay any other company or the employees of any other company for the referral of settlement services.

No person shall give and no person shall accept any portion, split or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

⁷¹ [§ 1002.14](#)

⁷² [§ 1002.14\(a\)\(1\)](#)

⁷³ [12 CFR § 1024.14\(a\) through \(h\)](#)

An agreement or understanding for the referral of business need not be written or verbalized if a pattern or practice of receiving a thing of value (includes money, gifts, etc.) exists, the receipt of the thing of value is considered to be evidence of an agreement for referral of business.

A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident thereto.

A referral also exists whenever a person paying for a settlement service or business incident is required to use a particular provider of a settlement service or business incident thereto.

Section 8 of RESPA permits:

- A payment to an attorney for services actually rendered
- A payment by a title company to its duly appointed agent for services actually performed in the issuance of a title policy
- A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing or funding of a loan
- A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed
- A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers (This exemption only refers to real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers)
- Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto. State Law may differ.⁷⁴

⁷⁴ [SB 133](#)

- An employer's payment to its own employees for any referral activities

The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

When a person in a position to refer settlement service business receives a payment for providing additional settlement services as part of the transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person.

Any documents provided pursuant to this section shall be retained for five years from the date of execution.

Conclusion

- No referral fees.
- No split of charges except for actual services performed.
- Thing of value.
- Agreement or understanding.
 - (1) Referral
 - A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection.
 - Also occurs whenever a person paying for a settlement service or business incident thereto is required to use a particular provider.
 - (2) The Bureau may investigate high prices to see if they are the result of a referral fee or a split of a fee.

Other HUD Prohibitions⁷⁵

Section 6

Provides borrowers with consumer protections relating to the servicing of their loans. If a borrower sends a “qualified written request” to his loan servicer concerning the servicing of the loan, the servicer must provide a written acknowledgment within 20 business days of receipt of the request.

Not later than 60 business days after receiving the request, the servicer must make any appropriate corrections to the borrower’s account, and must provide a written clarification regarding any dispute. During this 60-day period, the servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request.

Time to Think 3.3

- 1) Kickback prohibitions are listed in RESPA.
- 2) Documents referring to Section 8 problems must be retained for 5 years.
- 3) Servicers have how many days to make appropriate corrections?
60

Section 8

Violations are subject to criminal and civil penalties. According to HUD, a person who violates Section 8 may be fined up to \$10,000 and imprisoned up to one year. In a private law suit a person who violates Section 8 may be liable to the person charged for the settlement service an amount equal to three times the amount of the charge paid for the service.

⁷⁵ RESPAnews.com – Prohibited Practices

Section 9

RESPA prohibits home sellers from requiring home buyers to purchase their settlement services from a particular company either directly or indirectly, as a condition of sale. Buyers may sue a seller who violates this provision for an amount equal to three times all charges made for the title insurance.

Section 10

RESPA limits the amount of money a lender may require the borrower to hold in an escrow account for payment of taxes, hazard insurance and other charges related to the property. RESPA does not require lenders to impose an escrow account on borrowers; however, certain government loan programs or lenders may require escrow accounts as a condition of the loan.

RESPA Limits on Escrow/Impound Accounts⁷⁶

Some of the rules:

- **Cushion Limit:** It is limited to one-sixth of the total of all escrow items, which would be two months of payments.
- **Total Limit:** Only require one-twelfth of amount necessary to pay all fees.
- **Review Each Year:** If overage is more than \$50.00, it must be returned within thirty days.
- **Lenders:** May make an agreement to have this account part of a loan approval.
- **Problems:** Make a written request with your questions. Lender must respond within 20 days and resolve within 60 days, or you can go to HUD.

⁷⁶ [RESPA Limits on Escrow Accounts](#)

Some Limitations on RESPA REO's

There are many, many limits on different actions by loan originators, staff, servicers, lenders, and others. For example, there are limits on members of the public purchasing HUD REO properties. There is no limit on the number an investor can buy, however, investors can only bid on properties during the Extended Listing Period.

People who are not allowed to buy any REO's:

- HUD employees and family members.
- HUD REO Marketing and Management Contractors, and Listing Brokers and their agents/employees.
- Appraisers of HUD REO's
- Members of Congress or Delegates.
- Former Non-Occupant Borrowers of FHA Insured Programs where there was a default.

Other Limits

- On Fee Increases at Closing
- Incorrect Increases from Loan Estimate
- Balloon Payments
- Pre-payment Penalties
- Proper Rate Lock charges and Limits
- Incomplete Disclosures
- Predatory Lending
- Force-placed Insurance
- Appraisal Delivery
- And many, many more

Section 4

Notification of Action Taken⁷⁷

Section 1002.9(a)(1) requires a creditor to notify an applicant of the action taken on their application when the status is:

- (1) Application is complete.
- (2) Notification of approval.
- (3) Incomplete application - denial for incompleteness.
- (4) Incomplete application - denial for reasons other than incompleteness.
- (5) Length of counteroffer - A creditor is not required to hold a counteroffer open for 90 days or any other particular length of time.⁷⁸
- (6) Counteroffer combined with adverse action notice - a creditor that gives the applicant a combined counteroffer and adverse action notice that complies with § 1002.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer.
- (7) Denial of a telephone application.⁷⁹

Notice of Action Taken/Content⁸⁰

The Equal Credit Opportunity Act (ECOA) requires a creditor to notify the applicant of the specific reasons for the action taken. A notification given to an applicant when adverse action is taken shall be in writing and shall contain:

- A statement of the action taken
- The name and address of the creditor
- A statement of the provisions of section 701(a) of the Act
- The name and address of the Federal agency that administers compliance with respect to the creditor; and either:
 - (i) A statement of specific reasons for the action taken; or
 - (ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days.

⁷⁷ [§ 1002.9 Notifications](#)

⁷⁸ [§ 1002.9\(a\)\(1\)](#)

⁷⁹ [§ 1002.9\(a\)\(1\)](#)

⁸⁰ [12 C.F.R. §1002.9\(a\)\(2\)\(i\)](#)

Statement of Specific Reasons⁸¹

Requires the statement of reasons for adverse action required to be specific and indicate the principal reason(s) for the adverse action.⁸²

Number of Specific Reasons

The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

Source of Specific Reasons

The specific reasons disclosed under §§ 1002.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

Description of Source of Specific Reasons

A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say “length of residence” rather than “too short a period of residence.”

Credit Scoring System

If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, “age of automobile”) even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

Credit Scoring - Method for Selecting Reasons

The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation.

⁸¹ [12 C.F.R. §1002.9\(b\)\(2\)](#)

⁸² [§ 1002.9\(a\)\(2\)\(i\)](#)

Judgmental System

If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.

Combined Credit Scoring and Judgmental System

If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system.

In the situation where the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally since this was the reason for the denial.

If a borrower's application falls into a gray area, and the creditor performs both a credit scoring evaluation system and judgmental assessment and then denies the credit after performing both, the reasons disclosed must come from both components. It does not matter which component of the combined system is utilized first.

Automatic Denial

Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous poor credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

Notice of Action Taken/Timing⁸³

Requires a creditor to notify the applicant of the action taken within:

- 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application.
- 30 days after taking adverse action on an incomplete application.
- 30 days after taking adverse action on an existing account.
- 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

Notification of approval

Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement when it gives the applicant the credit card, money, property, or services requested.

Length of counteroffer

Not required to hold a counteroffer open for 90 days or any other particular length of time.

Counteroffer combined with adverse action notice

A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with § 1002.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer.

Denial of a telephone application

When an application is made by telephone and an adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section.

⁸³ [§ 1002.9\(a\)\(1\)](#)

Accurately Complete the Privacy Policy Information Purposes Only⁸⁴

Purpose

- Companies have failed to accurately complete the Privacy Policy Informational Purposes Only form.

This form is self-explanatory and should be accurately and completely filled in. The endorsement you save may be your own. So many lawsuits stem from mishandling of privacy information.

The Model Privacy Form⁸⁵

The Model Privacy Form states that the form is a standardized form, including page layout, content, format, style, pagination, and shading. Institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in the instructions.

⁸⁴ [12 CFR Part 1016 - Privacy of Consumer Financial Information \(Regulation P\)](#)

⁸⁵ [Appendix to Part 1016 - Model Privacy Form](#)

Rev. [insert date]

FACTS		WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?
Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
What?	The types of personal information we collect and share depend on the product or service you have with us. This information can include: <ul style="list-style-type: none"> ■ Social Security number and [income] ■ [account balances] and [payment history] ■ [credit history] and [credit scores] 	
How?	All financial companies need to share <i>customers'</i> personal information to run their everyday business. In the section below, we list the reasons financial companies can share their <i>customers'</i> personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.	
Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes—such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes—to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes—information about your transactions and experiences		
For our affiliates' everyday business purposes—information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		
To limit our sharing	<ul style="list-style-type: none"> ■ Call [phone number]—our menu will prompt you through your choice(s) ■ Visit us online: [website] or ■ Mail the form below <p>Please note: If you are a <i>new</i> customer, we can begin sharing your information [30] days from the date we sent this notice. When you are <i>no longer</i> our customer, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.</p>	
Questions?	Call [phone number] or go to [website]	

Mail-in Form

Leave Blank OR [If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.] <input type="checkbox"/> Apply my choices only to me	Mark any/all you want to limit:	
	<input type="checkbox"/> Do not share information about my creditworthiness with your affiliates for their everyday business purposes.	
	<input type="checkbox"/> Do not allow your affiliates to use my personal information to market to me.	
	<input type="checkbox"/> Do not share my personal information with nonaffiliates to market their products and services to me.	
	Name Address City, State, Zip [Account #]	Mail to: [Name of Financial Institution] [Address1] [Address2] [City], [ST] [ZIP]

Page 2

Who we are	
Who is providing this notice?	[insert]
What we do	
How does [name of financial institution] protect my personal information?	<p>To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.</p> <p>[insert]</p>
How does [name of financial institution] collect my personal information?	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> ■ [open an account] or [deposit money] ■ [pay your bills] or [apply for a loan] ■ [use your credit or debit card] <p>[We also collect your personal information from other companies.] OR [We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]</p>
Why can't I limit all sharing?	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you <p>State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]</p>
What happens when I limit sharing for an account I hold jointly with someone else?	<p>[Your choices will apply to everyone on your account.] OR [Your choices will apply to everyone on your account—unless you tell us otherwise.]</p>
Definitions	
Affiliates	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> ■ <i>[affiliate information]</i>
Nonaffiliates	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> ■ <i>[nonaffiliate information]</i>
Joint marketing	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> ■ <i>[joint marketing information]</i>
Other important information	
[insert other important information]	

8.....

Section 5

Homeownership Counseling

Introduction

Lenders, mortgage brokers, or dealers are required to provide the Homeownership Counseling List to borrower(s) no later than three business days after they receive an application, or information sufficient to complete an application. Counseling services under this section are not to be obtained any earlier than (30) days prior to the time when the list is provided to each applicant.⁸⁶

Lenders must offer a Homeownership Counseling List that is clear and conspicuous and provides relevant services in the loan applicant's location. Lenders comply when they provide the following data for each housing counseling agency on the list to the extent that they are available through the HUD 's application program interface.⁸⁷

Agency, name, phone number, street address, street address continued, city, state, zip code, website URL, email address, counseling services provided, and languages spoken. Providing a street address is preferable to providing a mailing address, as available.⁸⁸

A list generated by the lender complies when these data fields are provided to the extent that they are available through HUD's API.⁸⁹

Lenders must provide a written list of homeownership counseling organizations in the loan applicant's location. The Bureau discussed in the RESPA Homeownership Counseling Amendments.⁹⁰

⁸⁶ [§ 1024.20](#)

⁸⁷ [§ 1024.20\(a\)\(1\)](#)

⁸⁸ [CFPB Interpretive Rule / Publication Date January 10, 2014 Page 5](#)

⁸⁹ [CFPB Interpretive Rule / Publication Date January 10, 2014 Page 6](#)

⁹⁰ [A Rule by the Consumer Financial Protection Bureau Effective 01/10/2014](#)

Lenders, should they choose, may offer borrowers the option of generating the list from a more precise geographic marker such as a street address, but are not required to offer such an option.⁹¹

The lists of homeownership counseling organizations are provided from these two sources:

- The Web site maintained by the CFPB for lenders.
- Data made available by CFPB or HUD for lenders to use.

The tool maintained by the Bureau will generate a list of ten HUD-approved housing counseling agencies. CFPB Website:

<https://www.consumerfinance.gov/find-a-housing-counselor/>

Electronic Signatures in Global and National Commerce Act 15 U.S.C. 7001(c)(1)⁹²

Purpose

An act to facilitate the use of electronic records and signatures in interstate or foreign commerce.

General Rule of Validity - Section 101:

(a) In general

- (1) A signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
- (2) A contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) Preservation of rights and obligations

(c) Consumer disclosures

1. Consent to electronic records.
 - The consumer has affirmatively consented to such use and has not withdrawn such consent.

⁹¹ [HUD Approved Housing](#)

⁹² [241+*/ Agencies](#)

⁹² [15 USC § 7001 - Electronic Records and Signatures in Commerce](#)

- The consumer is provided with a clear and conspicuous statement.
- The Consumer
 - 1) Is provided with a statement of the hardware and software requirements for access to and retention of the electronic records
 - 2) Consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used
- If a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record provides the proper information.

2. Other Rights
 - Preservation of Consumer Protections
 - Verification of Acknowledgement
3. Effect of Failure to Obtain Electronic Consent or Confirmation of Consent
4. Prospective Consent
5. Prior Consent
6. Oral Communications

Time to Think 3.4

1) What is the minimum overage amount that requires a refund from an

Escrow Account? \$50

2) Which website provides a list of Homeownership Counseling

organizations? consumerfinance.gov/find-a-housing-counselor/

3) Name an action which would require a Notice of Action Taken?

 Application is complete, notification of approval, incomplete application, Length of counteroffer, counteroffer with adverse action, denial of a telephone application.

Section 6

Regulation P - Privacy of Consumer Financial Information⁹³

Conditions for disclosure

Except as otherwise authorized in this part, an institution may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

- (i) They have provided to the consumer an initial notice as required⁹⁴;
- (ii) They have provided to the consumer an opt out notice as required⁹⁵;
- (iii) They have given the consumer a reasonable opportunity, before they disclose the information to the nonaffiliated third party, to opt out of the disclosure; and⁹⁶
- (iv) The consumer does not opt out.⁹⁷

Opt Out definition

Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party.⁹⁸

Examples of Reasonable Opportunity to Opt Out

- By mail.⁹⁹
- By electronic means.¹⁰⁰
- Isolated transaction with consumer

⁹³ [12 CFR Part 1016](#)

⁹⁴ [12 CFR Part 1016](#)

⁹⁵ [12 CFR Part 1016](#)

⁹⁶ [12 CFR Part 1016](#)

⁹⁷ [Appendix to Part 1016 - Model Privacy Form](#)

⁹⁸ [12 CFR Part 1016](#)

⁹⁹ [CFPB Rulemaking / Interactive Bureau Regulations / 12 C.F.R. Part 1016 \(Regulation P\)](#)

¹⁰⁰ [12 CFR Part 1016](#)

Application of opt out to all consumers and all nonpublic personal information.

- Institutions must comply with this section, regardless of whether or not the consumer has established a customer relationship.¹⁰¹
- Unless an entity complies with this section, they may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that they have collected, regardless of whether they collected it before or after receiving the direction to opt out from the consumer.¹⁰²

Exception to Opt Out Requirements for Service Providers and Joint Marketing

The opt out requirements do not apply when providing nonpublic personal information to a nonaffiliated third party to perform services or functions on behalf of a financial institution.

A contractual agreement is entered into with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in the ordinary course of business to carry out those purposes.¹⁰³

Example. If an entity discloses nonpublic personal information under this section to a financial institution with which they perform joint marketing, their contractual agreement with that institution meets the requirements. As long as it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in the ordinary course of business to carry out that joint marketing.¹⁰⁴

¹⁰¹ [12 CFR Part 1016](#)

¹⁰² [12 CFR Part 1016](#)

¹⁰³ [12 CFR Part 1016](#)

¹⁰⁴ [§ 1016.14\(a\)\(1\)\(ii\)](#)

Exceptions for processing transactions at consumer's request¹⁰⁵

The requirements for initial notice do not apply if you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with the following:

Necessary to effect, administer, or enforce a transaction¹⁰⁶ means that the disclosure is:

- Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons
- Required, or is a usual, appropriate or acceptable method¹⁰⁷

Exceptions to Opt Out Requirements¹⁰⁸

The requirements for initial notice do not apply when you disclose nonpublic personal information:

- With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction.
- Protections
 - a. To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction
 - b. To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability
 - c. For required institutional risk control or for resolving consumer disputes or inquiries
 - d. To persons holding a legal or beneficial interest relating to the consumer
 - e. To persons acting in a fiduciary or representative capacity on behalf of the consumer

¹⁰⁵ [§ 1016.14](#)

¹⁰⁶ [§ 1016.4](#)

¹⁰⁷ [CFPB Rulemaking / Interactive Bureau Regulations / 12 C.F.R. Part 1016 \(Regulation P\)](#)

¹⁰⁸ [§ 1016.4](#)

- To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors
- To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 to law enforcement agencies
- Consumer Agencies
 - a. To a consumer reporting agency
 - b. From a consumer report reported by a consumer reporting agency
- In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit
- Federal
 - a. To comply with Federal, state, or local laws, rules and other applicable legal requirements
 - b. To comply with a properly authorized civil, criminal, or regulatory investigation, subpoena or summons by Federal, state, or local authorities
 - c. To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law

Time to Think 3.5

1) Within how many days must a creditor notify the applicant on an

adverse action? 30.

2) What are the definitions on the Model Privacy Form?

Affiliates, Non-Affiliates, Joint Marketing

3) Privacy of Consumer Financial Information is in which code?

CFR Part 1016

Section 7

Real Estate Settlement Procedures Act (RESPA) Regulation X¹⁰⁹

Introduction

If there is one section that loan originators should study it is Regulation X, the very important part of RESPA. A large majority of the sanctions for people in the industry involve this Regulation. It involves Kickbacks, Unearned Fees, Delivery of Disclosures, Good Faith Estimate, Exemptions, Foreclosure, Discount Points and so many other factors.

A company should establish a good strong compliance program and educate their people. Then, steps should be taken to update the program and monitor the work of their staff. This regulation was passed by Congress in 1994 and was effective in 1995 (getting near 23 years of age). Lots of court cases and other actions to give even more guidance. Become an expert and perhaps save yourself and your staff money and your licenses.

*RESPA - 12 U.S.C. 2601 et seq.*¹¹⁰

Loans Covered By RESPA

All federally related mortgage loans are covered by RESPA.

Loans, including refinances that satisfy the following two criteria:

- A. First, the loan is secured by a first or subordinate lien on residential real property, including those to be constructed. A one-to-four family structure is located or a manufactured home loan using proceeds of the loan.

¹⁰⁹ [§ 1024.14](#)

¹¹⁰ [Federal Reserve - RESPA](#)

B. Second:

- Loans made by a lender, creditor, dealer
- Loans made or insured by government agency
- Loans made in connection with a housing or urban development program
- Loans made and intended to be sold by the originating lender or creditor to FNMA, GNMA, etc.
- Loans that are the subject of a home equity conversion mortgage or reverse mortgage

Loans NOT Covered By RESPA

Some of the exemptions are:

- An extension of credit primarily for business, commercial or agricultural purposes.
- Temporary financing, such as a construction loan.
- Vacant land, with no plans to build within 2 years
- An assumption where the lender does not have the right to approve a subsequent borrower on an existing federally related loan.
- The conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage as long as a new note is not required
- A bona fide transfer of a loan obligation in the secondary market.

Time to Think 3.6

1) RESPA stands for: Real Estate Settlement Procedures Act.

2) Is a construction loan covered by RESPA? True / False

False - it's a temporary loan

3) Poll Question: Which attributes or characteristics would you prefer in a new MLO? _____

CHAPTER 3

REVIEW QUIZ

1. What is the complete name of the Dodd-Frank Act?

Dodd-Frank Wall Street Reform and Consumer Protection Act

2. Who must furnish the list of providers? Creditors

3. The borrower is advised to see a tax advisor if: _____

the loan exceeds fair market value

4. The PIW is charged by Fannie Mae when it buys a loan: _____

with no appraisal

5. What are the three columns under Closing Cost details:

Seller, Borrower, Other

6. Can a Mortgage Broker provide the Loan Estimate to a consumer?

Yes

7. If a Mortgage Broker provides the LE, they must retain the records for:

3 years

8. Has RESPA improved lending violations? _____

9. A referral can be oral or written.

10. If the “thing of value” does not result in an increased price, it is not a referral fee. True / False

11. A servicer must provide a written acknowledgement of receipt of a request within 20 business days after receipt.

12. The possible prison term for a Section 8 violation is: 1 year

13. An overage of over \$50.00 in an Impound Account must be returned within 30 days.

14. CFPB will generate a list of HUD-approved Counselors.

15. Which Act requires a creditor to notify applications of actions take?
ECOA.

16. A judgmental system cannot be used. True / False

17. A creditor must notify an applicant within 30 days after receiving a completed application.

18. Requirements for initial notice do not normally apply if you disclose non-public information. True / False

19. RESPA stands for: Real Estate Settlement Procedures Act.

20. Many regulations for MLO's are in CFR 1024 and CFR 1026. What does

CFR stand for? Title 12 Code of Federal Regulations

21. Vacant land with no plans to build for 2 years are not covered by

RESPA.

22. What percent of applicants pass the NMLS test the first time?

60-65%

23. Poll Question: What are some characteristics of MLOs that make them less

successful?

Chapter 4

CALIFORNIA DBO AGENCY SPECIFIC EDUCATION REQUIREMENT – 1 HOUR

Section 1

California Residential Mortgage Lending Act¹¹¹

History

1. The California Residential Mortgage Lending Act (CRMLA) is contained in Division 20 of the California Financial Code, commencing with Section 50002.¹¹²
2. The regulations are contained in Subchapter 11.5 of Chapter 3¹¹³ of Title 10 of the California Code of Regulations, commencing with Section 1950.003 (10 C.C.R. §1950.003, et seq.).
3. The CRMLA was enacted in 1994 and became operative in 1996.
4. The CRMLA was enacted as an alternative to the existing laws licensing lenders under the Real Estate Law and the California Finance Lenders Law, in order to provide mortgage bankers with a licensing law specifically intended to regulate their primary functions of originating and servicing residential mortgage loans. The California Finance Lenders Law was changed to the California Financing Law effective October 4, 2017.
5. Unlike the Real Estate Law and the California Finance Lenders Law, the CRMLA is specifically designed to authorize and regulate mortgage banking activities. An applicant under the CRMLA may obtain a license as a lender, a servicer, or both.

¹¹¹ [About CRMLA](#)

¹¹² [Financial Code - Division 20](#)

¹¹³ [§ 1950.003. Definitions](#)

6. The CRMLA authorizes licensees to make federally related mortgage loans, to make loans to finance the construction of a home, to sell the loans to institutional investors, and to service such loans.
7. Licensees are authorized to purchase and sell federally related mortgage loans and to provide contract underwriting services for institutional lenders.
8. Licensees are authorized to service any federally related mortgage loan regardless of whether they make the loan or purchase a servicing portfolio.
9. A licensed CRMLA lender is also authorized to provide brokerage services to a borrower, by attempting to obtain a mortgage loan on behalf of the borrower from an institutional lender
10. Employees who engage in brokering activities on behalf of the CRMLA licensee must be licensed mortgage loan originators employed by the licensee.

Important Facts About CRMLA Under DBO¹¹⁴

Note: Sometimes when you are reading these codes the Agency will still be referred to as DOC, Department of Corporations. This change of names and functions was effective on July 1, 2013. This was a reorganization by Governor Jerry Brown.

The Department of Corporations and the Department of Financial Institutions were combined to form the Department of Business Oversight.

At the same time the Department of Real Estate was placed under the Department of Consumer Affairs and renamed the California Bureau of Real Estate. The agency has been changed back to Department of Real Estate.

¹¹⁴ [MLO FAQs](#)

Net Worth Requirements

Each licensee is required to maintain tangible net worth of at least \$250,000 at all times.¹¹⁵

- (a) A licensee issued a license for purposes of making or servicing residential mortgage loans, including a licensee employing one or more mortgage loan originators, shall continuously maintain a minimum tangible net worth at all times of two hundred fifty thousand dollars (\$250,000) in the business account.
- (b) The commissioner, in his or her discretion, may require a lender who engages in the activities described in paragraph (2) of subdivision (m) of Section 50003 to continuously maintain a minimum tangible net worth of an amount that is greater than two hundred fifty thousand dollars (\$250,000), but that does not exceed the net worth required of an approved lender under the Federal Housing Administration.
- (c) Tangible net worth shall be computed in accordance with generally accepted accounting principles.

Cannot Do

1. Fail to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant.
2. Accept fees at closing that are not disclosed to the borrower on the federal HUD-1 Settlement Statement.
3. Commit an act in violation of Section 2941 of the Civil Code (covers reconveyance).¹¹⁶
4. Obtain or induce an agreement or other instrument in which blanks are left to be filled in after execution.
5. Intentionally delay closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.
6. Engage in fraudulent home mortgage underwriting practices.

¹¹⁵ [California Financial Code Section 50201](#)

¹¹⁶ [Civil Code - Division 3 - 2941](#)

7. Make payment of any kind, whether directly or indirectly, to an in-house or fee appraiser of a government or private money lending agency, with which an application for a home mortgage has been filed, for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by the home mortgage.
8. Any acts in violation of Section 17200 or 17500 of the Business and Professions Code (unfair competition and deceptive advertising).¹¹⁷
9. A residential mortgage lender or servicer licensee shall maintain a surety bond in accordance with this subdivision. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division.
10. The bond shall be payable when the licensee fails to comply with a provision of this division and shall be in the amount of fifty thousand dollars (\$50,000), and may be increased by order of the commissioner to one hundred thousand dollars (\$100,000) upon a determination by the commissioner that the licensee is not in compliance with any provision of this chapter or any rule or order adopted or issued by the commissioner to implement or enforce provisions of this chapter.
11. The bond shall be payable to the commissioner and issued by an insurance company authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of its execution.
12. The commissioner may by rule require a higher bond amount for a licensee employing one or more mortgage loan originators, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage loan originators employed by that licensee. Every mortgage loan originator employed by the licensee shall be covered by the surety bond.

¹¹⁷ [Business and Professional Code - Division 7](#)

13. The license shall state the name of the licensee. If the licensee is a partnership, the license shall state the names of its general partners. If the licensee is a corporation or an association, the license shall state the date and place of the corporation's incorporation or organization. If the licensee is a residential mortgage lender or servicer, the license shall state the address of the licensee's principal business location. The license shall state whether the licensee is licensed as a residential mortgage loan lender or servicer or as a mortgage loan originator.
14. Disburse the mortgage loan proceeds in a form other than direct deposit to the borrower's or borrower's designee's account, wire, bank or certified check, ACH funds transfer, or attorney's check drawn on a trust account.
15. This chapter does not authorize a residential mortgage lender licensee to do any of the following:
 - a) Provide brokerage services through independent contractors.
 - b) Provide brokerage services through an employee not licensed as a mortgage loan originator.
 - c) Obtain or attempt to obtain for a borrower a residential mortgage loan that is a "high cost mortgage," referred to in Section 152(aa)(1) of the federal Home Ownership and Equity Protection Act of 1994, as amended (15 U.S.C. Sec. 1602(aa)).
 - d) Hold itself out to borrowers, through advertising, as a mortgage broker, rather than a residential mortgage lender. However, a licensee shall disclose its status as a broker or agent when that disclosure is required by law.
 - e) Perform activity subject to Section 10131 of the Business and Professions Code, except activities authorized by this division.
16. A mortgage loan originator may only provide brokerage services as an employee of a licensed residential mortgage lender.
17. A residential mortgage lender, or a person or employee acting under the authority of a residential mortgage lender's license, including a mortgage loan originator, shall not provide brokerage services to a borrower, except as provided in subdivision (c).

More Cannot Do¹¹⁸

- Except as provided in subdivision (b), the commissioner has primary regulatory jurisdiction over all transactions in which a licensed residential mortgage lender provides brokerage services, whether the brokerage services are provided under the authority of this chapter or under the Real Estate Law.
- If the commissioner has reason to believe that a residential mortgage lender or one of its employees has violated the Real Estate Law while providing brokerage services under a real estate broker's license, the commissioner shall refer the matter to the Real Estate Commissioner, who may conduct an investigation to determine if a violation of the Real Estate Law has occurred. If the Real Estate Commissioner believes a violation has occurred, the Real Estate Commissioner may commence an enforcement action under the Real Estate Law.

Annual Assessment

On or before September 30 of each year, the Department levies an annual assessment to be paid by each licensee for its pro rata share of all costs and expenses reasonably incurred in the administration of the CRMLA. The pro rata share is the proportion which a licensee's lending, brokering and servicing activity as reported on the annual report for the previous calendar year bears to the aggregate activity of all licensees. The minimum amount provided by statute is \$1,000 with a maximum of \$5,000.

Payment of the annual assessment is required within 20 days of the invoice date.

¹¹⁸[Financial Code - Division 20](#)

Reporting Requirements

1. Report of Principal Amount of Loans Originated and Aggregate Amount of Loans Serviced for the 12-Month Period Ended December 31 (also called Mortgage Banker Annual Report), Due March 1.
2. Non-traditional, Adjustable Rate and Mortgage Loan Survey, Due March 1.
3. Residential Mortgage Loan Report, Due March 31.
4. Mortgage Call Report, Due 45 days after the end of each quarter. Every licensee must file the Mortgage Call Report on NMLS each quarter. Please refer to the NMLS Resource Center¹¹⁹.
5. Audited Financial Statements, Due within 105 days of end of fiscal year:
 - All licensees must submit audited financial statements within 105 days of the end of the fiscal year. The audited financial statements must document that the licensee maintains tangible net worth of \$250,000. The audited financial statements must be posted on NMLS.¹²⁰

Time to Think 4.1

1. The DBO was born in the year? 2013.
2. The net worth requirements for DBO brokers is: \$250,000.
3. The bond for a DBO must be at least \$50,000.

¹¹⁹ <http://mortgage.nationwidelicensingsystem.org/slrl/common/mcr/Pages/default.aspx>

¹²⁰ [California Financial Code Section 50200](#)

Section 2

CALIFORNIA HOMEOWNER BILL OF RIGHTS

History

There were six bills passed in 2012 which would be effective on January 31, 2013. They were summarized as the Homeowner Bill of Rights. They were:

- AB 1950: Concerns problems on loan modification scams.
- AB 2314: Notification of lien releases to governmental agency.
- AB 2610: Involves Tenant Notices.
- SB 1474: Allows the attorney general to convene a State-wide grand jury for cases that occur in more than one county.
- SB 900/AB 278: Impacted the non-judicial foreclosure process and loss mitigation statutes.

The Original Bill of Rights contained the following key provisions:

- 1) Restriction on dual track foreclosure: Mortgage servicers are restricted from advancing the foreclosure process if the homeowner is working on securing a loan modification.
- 2) Guaranteed single point of contact: Homeowners are guaranteed a single point of contact as they navigate the system and try to keep their homes.
- 3) Verification of documents: Lenders that record and file multiple unverified documents will be subject to a civil penalty of up to \$7,500 per loan in an action brought by a civil prosecutor.
- 4) Enforceability: Borrowers will have authority to seek redress of “material” violations of the new foreclosure process protections. (AB 278, SB900)
- 5) Tenant rights: Purchasers of foreclosed homes are required to give tenants at least 90 days’ notice before starting eviction proceedings. (AB 2610)
- 6) Tools to prosecute mortgage fraud: The statute of limitations to prosecute mortgage-related crimes is extended from one to three years, allowing the Attorney General’s office to investigate and prosecute complex mortgage fraud crimes. In addition, the Attorney General’s office can use a statewide grand jury to investigate and indict the perpetrators of financial crimes involving victims in multiple counties. (AB 1950, SB 1474)
- 7) Tools to curb blight: Local governments and receivers have additional tools to fight blight caused by multiple vacant homes in their neighborhoods. (AB 2314)

Where Are We Today?

The original bill had sunset dates and on January 2018 many of the protections were gone. A new law was passed and was effective January 1, 2019.

It might be best to just consider the current Bill. Forget about the sunsetting and the 2012 Bill. What applies to your clients today?

Today, a "large" bank cannot record a NOD or Notice of sale or conduct a trustee sale, if a foreclosure prevention alternative has been approved in writing by all parties (first lien and junior lien holders, mortgage insurers, owners, buyers, etc.), and importantly, that proof of funds has been provided to the servicer.

Departments must coordinate.

Servicers cannot file any first notices on a residential loan until a trustee deed loan is more than 120 days delinquent. This is a big change from the old days. It was made to allow borrowers "reasonable time" to do something. Servicers must not start any action if an application is pending for a loan modification, short sale, forbearance or any other alternative to foreclosure.

Note: On a business purpose loan the Notice of Default can be filed 1 day after the expiration of any grace period.

A mortgage servicer must cancel any pending trustee sale if a short sale has been approved by all parties, and there is proof of funds. Under other alternatives a lender must record a rescission of a NOD or cancel a pending Trustee Sale, if a borrower executes a permanent foreclosure prevention alternative.¹²¹

Review Foreclosure Documents

The only parties who can record a notice of default are the holder of the beneficial interest, designated agent of such holder, or the original or substituted trustee. Certain documents must be accurate and complete and supported by competent and reliable evidence. There is a restored penalty of \$7,500.00 per violation. English translation: no more Robo Signing.

¹²¹ [CIV § 2924g](#)

Extending Initial Contact Requirement

This section prohibits a servicer or lender from recording a NOD until 30 days after said party has contacted the borrower in person or by telephone. This time can run concurrently with the 120-day delinquency rule. This contact is to assess the borrower's financial situation and explore options for avoiding a foreclosure. A servicer cannot record a NOD until the borrower is informed that they have the right to request copies of the promissory note, deed of trust, payment history, and any assignment of the loan. These docs illustrate the Beneficiary's right to foreclose. AND there are certain protections under the Servicemembers Civil Relief Act¹²² for sevicemembers or dependents.

Postponing a Trustee's Sale

Whenever a sale is postponed for at least 10 business days, the Beneficiary or their agent must provide written notice of the new date and time to the Trustor within five business days after the postponement is filed. Strangely, any failure to comply with this requirement will not invalidate any sales that would otherwise be valid. Further note: This requirement applies to all trust deeds regardless of occupancy or number of units. If the postponement date is given at a scheduled sale date, no notice is needed.

Single Point of Contact

The wording: Upon a borrower's request for an alternative, the servicer must "promptly" establish and provide a direct means of communication with a single point of contact. This part of the HOBR has been unchanged since the original¹²³.

No Dual Tracking During Loan Modifications

Simple. Stop it. The servicer cannot start a NOD, Notice of Sale, or conduct a Trustee Sale if a complete application for a loan modification is pending or if a borrower is in compliance with the terms of a written trial or permanent Loan Mod, Forbearance, or Repayment Plan.

¹²² [Servicemember's Civil Relief Act](#)

¹²³ [CIV § 2923.7](#)

No Late Fees or Application Fees

These fees cannot be collected while a loan modification is being considered, a denial is being appealed, timely payments are being made or another alternative is being evaluated or exercised. No fees can be charged for any application, processing or other fee.

Services

- A mortgage servicer shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD so they can find a HUD-certified housing counseling agency.
- After the letter has been sent, the mortgage servicer shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.
- A mortgage servicer may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgage servicer.

Tweaks and Extras

- There were a couple changes that make certain topics more transparent. There is now a five business-day cut-off for the submission of a completed application.
- Now, loan mod applications received less than five business days before a sale do not stop a sale. This change was welcomed by servicers as it clarified a problem.
- Also, a "cease and desist" exception was added to the requirements in the telephone outreach for both 2923.5¹²⁴ and 2923.55¹²⁵. Servicers before had to decide between complying with the HOBR and violating the borrower's "cease and desist request".

¹²⁴ [CIV § 2923.5](#)

¹²⁵ [CIV § 2923.55](#)

Posting of Notice of Sale and Extra Notice

Upon the posting of a Notice of Sale, the following notice must also be posted. This notice shall be mailed, addressed to, "Resident of property subject to foreclosure sale" in English and the languages described in Section 1632. It must also state that it is an infraction to tear the notice down within 72 hours of posting, subject to a fine of \$100.00.

This section shall apply only to loans secured by residential real property, and if the billing address for the mortgage note is different than the property address.

The Notice ¹²⁶

"Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 90-day eviction notice."

The Notice continues, "You may have a right to stay in your home for longer than 90 days. If you have a fixed-term lease, the new owner must honor the lease unless the new owner will occupy the property as a primary residence or in other limited circumstances. Also, in some cases and in some cities with a "just cause for eviction" law, you may not have to move at all. All rights and obligations under your lease or tenancy, including your obligation to pay rent, will continue after the foreclosure sale. You may wish to contact a lawyer or your local legal aid office or housing counseling agency to discuss any rights you may have".

¹²⁶ [CIV § 2924.8](#)

Blight

Many lenders foreclosed on properties and then failed to maintain them. This was due in part because of the amount of foreclosures and also the incompetence of loan servicers or their REO management companies.

Assembly Bill 2314 amended Civil Code 2929.3¹²⁷ to address these issues. The regulation was effective January 1, 2013 and did not sunset.

- 1) A legal owner shall maintain vacant residential property purchased by that owner at a foreclosure sale or acquired by that owner through foreclosure under a mortgage or deed of trust.
- 2) The fine can be up to \$1,000.00 per day.
- 3) The notice is mailed, and work must be commenced within 14 days and finished in no less than 30 days.
- 4) The section applies only to residential real property and the rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.
- 5) A most important detail is the Code's definition of failure to maintain. It is, "Failure to care for the exterior of the property, including, but not limited to, permitting excessive foliage growth that diminishes the value of surrounding properties, failing to take action to prevent trespassers or squatters from remaining on the property, or failing to take action to prevent mosquito larvae from growing in standing water or other conditions that create a public nuisance."

Time to Think 4.2

1. The first California Homeowners Bill of Rights became law on _____ January 1, 2013 _____.
2. Robo signing violations could cost up to _____ \$7,500 _____ per violation.
3. What is the term when borrowers decide not to pay the loan when they have enough funds? _____ Strategic Default _____.

¹²⁷ [CIV § 2929.3](#)

Foreclosure Case Studies

- 1) IRS has a \$500,000.00 lien on a property. There is a junior lien of \$20,000.00. The bid is \$100,000.00 over the opening bid. How much money does the IRS receive?¹²⁸
- 2) Does the IRS have any additional rights?¹²⁹
- 3) The opening bid maximum is \$220,000.00 and there is no junior lien. The beneficiary bids only \$180,000.00. Why would they do this?¹³⁰
- 4) The trustee accepts a bid of \$195,000.00 on the property in questions #3. Who gets the \$15,000.00?¹³¹
- 5) A borrower on a residential property loan must be how many days delinquent before a NOD can be filed?¹³² A commercial property loan?
- 6) How long is the Notice Period? The Advertising Period?¹³³
- 7) Can a Trustor substitute trustees?¹³⁴
- 8) A Bankruptcy is filed, so what is the next step?¹³⁵
- 9) Why would a beneficiary appoint a receiver?¹³⁶
- 10) Owner files a Deed in Lieu of Foreclosure. What is next?¹³⁷
- 11) Why would a lender file a Judicial Foreclosure?¹³⁸

¹²⁸ [IRS 5.12.5.1 Redemption Period](#)

¹²⁹ [ibid](#)

¹³⁰ [CIV § 2924h](#)

¹³¹ [CIV § 2924k](#)

¹³² [Factsheet on Delinquency and the 2016](#)

¹³³ [CIV § 2924f](#)

¹³⁴ [Substitution of Trustee to a Deed of Trust](#)

¹³⁵ [How Bankruptcy Can Help With Foreclosure](#)

¹³⁶ [Receivership in Foreclosure Law and Legal Definition](#)

¹³⁷ [Deed in lieu of foreclosure](#)

¹³⁸ [Deficiency Judgments After California Foreclosures](#)

Answers

- 1) None, their lien is removed from this property but is still against the taxpayer.
- 2) Yes, they can buy the property back from the winning bidder within 120 days of the sale. They have to pay what the buyer bid, but not for any improvements made.
- 3) To possibly facilitate a sale, make sure that any receivership funds, insurance claims, etc. coming later could come to them, perhaps eliminate any incorrect bids.
- 4) The lender.
- 5) 120 days for residential and 1-day past grace period for commercial.
- 6) Notice-20 days, Advertising-3 months.
- 7) No, but the Beneficiary can anytime they want to do so. If they do so during the foreclosure process, they may have to refile.
- 8) The lender must get a Relief from the Stay of Execution.
- 9) To make sure the property is run properly during the foreclosure period.
- 10) The Deed must be accepted by the beneficiaries. It can be denied.
- 11) To get a deficiency judgment.

Time to Think 4.3

1. How many days must a residential loan be delinquent before a NOD can be filed? 120 days
2. The fine for violating blight regulations is \$1,000 a day.
3. Giving a person in possession after a foreclosure money to move is called Cash for Keys.

CHAPTER 4

REVIEW QUIZ

1. In California are there more Judicial or Non-Judicial foreclosures?
Non-Judicial foreclosures
2. The CRMLA became operative in: 1996.
3. DBO is an acronym for: Department of Business Oversight.
4. How many hours of MLO license education must an MLO for Wells Fargo complete to renew an endorsement? Zero
5. The penalty for tearing down a Notice of Sale is \$100.
6. Which Federal Act regulates Short Sale Agreements between owner and agent? MARS / Mortgage Assistance Relief Services
7. Poll Question: What is your opinion of Strategic Default?

FINAL PROJECT

There are two methods to end a NMLS 8 Hour CE Course: Final Exam or Final Project. Our students when surveyed have preferred a Final Case Study Project.

All students must participate in the project by reading the information, form answers/opinions, and then be prepared to discuss the questions.

The NMLS allows only 20 minutes for this Study so you must read quickly and work quickly so that we can finish in the allotted time. Good luck.

INTRODUCTION

Clark Van Galder is an experienced mortgage loan originator working in Wisconsin. He has been promoted by his company to go to Bakersfield, California and assume management control of a large branch of a national company. The employees are licensed by the Department of Business Oversight. The branch has been in trouble with several regulatory audits and needs to make many corrections. Each problem will be highlighted, and you will be Mr. Van Galder with authority and responsibility to make severe changes.

PROJECT ONE

There have been many citations for lack of money laundering control. Borrowers have paid cash down payments of substantial amounts with no track record of the money. Also, applicants have shown low income on pay stubs and tax returns yet have large cash reserves. There have been cash transactions of over \$10,000 in many instances with no action by the licensee. Not one Suspicious Activity Report has been filed in the last two years with this large staff.

Q: What are the recommended procedures that you should consider?

A: _____

_____.

PROJECT TWO

The Reverse Mortgage Department has not been writing many loans in the past six months. It is obvious that the licensees do not have a thorough understanding of the regulations. They ask you some questions on writing an advertisement to be used in a mailer. They want to use the following phrases:

- a) Get a Fixed Rate loan and get the entire benefit paid to you in the first year. _____
- b) If the borrowing spouse passes away, the non-borrowing spouse will continue to receive the monthly tenure payment. _____
- c) An equity line of credit will grow at the rate of the interest rate on the loan only. _____.
- d) If you buy a home with a RM, you can rent out your present home. _____
- e) You have no approval process of any kind. _____
- f) You cannot lose your home until you die or move out for twelve months. _____
- g) Your heirs can buy the home for 75% of the lower of the loan or home value. _____

PROJECT THREE

Q: One of the staff wants to start doing full-time telephone marketing. The person has no telemarketing experience and is coming into the MLO field after passing the NMLS exam easily. What should Mr. Van Galder do to educate the person about do-not-call regulations and other telemarketing rules?

A: _____

_____.

PROJECT FOUR

Q: The staff has a lack of understanding of finance charges. Complaints have been received from applicants and borrowers that they have been given incorrect information in their interviews. You decide to give them an exam on the topic to see what their problem is. When you find the areas that they do not understand, you will instruct them properly. When the topic is called, state whether the item is a finance charge or not. Assume that the loan is secured by real property and the fees are bona fide and reasonable.

A: _____

_____.

PROJECT FIVE

Q: Identity Theft: This is something that is not being considered important in the company.

Borrowers have used suspicious documents. Documents are left in the open. Affiliates have no identity theft procedures. There are no policies on review of application. Company emails are constantly being hacked. Money transfers have been diverted.

Red Flags are never even discussed. You want to establish a program to help them better fight these problems for clients. What are some of the steps that you would demand be followed by the company?

A: _____

_____.

**203(k) and Streamlined (k)
Maximum Mortgage Worksheet**

See Public Reporting Statement on the back before
completing this form (See Notes 1 thru 8 on back)

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval
No. 2502-0527
(exp. 07/31/2017)

Borrower's Name & Property Address (include street, city, State, and zip code)			FHA Case Number	No. of Units	HUD REO? <input type="checkbox"/> Yes <input type="checkbox"/> NO	<input type="checkbox"/> Purchase <input type="checkbox"/> Refinance <input type="checkbox"/> Streamlined (k) (Note 6) Purchase Date (owned less than 12 months) <input type="text"/>
			Type: <input type="checkbox"/> Owner-Occupant <input type="checkbox"/> Nonprofit <input type="checkbox"/> Government Agency			
A. Property Information	1. Contract Sales Price Or <input type="checkbox"/> Existing Debt \$	2. 'As-is' Value \$	3. After-improved Value \$	4. 110% of A3 (Note 8) \$	5. Borrower Paid Closing Costs + Prepays (Refinance) \$	6. Allowable energy Improvements (Note 2)
B. Rehabilitation and Other Allowable Costs	1. Total Cost of Repairs (Line 36, HUD-9746-A) includes the improvements in A6 and REO Lead Based Paint Stabilization					\$
	2. Contingency Reserve on Repair Costs () (10 to 20% of B1)					\$
	3. Inspection Fees (x \$ per inspection) + Title Update Fee (x \$ per draw)					\$
	4. Mortgage Payments Escrowed (months x \$) if uninhabited (Note 7)					\$
	5. Sub-Total for Rehabilitation Escrow Account (Total of B1 thru B4)					\$
	6. Architectural and Engineering Fees (Exhibits) (Note 7)					\$
	7. Consultant Fees (including mileage, if applicable) (\$ + miles@ /mile) (Note 7)					\$
	8. Permits					\$
	9. Other Fees (explain in Remarks)					\$
	10. Sub-Total (Total of B5 thru B9)					\$
	11. Supplemental Origination Fee for both 203k and Streamlined (k) (greater of \$350 or 1.5% of B10)					\$
	12. Discount Points on Repair Costs and Fees (B10x %)					\$
	13. Sub-Total for Release at Closing (Total of B6 thru B9 + B11 and B12 (Note 3)					\$
	14. Total Rehabilitation Cost (Total of B5 and B13 minus A6) (Streamlined (k) can not exceed \$35,000)					\$
C. Mortgage Calculation for Purchase Transactions	1. Lesser of Sales Price (A1) or As-Is-Value (A2)					\$
	2. Total Rehabilitation Cost (B14)					\$
	3. Lesser of Sum of C1 + C2 (\$) or 110% of After-Improved Value (A4)					\$
	4. Base Mortgage Amount: Sum of C3 +(-) Required Adjustment (Note 4) (\$) x LTV Factor (96.5%) (Owner-Occupant) or Less Allowable Down payment/ HUD-Owned Property (\$) (Note 5)					\$
D. Mortgage Calculation for Refinance Transactions	1. Sum of Existing Debt (A1) + Rehabilitation Cost (B14) + Borrower Paid Closing Costs + Prepays (A5) + Discount on Total Loan Amt minus Discount on Repair Costs (B12) minus FHA MIP Refund (\$)					\$
	2. Lesser of Sum of As-is Value (A2) (Note 1) + Rehabilitation Cost (B14) (\$) or 110% of After-Improved Value (A4)					\$
	3. D2 (\$) x LTV Factor (97.75%) (Owner-Occupant)					\$
	4. Base Mortgage Amount Lesser of D1 or D3 (Note 5)					\$
E. Calculation for EEM	1. Energy Efficient Mortgage (EEM) Amount (C4 or D4) + A6 (Note 2)					\$
F. Summary	UFMIP Factor %	UFMIP \$	Total Escrowed Funds \$	Interest Rate	Discount Pts %	\$ _____
	1. Total Mortgage Amount with UFMIP (C4, or D4 or E1 + UFMIP)					
DE Underwriter's Signature, Title & Date						CHUMS No.
Borrower's Signature & Date (Optional)			Co-Borrower's Signature & Date (Optional)			

Remarks (Continue on separate page if needed)

Notes:

1. If owned less than 1 year, use lesser of A2 or Original Acquisition Cost plus Debts incurred for rehabilitation since acquisition.
2. Refer to Mortgagee Letters 05-21, 95-46, and 93-13.
3. These Allowable Costs may be released at closing, provided paid receipts or contractual agreements requiring payment are obtained
4. Required Adjustments would include additions such as financeable repairs and improvements, energy related weatherization items, and solar energy systems, as well as subtractions including sales concessions in excess of six percent of the sales price, inducements to purchase, personal property items, etc., all as per HUD Handbook 4155.1 (May also include HUD REO Lead Based Paint Credit.)
5. Maximum Mortgage before UFMIP not to exceed statutory limit.
6. See ML 2005-50.
7. Not applicable to Streamline 203(k) transactions.
8. If Condominium limit to 100% of A3

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection involves an expanded information requirement for lenders that originate and service Section 203(k) mortgages. The purpose of the information is to help mitigate program abuses. The expanded information focuses on the loan origination process and requires increased documentation and strengthened internal control procedures. Periodic reporting of the information is not required. The information also includes information that was voluntarily accepted by the 203(k) lending community. The information provides a more comprehensive basis for evaluating lender underwriting practices and thereby improves risk management of the 203(k) loan portfolio. Responses are required under Section 203(k) of the National Housing Act (12 U.S.C. 1703). No assurance of confidentiality is provided.



VITAL INFORMATION SHEET

1. TO RECEIVE YOUR CERTIFICATE – PRINT ONLINE

- a. Go to www.DuaneGomer.com after five business days from today.
- b. From the Blue Bar select “Mortgage Loan Originators” and then “NMLS CE Attendee Certificates.” Type in your Name **OR** your NMLS individual number.
- d. Follow the prompts and print your certificate. Note: This Certificate is for your records only; we send the official notice to NMLS.
- e. We are allowed seven days to submit student completion data, but we normally do it much faster.

2. OTHER SERVICES:

- a. NMLS 20 Hour Pre-License Course - Live and Online.
- b. MLO Exam Prep Course – Live and Online.
- c. Continuing Education Courses (Live and Online) for MLO, DRE and Notary.
- d. Crash Courses (Live and Online) for Salespersons and Brokers plus Notaries.
- e. College Level Courses to Qualify for the DRE exams.

3. THANK YOU. Your support of our courses is so appreciated. See you next year. Our contact info: (800) 439-4909 or (949) 457-8930, or email us at Duane.G@Duanegomer.com. You can also visit our website @ www.DuaneGomer.com or Like our Facebook page <http://www.Facebook.com/DuaneGomer>



To Download a full copy of the textbook that
accompanies this workbook go to
[**http://duanegomer.com/nmls/2020.pdf**](http://duanegomer.com/nmls/2020.pdf)

DUANE GOMER EDUCATION: Important Information Form

(This is the only record kept that you attended the class, so please be complete & legible. Include your e-mail and phone number so we can send you periodic updates & research information)

Name - As it appears on your MLO Endorsement		NMLS#	DRE#		
Complete Home Address or P.O Box Mailing Address (include zip code): <hr/>					
Company Name and Address (include zip code): <hr/>					
Daytime Phone # (with area code):		E-mail address	DRE Expiration Date:		
Check Box Applicable		Currently <input type="checkbox"/> Full-Time MLO <input type="checkbox"/> Part-Time MLO <input type="checkbox"/> Other <input type="checkbox"/> Inactive			
<input type="checkbox"/> Responsible Broker <input type="checkbox"/> Broker <input type="checkbox"/> Agent <input type="checkbox"/> In Grace Period		Position in your company <input type="checkbox"/> Previous Student? <input type="checkbox"/> No <input type="checkbox"/> Once <input type="checkbox"/> More - How many?			
Number of Years You've Had License		Which Social Media are you using? <input type="checkbox"/> Facebook _____ <input type="checkbox"/> Linked In _____ <input type="checkbox"/> Blog <input type="checkbox"/> Yelp <input type="checkbox"/> Email N/L <input type="checkbox"/> Twitter _____			
Any designations you hold	Office held in any Assoc., Board, CAMP, etc	Name of business computer & software you're now using	Name of any outstanding speakers you've heard lately	Approximate # of Licensees in your office	We present Broker/Sales Licensing, Notary, Real Estate CE, MLO Licensing & CE, Prop Mgmt & Other Courses - want info on any?
Specialty in Lending: <input type="checkbox"/> Owner/Manager <input type="checkbox"/> Attorney <input type="checkbox"/> Residential <input type="checkbox"/> Sell Houses <input type="checkbox"/> Hard Money <input type="checkbox"/> Underwriter <input type="checkbox"/> Commercial <input type="checkbox"/> Inactive <input type="checkbox"/> HECM <input type="checkbox"/> Admin <input type="checkbox"/> Processor <input type="checkbox"/> Escrow <input type="checkbox"/> Do all loans <input type="checkbox"/> Other		How did you hear about us? <input type="checkbox"/> Previous Student <input type="checkbox"/> Friend <input type="checkbox"/> 4 Page Flyer <input type="checkbox"/> E-mail <input type="checkbox"/> Post Card <input type="checkbox"/> Website <input type="checkbox"/> Telephone <input type="checkbox"/> Facebook <input type="checkbox"/> Title Company <input type="checkbox"/> CAMP <input type="checkbox"/> Assoc./Board <input type="checkbox"/> Linked-In <input type="checkbox"/> Broker/Associate <input type="checkbox"/> Other		Comments about NMLS Licensing & Regulations	
Suggestion Box: PLEASE help us improve our program.					
RATE SPEAKER'S PERFORMANCE: _____					
RATE MEETING ROOM & BOOKS: _____			RATE OUR STAFF: _____		
NAMES & OFFICES (ADDRESS, PHONE, OR E-MAIL, IF POSSIBLE) OF ANYONE TO WHOM WE SHOULD SEND INFORMATION: <hr/> <hr/>					
ANY OTHER COMMENTS, SUGGESTIONS, COMPLAINTS OR POINTS OF ORDER: <hr/> <hr/>					
TIME SHEET: START: _____ END: _____			I ATTENDED THE ENTIRE SEMINAR _____ Initials _____		
ABSENT #1 _____ ABSENT #2 _____ ABSENT #3 _____ ABSENT #4 _____ ABSENT #5 _____ TOTAL _____					
I WAS GIVEN INFO ON DOWNLOADING MY CERTIFICATION _____ Initials _____					
I Received A Copy And Understand The Rules Of Conduct For NMLS Courses.					
SIGNATURE: _____ DATE: _____ LOCATION: _____					